



**New Proposals For 1972:  
ACIR Legislative Program**

**Advisory Commission on Intergovernmental Relations, Washington D.C. 20575**

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*New Proposals For 1972*

**ACIR  
STATE LEGISLATIVE  
PROGRAM**

**ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS  
WASHINGTON, D.C. 20575  
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## FOREWORD

The Advisory Commission on Intergovernmental Relations — ACIR — is a 26 member, bipartisan body established by Act of Congress in 1959 to give continuing study to the relationships among local, State and national levels of government and to recommend improvements. The Commission's membership, listed on the inside of the front cover, represents the legislative and executive branches of the three levels of government and the public at large.

Although created by Congress, the Commission does not speak for the Federal Government. Therefore, it should not be inferred that the Federal Government necessarily concurs in all recommendations of the Commission or in suggested legislation to implement them.

In its unique role as the official monitor of the American federal system, the Commission offers an extensive action agenda for improving government at all levels. Strengthening State and local government, the weaker partners of the federal system, is a central theme of the Commission's recommendations.

The Commission recognizes that its contribution to strengthening of the federal system will be measured, in part, in terms of its role in fostering significant improvements in the relationships between and among Federal, State and local governments. It therefore devotes a considerable share of its resources to encouraging the consideration of its recommendations for legislative and administrative action by government at all levels.

ACIR recommendations for State action are translated into legislative language for consideration by the State legislatures. The new proposals in this volume were drafted to implement recommendations in the Commission's report, *State Local Relations in the Criminal Justice System*. They are: "Judicial Constitutional Article," "Omnibus Judicial Act," "Omnibus Prosecution Act," "State Department of Correction Act," "Upgrading Police Personnel Practices," "Expanded State Services to Local Law Enforcement Agencies," "Rural Police Protection Act," "Intrastate Extraterritorial Police Powers," "Special Police Task Forces," "Independent County Police Forces and Modernized Sheriff's Departments," and "Minimum Police Services in Metropolitan Areas."

The other draft bills are revisions of proposals contained in earlier editions of the ACIR State Legislative Program. These are: "Legislative Apportionment Procedure," "Uniform Relocation Assistance," and "State Public Labor-Management Relations."

Some of the proposals in this volume are based on existing State statutes. Initial drafts were prepared by the ACIR staff. Individual proposals were reviewed by State officials and others with special knowledge in the subject matter fields involved.

All the proposals have been reviewed by an Advisory Board on State Legislation and the drafts further revised where appropriate to incorporate suggestions for improvement. Responsibility for the content of the proposals, however, rests solely with ACIR.

Members of the Advisory Board, whose valuable contributions are gratefully acknowledged, are:

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These proposals for State legislation are offered in the hope that they will serve as a useful reference aid for State legislators, State legislative service agencies, and others interested in strengthening the legislative framework of intergovernmental relations. Reprints of individual proposals are available in "slip bill" form upon request.

A complete list of current ACIR publications will be found at the end of this volume. Previous State legislative proposals to implement recommendations contained in Commission reports are available in the *1970 Cumulative ACIR State Legislative Program* and in *New Proposals for 1971: ACIR State Legislative Program*. Copies of the 1970 Cumulative Program and New Proposals for 1971 as well as additional copies of this volume, or reprints of the individual proposals they contain, are available upon request.

The draft proposals in this volume are identified by code numbers which conform to *A Functional Analytical Index to Suggested State Legislation (1941-1972)* prepared by the Council of State Governments.

Wm. R. MacDougall  
Executive Director

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## JUDICIAL CONSTITUTIONAL ARTICLE

A substantial part of the disorganization in most State-local criminal justice systems stems from the confused character of the judicial process. Too often judicial systems suffer from lack of centralized court administration, wide disparities in the qualifications for and conduct in judicial office, overly cumbersome procedures for judicial retirement and discipline and an over reliance on partisan methods of judicial selection.

Judicial reform in these matters needs to be of a constitutional and statutory nature. The separation of powers necessitates the drafting of a model constitutional article that will be the basis for statutory court reforms. The following draft constitutional article provides the fundamental construct for (1) a unified court system under the central direction of a Supreme Court and the chief justice, (2) uniform rules concerning judicial conduct, (3) modernized procedures for judicial retirement, removal, and discipline, and (4) "merit" selection of judges.

State judicial constitutional reform has enjoyed considerable support in the past three decades. Beginning with thorough reforms in Missouri in 1945 and New Jersey in 1947 and building on the model constitutions of Alaska and Hawaii in 1959, a number of other States have revised their constitutional judicial articles. Among such States are California (1966), Colorado (1966), Illinois (1962), Michigan (1964), Nebraska (1962, 1966), New Mexico (1966, 1967), New York (1961), and Oklahoma (1967). This model constitutional article is derived from the various provisions of the Alaska, California, Hawaii, Illinois, Missouri, Nebraska, and New Jersey constitutions as well as the model judicial constitutional articles of the American Bar Association and the National Municipal League.

### Suggested Constitutional Judicial Article

1            *Section 1. The Judicial Power.* The judicial power of the state is vested in [a unified judicial  
2 system] [one Court of Justice], which shall include a Supreme Court, [a Court of Appeals,] a Trial  
3 Court of General Jurisdiction, the geographic divisions of which shall be District Courts, [and special  
4 subdivisions of the Trial Court of General Jurisdiction known as Courts of Limited Jurisdiction].  
5 All courts except the Supreme Court may be divided into geographic districts and into functional  
6 divisions and subdivisions as provided by law or by judicial rules not inconsistent with the law. The  
7 several courts shall have original and appellate jurisdiction as provided by law.

8            *Section 2. Court Administration.* The chief justice of the Supreme Court shall be the execu-  
9 tive head of the judicial system and shall appoint, with the approval of the Supreme Court, an  
10 administrator and such assistants as the administrator deems necessary to supervise the administration  
11 of the courts of the state. The chief justice with the approval of the Supreme Court, may [assign  
12 judges from one court or division thereof to another] [assign judges to any court in the state] in order  
13 to aid in the prompt disposition of judicial business.

14            *Section 3. Rule Making Power.* The Supreme Court shall adopt rules governing the adminis-  
15 tration, practice and procedure in all courts. These rules may be changed by the legislature by a

1 [majority] [two-thirds] vote of the members elected to each house.

2       *Section 4. Judicial Rules of Conduct.* (a) The Supreme Court shall adopt rules of conduct for  
3 all judges.

4       (b) All judges shall devote full time to judicial duties. They shall not, while in office, engage in  
5 the practice of law or other gainful employment. They shall not hold any other public office under  
6 the United States, this state or its civil divisions. They also shall not directly or indirectly make any  
7 contribution to, or hold any office in, a political party or organization.

8       *Section 5. Commission on Judicial Qualifications.* The legislature shall establish a Commission  
9 on Judicial Qualifications. The Commission may recommend to the Supreme Court the removal,  
10 retirement, or discipline of any judge who the Commission finds is physically or mentally incapable  
11 of performing his judicial duties, or who has persistently failed to perform his judicial duties or whose  
12 other conduct has been prejudicial to the administration of justice.

13       *Section 6. Judicial Nominating Commissions.* The legislature shall establish a judicial nomi-  
14 nating commission for the Supreme Court and for each geographic division of [the Court of Appeals  
15 and] the Trial Court of General Jurisdiction. All judges shall be appointed initially by the Governor  
16 from a list of nominees submitted by the appropriate judicial nominating commission. Each judge  
17 shall stand for retention in office on a ballot which shall submit the question of whether he should  
18 be retained in judicial office for the prescribed term.

## OMNIBUS JUDICIAL ACT

This nation's State-local judicial systems suffer from a number of serious administrative, structural, and fiscal maladies. Court systems in most States are highly fragmented, lack central administrative direction, exhibit disparate rules of practice and procedure, have cumbersome and unprofessional procedures for judicial selection, discipline, removal, and retirement, and are often faced with a critical lack of funding. The result is too often a disorganized, inefficient judicial system.

To rectify this situation, 18 States have unified their court systems, 35 States have instituted a central court administrator, 17 States use the Missouri Plan for selection and appointment of judges; 18 States use judicial qualifications commissions to scrutinize the performance of incumbent judicial personnel; four States have assumed all judicial costs and 22 States provide for compulsory judicial retirement on or after the age of 70. All these State reforms have resulted in a more efficient and manageable judiciary.

The omnibus judicial bill is divided into ten titles. Title I sets forth the purpose and definitions of the act. Title II delineates the structure of a unified judicial system and provides for the organization and jurisdiction of the supreme court, court of appeals, and trial courts of general and limited jurisdiction. The chief justice is made executive head of the judicial department, and the supreme court or the legislature may organize the geographical divisions of the court of appeals and the trial courts of general and limited jurisdiction.

Title III structures the administrative responsibility for court operation. Part A creates a three-tiered hierarchy of judicial administration making departmental justices and chief judges responsible to the chief justice for the conduct of court business. Part B provides for professional court administrators at all levels to aid chief judicial personnel in their management responsibilities. The office of the State court administrator centralizes management responsibilities at the highest judicial level and should be a guiding force in effecting more uniform court procedures, more flexible assignment of court personnel, and more continuous scrutiny of the operations of the judicial system as a whole. The appellate and general trial court administrators provide similar guidance in other courts.

Title IV confers upon the chief justice assignment power over judicial personnel and Title V centralizes judicial rule-making power in the supreme court and the chief justice.

Title VI specifies the qualifications for judicial office and the method of judicial selection. It authorizes the creation of judicial nominating commissions that shall select nominees for appointment to any judicial vacancy. Procedures for nonpartisan election of judges so appointed are also set forth.

Title VII provides for the promulgation of a canon of judicial ethics, full-time service for judges, and the institution of a judicial qualifications commission to scrutinize the performance of incumbent judges. The judicial qualifications commission may recommend to the supreme court the (i) involuntary retirement of judges due to mental or physical disability which hinders their judicial performance or (ii) the removal or discipline of judges whose conduct may be deemed prejudicial to the administration of justice.

Title VIII mandates State assumption of court finances and the institution of centralized budget and personnel procedures for the judicial system. Title IX makes judicial retirement mandatory at the age of 70. It also sets forth, in general terms, other conditions of retirement for judicial department personnel.

Title II is modelled after Connecticut, Idaho, and Vermont laws on judicial organization. Title III

is derived from statutes of the over 30 States that have central court administrators. Titles IV and V are adapted from Puerto Rico and Hawaii law respectively.

Title VI on “merit” selection of judges is adapted from Missouri and Nebraska laws.

Title VII on judicial conduct is designed after California Supreme Court rules as well as Idaho, Nebraska, and Oregon laws on the subject.

Title VIII is modelled after Colorado law and parts of Title IX are adapted from Maine legislation.

### Suggested Legislation

#### TITLE I

#### PURPOSE AND DEFINITIONS

1           *Section 1. Purpose.* The purpose of this act is to: (i) create a unified court system, subject to  
2 central direction by the chief justice and the supreme court, (ii) to institute a corps of professional  
3 court administrators to assist the chief justice and judicial associates in matters of court administra-  
4 tion, (iii) to provide modernized procedures of judicial retirement and discipline, (iv) promulgate  
5 uniform rules on judicial conduct and judicial qualifications, (v) to provide for “merit” selection of  
6 judicial personnel, and (vi) to mandate state assumption of all court finances.

7           *Section 2. Definitions.* As used in this act:

8           (1) “Judicial department” means the judicial branch of the state government.

9           (2) “Judge” means any duly appointed or elected presiding judicial officer in the state.

10          (3) “Chief justice” means the chief justice of the state supreme court.

11          (4) “Director” means the head of the administrative office of the courts.

12          (5) “Departmental justice” means the judicial administrative head of a judicial circuit.

13          (6) “Administrator” means the general trial court administrator of each judicial district.

14          (7) “Member of the state bar” means any person admitted to the practice of law in this state.

15          (8) “Nonjudicial personnel” means all employees of the judicial department who do not hold  
16 the post of judge.

17          [(9) “Judicial circuit” means a geographical division of the state court of appeals.]

18          (10) “Judicial district” means a geographical division of the state general trial court.

## TITLE II

## JUDICIAL DEPARTMENT ORGANIZATION AND STRUCTURE

1        *Section 1. General Plan of Organization.* The judicial department of the state shall consist of a  
 2 supreme court, [a court of appeals and] a statewide general trial court and such subdivisions of the  
 3 general trial court to be known as trial courts of limited jurisdiction as [the supreme court may estab-  
 4 lish] [may be established by law]. The executive head of the judicial department shall be the chief  
 5 justice of the supreme court. The territorial jurisdiction of all courts in the judicial department shall  
 6 be coextensive with the boundaries of the state.

7        *Section 2. Supreme Court Organization.* There shall be one supreme court which shall be the  
 8 highest court of the state and shall consist of a chief justice and [ ] associate justices.

9        *Section 3. Supreme Court Jurisdiction.* The supreme court shall have final appellate jurisdic-  
 10 tion. Appeals to the supreme court from the [court of appeals] [general trial court] are a matter of  
 11 right if a question under the Constitution of the United States or of this state arises for the first time  
 12 in and as a result of the action of the [court of appeals] [general trial court] or if the [court of  
 13 appeals] [general trial court] certifies that a case decided by it involves a question of such impor-  
 14 tance that the case should be decided by the supreme court except that a defendant shall have an  
 15 absolute right to one appeal in all criminal cases. On all appeals authorized to be taken to the su-  
 16 preme court in criminal cases, that court shall have the power to review all questions of law and, to  
 17 the extent provided by rule, to review and revise the sentence imposed.

18        [*Section 4. Organization of the Court of Appeals.* The court of appeals shall consist of as  
 19 many geographical divisions known as judicial circuits as [the supreme court shall from time to time  
 20 determine to be necessary] [may be established by law]. Each judicial circuit of the court shall  
 21 consist of one chief judge and [ ] associate judges. The court shall sit at the times and places pre-  
 22 scribed by [the rules of the supreme court] [the chief justice].]

23        [*Section 5. Jurisdiction of the Court of Appeals.* Appeals from final judgments of a general  
 24 trial court are a matter of right to the court of appeals in the judicial circuit in which the general trial  
 25 court is located except in (a) criminal cases directly appealable to the supreme court and (b) criminal  
 26 cases where there has been an acquittal. The court of appeals shall exercise appellate jurisdiction in  
 27 all other cases under such terms and conditions as the supreme court shall specify by rule.]

28        *Section 6. General Trial Court Organization.* There shall be one general trial court having  
 29 statewide jurisdiction. The general trial court shall consist of as many geographical divisions as [the  
 30 supreme court shall from time to time determine to be necessary] [as may be established by law].

1 [The boundaries of judicial districts shall be contained within the judicial circuits in the state.] The  
2 supreme court shall designate the principal office in each district and shall also designate the chief  
3 judge of each district court. The court may hold sessions anywhere in its geographical area where  
4 adequate facilities exist for the disposition of court business. It shall hold continuous sessions or be  
5 in session as often as the chief justice finds that the caseload of each district requires.

6 *Section 7. Jurisdiction of General Trial Court.* The general trial court shall have original juris-  
7 diction, subject to appeal and exceptions by the supreme court.

8 *Section 8. Trial Courts of Limited Jurisdiction.* (a) The supreme court may authorize the es-  
9 tablishment of trial courts of limited jurisdiction as functional subdivisions of the general trial court.  
10 These courts shall be under the general direction of the chief judge of the judicial district of which they  
11 are a part.

12 (b) [These courts shall exercise jurisdiction in such cases as the supreme court may designate  
13 by rule.] [These courts shall exercise original jurisdiction in the case of criminal misdemeanors and  
14 violations of municipal ordinances.]

### TITLE III

#### COURT ADMINISTRATION

##### PART A

#### JUDICIAL ADMINISTRATORS

1 *Section 1. Chief Justice as Executive Head of Courts.* The chief justice shall be the executive  
2 head of the judicial department and be responsible for the efficient operation thereof, for the expedi-  
3 tious dispatch of litigation therein, and for the proper conduct of business in all courts. The chief jus-  
4 tice may require reports from all courts in the state and may issue rules and regulations as may be nec-  
5 essary for the efficient operation of the courts and the prompt and proper administration of justice.

6 [Section 2. *Departmental Justices.* The chief justice shall appoint from the ranks of all  
7 [appellate and] general trial court judges a departmental justice for each judicial circuit in the state.  
8 Departmental justices shall be responsible to the chief justice for the efficient operation of courts in  
9 their circuits. The departmental justice shall be assisted in his duties by an appeals court  
10 administrator.]

11 *Section 3. Chief Judges.* Every general trial court district shall have a chief judge selected  
12 from the judges in the district by the [departmental justice in the circuit in which the district is  
13 located] [chief justice]. The chief judge shall be responsible to the [departmental justice] [chief

1 justice] for the efficient operation of the courts in his district. Each chief judge shall be assisted in  
2 his duties by a general trial court administrator as directed by the [departmental justice] [chief  
3 justice].

4 *Section 4. Administrative Powers of Chief Justice.* The chief justice of the supreme court may:

5 (1) assign or reassign all judicial department personnel to any court in the state as described in  
6 title IV of this act.

7 (2) exercise powers of general financial management as detailed in title VIII of this act.

8 (3) exercise all other powers as the supreme court shall deem necessary to insure the proper  
9 administration of justice.

## PART B

### STATE COURT [COURT OF APPEALS,] AND GENERAL TRIAL COURT ADMINISTRATORS

1 *Section 1. Creation of the Office.* There is hereby established a state office known as the  
2 administrative office of the courts. It shall be supervised by a director who shall be appointed by the  
3 chief justice to serve at his pleasure. The director may appoint assistants and other employees  
4 necessary for the performance of duties of the office.

5 *Section 2. Qualifications of the Director, Compensation of Employees.* The director and other  
6 personnel shall have whatever qualifications as may be prescribed by [law] [the supreme court]  
7 provided that no personnel in the office shall be engaged directly or indirectly in the practice of law  
8 nor hold any other office or employment. The compensation of the director shall be [prescribed by  
9 law]. [The director shall fix the compensation of the personnel under his supervision.]

10 *Section 3. Powers and Duties.* The director, under the direction of the chief justice, shall:

11 (1) carry on a continuous survey and study of the organization, operation, condition of busi-  
12 ness, practice and procedure of the judicial department and make recommendations to the chief  
13 justice concerning the number of judges, other judicial personnel, and prosecutors required for the  
14 efficient administration of justice.

15 (2) examine the status of the dockets of all courts so as to determine cases and other judicial  
16 business that have been delayed beyond [ ] months and make reports thereon. From such reports,  
17 the director shall indicate which courts are in need of additional judicial personnel and make recom-  
18 mendations to the chief justice concerning the assignment or reassignment of personnel to courts  
19 that are in need of such personnel. The director shall also carry out the directives of the chief justice  
20 as to the assignment or reassignment of personnel in these instances.

1 (3) investigate complaints with respect to the operation of the courts.

2 (4) examine the statistical systems of the courts and make recommendations for a uniform  
3 system of judicial statistics. The director shall also collect and analyze statistical and other data re-  
4 lating to the business of the courts.

5 (5) prescribe uniform administrative and business methods, systems, forms, and records to be  
6 used in all state courts.

7 (6) assist in preparing assignment calendars of all judges and attend to the printing and distri-  
8 bution thereof.

9 (7) implement standards and policies set by the chief justice regarding hours of court, the  
10 assignment of term parts, judges and justices, and the publication of judicial opinions.

11 (8) act as fiscal officer of the courts and in so doing:

12 (i) maintain fiscal controls and accounts of funds appropriated for the judicial system;

13 (ii) prepare all requisitions for the payment of state monies appropriated for the mainte-  
14 nance and operation of the judicial system;

15 (iii) prepare budget estimates of state appropriations necessary for the maintenance and  
16 operation of the judicial system and make recommendations with respect thereto;

17 (iv) collect statistical and other data and make reports to the chief justice relating to the  
18 expenditures of public monies [, both state and local,] for the maintenance and operation of the  
19 judicial system;

20 (v) develop a uniform set of accounting and budgetary accounts for all courts in the state  
21 court system;<sup>1</sup> and

22 (vi) fix the compensation of all nonjudicial personnel whose compensation is not otherwise  
23 fixed pursuant to title VIII.

24 (9) examine the arrangements for the use and maintenance of court facilities and supervise the  
25 purchase, distribution, exchange, and transfer of judicial equipment and supplies thereof.

26 (10) act as secretary to the judicial council and prepare for an annual conference of all judges of  
27 courts of record to discuss recommendations for the improvement of the administration of justice.

28 (11) submit an annual report to the chief justice, legislature, and governor of the activities and  
29 accomplishments of the office for the preceding calendar year.

30 (12) attend to other matters consistent with the powers delegated herein as may be assigned by  
31 the chief justice.

<sup>1</sup>Some states also have the director serve as the auditor for the judicial department.



1           [*Section 4. Appeals Court Administrator: Creation.* The departmental justice of each judicial  
2 circuit, subject to the approval of the chief justice, shall appoint an appeals court administrator to  
3 assist him in his administrative duties. The appeals court administrator shall serve at the pleasure of  
4 the departmental justice and he shall, subject to the approval of the chief justice, employ such other  
5 personnel as may be necessary to enable him to perform the duties of his office.]

6           *Section 5. General Trial Court Administrator: Creation.* The chief judge of each judicial dis-  
7 trict, subject to the approval of the chief justice, shall appoint a general trial court administrator to  
8 assist him in his administrative duties. The administrator shall serve at the pleasure of the chief judge  
9 and he shall, subject to the approval of the [departmental justice] [chief justice], employ such other  
10 personnel as may be necessary to enable him to perform the duties of his office.

11           *Section 6. [Appeals court and] General Trial Court Administrator: Qualifications, Compensa-*  
12 *tion and Employees.* The [appeals court administrator and general trial court administrator]  
13 [administrator] and [their] [his] employees shall have whatever qualifications may be prescribed  
14 pursuant to title VIII of this act except that they shall not engage in the practice of law nor hold any  
15 other office or employment. The compensation of the [appeals court and general trial court admin-  
16 istrator] [administrator] and [their] [his] employees shall be prescribed pursuant to title VIII of this  
17 act.

18           *Section 7. Compliance with Requests for Information.* All employees of the state court system  
19 [the attorney general, and all district attorneys] shall promptly comply with the requests of the  
20 director for information and statistical data bearing on the business of the courts and such other  
21 information as may be needed to carry out the lawful duties of the administrative office of the  
22 courts. The director shall be assisted by all [appeals court and] general trial court administrators in  
23 the performance of his duties.

## TITLE IV

### ASSIGNMENT OF JUDICIAL DEPARTMENT PERSONNEL

1           *Section 1. Assignment Powers of Chief Justice.* The chief justice shall supervise, with the aid  
2 of the director, all employees of the judicial department of the state and assign, reassign, or modify  
3 assignments to various parts of the judicial department as the need may require.

4           *Section 2. Assignment Powers of [Departmental Justices and] Chief Judges.* [(a) Subject to the  
5 authority of and upon consultation with the chief justice, departmental justices shall have the power  
6 to assign or reassign judges to conduct sessions of the respective courts in their judicial circuit as the

1 business of those courts may require. In performing these tasks, the departmental justices shall be  
2 aided by the appeals court administrator.]

3 (b) Chief judges shall have general supervisory power over judges in their courts. They shall be  
4 subject to the assignment power of [departmental justices and] the chief justice as the situation may  
5 require.

6 *Section 3. Compensation for Assignment or Reassignment.* Any employee of the judicial de-  
7 partment, when reassigned to any court in this state on less than a permanent basis, shall serve with-  
8 out additional compensation but shall be reimbursed for all reasonable expenses actually incurred as  
9 a result of such reassignment.

## TITLE V

### RULES OF PRACTICE AND PROCEDURE

1 *Section 1. Rule Making Powers Vested in Supreme Court.* The supreme court shall make uni-  
2 form rules regulating practices and procedures in all courts of the judicial department and thereafter  
3 revise such rules at its discretion subject to modification by a [majority] [two-thirds] vote of each  
4 house of the legislature. All rules and regulations made under this act shall, when duly promulgated,  
5 have the force and effect of law.

6 *Section 2. Nature of Uniform Rules.* Uniform rules of practice and procedures shall apply to  
7 all courts. The supreme court shall provide for a public hearing not less than [ ] days before the  
8 adoption of any general rule or amendment thereof.

9 *Section 3. Criminal and Civil Procedures Rules Committee.* The supreme court may appoint a  
10 criminal and civil procedures rules committee [, the members of which shall be members of the state  
11 bar,] which shall assist the supreme court and the director in the preparation, revision, promulga-  
12 tion, publication and administration of general rules of practice and procedure.

13 *Section 4. General Rules of Court Business.* The chief justice may prescribe uniform rules  
14 governing the general business of and practice in any of the courts in the state. Such rules shall  
15 become immediately effective as of the date fixed by the chief justice.

## TITLE VI

### JUDICIAL QUALIFICATIONS AND SELECTION

1 *Section 1. Judicial Qualifications.* All judges in this state shall be licensed to practice law in  
2 this state [and shall possess the following additional qualifications: ].

1           *Section 2. Judicial Nominating Commissions.* There shall be one nominating commission for  
 2 the supreme court [and court of appeals] and one judicial nominating commission for each general  
 3 trial court district. After [insert appropriate date] whenever a vacancy shall occur in the office of  
 4 judge in any court in this state, the governor shall fill such vacancy by appointing one of three per-  
 5 sons possessing the qualifications for such office who shall be nominated and whose names shall be  
 6 submitted to the governor by the appropriate judicial nominating commission established and organ-  
 7 ized as hereafter provided. All such appointments shall be for a period of [ ] year [s]. If the governor  
 8 fails for [45] days to make the appointment, [it shall be made from such nominees by the chief  
 9 justice] [another set of three qualified nominees shall be submitted by the nominating commission  
 10 to the governor].

11           *Section 3. Composition of Commissions.* Each judicial nominating commission shall consist of  
 12 [ ] members. Members of the state bar shall elect [ ] of their number to act as members of the  
 13 nominating commission in the judicial district where they reside. The governor shall appoint, subject  
 14 to confirmation by the legislature, [ ] judges, and [ ] citizens who are neither judges, retired  
 15 judges, nor members of the state bar to each judicial nominating commission in the state. [The chief  
 16 justice shall be an ex officio member of the judicial nominating commission for the supreme court  
 17 and court of appeals.] [[Departmental justices] [Chief judges] shall be ex officio members of the  
 18 judicial nominating commissions for the judicial districts over which they have jurisdiction.] All  
 19 terms shall be for [ ] years. [Insert language to provide for staggered terms.]

20           *Section 4. Restrictions on Members.* Members of judicial nominating commissions shall not  
 21 hold any other elective or salaried public office. [Members shall not be eligible for reappointment or  
 22 reelection to a judicial nominating commission.] No member of the commission, except members  
 23 appointed to the commission as judges and ex officio members, shall be eligible for appointment as  
 24 a judge as long as he is a member of that commission and for a period of [ ] years thereafter. All  
 25 acts of judicial nominating commissions shall be made with the concurrence of a majority of its  
 26 members. All commissions shall operate in accordance with rules promulgated by the supreme court.

27           *Section 5. Nominating Procedures.* In the event of a judicial vacancy, the chairman of the  
 28 appropriate judicial nominating commission shall notify other members of the commission and sched-  
 29 ule a public hearing to be held on qualified nominees for the vacancy. He shall also cause appropriate  
 30 notice of such hearing to be published by the various news media and make known the interest of the  
 31 judicial nominating commission to receive information relating to qualified applicants for the judicial  
 32 vacancy. Any member of the public shall be entitled to attend the public hearing to express, either  
 33 orally or in writing, his views concerning candidates for the judicial vacancy. After the public

1 hearing, a judicial nominating commission shall hold any additional [confidential] meetings and make  
2 any independent investigation and inquiry it deems necessary to determine the qualifications of can-  
3 didates for the judicial vacancy. Thereafter, the judicial nominating commission, upon the concur-  
4 rence of a majority of its members, shall recommend three qualified nominees for the judicial vacancy.  
5 [If the commission cannot name three qualified nominees within [ ] months of the judicial va-  
6 cancy, the governor, subject to the confirmation of the legislature, may appoint a qualified judge to  
7 the judicial vacancy.]

8 *Section 6. Election of Judges.* (a) Any judge desiring to retain his office after initial gubernatorial  
9 appointment and every [ ] years thereafter shall certify his candidacy to the proper election  
10 officials and the secretary of state no less than [ ] days before the said election. At the election  
11 the name of each judge who has filed such a certification shall be submitted to the voters, on the  
12 ballot without party designation, on the sole question of whether he shall be retained in office for  
13 another term. The elections shall be conducted in the appropriate judicial [circuits or] districts.

14 (b) The affirmative votes of a majority of qualified voters voting on the question shall retain  
15 a judge in office for the prescribed term.

16 (c) Any judge failing to file a declaration of candidacy or who fails reelection shall vacate his  
17 office at the expiration of his term. His vacancy shall be filled according to procedures of sections 2  
18 and 5 of this title.

19 *Section 7. Compensation of Commissions.* The members of judicial nominating commissions  
20 [who are public officials] shall receive no salary or other compensation for their service. [All other  
21 members shall be eligible for a per diem compensation of [\$50].] All members may be reimbursed  
22 for all reasonable expenses incurred in the discharge of their official duties. The budgets of all  
23 nominating commissions shall be included in the judicial department operating budget.

24 *Section 8. Unlawful Influence of Commissions.* It shall be unlawful and a breach of ethics for  
25 any judge, public officeholder, lawyer, or any other person or organization to attempt to influence  
26 any judicial nominating commission in any manner and on any basis except by presenting facts and  
27 opinions relevant to the judicial qualifications of the proposed nominees, at the times and in the  
28 manner set forth in section 5 of this title. Violation of this section shall be considered as contempt  
29 of the supreme court. Violation of this section by any judge of this state shall be grounds for dis-  
30 cipline or removal as provided for in title VI of this act.

TITLE VII

JUDICIAL CONDUCT

1           *Section 1. Judicial Canon of Ethics.* After due notice and hearing, the supreme court shall  
2 adopt and put into effect canons of judicial ethics which shall govern the conduct of all judges.  
3 Any violations of these canons shall be grounds for removal or retirement or discipline as provided in  
4 sections 5 through 8 of this title.

5           *Section 2. Full-time Judges.* (a) All judges shall devote full time to their judicial duties. Dur-  
6 ing his term of office a judge shall not practice law nor shall he be the partner or associate of any  
7 person in the practice of law. A judge shall also not hold any other employment or position of profit  
8 or hold a public office under the United States, this State, or any of its civil divisions during his term  
9 of office.

10           (b) Any judge violating section 2(a) of this title shall be subject to removal or discipline as  
11 provided for in sections 5 through 8 of this title.

12           *Section 3. Grounds for removal and Suspension.* (a) Without recourse to the commission on  
13 judicial qualifications, the supreme court shall suspend any judge from office without salary when he  
14 pleads guilty or no contest or is found guilty in a general trial court of a crime punishable as a felony  
15 under state or federal law or any other crime that involves moral turpitude under the law. If his  
16 conviction is reversed, suspension terminates and he shall be paid his salary for the period of his  
17 suspension. If his conviction becomes final, the supreme court shall remove him from his office.

18           (b) All other proceedings for removal shall be conducted through the judicial qualifications  
19 commission as provided for in sections 5 through 8 of this title.

20           *Section 4. Commission on Judicial Qualifications.* A commission on judicial qualifications  
21 is hereby established which shall consist of [ ] judges [appointed by the chief justice], [ ]  
22 members of the state bar [elected by that body], and [ ] citizens who shall not be judges, retired  
23 judges, or persons admitted to the practice of law. Members shall be appointed for a term of [ ]  
24 years. [Insert language to provide staggered terms.] Whenever a member resigns, dies, or ceases to  
25 be a member of the commission, the appointing authority as herein provided shall appoint a successor  
26 for the unexpired term. The commission shall elect one of its members to serve as a chairman for the  
27 term prescribed by the commission.

28           *Section 5. Grounds for Retirement or Removal.* Any judge, in accordance with the procedures  
29 described in this title, may by action of the supreme court be:

30           (1) retired from office for any physical or mental disability seriously interfering with the per-  
31 formance of his duties which is, or is likely to become, of a permanent character.

1 (2) disciplined or removed from office for action occurring within [ ] years before the  
2 commencement of his current term which constitutes willful misconduct in office, willful and per-  
3 sistent failure to perform his duties, habitual intemperance, unlawful influence of a judicial nominating  
4 commission, or any other conduct deemed prejudicial to the administration of justice or that brings  
5 the judicial office into disrepute.

6 *Section 6. Powers of the Commission.* (a) The commission shall have, but not be limited to,  
7 the following powers:

8 (1) to hold hearings and subpoena witnesses and exercise requisite process powers;

9 (2) to require a judge to submit to physical or mental examination by qualified medical experts;

10 (3) to make independent investigations either by members of the commission, or by special  
11 investigators employed by the commission or by the office of attorney general;

12 (4) to hold confidential hearings with all parties involved in the proceedings before the  
13 commission;

14 (5) to employ investigators, medical experts and such other employees as the commission in  
15 its discretion determines to be necessary to carry out its functions and purposes.

16 (b) All personnel of the judicial department of this state shall cooperate with and give reason-  
17 able assistance and information to the commission and any authorized representative thereof in  
18 connection with any investigations or proceedings within the jurisdiction of the commission. It also  
19 shall be the duty of any law enforcement officer of this state to serve process and execute all lawful  
20 orders of the commission throughout the state.

21 *Section 7. Procedures of the Commission.* (a) The commission on its own motion or on the  
22 complaint of any citizen may initiate proceedings for the retirement, discipline, or removal of any  
23 judge in the state. All citizen complaints shall be directed to the commission or to any member of  
24 the commission. No specified form of complaint shall be required.

25 (b) The commission may make such investigation as it deems necessary to verify or refute the  
26 substance of the complaint. After such investigation, the commission may order a confidential hear-  
27 ing to be held before it concerning the complaint. After confidential hearing, the commission may  
28 recommend to the supreme court the retirement, removal, or discipline, as the case may be, of the  
29 judge against whom the complaint is filed.

30 (c) The supreme court shall review the record of the commission proceedings and in its discre-  
31 tion may permit the introduction of additional evidence. It shall make whatever determinations it  
32 finds just and proper, and may order the removal, discipline, or retirement of the judge, or may  
33 wholly reject the recommendation. Upon an order for retirement, the judge shall thereby be retired

1 with the same rights and privileges as if he had retired pursuant to other provisions of law relating to  
2 retirement of judges. Upon an order for removal, the judge shall be removed from office and his  
3 salary shall cease from the date of such order. He shall be ineligible for judicial office for [ ] years.

4 (d) The director shall be the commission's executive secretary. He shall certify each order of  
5 the commission to the governor and the chief justice.

6 (e) No act of the commission shall be valid unless concurred in by a majority of its members.

7 (f) All papers filed with and proceedings before the commission shall be confidential and the  
8 record filed by the commission may become public record with the consent of the judge being in-  
9 vestigated. No members or employees of the commission shall disclose or use any commission  
10 records, files, or communications in any other than their official duties.

11 (g) No judge who is a member of the commission or of the supreme court shall sit on the  
12 commission or the court in any proceedings involving his own discipline, removal or retirement.

13 *Section 8. Rights of Judicial Defendants in Commission Action.* (a) In any proceeding involv-  
14 ing a judge's discipline, removal, or retirement, the judge shall have the right and reasonable opportu-  
15 nity to defend himself against complaints by the introduction of evidence, to be represented by  
16 counsel, and to examine and cross-examine witnesses. He shall also have the right to the issuance of  
17 subpoenas for attendance of witnesses to testify or produce books, papers, or other evidentiary  
18 matter.

19 (b) In any proceedings under this act, the judge under investigation and his counsel shall be  
20 given [ ] days advance notice of such proceedings.

21 (c) A judge is disqualified from acting as a judge, without loss of salary, while there is pending  
22 a recommendation to the supreme court by the commission for his removal or retirement.

23 *Section 9. Voluntary Retirement for Disability.* Any judge desiring to retire on the grounds of  
24 mental or physical disability shall certify to the commission his request for retirement and the nature  
25 of his disability; and the commission may order a medical examination and make a report and  
26 recommendation.

27 *Section 10. Budget and Compensation of Commission.* The judicial department shall be  
28 responsible for preparing and presenting to the legislature proposed annual budgets for the commis-  
29 sion. Members of the commission [who hold other salaried public office] shall serve without com-  
30 pensation. [Other members shall be eligible for a per diem compensation of [\$50].] Members shall  
31 be reimbursed for all reasonable expenses incurred by them in connection with their duties as mem-  
32 bers of the commission.

TITLE VIII

COURT PERSONNEL AND FINANCES

1           *Section 1. State Responsibility for Court Finances.* After [insert appropriate date] the legisla-  
2           ture shall appropriate funds for the expenses of the judicial department.

3           *Section 2. Court Personnel and Compensation.* (a) After [insert appropriate date] the chief  
4           justice shall prescribe by rule a personnel classification plan for all courts in the judicial department.  
5           Such a plan shall include: (i) a basic compensation plan of pay ranges to which classes of positions  
6           shall be assigned and may be reassigned; (ii) qualifications for all nonjudicial positions and classes of  
7           positions which shall include education, experience, special skills, and legal knowledge; (iii) an  
8           outline of duties to be performed in each position and class of positions; (iv) the number of full-time  
9           and part-time positions, by position title and classification, in each court in the state; (v) the proce-  
10          dures for and regulations governing the appointment and removal of nonjudicial personnel; (vi) the  
11          procedures for and regulations governing the promotion of nonjudicial personnel; and (vii) the  
12          amount, terms, and conditions of sick leave and vacation time and fringe benefits for court personnel,  
13          including annual allowance and accumulation thereof, and hours of work and other conditions of  
14          employment.

15          (b) The chief justice, in promulgating rules as set forth in this section, shall take into account  
16          the compensation and classification plans, vacation and sick leave provisions, and other conditions of  
17          employment applicable to the employees of the executive and legislative departments. The chief  
18          justice shall be aided by the administrative office of the courts in the implementation of this section.

19          *Section 3. Operating Budgets.* (a) The director shall, subject to the approval of the chief  
20          justice, prepare annually a consolidated operating budget for all courts in the state to be known as  
21          the judicial department operating budget. He shall be assisted in this task by all [appeals court and]  
22          general trial court administrators.

23          (b) The director shall prepare the consolidated court budget according to procedures prescribed  
24          by the [state budget officer] [and the joint budget committee of the legislature] . Budget requests  
25          and other additional information as requested shall be transmitted to the [state budget officer] [and  
26          the joint budget committee of the legislature] by [insert appropriate date] . The governor shall  
27          include his recommendations for court appropriations by [insert appropriate date] and the legislature  
28          shall make appropriations to courts based on an evaluation of the budget request, the governor's  
29          recommendations and the availability of state funds.

30          (c) The director, subject to the approval of the chief justice, shall prescribe the financial



1 management procedures to be used in all courts of the judicial department. These procedures shall  
2 include but not be limited to: (1) the preparation of budget requests, (2) the disbursement of funds  
3 appropriated to the judicial department, (3) the purchase of forms, supplies, equipment, and other  
4 items as authorized in the judicial department operating budget, and (4) any other matter relating to  
5 fiscal administration.

6 *Section 4. Capital Budgets.* (a) The director shall, subject to the approval of the chief justice,  
7 prepare a consolidated capital budget for all courts in the state. He shall be assisted in this task by all  
8 [appeals court and] general trial court administrators.

9 (b) The director shall prepare the consolidated capital budget according to procedures pre-  
10 scribed by the [state budget officer] [and the joint budget committee of the legislature]. Budget  
11 requests and other additional information as requested shall be transmitted to the [state budget offi-  
12 cer] [and the joint budget committee] by [insert appropriate date]. The governor shall include his  
13 recommendations for court capital expenditures by [insert appropriate date] and the legislature  
14 shall make appropriations or authorize bond issues for court capital expenditures based on an evalua-  
15 tion of the budget request, the governor's recommendations and the availability of state funds.

16 (c) The consolidated capital budget for the judicial department shall include but not be  
17 limited to:

18 (1) projections of additional court facilities required for each court;

19 (2) estimated costs of the additional facilities and whether these facilities will include space to  
20 be used by other state agencies or governmental units of the state; and

21 (3) a detailed report on the present court facilities currently in use and the reasons for their  
22 inadequacy. The capital budget shall also indicate the relative priority of the capital construction  
23 needs for each court for the next [ ] years.

24 (d) The director, subject to the approval of the chief justice, may enter into leasing agreements  
25 with local units of government or other departments of the state government when joint construction  
26 of capital facilities is authorized. The leasing agreement shall provide for the payment of state funds  
27 for that portion of the construction costs related to the operation of the courts.

## TITLE IX

### JUDICIAL RETIREMENT

1 *Section 1. Mandated Retirement.* All judges shall retire at the age of seventy. They shall be  
2 included in a retirement plan of the state.

1        *Section 2. Eligibility for Reappointment.* All retired judges shall be eligible for reappointment  
2 by the chief justice as an active retired judge. An active retired judge shall be subject to the same  
3 judicial rules and regulations as other judges. He shall act only in such cases and matters and hold  
4 court only at such times as he may be directed and assigned by the chief judge of his court. In no  
5 case shall a judge serve on the bench after [eighty] years of age.

6        *Section 3. Retirement System.*<sup>2</sup> (a) After [insert appropriate date] the director, subject to  
7 the approval of the supreme court [and the state retirement board] shall promulgate the terms and  
8 conditions of retirement for judicial department personnel. They shall include, but not be limited  
9 to:

- 10        (1) eligibility for retirement,
- 11        (2) basis of retirement compensation for the employees of the judicial department and their  
12 survivors,
- 13        (3) conditions of receiving retirement pay as concerns outside employment,
- 14        (4) conditions for retirement for disability,
- 15        (5) any other matter that may be properly related to the determination of retirement pay.

16 In defining the terms and condition of retirement for personnel of the judicial department, the  
17 director shall take into account the retirement plans applicable to employees of the executive and  
18 legislative departments.

19        (b) After [insert effective date of act] all employees of local judicial agencies shall be deemed  
20 to be employees of the judicial department. These employees shall receive full credit for the time  
21 employed by local judicial agencies in computing the number of years of service required to receive  
22 pension benefits under the [insert appropriate state retirement plan].

## TITLE X

### MISCELLANEOUS

1        *Section 1. Effective Date.* [Insert effective date.]

2        *Section 2. Severability.* [Insert severability clause.]

3        *Section 3. Transition.* [Insert appropriate transition provisions.]

<sup>2</sup>Some States may wish to integrate the judicial personnel retirement system with an existing retirement system.

## OMNIBUS PROSECUTION ACT

The relationship between the attorney general and local prosecuting attorneys varies widely from State to State. A few States vest complete prosecutorial authority in the attorney general; at the same time, a few give him no authority whatsoever in criminal cases. Between these extremes, most States have established a range of relationships, including mutually exclusive areas of criminal authority, attorney general advice and assistance to local prosecutors, and direct control over local prosecuting attorneys by the attorney general.

The purpose of the following proposed legislation is to strengthen statewide coordination of prosecutorial activity by providing for general supervision by the attorney general of the prosecution component of a State's criminal justice system. Section 2 contains the necessary definitions. It should be recognized that the definition of "local prosecuting attorney" will vary from State to State; in determining the proper titles, however, it should be kept in mind that the local prosecutor should have primary responsibility for instituting criminal actions within his jurisdiction. Section 3 of the bill provides a number of actions that the attorney general may take vis-a-vis local prosecutors at his discretion; on the request of the local prosecuting attorney, the governor, or a grand jury; or when the local prosecutor fails to apply properly a statewide policy. These actions include consultation, technical assistance, and intervention. This section also embodies necessary safeguards in connection with the exercise of the attorney general's authority in criminal investigations. Section 4 authorizes the attorney general to submit periodically to the legislature local prosecution district reorganization plans, and requires local prosecuting attorneys of multi-county districts to appoint at least one assistant. Section 5 requires the attorney general to prescribe minimum standards for local prosecutors' offices, and authorizes State financial aid to offices certified as meeting these standards to cover part of the costs related to the investigation and prosecution of criminal offenses. Section 6 establishes a State Council of Prosecutors and provides for interagency cooperation, and Section 7 deals with reporting requirements. Section 8 contains procedures for the removal of local prosecuting attorneys.

This draft bill draws upon the American Bar Association's "Model Department of Justice Act" and New Jersey's "Criminal Justice Act of 1970." In some States, constitutional amendments may be required to implement various sections of this act.

### Suggested Legislation

*[Title should conform to state requirements. The following is a suggestion: "An act providing for the general supervision by the attorney general of criminal law enforcement throughout the state."]*

*[Be it enacted, etc.]*

1            *Section 1. Findings and Purpose.* The legislature hereby finds and declares that:

2            (1) The increasing rate of crime presents a serious threat to the political, social, and  
3 economic institutions of the state and helps bring about a loss of popular confidence in the  
4 agencies of government; and

5            (2) Fragmented administration of the prosecution function has reduced the effectiveness of  
6 the crime prevention and control efforts of the state and its political subdivisions, and has hindered  
7 the consistent application of criminal law throughout the state.

1 It is the purpose of this act to encourage cooperation among state and local prosecuting  
2 attorneys and to provide for the general supervision of criminal justice by the attorney general as  
3 chief law officer of the state, in order to secure the benefits of a uniform and efficient enforce-  
4 ment of the criminal law and the administration of criminal justice throughout the state.

5 *Section 2. Definitions.* As used in this act:

6 (1) “Local prosecuting attorney” means a [county or district prosecutor, or a county  
7 attorney, district attorney, state’s attorney, circuit attorney, city attorney, corporation counsel, or  
8 solicitor]<sup>1</sup> having primary responsibility for instituting criminal actions.

9 (2) “Law enforcement officer” means a police officer, sheriff, or other individual who is  
10 employed full time by the state or a unit of local government to preserve order and enforce the laws.

11 *Section 3. Powers and Duties of the Attorney General.*

12 (a) The attorney general shall consult with and advise the several local prosecuting  
13 attorneys and may provide technical assistance in matters relating to the duties of their office.  
14 He shall maintain a general supervision over local prosecuting attorneys with a view to obtaining  
15 effective and uniform enforcement of the criminal laws throughout the state.

16 (b) Any local prosecuting attorney may request in writing the assistance of the attorney  
17 general in the conduct of any investigation, criminal action, or proceeding. The attorney general  
18 may thereafter take whatever action he deems necessary to assist the local prosecuting attorney in  
19 the discharge of his duties.

20 (c) Whenever requested in writing by the governor, the attorney general shall, and when-  
21 ever requested in writing by a grand jury of a county or by [insert other appropriate agencies],  
22 the attorney general may intervene in any investigation, criminal action, or proceeding instituted  
23 by a local prosecuting attorney, and may appear for the state in any court or tribunal for the  
24 purpose of conducting such investigations, criminal actions, or proceedings as shall be necessary  
25 for the protection of the rights and interests of the state.

26 (d) Whenever in his opinion the interests of the state will be furthered by so doing, the  
27 attorney general may, and whenever a local prosecuting attorney refuses to apply a statewide  
28 policy or has applied it in a manner that distorts its purposes, the attorney general shall, intervene  
29 in or initiate any investigation, criminal action, or proceeding. In such instances, the attorney  
30 general may appear for the state in any court or tribunal for the purpose of conducting such  
31 investigations, criminal actions, or proceedings as shall be necessary to promote and safeguard the  
32 public interests of the state and secure the enforcement of the laws of the state. [The attorney

<sup>1</sup>Each state should insert the appropriate title of its local prosecuting attorneys.

1 general may in his discretion act for any local prosecuting attorney in representing the interests of  
2 the state in any and all appeals and applications for post-conviction remedies.]

3 (e) The attorney general shall prosecute the criminal business of the state in any county or  
4 judicial district having no local prosecuting attorney.

5 (f) Whenever the attorney general shall assist, intervene or participate in, or initiate or  
6 conduct any criminal action or proceeding as heretofore provided in subsections (b) and (c) of  
7 this section, he shall be authorized to exercise all the powers and perform all the duties the local  
8 prosecuting attorney would otherwise be authorized or required to perform, including the investi-  
9 gation of alleged crimes, the attendance before the criminal courts and grand juries, the prepara-  
10 tion and trial of indictments for crimes, and the representation of the state in all proceedings in  
11 criminal cases on appeal or otherwise in the courts of this state. Subject to the availability of  
12 funds, he may appoint temporary assistants, aides, investigators, or other personnel.

13 (g) The powers and duties conferred upon or required of the attorney general by this act  
14 shall not be construed to supplant or deprive local prosecuting attorneys of any of their authority  
15 in respect to criminal prosecutions, or relieve them from any of their duties to enforce the  
16 criminal laws of the state.

17 *Section 4. Local Prosecution Districts.* (a) Local prosecuting attorneys of multi-county  
18 districts shall appoint at least one assistant [in each county] to coordinate the prosecution of  
19 crimes under state law and handle all stages of felony proceedings.

20 (b) So as to warrant at least one full-time local prosecuting attorney and the supporting  
21 staff necessary for effective performance of the prosecution function, the attorney general shall  
22 submit periodically to the legislature a plan revising existing or establishing new local prosecution  
23 districts on the basis of population, caseload, judicial district boundaries, and other relevant  
24 factors.<sup>2</sup>

25 *Section 5. Minimum Standards; Financial Assistance.* (a) In order to assure the efficient  
26 operation of offices of local prosecuting attorneys, the attorney general shall prescribe minimum  
27 standards with regard to personnel, procedures, and other appropriate matters. Offices of local  
28 prosecuting attorneys shall be given reasonable opportunity to meet such minimum standards. On  
29 or before [the last day of each fiscal year], the attorney general shall certify to the [state dis-  
30 burbing officer] those offices of local prosecuting attorneys meeting these standards. The [state  
31 disbursing officer] shall make payments, from funds appropriated for that purpose, to the

<sup>2</sup>In some states, a constitutional amendment may be necessary to implement this subsection.

1 appropriate [units of local government] to reimburse them for [fifty] percent of the costs incurred  
2 during the ensuing fiscal year for activities related to the investigation and prosecution of criminal  
3 offenses conducted by certified offices of local prosecuting attorneys.

4 *Section 6. State Council of Prosecutors and Interagency Cooperation.* (a) The attorney  
5 general shall establish a state council of prosecutors composed of all local prosecuting attorneys,  
6 which shall meet on a regular basis to develop guidelines for local prosecuting attorneys and assure  
7 that local prosecution policies and practices meet state minimum standards and are consistent from  
8 jurisdiction to jurisdiction.

9 (b) The attorney general may, from time to time, and as often as may be required, call  
10 into conference the local prosecuting attorneys, the chiefs of police of the several counties and  
11 municipalities, and any other law enforcement officers of the state or such of them as he may  
12 deem advisable, for the purpose of discussing the duties of their respective offices with a view to  
13 the adequate and uniform enforcement of the criminal laws of this state.

14 (c) All local prosecuting attorneys and local police officers shall cooperate with and aid  
15 the attorney general in the performance of his duties. All state and local law enforcement officers  
16 shall cooperate with and aid the attorney general and the several local prosecuting attorneys in the  
17 performance of their respective duties.

18 *Section 7. Reports.* (a) The attorney general shall annually submit to the governor and the  
19 legislature a report setting forth the activities of his office during the preceding calendar year,  
20 together with suggestions and recommendations for the adequate and uniform enforcement of the  
21 criminal laws of the state. The attorney general shall include in his report an abstract of the annual  
22 reports of the several local prosecuting attorneys.

23 (b) Each local prosecuting attorney shall annually submit to the attorney general a written  
24 report for the last preceding [fiscal] [calendar] year, covering such items of information and such  
25 dispositions of complaints, investigations, criminal actions, and proceedings as the attorney general  
26 shall prescribe. The attorney general may also require the several local prosecuting attorneys to  
27 submit, from time to time, reports as to any matters pertaining to the duties of their office.

28 (c) The attorney general may make studies and surveys of the organization, procedures,  
29 and methods of operation and administration of all law enforcement agencies within the state,  
30 with a view toward preventing crime, improving the administration of criminal justice, and securing  
31 the improved enforcement of the criminal law. Such studies may include the procedures and re-  
32 sults of sentencing, where sentences are open to discretion.

1 *Section 8. Removal of Local Prosecuting Attorneys.* In addition to any and all methods now  
2 provided by law for removal from office, the attorney general, after receipt of a valid complaint or  
3 on his own motion, may initiate proceedings for the removal of any local prosecuting attorney in  
4 the state by the supreme court. Upon receipt of a valid complaint, the attorney general shall make  
5 such investigation as he deems necessary to verify or refute the substance of the complaint. After  
6 such investigation, the attorney general may order a confidential hearing to be held. After investi-  
7 gation and hearing, the attorney general may petition the supreme court for the removal from  
8 office of any prosecuting attorney. The supreme court shall review the record of the attorney  
9 general's proceedings and in its discretion may permit the introduction of additional evidence. It  
10 shall make whatever determination it finds just and proper, and may order the removal of any  
11 local prosecuting attorney or may wholly reject the petition of the attorney general.

12 *Section 9. Laws Repealed.* All acts or parts of acts inconsistent with the provisions of this  
13 act are hereby repealed.

14 *Section 10. Separability.* [Insert separability clause.]

15 *Section 11. Effective Date.* [Insert effective date.]

## STATE DEPARTMENT OF CORRECTION ACT

In most States, the administration of corrections facilities and services is highly fragmented. Only three States have established a “unified” corrections system, while a handful of others have consolidated responsibility for most of the corrections functions in one agency at the State level. Generally, however, administrative responsibility for the nine corrections activities – juvenile detention, juvenile probation, juvenile institutions, juvenile aftercare, misdemeanor probation, adult probation, local short-term adult institutions and jails, long-term adult institutions, and parole – is divided between the State and its political subdivisions, and among the various public and private agencies that handle adult and juvenile related programs. The only generalization that can be safely made is that every State has assumed responsibility for parole, long-term adult institutions, and long-term juvenile institutions, while local governments usually are responsible for juvenile detention and jails, police lock-ups, and other short-term facilities. This wide inter-governmental and interagency diversity has done little to further the successful rehabilitation of offenders, as reflected in rising recidivism rates.

The purpose of this bill is to provide for a more systematic State-local approach to corrections by expanding State administrative and supervisory responsibilities and by increasing State financial and technical assistance. Section 1 sets forth the legislature’s findings and purpose, and section 2 contains the necessary definitions. Section 3 establishes a State Department of Correction and a director of correction directly accountable to the governor. Section 4 fixes responsibility for the maintenance, supervision, and administration of all long-term correctional institutions for adults and juveniles, adult probation, parole services, and juvenile aftercare. The department is required to furnish to local detention and short-term correctional facilities and probation programs technical assistance, training courses, encouragement to enter into interlocal contracts and agreements for regional facilities, and financial aid. The department also is made responsible for establishing and enforcing standards and rules of operation for local facilities. Section 5 deals with cooperative agreements. Section 6 pertains to the director’s role in the commitment and transfer of offenders. Section 7 concerns the provision of diagnostic services, and section 8 deals with the transfer of mentally retarded inmates. Section 9 provides for the classification, treatment, and discipline of inmates. Section 10 focuses on offender vocational training programs and permits temporary furloughs and work release under specified conditions. Section 11 authorizes good behavior and discharge allowances. Sections 12 and 13 set forth procedures for the transfer of certain personnel, property, records, and funds from local to State status.

This bill draws upon the *Standard Act for State Correctional Services*, prepared by the National Council on Crime and Delinquency and the American Correctional Association, and on Delaware’s recent statute (Title II, *Delaware Code Annotated*, “Crimes and Criminal Procedure,” Chapter 65) establishing a State Department of Correction.

### Suggested Legislation

*[Title should conform to State requirements. The following is a suggestion: “An Act to establish a state department of correction.”]*

#### ARTICLE I: CONSTRUCTION OF ACT

1        *Section 1. Findings and Purpose.* The legislature hereby finds and declares that:



1 (1) The state has a basic obligation to protect the public by providing institutional confinement  
2 and care of offenders and, where appropriate, treatment in the community;

3 (2) Efforts to rehabilitate and restore criminal offenders as law-abiding and productive members  
4 of society are essential to the reduction of crime;

5 (3) Upgrading of correctional institutions and rehabilitative services deserves priority considera-  
6 tion as a means of lowering crime rates and of preventing offenders, particularly youths, first-  
7 offenders, and misdemeanants, from becoming trapped in careers of crime; and

8 (4) Correctional institutions and services should be so diversified in program and personnel as  
9 to facilitate individualized treatment.

10 The purpose of this act is to establish an agency of state government to provide for the custody,  
11 care, discipline, training, treatment, and study of persons committed to state correctional institutions  
12 or on probation or parole, and to supervise and assist in the treatment, training, and study of persons  
13 in local correctional and detention facilities, so that such persons may be prepared for release, after-  
14 care, and supervision in the community.

15 *Section 2. Definitions.* As used in this act:

16 (1) "Adult" means a person [eighteen] years of age or older.

17 (2) "Juvenile," "minor," or "youthful" means a person less than [eighteen] years of age.

18 (3) "Offender" means any person convicted of a crime or offense under the laws and ordinances  
19 of the state and its political subdivisions.

20 (4) "Institution" means a prison, penitentiary, jail, workhouse, training school, or other facility  
21 operated by the state or by a unit of local government for the correction of offenders.

22 (5) "Local facility" means a temporary holding facility, police lock-up, or other facility for the  
23 detention of persons for less than [forty-eight] hours operated by a unit of local government.

24 (6) "Detention" means the temporary care of juveniles and adults who require secure custody  
25 for their own or the community's protection in a physically restricting facility.

26 (7) "Halfway house" means a community based and oriented facility which may provide  
27 "live-in" accommodations for offenders who are assisted to obtain and hold regular employment; to  
28 enroll in and maintain academic courses; to participate in vocational training programs; to utilize the  
29 resources of the community in meeting their personal and family needs; and to participate in whatever  
30 specialized programs exist within the halfway house.

31 (8) "Professional employee" means any employee whose work is predominantly intellectual  
32 and varied in character; requires consistent exercise of discretion and judgment; requires knowledge  
33 of an advanced nature in a field of science or learning customarily acquired by prolonged study in an

1 institution of higher learning; or is of such character that the output or result accomplished cannot  
2 be standardized in relation to a given period of time; and who is compensated for his services on a  
3 salary or fee basis.

4 (9) "Unit of local government" means a county, municipality, town, township, village, or other  
5 general purpose political subdivision of the state.

## ARTICLE II: ORGANIZATION OF DEPARTMENT

1 *Section 3. State Department of Correction.* (a) A state department of correction is hereby  
2 established. The department shall be accountable directly to the governor.

3 (b) A director of correction, who shall be the chief administrative and fiscal officer of the  
4 department, shall be appointed by the governor [with the advice and consent of the Senate] and shall  
5 serve at his pleasure. The director shall receive an annual salary fixed by the governor pursuant to  
6 law, in addition to an allowance for expenses actually and necessarily incurred by him in the perform-  
7 ance of his duties. The director shall be qualified for his position by character, personality, ability,  
8 education, training, and successful administrative experience in the correctional field. He need not  
9 be a resident of this state when appointed.

10 (c) The director shall appoint such personnel as are required to administer the provisions of  
11 this act. Within [four] years following the effective date of this act, all employees of the department  
12 other than the director shall be within the state merit system.

13 (d) Within the general policies established by the governor and legislature, the director shall  
14 administer the department, prescribe rules and regulations for its operation, and supervise the admin-  
15 istration of all institutions, facilities, and services under the department's jurisdiction pursuant to  
16 Section 4. The director shall prescribe the duties of all personnel of the department and the regula-  
17 tions governing transfer of employees from one institution or division of the department to another.  
18 He shall have authority, subject to civil service requirements, to suspend, discharge, or otherwise  
19 discipline personnel for cause.

20 (e) The director, in cooperation with [insert state civil service commission or personnel  
21 agency], shall establish minimum qualifications standards for correctional personnel; shall develop  
22 new personnel classification positions to enable paraprofessionals, volunteers, and ex-offenders  
23 [except those who were former police officers] to perform appropriate correctional services; and  
24 shall arrange with appropriate agencies to provide pre-employment training and educational opportu-  
25 nities to such individuals to enable them to meet minimum qualifications standards, and to make  
26 available in-service training to departmental personnel.

1            *Section 4. Institutions, Services, and Administrative Structure.*

2            (a) The department shall be completely responsible for the maintenance, supervision, and ad-  
3            ministration of the following institutions and services:

4            (1) All institutions within the state for the care, custody, and correction of persons committed  
5            for felonies or misdemeanors, persons adjudicated as youthful offenders, and minors adjudicated as  
6            delinquents by the [juvenile or family] courts and committed to the department.

7            (2) Probation services for courts having jurisdiction over adult criminal offenders.

8            (3) Parole services for persons committed by criminal courts to institutions within the depart-  
9            ment. The parole board established by [cite section of act establishing parole board] shall be con-  
10           continued and shall be responsible for those duties specified in section [ . . ].\*

11           (4) Aftercare services for juveniles released from correctional institutions and facilities.

12           (b) The department may establish and operate institutions for misdemeanants committed for  
13           terms of thirty days or over.

14           (c) The following services and assistance shall be provided by the department to detention and  
15           short-term correctional facilities and probation programs operated by units of local government:

16           (1) Consultation regarding the design, construction, programs, and administration of facilities  
17           for juveniles and adults. The department may make studies and surveys of the programs and adminis-  
18           tration of those facilities. Personnel of the department shall be admitted to these facilities as required  
19           for those purposes.

20           (2) Establishment of standards and rules for the operation of local facilities and inspection, on  
21           at least an annual basis, to ensure their compliance with the standards set. The department shall pub-  
22           lish the results of the inspections as well as statistical and other data on the persons held in those  
23           facilities. After providing reasonable notice and opportunity to make necessary improvements, the  
24           director may order the closing of any facility that does not meet the standards set by the department.

25           (3) Establishment of minimum standards for probation services for juveniles and misdemeanants.

26           (4) Provision of training courses for the personnel of local facilities.

27           (5) Encouragement to enter into contracts and joint service agreements with other local units  
28           to establish and operate regional detention and correctional facilities for adult and juvenile offenders.

29           (6) Administration of a financial assistance program established by state law to cover a reason-  
30           able share of the costs of construction and operation of approved local facilities and programs. [The  
31           department shall administer the state share of all federal funds for corrections related purposes made  
32           available under Title I of the Omnibus Crime Control and Safe Streets Act of 1968.]

\*See National Council on Crime and Delinquency, *Standard Probation and Parole Act* (New York: The Council, 1955).

1 (d) The department shall establish programs of research, statistics, and planning, including  
2 evaluations of the performance of the various functions of the department and the effectiveness of  
3 the treatment of offenders.

4 (e) The department shall make an annual report to the governor on its activities, including  
5 statistical and other data; accounts of research work; analysis and evaluation of the adequacy and  
6 effectiveness of personnel, institutions, and services; and recommendations for legislation affecting  
7 the department. Copies of the report shall be provided to each member of the legislature.

8 (f) The director shall develop a suitable administrative structure providing for divisions and  
9 services to accomplish the purposes, goals, and programs required by this act, including, but not  
10 limited to, the following:

11 (1) Services for minors committed as delinquents by the [juvenile or family] courts shall be  
12 provided by specially qualified staff, in institutions separate from those for adults and, where admin-  
13 istratively practical, other services for juveniles shall be administered separately from those for adults.

14 (2) Females committed to the department shall be housed in appropriate institutions or quarters  
15 separate from those for males.

16 (3) The department shall provide for the administration of all institutions by professional  
17 corrections personnel.

18 *Section 5. Cooperation and Agreements with Other Departments and Agencies.* The department  
19 shall cooperate with the courts and with public and private agencies and officials to assist in attaining  
20 the purposes of this Act. The department may enter into agreements with other departments of  
21 Federal, State, or local government and with private agencies concerning the discharge of its responsi-  
22 bilities or theirs.

### ARTICLE III: INSTITUTIONAL ADMINISTRATION

1 *Section 6. Commitment and Transfer.* (a) Commitment to institutions within the jurisdiction  
2 of the department shall be to the department, not to a particular institution. The director shall  
3 assign a newly committed inmate to an appropriate institution. He may transfer an inmate from one  
4 institution to another, consistent with the commitment and in accordance with treatment, training,  
5 and security needs, except that he may not transfer to an institution for offenders committed by  
6 criminal courts a minor adjudicated as delinquent by a [juvenile or family] court.

7 (b) On the request of the chief executive officer of the affected unit of local government, the  
8 director may transfer a person detained in a local facility to a state institution. The director shall

1 determine the cost of care for that person to be borne by the unit of local government.

2       *Section 7. Diagnostic Facilities and Services.*       The department shall provide diagnostic  
3 facilities to make social, medical, psychological, and other appropriate studies of persons committed  
4 to its care. At the request of any sentencing court, and in accordance with standards established by  
5 the department, diagnostic services shall be provided for any person who has been convicted, is before  
6 the court for sentencing, and is subject to commitment to the department. A report of the findings  
7 shall be furnished to the court. To the maximum extent feasible, diagnostic services shall be made  
8 available in community-based institutions.

9       *Section 8. Transfer of Mentally Ill and Mentally Retarded Inmates.*

10       The director may arrange for the transfer of an inmate for observation and diagnosis to  
11 other appropriate state departments or institutions, provided that he has obtained the prior consent  
12 of the administrators of the agencies. If the inmate is found to be subject to civil commitments for  
13 psychosis or other mental illness or retardation, the director shall initiate legal proceedings for the  
14 commitment. While the inmate is in another institution his sentence shall continue to run. When, in  
15 the judgment of the administrator of the institution to which an inmate has been transferred, he has  
16 recovered from the condition which occasioned the transfer, the administrator shall provide for his  
17 return to the department, unless his sentence has expired.

#### ARTICLE IV: TREATMENT OF INMATES

1       *Section 9. Classification, Treatment, and Discipline.* (a) Persons committed to the institu-  
2 tional care of the department shall be dealt with humanely, with efforts directed to their rehabilitation  
3 and return to the community as safely and promptly as practicable. For these purposes, the director  
4 shall establish programs of classification and diagnosis, education, casework, counseling and psycho-  
5 therapy, vocational training and guidance, work, library, and other rehabilitation services; he may  
6 establish religious programs; and he shall institute procedures for the study and classification of  
7 inmates. The director shall maintain a comprehensive record of the behavior of each inmate reflecting  
8 accomplishments and progress toward rehabilitation as well as charges of infractions of rules and regu-  
9 lations, punishments imposed and medical inspections made.

10       (b) The director shall establish and prescribe standards for health, medical, and dental services  
11 for each institution, including preventive, diagnostic, and therapeutic measures on both an out-patient  
12 and a hospital basis, for all types of patients. An inmate may be taken, when necessary, to a medical  
13 facility outside the institution.

1 (c) Under rules prescribed by the department, heads of institutions may authorize visits and  
2 correspondence, under reasonable conditions, between inmates and appropriate friends, relatives, and  
3 others.

4 (d) The director shall promulgate regulations under which inmates, as part of a program looking  
5 to their release from the custody of the department, or their treatment, may be granted temporary  
6 furloughs from an institution to visit their families or to be interviewed by prospective employers.

7 (e) The director shall prescribe rules and regulations for the maintenance of good order and  
8 discipline in institutions, including procedures for dealing with violations. A copy of the rules shall  
9 be provided to each inmate. [Corporal punishment is prohibited.]

10 *Section 10. Work by Inmates and Compensation.* (a) The department shall provide employ-  
11 ment opportunities, work experiences, and vocational training for all inmates. To the extent possible,  
12 equipment, management practices, and general procedures shall approximate normal conditions of  
13 employment. [Tax-supported departments, agencies, and institutions of the state and its political  
14 subdivisions shall give preference to the purchase of products of inmate labor and inmate services.]

15 (b) Inmates shall be compensated, at rates fixed by the director, for work performed, includ-  
16 ing institutional maintenance and attendance at training programs. The inmate shall contribute to the  
17 support of his dependents who may be receiving public assistance during the period of commitment if  
18 funds available to him are adequate for that purpose.

19 (c) The department may make contractual arrangements for the use of inmate labor by other  
20 tax-supported units of government and private industry when evidence is available that such employ-  
21 ment will contribute to the rehabilitation of the inmate.

22 (d) The department may grant any inmate serving a sentence, the balance of which does not  
23 exceed [five] years, the privilege of leaving the institution during necessary and reasonable hours for  
24 any of the following purposes:

25 (1) Seeking employment;

26 (2) Working at his employment;

27 (3) Conducting his own business or other self-employed occupation including, in the case of a  
28 woman, housekeeping and attending the needs of her family; or

29 (4) Attending an educational institution.

30 (e) The department shall establish administrative and fiscal procedures to permit the use of  
31 approved regional or community institutions or halfway houses for the placement of inmates re-  
32 leased for those purposes.

1 (f) Any inmate participating in work and educational release programs under the provisions of  
2 subsection (d) shall continue to be in the legal custody of the department, notwithstanding his ab-  
3 sence from an institution by reason of employment or education, and any employer or educator of  
4 that person shall be considered the representative of, or keeper for, the department.

5 *Section 11. Good Behavior and Discharge Allowances.* (a) An inmate serving a commitment  
6 shall be allowed a reduction, from his maximum term, of [ten] days for each month served for the  
7 first [five] years of any term, and [fifteen] days per month for the period of any term over [five]  
8 years. However, the director, pursuant to regulations promulgated by him, may deny the allowances  
9 for [one] or more months of time served prior to the infraction of rules by the inmate. The regula-  
10 tions shall provide, under stated circumstances, for the restoration of good time lost.

11 (b) Inmates released upon completion of their term or released on parole or mandatory condi-  
12 tional release shall be supplied with satisfactory clothing, transportation to the point of destination  
13 within the state, and [financial assistance to meet their needs for a reasonable period after release.]  
14 [Insert state unemployment compensation law, providing for the state as the employer.] If the  
15 inmate or his family has financial resources, these shall be used prior to the use of public funds.

16 (c) The department shall establish a revolving fund from funds available to the department, to  
17 be used for loans to prisoners discharged, released on parole, or released on mandatory conditional  
18 release, to assist them to readjust in the community.

#### ARTICLE V: TRANSFER OF PERSONNEL, PROPERTY, RECORDS, AND FUNDS

1 *Section 12. Status of Personnel.* (a) All employees of state, county, and municipal correctional  
2 institutions and agencies providing adult probation and juvenile aftercare services shall be deemed to  
3 be employees of the department of correction as of [insert effective date of this Act].

4 (b) Employees shall receive full credit for the time employed by state, county, or municipal  
5 institutions or agencies in computing the number of years of service required to receive pension bene-  
6 fits within the meaning of the [insert state employees' pension plan]. No person shall be entitled to  
7 the pension benefits provided herein until he has completed [one year] as an employee of the depart-  
8 ment and has met all other requirements of the [insert state employees' pension plan]. [Language  
9 may be added to provide for the appropriate transfer of funds from local retirement systems to the  
10 state retirement system.]

11 *Section 13. Transfer of Property, Records, and Funds.* The following shall be transferred to  
12 the department in accordance with regulations and procedures prescribed by the director:

1           (1) All property and records of correctional institutions and adult probation and juvenile after-  
2 care agencies operated by units of local government.

3           (2) All property, records, and unexpended balances of appropriations, allocations, and other  
4 funds of state correctional institutions, adult probation and juvenile aftercare agencies, and the parole  
5 board.

ARTICLE VI: APPLICATION OF ACT

1           *Section 14. Laws Repealed.* [Insert language repealing all other acts and parts of acts incon-  
2 sistent with the provisions of this Act.]

3           *Section 15. Separability.* [Insert separability clause.]

4           *Section 16. Effective Date.* [Insert effective date.]



## UPGRADING POLICE PERSONNEL PRACTICES

High quality police selection and training is central to the effective performance of the police function. Programs to develop minimum police standards, education, and training requirements, and provisions for adequate financing of such programs can result in more consistent and uniform law enforcement operations. In addition, such programs have the advantage of promoting greater coordination within the administration of the law enforcement system.

Presently, police standards councils are in operation in 33 States. Mandatory police selection and training standards are in effect in 25 States. The proposed legislation is mainly directed at the remaining States that now do not have such programs.

Sections 1 and 2 of the act set forth the purpose and definitions. Section 3 establishes a State police standards council. Section 4 outlines the powers and duties of the council. Section 5 specifies minimum conditions of police selection and training and certain exceptions thereto. Sections 6 and 7 make available grants for reimbursement to law enforcement officers as an incentive for participation in advanced training and educational programs. Section 8 provides for the acceptance and administration of grants.

This act is patterned after the Model Police Standards Act drafted by the International Association of Chiefs of Police. Reference was also made to the Michigan Law Enforcement Officers Training Council Statute (Chapter 28.600) and the Georgia Peace Officers Standards and Training Act of 1970.

### Suggested Legislation

*[Title should conform to State requirements. The following is a suggestion: "An Act establishing a council on police standards; prescribing certain education and training requirements for members of police forces; providing for state financial participation in local training programs meeting state standards; and encouraging local government units to offer fiscal compensation incentives to local policemen participating in advanced training and educational programs."]*

1            (Be it enacted, etc.)

2            *Section 1. Findings and Policy.* The legislature finds that the administration of criminal justice  
3 is of statewide concern and that law enforcement is important to the health, safety and welfare of the  
4 people of this state. Furthermore, the state has a responsibility to ensure effective law enforcement  
5 by establishing minimum selection, training, and educational requirements for local police forces, and  
6 also by encouraging advanced in-service training programs.

7            It is in the public interest that minimum levels of education and training be developed and made  
8 available to persons seeking to become police officers and to persons presently serving as police  
9 officers.

1           *Section 2. Definitions. As used in this act:* (1) “law enforcement officer” means any  
2 [appointed] police employee who is responsible for the prevention, and detection of crime and the  
3 enforcement of the criminal, traffic or highway laws of this state.

4           (2) “council” means the police standards council established by Section 3 of this act.

5           (3) “political subdivision” means [specify local units of general government.]

6           *Section 3. Police Standards Council.* (a) There is established a police standards council, herein-  
7 after called “the council,” in the [appropriate department]. The council shall be composed of [15]  
8 members, including [ ] elected officials of political subdivisions, [ ] chief administrative officers  
9 of local police forces; [ ] representatives of institutions of higher education; [ ] public members;  
10 the director of the [appropriate state law enforcement agency], the director of the state law enforce-  
11 ment planning agency, and the attorney general.

12           (b) Except for the attorney general, the director of the [appropriate state law enforcement  
13 agency] and the director of the state law enforcement planning agency, who shall serve during their  
14 continuance in those offices, members of the council shall be appointed by the governor for terms of  
15 [4] years: provided that no member shall serve beyond the time when he holds the office or em-  
16 ployment by reason of which he was initially eligible for appointment. Any vacancy on the council  
17 shall be filled in the same manner as the original appointment, but for the unexpired term.

18           (c) The governor shall designate the chairman of the council from among the members of the  
19 council.

20           (d) Notwithstanding any other provision of state law, local ordinance, or charter to the con-  
21 trary, membership on the council shall not disqualify a member from holding any other public office  
22 or employment, or cause the forfeiture thereof.

23           (e) Members of the council shall serve without compensation, but shall be entitled to receive  
24 reimbursement for any actual expenses incurred as a necessary incident to such service.\*

25           (f) The council shall hold no less than [four] regular meetings a year. Subject to the require-  
26 ments of this subsection, the chairman shall fix the times and places of meetings, either on his own  
27 motion or upon written request of any [five] members of the council.

28           (g) The council shall report annually to the governor and legislature on the nature and scope of  
29 its activities, accomplishments, and goals; the council may make such other reports as it deems  
30 desirable.

\*Members of the council who are not full-time public employees should be reimbursed on a per diem basis in accordance with regular state practice for compensation.

1            *Section 4. Powers and Duties.* In addition to powers conferred upon the council elsewhere in  
2 this act, the council shall have power to:

- 3            1. Promulgate rules and regulations for the administration of this act.
- 4            2. Require the submission of reports and information by police departments within this state.
- 5            3. Establish minimum selection and training standards for admission to employment as a law  
6 enforcement officer. The standards may take into account different requirements for urban and  
7 rural areas, full-time and part-time employment, and specialized police personnel.
- 8            4. Establish minimum curriculum requirements for preparatory, inservice and advanced courses  
9 and programs for schools operated by or for the state or any political subdivision for the specific  
10 purpose of training recruits or law enforcement officers.
- 11           5. Consult and cooperate with counties, municipalities, agencies of this state, other govern-  
12 mental agencies, and with universities, colleges, junior colleges, community colleges and other insti-  
13 tutions or organizations concerning the development of police training schools and programs or  
14 courses of instruction.
- 15           6. Approve institutions and facilities to be used by or for the state or any political subdivision  
16 thereof for the specific purpose of training law enforcement officers and recruits.
- 17           7. Make and encourage studies of any aspect of police administration.
- 18           8. Conduct and stimulate research by public and private agencies designed to improve police  
19 administration and law enforcement.
- 20           9. Make recommendations concerning any matter within its purview pursuant to this act.
- 21           10. Employ a director and such other personnel as may be necessary in the performance of its  
22 functions.
- 23           11. Make such evaluations as may be necessary to determine if governmental units are comply-  
24 ing with the provisions of this act.
- 25           12. Adopt and amend bylaws, consistent with law, for its internal management and control.
- 26           13. Enter into contracts or do such things as may be necessary and incidental to the administra-  
27 tion of this act.

28           *Section 5. Selection and Training Requirements.* (a) At the earliest practicable time, the council  
29 shall provide, by regulation, that no person shall be appointed as a law enforcement officer, except  
30 on a temporary or probationary basis, unless such person has satisfactorily completed a preparatory  
31 program of police training at a school approved by the council, [and is the holder of a bachelor's  
32 degree from an accredited institution.] A law enforcement officer who lacks the education and train-  
33 ing qualifications required by the council shall not have his temporary or probationary employment

1 extended beyond one year by renewal of appointment or otherwise.

2 (b) In addition to the requirements of subsections (a), of this section, the council by rules and  
3 regulations, shall fix other qualifications as it deems necessary.

4 (c) The council shall issue a certificate evidencing satisfaction of the requirements of subsections  
5 (a) and (b) of this section to any applicant who presents such evidence as may be required by its rules  
6 and regulations of satisfactory completion of a program or course of instruction in this or another  
7 state conforming to the content and quality required by the council for approved police education  
8 and training.

9 (d) Nothing herein shall be construed to preclude any employing agency from establishing  
10 qualifications and standards for hiring, training, compensating, or promoting law enforcement  
11 officers that exceed those set by the council.

12 (e) Law enforcement officers already serving under full-time permanent appointment on the  
13 effective date of this act shall not be required to meet any requirement of subsections (b) and (c) of  
14 this section as a condition of tenure or continued employment; nor shall failure of any law enforce-  
15 ment officer to fulfill such requirements make him ineligible for any promotional examination for  
16 which he is otherwise eligible. Law enforcement officers employed prior to the enactment of this act  
17 may continue their employment and participate in training programs on a voluntary or assigned basis,  
18 but failure to meet the standards shall not be grounds for their dismissal or termination of employment.

19 *Section 6. Police Training Programs: Grants Under the Supervision of Council and the State.*

20 (a) For the purposes of this act, the council may cooperate with federal, state, and local law enforce-  
21 ment agencies in establishing and conducting instruction and training programs for law enforcement  
22 officers of this state, its counties and municipalities.

23 (b) The council shall establish and maintain police training programs through such agencies  
24 and institutions as the council may deem appropriate to carry out the intent of this act.

25 (c) The council shall reimburse each state agency and political subdivision that adheres to the  
26 selection and training standards established by the council for the [salary and the] allowable tuition,  
27 living, and travel expenses incurred by the officers in attendance at approved training programs.

28 *Section 7. Police Career Incentive Program.* (a) The council shall develop guidelines for use by  
29 local governments to establish a career incentive pay program offering base salary increases to regular  
30 full-time members of the county and municipal police departments in the state as a reward for fur-  
31 thering their education in the field of police work. The council shall determine the manner in which  
32 police career incentive salary increases shall be predicated and granted, including the option of  
33 whether any county and municipality participating in the program authorized by this section shall

1 be entitled to be reimbursed by the state for [100] percent of the costs of such payments upon certi-  
2 fication to the council that all credits and degrees have been earned in an educational institution duly  
3 accredited in the state.

4 *Section 8. Acceptance and Administration of Grants.* (a) In addition to funds appropriated by  
5 the legislature the council may accept for any of its purposes and functions any grants of money and  
6 real and personal property from any governmental unit or public agency, or from any institution,  
7 person, firm or corporation and may receive, utilize and dispose of the same. Any monies received by  
8 the council pursuant to this subsection shall be deposited in the state treasury to the account of the  
9 council.

10 (b) The council, by rules and regulations, shall provide for the administration of the grant pro-  
11 grams authorized by the act. In promulgating such rules, the council shall promote the most efficient  
12 and economical program for police training, including the maximum utilization of existing facilities  
13 and programs for the purpose of avoiding duplication.

14 (c) The council may provide grants as a reimbursement for actual expenses incurred by the  
15 state or political subdivisions thereof for the provision of training programs to officers from other  
16 jurisdictions within the state as herein authorized.

17 *Section 9. Separability.* [Insert separability clause.]

18 *Section 19. Effective Date.* [Insert effective date clause.]

## EXPANDED STATE SERVICES TO LOCAL LAW ENFORCEMENT AGENCIES

Inadequate supportive services for local police agencies has long been recognized as a major organizational problem in many metropolitan areas. Additionally, the problem of providing a full-range of specialized "back-up" police services and securing coordination among police departments with respect to crime analysis, criminal identification, records and statistics has weakened the effectiveness of overall crime control efforts in many States.

In order to improve the efficiency and economy of the entire law enforcement system with a State, it is essential that formal assistance and cooperation between State and local law enforcement agencies be provided and that technical resources and pertinent information relating to criminal matters be shared.

Section 1 sets forth the purpose of the legislation. Section 2 includes the definitions of terms commonly used in this act. Section 3 authorizes the appropriate State law enforcement agency to assist local departments upon request. Section 4 establishes procedures for carrying out uniform crime reporting systems in the State. Section 5 creates State crime laboratory facilities to provide specialized technical assistance to strengthen local law enforcement capabilities.

This draft legislation is modeled after the Wisconsin Police Regulation Act (Chapter 165.55) and the Pennsylvania Administrative Code (Chapter 71.S.250).

### Suggested Legislation

*[Title should conform to State requirements. The following is a suggestion: "An Act authorizing the [appropriate state law enforcement agency] to assist and cooperate with local police officers in the performance of their duties in any criminal matter throughout the state; to provide services of a special nature to local law enforcement agencies within the state; and to establish a statewide uniform system of criminal identification, records and statistics."]*

(Be it enacted, etc.)

1        *Section 1. Findings and Purpose.* The legislature hereby finds it to be in the best interests of  
2 the citizens of this state that the [appropriate state law enforcement agency], whenever possible,  
3 should cooperate with counties and municipalities in the detection of crime, the apprehension of  
4 criminals, and the preservation of law and order throughout the state. The purposes of this act are to  
5 authorize the [appropriate state law enforcement agency] to exercise all the powers and prerogatives  
6 conferred upon members of local law enforcement agencies, when performing identical duties in any  
7 political jurisdiction of the state; and to establish, maintain, and operate within the [appropriate  
8 state law enforcement agency] the necessary divisions to perform specialized police related functions  
9 to aid law enforcement agencies throughout the state.

1           *Section 2. Definitions.* As used in this act: (1) “offense” means an act which is a felony, a  
2 misdemeanor, [or a violation of a county, city, or town criminal code].

3           (2) “local police agency” means a police agency of one or more persons employed full-time by  
4 a political subdivision of the state for the purpose of preventing and detecting crime and enforcing  
5 laws [or ordinances] and whose employees are authorized to make arrests to enforce the laws [or  
6 ordinances].

7           (3) “division” means the division of criminal records and statistics created by section 4 of this  
8 act.

9           (4) “director” means the head of the [appropriate state law enforcement agency];

10          (5) “laboratory” means the state crime laboratory created by section 5 of this act.

11          *Section 3. Powers and Duties.* (a) The [director], when requested by the governor, shall, and  
12 upon his own initiative or when requested by a local law enforcement agency, may: (1) assist in or  
13 assume the investigation or detection of any offense, (2) make lawful arrests, without warrant, for all  
14 violations of the criminal law or any laws regulating the use of motor vehicles on the highways, which  
15 they may witness; and (3) serve and execute lawful warrants issued by the proper local authorities.

16          (b) All law enforcement personnel of the [appropriate state law enforcement agency] shall  
17 have, in any part of the state, the same powers and prerogatives conferred by law, with respect to  
18 criminal offenses and the enforcement of the law relating thereto as sheriffs, policemen, or other  
19 local law enforcement officers have in their respective jurisdictions.

20          *Section 4. Uniform Crime Reporting Systems.* (a) Within the [appropriate state law enforce-  
21 ment agency] there is hereby established a division of criminal records and statistics for centralization  
22 of information with regard to crime in the state. The division shall:

23          (1) obtain and file fingerprints, descriptions, photographs, and any other available identifying  
24 data on persons who have been arrested or taken into custody in this state for any offense for which  
25 the maximum lawful penalty is [two] years.

26          (2) Develop and operate an information system which, in the judgement of the administrator  
27 of the division, may be useful in the reduction of crime and the administration of justice.

28          (3) Cooperate with all enforcement agencies in the state to establish a system of criminal  
29 identification, and furnish all reporting officials with forms and instructions which specify the nature  
30 of information required and the time it is to be forwarded.

31          (4) Make available upon request, to all local and state law enforcement agencies in this state, to  
32 all federal law enforcement and criminal identification agencies, and to state law enforcement agen-  
33 cies in other states, any information in the files of the division which will aid these agencies in the

1 performance of their official duties; and

2 (5) cooperate with other law enforcement agencies in this state and the crime information  
3 agencies in other States, in developing and operating an intra-state, inter-state, and national system  
4 of criminal identification, records and statistics.

5 (b) All local law enforcement agencies in the state shall obtain and file fingerprints, descrip-  
6 tions, photographs, and other available identifying data on persons who have been lawfully arrested  
7 or taken into custody in this state for any offense for which the maximum penalty is [two] years or  
8 more. It shall be the duty of all chiefs of police, sheriffs, prosecuting attorneys, courts, judges, parole  
9 and probation officers, wardens, or other persons in charge of correctional institutions in this state to  
10 furnish the division with data deemed necessary by the [director] to carry out the purposes of para-  
11 graph (2) of this section.

12 *Section 5. Establishment of a State Crime Laboratory.* (a) There is hereby established within  
13 the [appropriate state law enforcement agency] one or more laboratories to provide as may be nec-  
14 essary technical assistance to state and local law enforcement officers in the various fields of scientific  
15 investigation in the aid of law enforcement.

16 (b) Persons employed in the laboratory shall not be empowered by reason of their employment  
17 in the laboratory to make arrest or to serve or execute criminal process.

18 (c) The laboratory shall maintain and conduct criminal analysis services for the investigation  
19 and prosecution of crime in such fields as ballistics, chemistry, handwriting comparison, metallurgy,  
20 comparative micrography, lie-detector and deception test operations, fingerprinting, toxicology and  
21 pathology.

22 (d) The laboratory shall not undertake investigation of criminal conduct except as ordered by  
23 the [director]. A sheriff, municipal police chief, district attorney, warden, or the attorney general  
24 may request, and the governor may order, the [director] to authorize an investigation.

25 Upon request of the head of any state department that has law enforcement responsibilities,  
26 the [director] may authorize the laboratory to provide scientific and technological services to the  
27 requesting department, provided that these services relate directly to, and are necessary for, the  
28 effective performance of law enforcement responsibilities which by statute have been vested in the  
29 requesting department.

30 (e) Upon request of the attorney general, the services of the laboratory may be provided in  
31 civil cases in which the state or any department, bureau, agency or officer of the state is a party in an  
32 official capacity.



1 (f) The [director] may decline to provide laboratory service as he deems appropriate except on  
2 order of the governor.

3 (g) Reasonable fees may be charged for the services performed at the laboratory to each appli-  
4 cable case referred for investigations to the laboratory.

5 (h) Whenever the [director] is informed by the submitting officer or agency that physical  
6 evidence in the possession of the laboratory is no longer needed, he may, unless otherwise provided  
7 by law, either destroy the evidence or retain it in the laboratory. Whenever the [director] receives  
8 information from which it appears probable that such evidence is no longer needed, he may give  
9 written notice to the submitting agency and the appropriate district attorney, by registered mail, of  
10 his intention to dispose of the evidence, and if no objection is received within [20] days after the  
11 notice was received, he may order disposal of the evidence.

12 *Section 6. Separability.* [Insert separability clause.]

13 *Section 7. Effective Date.* [Insert effective date clause.]

## RURAL POLICE PROTECTION ACT

Most nonmetropolitan areas of the county face serious deficiencies in their police protection organization. Basically, these difficulties involve: (1) the average size of nonmetropolitan police departments, (2) the heavy use of part-time personnel and, (3) the lack of adequate areawide protection.

Most nonmetropolitan police departments are too small to provide more than basic patrol services, and, to a certain extent, must depend on the police agencies of other levels to provide protection. This pattern of infrequent patrol activities does not offer sufficient police services for most of these areas, even though rural crime is not of the magnitude of that in urban areas.

This act provides two basic means of strengthening the police capabilities of nonmetropolitan communities. The first involves authorization for establishing a State resident trooper program whereby members of the appropriate state law enforcement agency would be assigned to individual small jurisdictions on a contractual basis, as is done in Connecticut. The second is a State financial incentive program to encourage the consolidation of the small rural police forces.

Sections 1 and 2 of this act state its purpose and definitions. Section 3 provides for contractual arrangement to assign personnel from the appropriate state law enforcement agency to serve on a full-time basis in rural areas. Section 4 describes the powers of officers assigned in such a capacity. Section 5 offers state grants of financial support to encourage the consolidation of nonmetropolitan police forces.

This draft proposal is drawn from a Massachusetts' "regional police district law" (Chapter 878, 1969 Laws), a proposed Michigan statute supplementing expenditures for police personnel in small jurisdictions, and Connecticut's "Resident State Police Program."

### Suggested Legislation

*[Title should conform to State requirements. The following is a suggestion: "An Act to authorize cooperative arrangements to supplement law enforcement systems in counties, cities and towns in non-metropolitan areas of the state and to provide financial incentives for consolidating multiple police forces into a single county police district to serve a common area of primarily rural jurisdiction."]*

(Be it enacted, etc.)

1        *Section 1. Findings and Purpose.* The legislature finds that there is an acute problem of organ-  
2        izing local rural police forces to provide basic services and protection due to insufficient regular police  
3        personnel; and that jurisdictional fragmentation tends to reduce the efforts of existing law enforce-  
4        ment agencies to provide full-time efficient police services.

5        The purpose of this act is to authorize rural jurisdictions to strengthen their law enforcement  
6        systems by empowering assignment of personnel from the [appropriate state law enforcement agency]

1 to provide police services, or through agreements to consolidate local police forces into a single  
2 countywide police department.

3 *Section 2. Definitions.* As used in this act: (1) “rural jurisdiction” means any county that is  
4 not all or part of a Standard Metropolitan Area as designated by the U.S. Office of Management and  
5 Budget, or any local unit of general government within such a county, or any combination thereof.

6 (2) “director” means the head of the [appropriate state law enforcement agency].

7 (3) “assigned state policeman” means a police officer detailed from the [appropriate state law  
8 enforcement agency] to a rural jurisdiction to assist or assume police functions, as agreed upon by a  
9 rural jurisdiction and the [director].

10 *Section 3. Assigned State Law Enforcement Services Provided on a Contractual Basis.*

11 (a) Any rural jurisdiction may contract with the [director] for the purpose of receiving fulltime  
12 assigned state policemen and various other police services where they are otherwise not available.

13 The contract shall be for a period of not more than [ ] years and may be renewed.

14 *Section 4. Powers of Assigned State Policemen.* The [director] shall supervise and direct as-  
15 signed state policemen. In addition to his state law enforcement duties, each assigned state policeman  
16 providing services in a rural jurisdiction shall have the same powers as officers of the rural jurisdiction  
17 unless specifically limited by the contract.

18 *Section 5. State Financial Incentives to Encourage Consolidation of Local Police Departments*  
19 *Into Single County Police Force.* (a) In addition to its other powers, the governing body of any rural  
20 jurisdiction [under [25,000] population] other than a county, by [ordinance] [resolution], may  
21 abolish its police department and vest its law enforcement powers and duties in the government of the  
22 county in which it is located.

23 (b) On the effective date of the dissolution of the police department, any pending criminal  
24 prosecutions of the police department of the local government shall be assumed by the police force of  
25 the county, and all employees of the local government police department shall be eligible for transfer  
26 to the county police department.

27 (c) The county sheriff, his deputies, and other police officers of the county police force shall  
28 have all the powers, duties, immunities, and privileges conferred by law upon law enforcement per-  
29 sonnel of a rural jurisdiction which transfers its police powers and duties to a county.

30 (d) The [county governing body] shall determine as nearly as possible the actual cost of  
31 providing police services to the non-county rural jurisdiction that abolishes its police department  
32 and vests its law enforcement powers and duties in a county pursuant to this section. This cost  
33 shall be paid to the county by the rural jurisdiction.

1           (e) A rural jurisdiction that vests its law enforcement powers and duties in a county shall receive  
2 reimbursement from the state [for a period of five years] for [25] percent of the amount it pays a  
3 county for police services pursuant to this section. The reimbursement shall be made [quarterly] by  
4 the [state treasurer] from funds appropriated for that purpose upon receipt by the [state treasurer]  
5 of a certification by the county and by the affected rural jurisdiction of the cost of police services  
6 provided for it by the county.

7           (f) Whenever a rural jurisdiction repeals the [ordinance] [resolution] abolishing its police  
8 department and vesting its law enforcement powers and duties in a county, it shall cease to be eligible  
9 for the reimbursement provided for in section 5 (e) of this act.

10           *Section 6. Separability.* [Insert separability clause].

11           *Section 7. Effective date.* [Insert effective date clause].

## INTRASTATE EXTRATERRITORIAL POLICE POWERS

The nation's metropolitan areas are the site of the bulk of the country's criminal activity. Yet, the typical metropolitan area is characterized by a fragmented system of police protection which seriously hinders local police work.

One major jurisdictional issue which affects metropolitan police protection is the extent to which extra-territorial police powers are authorized. Such powers are essential if a policeman is to discharge his duties and discourage criminal offenders from using jurisdictional lines to hinder their apprehension. Moreover, the grant of extra-territorial power must be accompanied by clear State or local responsibility for tort liability protection and employee insurance benefits if it is to be effective. The proposed legislation sets forth both the broad grant of extra-territorial police power and the necessary guarantee of tort liability and insurance protection for local police officers.

Sections 1 and 2 set forth the basic purpose and definitions of the legislation. Section 3 authorizes police officers to pursue and arrest a person anywhere in the State and prescribes certain conditions to be followed in instances of "close pursuit" and in making an extraterritorial arrest. Section 4 assures basic tort liability protection and insurance benefits in the performance of police duties beyond territorial limits and sets forth certain restrictions on such benefits.

The draft statute reflects the principles of a model uniform statute on intrastate pursuit contained in the 1966 edition of the *Handbook on Interstate Crime Control*, prepared by the Council of State Governments. Additional reference was made to Chapter 996, Laws of 1970 of the State of New York, which authorizes statewide arrest powers.

### Suggested Legislation

*[Title should conform to state requirements. The following is a suggestion: "An act granting extraterritorial police powers to police officers of political subdivisions."]*

*[Be it enacted]*

1            *Section 1. Purpose.* The purpose of this act is to grant extraterritorial police powers to  
2 police officers to perform the lawful exercise of their police duties anywhere in the state and to  
3 set forth provisions for immunity from tort liability and for insurance benefits of the police  
4 officers of county and municipal corporations engaged in the lawful exercise of extra-territorial  
5 police activity.

6            *Section 2. Definitions.* As used in this act:

7            (1) "Close pursuit" means pursuit of a person who has committed a felony or whose pur-  
8 suer reasonably believes he has committed a felony in this State, or who has committed a misde-  
9 meanor in the presence of the arresting officer, or for whom such officer holds a warrant of  
10 arrest for a criminal offense.

1           (2) "Police officer" means an employee of a police department of any political subdivision  
2 of the state who is responsible for crime prevention, and crime detection, or the enforcement of  
3 the criminal, traffic, or highway law of this State.

4           *Section 3. Pursuit Across County and Municipal Lines.* (a) Any police officer in "close  
5 pursuit" may arrest the person pursued.

6           (b) If an arrest is made in obedience to a warrant, the disposition of the prisoner shall be  
7 as in other cases of arrest under a warrant. If the arrest is without warrant, the prisoner shall with-  
8 out unnecessary delay be taken before the appropriate authority in the jurisdiction wherein the  
9 arrest was made for a hearing to determine the lawfulness of the arrest. The court shall admit such  
10 person to bail, if the offense is bailable by taking security by way of recognizance for the appear-  
11 ance of such prisoner before the court having jurisdiction for such criminal offense.

12           (c) Any officer engaged in close pursuit shall be in uniform, and whenever feasible he  
13 shall notify the law enforcement authorities of other appropriate jurisdictions of such pursuit. If  
14 close pursuit takes place at speeds in excess of the legal speed limit, pursuit shall be in a marked  
15 police vehicle with emergency lights and siren in operation.\*

16           *Section 4. Immunity from Tort Liability and Insurance Benefits Connected With the*  
17 *Exercise of Police Duties Beyond Territorial Limits.*

18           (a) Any police officer, when acting under lawful authority beyond the territorial limits of  
19 the employing county or municipal corporation, shall have all the immunities from tort liabilities  
20 and have all the pensions, relief, disability, workmen's compensation and other benefits enjoyed by  
21 him while performing his duties within the territorial limits of the employing county or municipal  
22 corporation.

23           (b) Nothing in this act shall be deemed to: (1) entitle the extension of any benefits to an  
24 officer who at the time of death, injury, disability, or illness is acting for compensation on behalf  
25 of anyone other than the employing county or municipal corporation; or (2) require the extension  
26 of any benefits to a police officer whose action gives rise to death, injury, disability or illness, if

\*As of January 1, 1970, the information in *Uniform Vehicle Code: Rules of the Road with Statutory Annotation* 11-106 (1967, Supp. 1970) indicates that nineteen States require special flashing lights and sirens on authorized emergency vehicles, but that police vehicles need not have special flashing lights, in order to exceed speed limits. In eleven States (California, Colorado, Illinois, Kentucky, Missouri, Nevada, Oregon, South Dakota, Utah, Virginia and Wisconsin), police vehicles apparently must have both the lights and the siren. The remaining 20 States do not have laws requiring lights on any police vehicles (usually they require only sirens).

Among laws describing when drivers must pull over and yield the right of way to authorized emergency vehicles, 19 require lights and sirens except on police vehicles, as is also true in the UVC. On the other hand, 10 would require special flashing lights on police vehicles: Alabama, California, Georgia, Michigan, Maine, Minnesota, Nevada, Ohio, Vermont and Utah. The remaining States are more comparable to the UVC: Five require a light or a siren; two require neither a light or a siren; and 13 require only a siren (as did editions of the UVC before 1944).

1 such action, at the time it occurs, is expressly prohibited by charter, ordinance, rule, or regulation  
2 of the employing county or municipal corporation.

3 *Section 5. Separability.* [Insert separability clause.]

4 *Section 6. Effective Date.* [Insert effective date clause.]

## SPECIAL POLICE TASK FORCES

There are at least 114 metropolitan areas in the nation that are composed of more than one county or that are situated in more than one State. In such areas, there is no single local police force that has police jurisdiction over the entire area. In at least half the States, State law enforcement agencies are primarily concerned with highway patrol and, therefore, do not supply areawide police coverage to such areas.

Multicounty and interstate metropolitan areas are among the most populous portions of the country. Organized crime, unfortunately, flourishes in some of these locations. All these areas experience problems with apprehending mobile criminals. The creation of special purpose police forces, under either interlocal or State direction, to combat extralocal and organized crime would close a troublesome gap in police protection for these locations. Being special purpose units, an overcentralization of basic police services within these jurisdictions would be prevented.

Sections 1 and 2 set forth the purpose and definitions of the legislation. Sections 3 and 4 provide for either interlocal or State creation of special purpose police forces. Sections 5 and 6 indicate the powers, duties and limitations of these task forces. Section 7 specifies some of the conditions of interstate task force agreements.

The Kansas City and St. Louis metropolitan areas have created special purpose multicounty police details to operate on an ad hoc basis to solve crimes of an areawide dimension. Atlanta's METROPOL operates an areawide Fugitive Squad to keep a continuing surveillance on known criminals in that area. All of these operations could be considered as prototypes of a multicounty or interstate special police task force.

### Suggested Legislation

*[Be it enacted, etc.]*

1            *Section 1. Purpose.* It is the intent of this act to authorize state and local law enforcement  
2 agencies to operate special police task forces throughout multicounty and interstate metropolitan  
3 areas for the more effective detection, apprehension, and control of persons engaged in organized  
4 and extralocal crime and to prevent other unlawful actions which may be beyond the control of a  
5 single jurisdiction.

6            *Section 2. Definitions.* As used in this act: (1) "Task force" means a special purpose  
7 multicounty or interstate police force under the direction of either the director of the [appropriate  
8 state law enforcement agency] or the local governments party to the multicounty or interstate  
9 agreement setting up such a special purpose police force.

10           (2) "Multicounty or interstate metropolitan area" means any Standard Metropolitan  
11 Statistical Area as designated by the United States Office of Management and Budget, being com-  
12 posed of more than one county or situated in more than one state.

13           (3) "Director" means the head of the [appropriate state law enforcement agency].



1           (4) “Organized crime” means any felonious act committed by a person who is a member of  
2 a criminal syndicate.

3           (5) “Extralocal crime” means any felonious act which involves the crossing of a municipal  
4 or county boundary.

5           (6) “Agency” means any duly organized interlocal areawide instrumentality having juris-  
6 diction over a multicounty or interstate metropolitan area and which is authorized to perform  
7 police and other governmental functions.

8           *Section 3. Interlocal Creation of Special Police Task Forces.* (a) Local jurisdictions in multi-  
9 county and interstate metropolitan areas may enter into interlocal agreements with other local  
10 governments in this and adjacent states to create special police task forces, composed of police  
11 officers from party jurisdictions in any number that may be designated by the parties to the agree-  
12 ment as may be necessary to perform task force services throughout the jurisdictions of the  
13 affected parties.

14           (b) The governing bodies of the participating local governments may designate an approp-  
15 riate existing agency to perform task force operations or create a new agency to perform task  
16 force operations where there is no suitable existing agency in existence willing or able to assume  
17 this assignment.

18           *Section 4. State Creation of Special Police Task Forces.* Where the authority granted under  
19 section 3 of this act is not utilized by local jurisdictions and where in the opinion of the governor  
20 there is a clear and urgent need for such task forces, he may create or enter into interstate agree-  
21 ments to create a special police task force that will serve on a continuing basis in multi-  
22 county or interstate metropolitan areas. In the case of multi-county, intra-state metropolitan areas,  
23 the director shall appoint a commander for this task force to serve at his pleasure. In the case of  
24 interstate agreements, the respective state directors shall appoint a single commander to head the  
25 task force for a [two] year term.

26           *Section 5. Police Task Forces: Powers and Duties.* (a) Police task forces shall be limited to  
27 the following powers:

- 28           (i) to conduct intelligence and undercover operations for the detection and appre-  
29 hension of persons engaged in or otherwise associated with organized crime,  
30           (ii) to detail police patrol and investigative teams throughout the jurisdiction of the  
31 task force to control, detect and apprehend persons engaged in extralocal and  
32 organized crime, and



## INDEPENDENT COUNTY POLICE FORCES AND MODERNIZED SHERIFF'S DEPARTMENTS

Effective metropolitan police protection depends, in large measure, on a capable countywide law enforcement agency. To that end, many metropolitan counties have either vested full-time county police responsibilities in an independent county police force or a revitalized sheriff's department. Over 50 counties, most of them in large metropolitan areas, have independent county police forces responsible to the county executive or county board of commissioners. Many other metropolitan counties have bolstered the police responsibilities of the sheriff's department and downgraded its more traditional court and jail duties. By both sorts of actions, metropolitan counties have modernized their law enforcement agencies.

The following two alternative bills offer the option of providing metropolitan counties with an independent county police force or a restructured sheriff's department. The legislation creating an independent county police force authorizes their creation in metropolitan counties while, at the same time, placing the sheriff in a subordinate police role to the new force. It sets forth the powers and duties of the independent police agency and the responsibilities of metropolitan police chief. Finally, it provides that department personnel shall be compensated solely by salary and be covered by the county civil service personnel regulations.

The bill restructuring the sheriff's department is similar to that authorizing the independent police force. Yet, it contains some distinguishing features. It provides for election of the sheriff for a four-year term with no limits on succession. It sets forth the powers of his department, his own management and appointment powers, and provides for a transfer of the agency's nonpolice duties to appropriate State or local court and correctional agencies. Like the first alternative, it also provides that county law enforcement personnel shall be compensated solely by salary and covered under county civil service regulations.

The model for this legislation was the Nashville-Davidson County Charter.

### Suggested Legislation

#### INDEPENDENT COUNTY POLICE FORCES

*[Be it enacted, etc.]*

- 1           *Section 1. Purpose.* The purpose of this act is to authorize metropolitan counties to vest  
2 primary law enforcement responsibilities in an independent county police force under the control  
3 of the [county board of commissioners] [county chief executive] and to insure that all county  
4 law enforcement personnel are covered under a county civil service system, compensated solely by  
5 salary, and provided with adequate retirement benefits.
- 6           *Section 2. Definitions.* As used in this act: (1) "board" means county board of commis-  
7 sioners.
- 8           (2) "executive" means county chief executive.
- 9           (3) "metropolitan police department" means independent county police department created  
10 pursuant to section 3 of this act.
- 11          (4) "chief" means the administrative head of the metropolitan police department.

1 (5) "metropolitan county" means any county located in a metropolitan area as designated  
2 by the U. S. Office of Management and Budget.

3 *Section 3. Authorization for Independent County Police Forces.* (a) The legislative body of  
4 every metropolitan county in this state may by ordinance establish and maintain a metropolitan  
5 police department under the direction of the [board] [executive] and may provide for the appoint-  
6 ment of county police, prescribe their duties, and fix their compensation. The metropolitan police  
7 department shall consist of a chief, and such other officers and employees of such ranks and grades  
8 as may be established by ordinance and which shall include such bureaus, divisions, and units as  
9 may be provided by ordinance or by regulations of the chief consistent therewith.

10 (b) Where an independent county police force is created pursuant to this section, the  
11 sheriff shall not be the principal peace officer within the jurisdiction of the metropolitan police  
12 department. However, he may retain any law enforcement powers that are necessary for him to  
13 serve as the chief enforcement officer of the appropriate general trial court in the county in which  
14 he is located. He may also give law enforcement assistance to the metropolitan police department  
15 when so requested by the chief.

16 *Section 4. Police Powers of Metropolitan Police Department.* The metropolitan police de-  
17 partment shall be responsible for the preservation of the public peace, prevention and detection of  
18 crime, apprehension of criminals, protection of personal and property rights and enforcement of  
19 state laws and local ordinances throughout its jurisdiction. The department shall be vested with  
20 all the power and authority belonging to the office of constable and sheriff by common law and  
21 other powers and duties conferred on them by law.

22 *Section 5. Chief of Metropolitan Police Department: Powers and Duties.* The metropolitan  
23 police department shall be under the general management and control of a chief. He shall have,  
24 but not be limited to the following powers: (i) establishment of zones and precincts for police  
25 work, (ii) assignments of department members to respective posts, shifts, and details, consistent  
26 with their rank, (iii) promulgation of regulations [with the approval of the [executive] [board]]  
27 concerning the operation of the department, the conduct of the officers and employees thereof,  
28 their uniforms, arms, and their training, and (iv) other powers [as may be delegated by the [board]  
29 [executive]] that may be necessary for the efficient operation of the department. Disobedience to  
30 the lawful commands of the chief or violations of the rules and regulations governing the operation  
31 of the metropolitan police department shall be grounds for removal or other disciplinary action as  
32 provided for by county civil service regulations.

1           *Section 6. Chief of Metropolitan Police Department: Selection and Personnel Powers.* The  
2 chief shall be appointed by the [board] [executive with approval of the board], and he shall serve  
3 at the pleasure of the [board] [executive]. The chief shall appoint all police personnel who report  
4 directly to him from the ranks of any qualified applicants in accordance with the county civil  
5 service procedures. All other county law enforcement personnel shall be selected pursuant to county  
6 civil service laws.

7           *Section 7. County Law Enforcement Personnel: Civil Service Tenure and Retirement Provi-*  
8 *sions.* All county law enforcement personnel, excepting the chief, in metropolitan counties shall be  
9 covered by the applicable rules and regulations of county civil service laws. They shall be compen-  
10 sated solely by salary and be under a county retirement plan.

11           *Section 8. Separability Clause.* [Insert separability clause.]

12           *Section 9. Effective Date.* [Insert effective date clause.]

## MODERNIZED SHERIFF'S DEPARTMENTS

*[Be it enacted, etc.]*

1           *Section 1. Purpose.* The purpose of this act is to authorize metropolitan counties to vest  
2 primary law enforcement responsibilities in a modernized sheriff's department, and to insure that  
3 county law enforcement personnel are covered under a county civil service system, compensated  
4 solely by salary, and provided with adequate retirement benefits.

5           *Section 2. Definitions.* As used in this act:

6           (1) "board" means county board of commissioners.

7           (2) "executive" means county chief executive.

8           (3) "metropolitan county" means any county located in a metropolitan area as designated  
9 by the U. S. Office of Management and Budget.

10           (4) "sheriff's department" means the county law enforcement agency.

11           (5) "sheriff" means chief of county law enforcement agency where there is no metropolitan  
12 police department.

13           *Section 3. The Office of Sheriff.* The sheriff shall be the principal conservator of the peace  
14 within all [metropolitan] counties of the state. He shall be elected for a term of [four] years, and  
15 may be re-elected.

1           *Section 4. Police Powers of the Sheriff's Department.* The sheriff's department shall be  
 2 responsible for the preservation of the public peace, prevention and detection of crime, apprehen-  
 3 sion of criminals, protection of personal and property rights and enforcement of state laws and  
 4 local ordinances throughout its jurisdictions. The sheriff's department shall be vested with all the  
 5 power and authority belonging to the office of constable and sheriff by common law and other  
 6 powers and duties prescribed by law.

7           *Section 5. The Sheriff: Powers and Duties.* The sheriff's department shall be under the  
 8 general management and control of the sheriff. He shall have, but not be limited to the following  
 9 powers: (i) establishment of zones and precincts for police work, (ii) assignment of department  
 10 members to respective posts, shifts, and details, consistent with their rank, (iii) promulgation of  
 11 regulations [with the approval of the [executive] [board]] concerning the operation of the depart-  
 12 ment, the conduct of the officers and employees thereof, their uniforms, arms, and for their train-  
 13 ing, and (iv) other powers [as may be delegated by the [board] [executive]] that may be necessary  
 14 for the efficient operation of the department. Disobedience to the lawful commands of the sheriff  
 15 or violations of the rules and regulations governing the operation of the sheriff's department shall  
 16 be grounds for removal or other disciplinary action as provided for by county civil service regu-  
 17 lations.

18           *Section 6. The Sheriff: Personnel Powers.* The sheriff shall appoint all police personnel who  
 19 report directly to him from the ranks of any qualified applicants in accordance with the county  
 20 civil service procedures. All other sheriff's department personnel shall be selected pursuant to  
 21 county civil service laws.

22           *Section 7. Transfer of Court and Correctional Duties.* (a) After [insert appropriate date],  
 23 the sheriff and his deputies shall relinquish their responsibilities as principal law enforcement  
 24 officers of any trial court of general or limited jurisdiction to court personnel designated by the  
 25 chief justice.\* Such transferred duties shall include but not be limited to service of court orders  
 26 and service as bailiff of the court.

27           (b) After [insert appropriate date] the sheriff's responsibilities for the county jail shall be  
 28 assumed by [insert name of appropriate local correctional agency].

29           *Section 8. County Law Enforcement Personnel.* All sheriff's department personnel, except-  
 30 ing the sheriff, shall be covered by the applicable rules and regulations of county civil service  
 31 laws. They shall be compensated solely by salary and be under a county retirement plan.

\*Title VIII of the ACIR Omnibus Judicial Act provides for State assumption of the judicial function. Some States may wish to have sheriff's department personnel transferred to the State judicial department for the performance of the court's law enforcement duties.

1        *Section 9. Separability Clause.* [Insert separability clause.]

2        *Section 10. Effective Date.* [Insert effective date clause.]

## MINIMUM POLICE SERVICES IN METROPOLITAN AREAS

Many metropolitan areas are faced with an almost hopeless proliferation of small and inefficient local police departments. A survey of local police forces in 91 metropolitan areas in 1967 indicated that one-fourth of all such departments employed ten or less men. More than half of all such forces in these areas contained 20 or less men. Studies of local police organization in several States have revealed that some metropolitan jurisdictions completely forego the provision of any police service.

The lack of adequate basic police services in an urban jurisdiction creates a harmful gap in the capability of metropolitan police systems. The residents of the affected community are deprived of easy access to front line police services and quite often neighboring local or State law enforcement agencies are forced to supply basic services on an ad hoc basis.

The inability or unwillingness of a local metropolitan government to provide basic police services suggests that it may not be a viable unit of local government—if it incorporates it should be willing and able to provide basic police services to its residents either directly or through intergovernmental agreement. The following draft legislation places a floor on the level of police services a metropolitan jurisdiction must provide. As such it builds on earlier Commission recommendations geared to insuring the viability of local governments.

Sections 1 and 2 set forth the purpose and definitions of the act. Section 3 provides that the director of the appropriate State law enforcement agency or State Police Standards Council shall set minimum standards for the provision of basic police services in metropolitan areas. Section 4 prescribes alternate ways in which local governments may meet minimum standards. Section 5 mandates counties to provide basic police protection in localities failing to provide basic services and makes these counties eligible for additional State aid when they do so. Section 6 specifies the conditions under which local governments may resume the provision of basic police services. Section 7 provides for judicial review of orders issued pursuant to the act.

### Suggested Legislation

*[Be it enacted, etc.]*

1            *Section 1. Purpose.* The purpose of this act is to assure that minimum basic police services  
2 are provided in all metropolitan local jurisdictions and to require that such services be provided by  
3 either (i) the local police department itself, or (ii) the local police force through an appropriate  
4 intergovernmental agreement with other local or State law enforcement agencies, or (iii) county  
5 assumption of such services.

6            *Section 2. Definitions.* As used in this act:

- 7            (1) "Basic police services" means, at a minimum, continuous 24 hour police patrol and  
8 preliminary investigative service [by a [two man] police patrol with appropriate supporting police  
9 personnel].
- 10           (2) "Director" means the head of the [appropriate state law enforcement agency].
- 11           (3) "Council" means state council on police standards.



1 (4) "Minimum standards" means standards prescribed by the [director] [council] concerning  
2 the adequacy of basic police services.

3 (5) "Metropolitan local jurisdiction" means any unit of general local government located in  
4 an area designated by the U. S. Office of Management and Budget as a Standard Metropolitan  
5 Statistical Area.

6 *Section 3. Minimum Standards for Basic Police Services.* (a) The [director] [council] shall  
7 promulgate, and may from time to time amend, reasonable minimum standards for the provision  
8 of basic police services by metropolitan local jurisdictions.

9 (b) In drafting such standards, the [director] [council] shall give due consideration to the  
10 views of representatives of local governments in metropolitan counties.

11 (c) No later than [six] months after the effective date of this act, the [director] [council]  
12 shall give public notice and within [90] days shall hold a public hearing on the issuance of such  
13 standards.

14 (d) Minimum standards shall take effect on a date prescribed by the [director] [council]  
15 which shall be not less than [three] nor more than [twelve] months after the standards are  
16 promulgated.

17 *Section 4. Local Provision of Minimum Basic Police Services.* Commencing on the effective  
18 date of the minimum standards, all metropolitan local jurisdictions shall meet or exceed the mini-  
19 mum standards for basic police services either (i) directly by maintaining a local police force, or  
20 (ii) by supplementing or transferring its police services through agreements with other municipal,  
21 county, or state law enforcement agencies, or by a combination of alternatives (i) and (ii).

22 *Section 5. County Assumption of Basic Police Services.* [One year] after the effective date  
23 of the minimum standards, and annually thereafter, the [director] [council] shall determine  
24 whether each metropolitan local jurisdiction in the state is in compliance with the minimum  
25 standards and shall notify the governing body of each metropolitan local jurisdiction of his finding  
26 with respect to that jurisdiction.

27 Upon receipt of the [director's] [council's] finding that it is not in compliance with the  
28 minimum standards, the metropolitan local jurisdiction shall have [90 days] to bring itself into  
29 compliance as provided in section 4 of this act. If, after the [90 day] period, the [director] [coun-  
30 cil] finds that the metropolitan local jurisdiction still is not in compliance with the minimum  
31 standards, [he] [it] shall notify the governing body of the county in which the metropolitan local  
32 jurisdiction is located.

1           Within [90 days] after receipt of the [director's] [council's] finding that a metropolitan local  
2 jurisdiction is not providing minimum police services, the county shall provide such basic police  
3 services for the jurisdiction as may be needed to bring it into compliance.<sup>1</sup>

4           The county shall charge the cost of providing the basic police services to the affected juris-  
5 diction [and shall be eligible for [additional] annual state aid equal to [five] percent of its police  
6 expenditures made on such mandated services for the fiscal year preceding the assumption of such  
7 services, during each of the ensuing [five] fiscal years].<sup>2</sup>

8           *Section 6. Local Resumption of Services.* No sooner than [one] year after a county has  
9 commenced, pursuant to section 5 of this act, providing basic police services as may be needed to  
10 bring the metropolitan local jurisdiction into compliance with the minimum standards, the local  
11 jurisdiction may resume the provision of basic police services, if the [director] [council] finds that  
12 the jurisdiction has made adequate provision for furnishing such services.

13           *Section 7. Judicial Review.* Any order issued by the [director] [council] pursuant to  
14 this act shall be reviewable pursuant to [cite state administrative procedure act] by a proceeding  
15 in the [court of appropriate jurisdiction].

16           *Section 8. Separability Clause.* [Insert separability clause.]

17           *Section 9. Effective Date.* [Insert effective date clause.]

<sup>1</sup>As an alternative to requiring county assumption of local police services, some states may wish to authorize a state commission on local boundary adjustments to consider the failure of a metropolitan local jurisdiction to provide basic minimum police services as evidence that the jurisdiction should no longer exist as a separate government entity, and order its consolidation with an adjacent municipality where appropriate.

<sup>2</sup>The state aid provision should be included by states which provide grants-in-aid to local governments.

## LEGISLATIVE APPORTIONMENT PROCEDURE

The actual formulas for apportioning seats in the legislative bodies of a state is a matter of individual state concern, subject to the limitations still being developed by the United States Supreme Court under the United States Constitution. However, it is essential that state constitutions specifically provide procedures that will insure that the states themselves are in a position to comply with all constitutional requirements for periodic reapportionment of legislative bodies.

The suggested amendment deals primarily with apportionment procedure and does not treat definitively the substantive issues (population, political subdivision, etc.) that arise in the allocation of state legislative seats nor questions involved in use of weighted voting, single- or multi-member districts, etc.

The Supreme Court's "one man—one vote" rulings seem to require a fairly stringent degree of population equality among legislative districts. At the same time the experience of the sixties indicates that apportionment bodies flounder unless they have as a negotiating base some fixed figure specifying a maximum allowable percentage deviation. A specification of absolute population equality does not solve the problem because a computer can provide literally hundreds of equally "equal," but politically different, plans if population equality be the sole consideration. Hence the suggested amendment provides for specifying a maximum percentage deviation. To avoid having all the districts at the maximum deviation figure, an average deviation figure also could be included.

The amendment directs the legislature to reapportion itself in accordance with constitutional requirements following each decennial census. The amendment contains optional clauses dealing with the failure of the legislature and governor to agree on an apportionment plan: (a) apportionment by a nonlegislative, nonjudicial agency consisting of named State officials; (b) apportionment by a bipartisan commission with tie breaker. Although not specified in the amendment, the apportionment function could be vested initially in such a body other than the legislature. Since the "one man—one vote" decisions several States have transferred the apportionment function to a bipartisan commission with tie breaker (New Jersey, 1966; Pennsylvania, 1968; Hawaii, 1968), and Illinois (1970) has provided for apportionment by such a commission in the event the legislature and governor cannot agree on a plan. Such a plan has received serious consideration in other States, and was included in the new draft constitutions of New York and Maryland that were rejected on other grounds in 1967 and 1969.

Prior to the "one man—one vote" decisions the constitutions of some States provided for various kinds of nonlegislative apportionment agencies. Many were failures and were displaced by court action during the sixties, but where the apportionment board was dominated by one political party (Ohio, Arkansas) it was able to play a role.

In making a choice of apportionment agency the following facts of life should be borne in mind. Now that apportionment is no longer a nonjusticiable "political question" the State and Federal courts will require prompt apportionment or do the job themselves. Leaving the apportionment function in the hands of the legislature and governor (the latter is always a vital part of the process because of his veto power) will provide prompt (and partisan) reapportionment if one party dominates both houses and the governorship. If the government is divided, there may be a bipartisan, negotiated apportionment, as occurred in several States in the sixties (e.g., Connecticut, Minnesota, Washington). If there is a bipartisan commission without tie breaker there will be deadlock (Illinois, 1964; Michigan, 1964-1966). If there is an agency dominated by one political party, or viewpoint by virtue of gubernatorial appointment or by naming in the constitution specified State officials, there will be a prompt and probable partisan apportionment.

Section 1 would spell out the formula for apportioning seats in the state legislature and the appropriate provisions should be inserted by each state. The formula should be as clear and as specific as possible in order to permit the state supreme court to determine easily whether the reapportionment statute complies with the state constitutional formulas. It may be best for a state constitution in defining "population" in its formula to express that definition in mathematical terms. The following three alternatives might be included at the appropriate place or places:

(a) The [population] of no [Senatorial or Representative] district shall deviate by more than [ten (10)] percent from the figure obtained by dividing the total [population] of the state by the number of [Senators or Representatives], and the average deviation shall not exceed [five (5)] percent.

(b) [Senatorial and Representative] districts shall be established with appropriate boundaries so as to permit at least forty-five (45) percent of the total [population] of the state to elect fifty (50) percent of the state [Senators] and fifty (50) percent of the state [Representatives].

(c) The aim of the reapportionment plan shall be to provide fair and effective representation and to avoid minimizing or cancelling out the voting strength of racial or political elements of the voting population.

Section 2 directs the state legislature to reapportion itself in the first legislative session immediately following the decennial census of the United States. It should be noted that several states still require reapportionment, based on population, at intervals which do not coincide with the decennial census. This is a carryover from the 18th century when states themselves conducted censuses. Since state censuses are no longer taken, it is suggested that the timing of reapportionment be keyed to the federal census.

Section 3 gives the state supreme court original jurisdiction to determine whether a reapportionment statute enacted by the legislature complies with the provisions of the state constitution and federal constitutional requirements being developed by the United States supreme court. Any qualified voter of the state can bring this question before the court within 30 days after enactment of the reapportionment. If the court finds that the reapportionment does not comply with federal and state constitutional requirements, the court shall direct either the named state official or the apportionment board to develop a constitutional plan. The court is also granted authority to review a reapportionment plan so prepared and if it is found that such plan does not comply with constitutional requirements, the court is authorized to direct the named state official or apportionment board to make appropriate changes.

Section 4 authorizes the named state official or apportionment board to prepare a reapportionment of the state legislature where the legislature, by July 1st of the year of the first regular legislative session following a decennial census, has not enacted reapportionment legislation. Here again, such a reapportionment is subject to court review only if challenged by a qualified voter of the state.

Section 5 is to be used only if the state determines that an apportionment board, rather than a single state official, shall reapportion seats in the event that the legislature itself fails to do so. It would create the apportionment board and determine its membership. Two alternatives are presented. The first would consist of named state officials. Most states that have apportionment boards follow this approach. It is important to note that members of the judiciary should not be members of an apportionment board. This recommendation is made because the state supreme court is granted jurisdiction over cases involving apportionment.

### Suggested Constitutional Amendment

1        *Section 1. Apportionment of Senators and Representatives.* (a) *Senators.* [Insert provisions for  
2 the apportionment of state senators.]

3        (b) *Representatives or Assemblymen.* [Insert provisions for apportionment of house of repre-  
4 sentatives or assembly.]

5        *Section 2. Reapportionment Duty.* The number of senators and representatives shall, not later  
6 than [July 1st] at the first regular session of the legislature next following the decennial census con-  
7 ducted by the United States government, be reapportioned by the legislature in accordance with federal  
8 and state constitutional requirements.

9        *Section 3. Jurisdiction of [State Supreme Court].* Original jurisdiction is vested in the [state  
10 court of last resort], upon the petition of any qualified voter of the state filed with the [clerk of the  
11 supreme court] within [30] days after enactment of a reapportionment measure, to review, in whole  
12 or part, any measure so enacted. If the [supreme court] determines that the measure complied with  
13 federal and state constitutional requirements, it shall dismiss the petition by written opinion within  
14 [30] days after the petition was filed and the legislation enacted shall become law upon the date of  
15 opinion. If the [supreme court] determines that the measure does not comply with federal and state  
16 constitutional requirements, the measure shall be null and void and the court shall direct [the named  
17 state official] [the apportionment board] to prepare a reapportionment of the legislature in com-  
18 pliance with federal and state constitutional requirements and return its reapportionment to the  
19 [supreme court] within [30] days after the finding and it shall become law upon the date of filing.  
20 If the [supreme court] shall determine that the draft returned to it by the [named state official]  
21 [apportionment board] does not comply with federal and state constitutional requirements, the court  
22 shall return it forthwith for preparation of a revised plan within [30] days.

23        *Section 4. Failure of Legislature to Reapportion Itself.* If the legislature fails to enact any  
24 reapportionment measure by [July 1st] of the year of the first regular session of the legislature next  
25 following a decennial census by the United States government, the [named state official] [apportion-  
26 ment board] shall make a reapportionment of the legislature in accordance with federal and state  
27 constitutional requirements. The reapportionment so made shall be filed with the governor on or  
28 before [August 1st] of such year and shall become law, subject to [supreme court], review, upon  
29 date of filing.

30        Original jurisdiction is vested in the [supreme court], upon petition of any qualified voter of  
31 the state filed with the [clerk of the supreme court] within [30] days after any reapportionment  
32 made by the [named state official] [apportionment board] has been filed with the governor to review,

1 in whole or part, any such reapportionment. If the court determines that the reapportionment thus  
 2 made complies with federal and state constitutional requirements it shall dismiss the petition by  
 3 written opinion within [30] days after the petition was filed and the reapportionment shall become  
 4 law upon the date of the opinion. If the [supreme court] determines that the reapportionment does  
 5 not comply with federal and state constitutional requirements, said reapportionment shall be null and  
 6 void and the [supreme court] shall return it forthwith to the [named state official] [apportionment  
 7 board] accompanied by a written opinion specifying with particulars wherein the reapportionment  
 8 fails to comply with federal and state constitutional requirements. The opinion shall further direct  
 9 the [named state official] [apportionment board] to correct the reapportionment in those particulars  
 10 and in no others and file the corrected reapportionment with the governor within [30] days after  
 11 issuance of the order and it shall become law upon the date of filing.

12 *[Section 5. Apportionment Board.* There is hereby created an apportionment board consisting  
 13 of [named state officials; do not include members of the judiciary] [consisting of [two] members  
 14 appointed by the chairman of the political party whose candidate for governor in the last preceding  
 15 gubernatorial election received the largest number of votes, [two] members appointed by the chairman  
 16 of the political party whose candidate for governor received the second largest number of votes at the  
 17 last preceding gubernatorial election, and one member who shall be chairman of the apportionment  
 18 board, appointed by the [supreme court] [Chief Justice of the Supreme Court] ]. The apportionment  
 19 board shall convene prior to [July 10th] of any year in which the legislature has failed to comply with  
 20 its responsibility under section 2 of this article and reapportion the state legislature in accordance with  
 21 federal and state constitutional requirements. In that event the apportionment board shall, on or before  
 22 [August 1st] of such year, reapportion seats in the state legislature in accordance with federal and state  
 23 constitutional requirements and file a copy of such reapportionment with the governor. Such reap-  
 24 portionment shall become law, subject to [supreme court] review, upon date of filing. In the event the  
 25 [supreme court] shall declare that a reapportionment law enacted by the legislature fails to comply with  
 26 federal and state constitutional requirements the apportionment board shall convene within [10] days  
 27 after the decision of the court and shall proceed to reapportion seats in the legislature as if no reap-  
 28 portionment action was taken by the legislature. [The [secretary of state] shall be secretary of the  
 29 apportionment board, and in that capacity shall furnish, under its direction, all necessary technical  
 30 services.] ].

## UNIFORM RELOCATION ASSISTANCE

Relocation of persons and businesses displaced by governmental construction programs is a serious and growing problem in the United States. All indications are that this pace of displacement will accelerate with increased urbanization and the consequent mounting demands for urban services and the growth of federal, state, and local programs for the renewal of cities and the construction of roads. It has been estimated that from 1964 to 1972 the federally aided urban renewal and highway programs alone will dislocate 825,000 families and individuals and 136,000 businesses.

In its 1965 report, *Relocation: Unequal Treatment of People and Businesses Displaced by Governments*, the Advisory Commission on Intergovernmental Relations found great inconsistencies in provisions for relocation assistance among levels of government and among programs at the same level. As a result, a family at that time could be displaced by a state or local public works project and receive no moving expense payments or advisory assistance, while a family across the street, displaced by a federally aided urban renewal project, would be reimbursed for moving expenses and receive governmental help in locating a new residence.

There are serious problems even where governments make earnest efforts to provide relocation assistance. The single greatest problem in relocating families is the shortage of standard housing for low income groups, particularly non-whites, the elderly, and large families. Among business displacees, small businesses owned and operated by the elderly are major displacement casualties. Advisory assistance is of growing importance for these groups that are most seriously affected by displacement.

In preparation of its relocation study, the Advisory Commission cooperated with the U. S. Conference of Mayors in a joint survey of the problems and practices of 100 cities over 100,000 population. The survey disclosed that federally assisted urban renewal and highway activities together accounted for about 65 percent of the people, and about 90 percent of the businesses displaced by governmental action in urban areas.

Uniform relocation policies for all Federal and Federally assisted projects were established by Congress with the passage of the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970" (P.L. 91-646). The Act requires that by July 1, 1972, all States must provide substantially the same relocation benefits and advisory assistance as that required of Federal agencies for persons displaced by Federally aided projects. Establishment of uniformity among federally aided State and local programs, however, still leaves the problem of inconsistencies and inadequacies among other State and local programs.

State governments should assume responsibility for establishing greater consistency and equity in the relocation practices of state and local programs. The principles of fair treatment involved — as basic as those in the eminent domain law on which the process of public property taking depends — are matters of fundamental statewide concern, and therefore require legislative consideration.

The following draft bill is consistent with the provisions of the Federal act and would establish a uniform state relocation policy for persons and businesses displaced by State and local programs. A displaced person would be entitled to reimbursement on the basis of either (a) actual and reasonable expenses involved in moving himself, his family, his business or farm operation, or other personal property, or (b) a fixed payment in accordance with a fixed schedule. The legislation includes the minimum dollar amounts, shown in brackets, which comply with the Federal law.

State or local agencies causing displacement would be required to provide a relocation assistance program which would include (1) determining the relocation needs of displacees; (2) assisting business-

men and farmers in obtaining and becoming established in suitable business locations or replacement farms; (3) supplying information about federal government assistance programs; and (4) helping to minimize hardships caused by relocation. State or local agencies would also be required to provide temporary relocation for displaced families and individuals and to provide assurance that standard housing is available or being made available that is comparable in quality, cost, and relocation to that form which they are displaced.

The governor or the State community affairs department would be required to establish regulations to assure that payments are reasonable and fair, that payments are made with reasonable promptness, and that there is provision for appropriate administrative review of any determination as to the eligibility for relocation payment authorized by the act.

In the interest of economy and efficiency, State and local agencies are authorized to use the administrative machinery of other state agencies or units of local government for making relocation payments and providing relocation services.

In cases where a local government causes displacement by a program in which the state shares part of the cost, the locality would be entitled to reimbursement for the relocation cost in the same manner, and to the same extent, as it receives reimbursement for other project costs.

The draft bill was prepared by a task force consisting of persons from the Office of Management and Budget, Federal Departments of Housing and Urban Development, Transportation, Justice, and Defense; the National Governors' Conference, the Council of State Governments, and the Advisory Commission on Intergovernmental Relations.

#### **Suggested Legislation**

*[Title should conform to state requirements. The following is a suggestion: "An act to provide for uniform, fair, and equitable treatment of persons, businesses, and nonprofit organizations displaced by state and local programs."]*

*[Be it enacted, etc.]*

1           **Section 1. Declaration of Policy.** The purpose of this act is to establish a uniform policy for  
2 the fair and equitable treatment of persons displaced by the acquisition of real property by state and  
3 local land acquisition programs, by building code enforcement activities, or by a program of volun-  
4 tary rehabilitation of buildings or other improvements conducted pursuant to governmental super-  
5 vision. The policy shall be uniform as to (1) relocation payments, (2) advisory assistance, (3) assur-  
6 ance of availability of standard housing, and (4) state reimbursement for local relocation payments  
7 under state assisted and local programs.

8           **Section 2. Definitions.** As used in this act:

9           (1) "Agency" means any department, agency or instrumentality of the state or of a political  
10 subdivision of the state; or any department, agency or instrumentality of two or more political  
11 subdivisions of the state.



1 (2) "Person" means any individual, partnership, corporation, or association.

2 (3) "Displaced person" means any person who, on or after the effective date of this act, moves  
3 from real property, or moves his personal property from real property, as a result of the acquisition of  
4 such real property, in whole or in part, or as the result of the written order of the acquiring agency to  
5 vacate real property, for a program or project undertaken by an agency; and solely for the purposes  
6 of sections 3(a) and (b) and 6 of this act, as a result of the acquisition of or as the result of the written  
7 order of the acquiring agency to vacate other real property, on which such person conducts a business  
8 or farm operation, for such program or project.

9 (4) ["Nonprofit organization" means (define for state purposes; might use definition for tax  
10 exemption purposes)].

11 (5) "Business" means any lawful activity, excepting a farm operation, conducted primarily:

12 (i) for the purchase, sale, lease and rental of personal and real property, and for the  
13 manufacture, processing, or marketing of products, commodities, or any other personal property;

14 (ii) for the sale of services to the public;

15 (iii) by a nonprofit organization; or

16 (iv) solely for the purposes of section 3 (a) of this act, for assisting in the purchase, sale,  
17 resale, manufacture, processing, or marketing of products, commodities, personal property, or services  
18 by the erection and maintenance of an outdoor advertising display or displays, whether or not such  
19 display or displays are located on the premises on which any of the above activities are conducted.

20 (6) "Farm operation" means any activity conducted solely or primarily for the production of  
21 one or more agricultural products or commodities, including timber, for sale or home use, and custo-  
22 marily producing such products or commodities in sufficient quantity to be capable of contributing  
23 materially to the operator's support.

24 *Section 3. Moving and Related Expenses.* (a) If an agency acquires real property for public  
25 use, it shall make fair and reasonable relocation payments to displaced persons and businesses as  
26 required by this act, for:

27 (1) actual reasonable expenses in moving himself, his family, business, farm operation, or other  
28 personal property;

29 (2) actual direct losses of tangible personal property as a result of moving or discontinuing a  
30 business or farm operation, but not to exceed an amount equal to the reasonable expenses that  
31 would have been required to relocate such property, as determined by the agency; and

32 (3) actual reasonable expenses in searching for a replacement business or farm.

1 (b) Any displaced person eligible for payments under subsection (a) of this section who is dis-  
2 placed from a dwelling and who elects to accept the payments authorized by this subsection in lieu  
3 of the payments authorized by subsection (a) of this section may receive a moving expense allowance,  
4 determined according to a schedule established by the agency, not to exceed [\$300]; and a disloca-  
5 tion allowance of [\$200].

6 (c) Any displaced person eligible for payments under subsection (a) of this section who is dis-  
7 placed from his place of business or from his farm operation and who elects to accept the payment  
8 authorized by this subsection in lieu of the payment authorized by subsection (a) of this section, may  
9 receive a fixed payment in an amount equal to the average annual net earnings of the business or farm  
10 operation, except that such payment shall not be less than [\$2,500] nor more than [\$10,000]. In  
11 the case of a business no payment shall be made under this subsection unless the agency is satisfied  
12 that the business (1) cannot be relocated without a substantial loss of its existing patronage, and (2)  
13 is not a part of a commercial enterprise having at least one other establishment not being acquired by  
14 the agency, which is engaged in the same or similar business. For purposes of this subsection, the  
15 term "average annual net earnings" means one-half of any net earnings of the business or farm opera-  
16 tion, before federal, state, and local income taxes, during the two taxable years immediately preced-  
17 ing the taxable year in which the business or farm operation moves from the real property acquired  
18 for such project, or during such other period as the agency determines to be more equitable for  
19 establishing such earnings, and includes any compensation paid by the business or farm operation to  
20 the owner, his spouse, or his dependents during such period.

21 *Section 4. Replacement Housing for Homeowners.* (a) In addition to payments otherwise  
22 authorized by this act, the agency shall make an additional payment not in excess of [\$15,000] to  
23 any displaced person who is displaced from a dwelling actually owned and occupied by the displaced  
24 person for not less than one hundred and eighty days prior to the initiation of negotiations for the  
25 acquisition of the property. The additional payment shall include the following elements:

26 (1) The amount, if any, which when added to the acquisition cost of the dwelling acquired,  
27 equals the reasonable cost of a comparable replacement dwelling which is a decent, safe, and sanitary  
28 dwelling adequate to accommodate such displaced person, reasonably accessible to public services  
29 and places of employment and available on the private market. All determinations required to carry  
30 out this subparagraph shall be determined by regulations issued pursuant to section 8 of this act.

31 (2) The amount, if any, which will compensate the displaced person for any increased interest  
32 costs which the person is required to pay for financing the acquisition of a comparable replacement  
33 dwelling. The amount shall be paid only if the dwelling acquired was encumbered by a bona fide

1 mortgage which was a valid lien on the dwelling for not less than one hundred and eighty days prior  
 2 to the initiation of negotiations for the acquisition of the dwelling. The amount shall be equal to the  
 3 excess in the aggregate interest and other debt service costs of that amount of the principal of the  
 4 mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the  
 5 acquired dwelling, over the remainder term of the mortgage on the acquired dwelling, reduced to  
 6 discounted present value. The discount rate shall be determined by regulations issued pursuant to  
 7 section 8 of this act.

8 (3) Reasonable expenses incurred by the displaced person for evidence of title, recording fees,  
 9 and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid  
 10 expenses.

11 (b) The additional payment authorized by this section shall be made only to a displaced person  
 12 who purchases and occupies a replacement dwelling which is decent, safe, and sanitary not later than  
 13 the end of the one year period beginning on the date on which he receives final payment of all costs  
 14 of the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is  
 15 the later date.

16 *Section 5. Replacement Housing for Tenants and Certain Others.* In addition to amounts other-  
 17 wise authorized by this act, an agency shall make a payment to or for any displaced person displaced  
 18 from any dwelling not eligible to receive a payment under section 4, which dwelling was actually and  
 19 lawfully occupied by the displaced person for not less than ninety days prior to the initiation of  
 20 negotiations for acquisition of such dwelling. The payment shall be either:

21 (1) the amount necessary to enable the displaced person to lease or rent for a period not to  
 22 exceed [four years], a decent, safe, and sanitary dwelling of standards adequate to accommodate the  
 23 person in areas not generally less desirable in regard to public utilities and public and commercial  
 24 facilities, and reasonably accessible to his place of employment, but not to exceed [\$4,000], or

25 (2) the amount necessary to enable the person to make a downpayment (including incidental  
 26 expenses described in section 4(a)(3)) on the purchase of a decent, safe, and sanitary dwelling of  
 27 standards adequate to accommodate such person in areas not generally less desirable in regard to pub-  
 28 lic utilities and public and commercial facilities, but not to exceed [\$4,000], except that if the  
 29 amount exceeds [\$2,000], the person must equally match any amount in excess of [\$2,000], in  
 30 making the downpayment.

31 *Section 6. Relocation Assistance Advisory Programs.* (a) Whenever the acquisition of real  
 32 property for a program or project undertaken by an agency will result in the displacement of any  
 33 person on or after the effective date of this act, the agency shall provide a relocation assistance

1 advisory program for displaced persons which shall offer the services prescribed in subsection (b) of  
 2 this section. If the agency determines that any person occupying property immediately adjacent to  
 3 the real property acquired is caused substantial economic injury because of the acquisition, it may  
 4 offer the person relocation advisory services under the program.

5 (b) Each relocation assistance program required by subsection (a) shall include such measures,  
 6 facilities, or services as may be necessary or appropriate in order (1) to determine the needs of dis-  
 7 placed persons, business concerns, and nonprofit organizations for relocation assistance; (2) to assist  
 8 owners of displaced businesses and farm operations in obtaining and becoming established in suitable  
 9 business locations or replacement farms; (3) to supply information concerning programs of the federal,  
 10 state and local governments offering assistance to displaced persons and business concerns; (4) to  
 11 assist in minimizing hardships to displaced persons in adjusting to relocation; and (5) to secure, to the  
 12 greatest extent practicable, the coordination of relocation activities with other project activities and  
 13 other planned or proposed governmental actions in the community or nearby areas which may affect  
 14 the carrying out of the relocation program.

15 *Section 7. Assurance of Availability of Standard Housing.* Whenever the acquisition of real  
 16 property for a program or project undertaken by an agency will result in the displacement of any  
 17 person on or after the effective date of this act, the agency shall assure that, within a reasonable  
 18 period of time prior to displacement, there will be available in areas not generally less desirable in  
 19 regard to public utilities and public and commercial facilities and at rents or prices within the finan-  
 20 cial means of the families and individuals displaced, decent, safe and sanitary dwellings equal in  
 21 number to the number of and available to displaced persons who require dwellings and reasonably  
 22 accessible to their places of employment; [except that regulations issued pursuant to section 8 of this  
 23 act may prescribe situations when these assurances may be waived].

24 *Section 8. Authority of the [governor] [department of community affairs].* (a) the [governor]  
 25 [department of community affairs] shall adopt rules and regulations necessary to assure that:

26 (1) the payments and assistance authorized by this act shall be administered in a manner  
 27 which is fair and reasonable, and as uniform as practicable;

28 (2) a displaced person who makes proper application for a payment authorized by this act  
 29 shall be paid promptly after a move or, in hardship cases, be paid in advance; and

30 (3) any person aggrieved by a determination as to eligibility for a payment authorized by this  
 31 act, or the amount of a payment, may have his application reviewed by the [department of  
 32 community affairs].

1 (b) the [governor] [department of community affairs] may prescribe other regulations and  
2 procedures, consistent with the provisions of this act.

3 *Section 9. Administration.* In order to prevent unnecessary expense and duplication of func-  
4 tions, and to promote uniform and effective administration of relocation assistance programs for  
5 displaced persons, the agency [[with the approval of the governor] [department of community  
6 affairs]] may enter into contracts with any individual, firm, association or corporation for services  
7 in connection with those programs, or may carry out its functions under this act through any federal  
8 agency or any department or instrumentality of the state or its political subdivisions having an estab-  
9 lished organization for conducting relocation assistance programs.

10 *Section 10. Fund Availability.* Funds appropriated or otherwise available to any agency for the  
11 acquisition of real property or any interest therein for a particular program or project shall be avail-  
12 able also for obligation and expenditure to carry out the provisions of this act as applied to that  
13 program or project.

14 *Section 11. State Participation in Cost of Local Relocation Payments and Services.* If a [unit  
15 of local government] acquires real property, and state financial assistance is available to pay the cost,  
16 in whole or part, of the acquisition of that real property, or of the improvement for which the prop-  
17 erty is acquired, the cost to the [unit of local government] of providing the payments and services  
18 prescribed by this act shall be included as part of the costs of the project for which state financial  
19 assistance is available and the [unit of local government] shall be eligible for state financial assistance  
20 for relocation payments and services in the same manner and to the same extent as other project  
21 costs.

22 *Section 12. Displacement by Building Code Enforcement or Voluntary Rehabilitation.* A per-  
23 son who moves or discontinues his business or moves other personal property, or moves from his  
24 dwelling on or after the effective date of this act as the direct result of building code enforcement  
25 activities, or a program of rehabilitation of buildings conducted pursuant to a governmental program,  
26 is deemed to be a displaced person for the purposes of this act.

27 *Section 13. Payments Not to be Considered As Income or Resources.* No payment received by  
28 a displaced person under this act shall be considered as income or resources for the purpose of deter-  
29 mining the eligibility or extent of eligibility of any person for assistance under any state law or for  
30 the purposes of determining the eligibility or extent of eligibility of any person for assistance under  
31 any state law or for the purposes of the State's personal income tax law, corporation tax law, or other  
32 tax laws. These payments shall not be considered as income or resources of any recipient of public  
33 assistance and the payments shall not be deducted from the amount of aid to which the recipient

1 would otherwise be entitled.

2       *Section 14. Appeal Procedure.* Any person or business concern aggrieved by a final adminis-  
3 trative determination pursuant to [cite administrative procedures act], concerning eligibility for  
4 relocation payments authorized by this act may appeal that determination to the [court of appro-  
5 priate jurisdiction] in the area in which the land taken for public use is located or in which the  
6 building code enforcement activity occurs or the voluntary rehabilitation program is conducted.

7       *Section 15. Separability.* [Insert separability clause.]

8       *Section 16. Repeals.* [Cite existing state relocation statutes.]

9       *Section 17. Effective Date.* [Insert effective date.]

**STATE PUBLIC LABOR-MANAGEMENT RELATIONS ACT**

Although most States forbid public employees to strike, work stoppages of government personnel at all levels have been skyrocketing. At the same time, the right of government workers to organize is now recognized in more than two-thirds of the States, and more and more States are adopting public employer-employee relations acts.

In *Labor-Management Policies for State and Local Government*, the Advisory Commission on Intergovernmental Relations asserted that State efforts “will have little significance unless there is appropriate machinery to resolve recognition and representation disputes, ensure adherence by all parties to the law, and provide the means of facilitating the resolution of controversies arising out of employer-employee impasses.” The Commission adopted 16 recommendations addressed to the problem, not all of them unanimously. The following suggested laws were drafted to implement the recommendations. The majority of the Commission viewed the “meet and confer in good faith” approach as most appropriate in a majority of situations under present and evolving conditions. Therefore, the first draft takes this approach. However, a substantial minority of the Commission called for “collective negotiations”. The second draft embodies that viewpoint.

The first substantive title of the meet and confer bill establishes a Public Employee Relations Agency (PERA) with significant administrative and dispute settlement responsibilities.

To safeguard public employee rights, the bill contains a section authorizing public employees to form, join, participate in or refrain from joining or participating in the activities of employee organizations of their own choice. Procedures relating to the internal conduct of public employee organizations also are included. The bill recognizes the right of supervisory personnel to form their own associations, but bars them from rank and file unions and from formal recognition privileges in order to strengthen the management orientation of supervisors and to stabilize the basic administrative discretion of public employers. In addition, a management rights section is provided.

The suggested legislation establishes procedures for formal recognition of an employee organization, for determination by PERA of the appropriate unit, and for certification of the majority employee representative when inter-union disputes arise. Certain privileges may be accorded recognized employee organizations, including dues checkoff.

The bill seeks to balance the need for a large measure of flexibility in employer-employee dealings with the need to preserve the integrity of merit systems. Therefore, it permits the memoranda of agreement to cover all issues relating to employment — including wages, hours, and other terms and conditions — but exempts certain critical items, such as issues preempted by law and the authority of civil service commissions and boards to impartially recruit candidates, to conduct and grade merit examinations, and to rate candidates.

Strikes are banned, but a wide range of formal devices to resolve disagreements is mandated. Local governments are given the option of substituting their own provisions and procedures, as long as they are substantially equivalent to the rights granted under the act.

The “collective negotiations” draft is similar in many respects. The focus, however, is somewhat different; bilateral negotiations is the prime purpose of this draft.

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### Section-by-Section Analysis

(Meet and Confer in Good Faith)

*Section 1* states the legislature's findings and purpose, and declares among other findings that recognition of employees' right to organize can alleviate unrest, but inherent differences exist between public and private employment which preclude employer-employee relationships in the public service from being completely comparable to those in the private sector.

*Section 2* provides definitions of 16 terms used in the act.

*Section 3* creates a Public Employee Relations Agency (PERA) and specifies the Agency's powers, responsibilities, and membership. All members of the Agency are appointed by the Governor and significant administrative and dispute settlement functions are assigned to it.

*Section 4* authorizes public employees to form, join, and participate in, or to refrain from joining or participating in, employee organizations for the purpose of meeting and conferring with public employers.

*Section 5* permits supervisory employees to join and participate in employee organizations, provided that such organizations do not include non-supervisory employees. It prohibits the public employer from extending formal recognition to supervisor organizations, but permits informal consultation at the discretion of the employer.

*Section 6* specifies certain traditional public employer rights under the act.

*Section 7* provides procedures for formal recognition of an employee organization, for PERA's determination of the appropriate unit, and for certification by the PERA of the designated representative of such unit when inter-union disputes arise.

*Section 8* specifies the rights accompanying formal recognition of an employee organization, including authorization for the public employer to make dues checkoffs and to give a reasonable number of employee representatives time off during normal working hours without loss of compensation to meet and confer.

*Section 9* contains alternative procedures for determining the recognition status of local employee organizations whereby local public employers may establish their own process for such determination. These procedures, however, must not be inconsistent with those stipulated for the State under the previous two sections.

*Section 10* extends the scope of a memorandum of agreement to cover wages, hours, and other conditions of employment; but it excludes proposals relating to any subjects pre-empted by Federal or State law or municipal charter, to public employee and public employer rights defined under the act, and to the authority of civil service commissions and personnel boards to examine and rate candidates. The parties are authorized to include in a memorandum of agreement procedures for advisory arbitration of unresolved grievances and disputed interpretations of the memorandum of agreement.



*Section 11* specifies procedures for implementing a memorandum of agreement.

*Section 12* provides machinery for resolving disputes arising in the course of discussions, including mediation, fact-finding, and “show-cause” hearings; meet and confer and dispute settlement procedures are exempted from State “right to know” laws; and cost-sharing arrangements for mediation and fact-finding services are specified.

*Section 13* lists prohibited practices for public employers and employees, and states that in applying this section fundamental distinctions between public and private employment shall be recognized and that no Federal or State law applicable to private employment shall be regarded as a binding or controlling precedent; strikes are banned.

*Section 14* provides for the handling of violations of prohibited practices.

*Section 15* deals with the internal conduct of public employee organizations, and provides for standards and safeguards over the conduct of organizational elections, for regulation of trusteeships and fiduciary responsibilities of organizational officers, and for maintenance of accounting and fiscal controls and regular financial reports.

*Section 16* contains a local public agency option, wherein localities are permitted to substitute their own provisions and procedures for those established for the State, provided the rights granted under the act are not abrogated.

### **Section-by-Section Analysis**

#### **(Collective Negotiations)**

*Section 1* states the legislature’s findings and purpose, and asserts that experience in both the public and private sectors has demonstrated that collective negotiations, because it establishes greater equality of bargaining power between public employees and their employers and encourages these parties to resolve their differences by mutual agreement, can remove certain sources of strife and unrest.

*Section 2* provides definitions of 16 terms used in the act.

*Section 3* creates a Public Employee Relations Agency (PERA) and specifies the Agency’s powers, responsibilities, and membership. Two alternative approaches to appointing members are provided: all of the Agency’s members may be appointed by the Governor; or two members may be appointed by the Governor, two by a State Labor Committee established pursuant to the act, and the fifth--the chairman--by the other four members. Significant administrative and dispute settlement functions are assigned to the Agency.

*Section 4* authorized public employees to form, join, and participate in employee organizations for the purpose of negotiating collectively with public employers. Employees also may refrain from joining such organizations.

*Section 5* permits supervisory employees to join and participate in employee organizations, provided that such organizations do not include non-supervisory employees. It prohibits the public employer from extending exclusive recognition to supervisor organizations, but permits informal consultation at the discretion of the employer.

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*Section 6* specifies certain traditional public employer rights under the act, but makes this section optional.

*Section 7* provides procedures for exclusive recognition of an employee organization, for PERA's determination of the appropriate unit, and for certification (by the PERA) of the designated representative of such unit when inter-union conflicts arise.

*Section 8* specifies the rights accompanying exclusive recognition of an employee organization, including requirements for the public employer to make dues checkoffs and to give employee representatives time off during normal working hours without loss of compensation to negotiate.

*Section 9* contains alternative procedures for determining the recognition status of local employee organizations, whereby local public employers may establish their own process for such determination. Its procedures, however, must not be inconsistent with those stipulated for the State under the previous two sections.

*Section 10* gives broad scope to an agreement but it excludes proposals relating to the authority of duly constituted civil service commissions and personnel boards to examine and rate candidates. In any conflict between the terms of an agreement and matters covered by any charter, special act, ordinance, civil service commission or personnel board rule or regulation, or general statutes pertaining to working hours for policemen and firemen or to coverage of employees under a retirement system, the agreement shall prevail. The parties are authorized to include in an agreement procedures for final and binding arbitration of unresolved grievances and disputed interpretations of the agreement.

*Section 11* specifies procedures for implementing a memorandum of agreement.

*Section 12* provides machinery for resolving disputes arising in the course of negotiations, including mediation, fact-finding, voluntary arbitration, and "show-cause" hearings; collective negotiations and dispute settlement proceedings are exempted from State "right to know" laws; and cost-sharing arrangements for mediation, fact-finding, and arbitration services are specified.

*Section 13* lists prohibited practices for public employers, including dealing directly with employees on matters falling within the scope of negotiations thus circumventing the exclusive representative; prohibited practices for public employees are also cited, including engaging in strikes.

*Section 14* provides for the handling of violations of prohibited practices.

*Section 15* deals with the internal conduct of public employee organizations, and provides for standards and safeguards over the conduct of organizational elections, for regulation of trusteeships and fiduciary responsibilities of organizational officers, and for maintenance of accounting and fiscal controls and regular financial reports.

*Section 16* contains a local public agency option, wherein localities are permitted to substitute their own provisions for those established for the State, provided the rights granted under the act are not abrogated.

**STATE PUBLIC LABOR—MANAGEMENT RELATIONS ACT**

**SUGGESTED LEGISLATION<sup>1</sup>**

*[Title should conform to State requirements. The following is a suggestion: “An Act to Establish a Framework of Public Employer-Employee Relations by Providing Uniform and Orderly Methods for Dealings Between Employees and Organizations Thereof and Employing Public Agencies and for Related Purposes.”]*

*(Be it enacted, etc.)*

1     *Section 1. Findings and Purpose.* The legislature hereby finds and declares that:

2     (1) the people of this State have a fundamental interest in the development of harmonious  
3 and cooperative relationships between government and its employees;

4     (2) recognition by public employers of the right of public employees to organize and full  
5 acceptance of the principle and procedure of full communication between public employers and  
6 public employee organizations can alleviate various forms of strife and unrest;

7     (3) the State has a basic obligation to protect the public by attempting to assure the orderly  
8 and uninterrupted operations and functions of government;

9     (4) the status of public employees neither is, nor can be, completely comparable to that of  
10 private employees, in fact or law, because of inherent differences in the employment relationship  
11 arising out of the unique fact that the public employer was established by and run for the benefit  
12 of all the people and its authority derives not from contract nor the profit motive inherent in the  
13 principle of free private enterprise, but from the constitution, statutes, municipal charters, and civil  
14 service rules and regulations; and

15     (5) this difference between public and private employment is further reflected in the constraints  
16 that bar any abdication or bargaining away by public employers of their continuing legislative dis-  
17 cretion and in the fact that State constitutional provisions as to contract, property, and due process  
18 do not have the same force with respect to the public employer-employee relationship.

<sup>1</sup>The following statute incorporates a “meet and confer in good faith” approach to labor-management relations in the State and local public service. A draft embodying a “collective negotiations” approach appears on page 17. On balance, the Advisory Commission on Intergovernmental Relations tends to favor the meet and confer in good faith approach, but recognizes that different States will take varying positions regarding sections of this draft legislation; hence, the inclusion of alternate language.

1 It is the purpose of this act to obligate public agencies, public employees, and their representatives  
2 to enter into discussions with affirmative willingness to resolve grievances and disputes relating to wages,  
3 hours, and other terms and conditions of employment, acting within the framework of laws and charter  
4 provisions. It is also the purpose of this act to promote the improvement of employer-employee relations  
5 within the various public agencies of the State and its political subdivisions by providing a uniform basis  
6 for recognizing the right of public employees to join organizations of their own choice, or to refrain from  
7 joining, and be represented by such organizations in their employment relations and dealings with public  
8 agencies.

9 *Section 2. Definitions.* As used in this act:

10 (1) "Public employee" means any person employed by any public agency excepting those persons  
11 classed as legislative, judicial, or supervisory public employees; elected and top management appointive  
12 officials; and certain categories of confidential employees including those who have responsibility for  
13 administering the public labor-management relations law as a part of their official duties.

14 (2) "Supervisory employee" means any individual having authority, in the interest of the employer,  
15 (i) to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees,  
16 or (ii) responsibly to direct them, or (iii) to adjust their grievances, or (iv) effectively to recommend such  
17 action, if in connection with the foregoing the exercise of such authority is not of a merely routine or  
18 clerical nature, but requires the use of independent judgment.

19 (3) "Confidential employee" means one whose unrestricted access to confidential personnel  
20 files or information concerning the administrative operations of a public agency, or whose functional  
21 responsibilities or knowledge in connection with the issues involved in the meet and confer in good  
22 faith process, would make his membership in the same organization as rank-and-file employees  
23 incompatible with his official duties.

24 (4) "Public agency" or "public employer" means the State of [ ] and every  
25 governmental subdivision; school and non-school special district; public and quasi-public corporation;  
26 public agency; town, city, county, city and county, and municipal corporation; and authority, board,  
27 or commission, whether incorporated or not and whether chartered or not.

28 (5) "Governing body" means the legislative body of the public employer or the body possessing  
29 legislative powers. In the case of independent school districts, it means the board of education, board  
30 of trustees, or sole trustee, as the case may be.

31 (6) "Representative of the public employer" and "designated representative" means the chief  
32 executive officer of the public employer or his designee, except where the governing body provides  
33 otherwise.

34 (7) "Employee organization" means any organization which includes employees of a public  
35 agency and which has as one of its primary purposes representing such employees in discussions with  
36 that public agency over grievances and wages, hours, and other terms and conditions of employment.

1 ( 8 ) “Recognized employee organization” means an employee organization which has been formally  
2 acknowledged by the public agency or certified as representing a majority of the nonsupervisory employees  
3 of an appropriate unit.

4 ( 9 ) “Agency” means the Public Employee Relations Agency established pursuant to this act.

5 (10) “Meet and confer in good faith” means the process whereby the chief executive of a public  
6 agency, or such representatives as it may designate, and representatives of recognized employee  
7 organizations have the mutual obligation personally to meet and confer in order to exchange freely  
8 information, opinions, and proposals, to endeavor to reach agreement on matters within the scope of  
9 discussions, and to seek by every possible means to implement agreements reached.

10 (11) “Memorandum of agreement” means a written memorandum of understanding arrived  
11 at by the representatives of the public agency and a recognized employee organization, which may  
12 be presented to the governing body or its statutory representative and to the membership of such  
13 organization for appropriate action.

14 (12) “Mediation” means effort by an impartial third party to assist in reconciling a dispute  
15 regarding wages, hours, and other terms and conditions of employment between representatives  
16 of the public agency and the recognized employee organization through interpretation, suggestion,  
17 and advice.

18 (13) “Fact-finding” means investigation of such a dispute by an individual, panel, or board with  
19 the fact-finder submitting a report to the parties describing the issues involved. The report may contain  
20 recommendations for settlement and may be made public.

21 (14) “Advisory arbitration” means interpretation of the terms of an existing or a new memorandum  
22 of agreement or investigation of disputes by an impartial third party whose decision is not binding upon  
23 the parties.

24 (15) “Voluntary arbitration” means a procedure wherein both parties jointly agree to submit  
25 their dispute over the interpretation of the terms of an existing agreement or over a new memorandum  
26 of agreement to an impartial third party whose decision may be final and binding or advisory and non-  
27 binding, depending on the nature of the initial agreement.

28 (16) “Strike” means the failure by concerted action with others to report for duty, the wilful  
29 absence from one’s position, the stoppage of work, or the abstinence in whole or in part from the full,  
30 faithful, and proper performance of the duties of employment, or in any manner interfering with the  
31 operation of any public agency, for the purpose of inducing, influencing, or coercing a change in the  
32 conditions or compensation or the rights, privileges, or obligations of employment.

33 *Section 3. Public Employee Relations Agency.*

34 (a) There is hereby created [in the State department of] a board, to be known as the [Public

1 Employee Relations Agency], which shall consist of [5] members appointed by the Governor, by and  
2 with the advice and consent of the Senate from persons representative of the public. Not more than [3]  
3 members of the Agency shall be members of the same political party. Each member shall be appointed  
4 for a term of [6] years, except that [2] shall be appointed for a term to expire [2] years following the  
5 effective date of this act, [2] for a term that shall expire [4] years following the effective date of this  
6 act, and [1] for a term that shall expire [6] years following the effective date of this act. A member  
7 appointed to fill a vacancy shall be appointed for the unexpired term of the member whom he is to  
8 succeed.

9 (b) Members shall hold no other public office or public employment in the State or its political  
10 subdivisions. [The chairman shall give his full time to his duties.]

11 (c) Members of the Agency other than the chairman, when performing the duties of the Agency,  
12 shall be compensated at the rate of [one hundred dollars a day], together with an allowance of actual  
13 and necessary expenses incurred in the discharge of their responsibilities hereunder. The chairman shall  
14 receive an annual salary to be fixed [by the Governor] within the amount available therefor by  
15 appropriation, in addition to an allowance for expenses actually and necessarily incurred by him in  
16 the performance of his duties.

17 (d) The Agency may appoint an executive director and such other persons, including but not  
18 limited to mediators, members of fact-finding boards, and representatives of employee organizations  
19 and public employers to serve as technical advisers to such fact-finding boards, as it may from time to  
20 time deem necessary for the performance of its functions. The agency shall prescribe their duties, fix  
21 their compensation, and provide for reimbursement of their expenses within the amounts made available  
therefor by appropriation.

22 (e) In addition to the authority provided in other sections, the Agency may:

23 (1) Make studies and analyses of, and act as a clearing-house of information relating to,  
24 conditions of employment of public employees throughout the State.

25 (2) Provide technical assistance and training programs to assist public employers in their  
26 dealings with employee organizations.

27 (3) Request from any public agency such assistance, services, and data as will enable the  
28 Agency properly to carry out its functions and powers.

29 (4) Establish procedures for the prevention of improper public employer and employee  
30 organization practices as provided in Section 13 of this act, provided that in the case of a claimed  
31 violation of paragraph (5) of subdivision (b) or paragraph (4) of subdivision (c) of such section,  
32 procedures shall provide only for an entering of an order directing the public agency or employee  
33 organization to meet and confer in good faith. The pendency of proceedings under this paragraph  
34 shall not be used as the basis to delay or interfere with determination of representation status  
35 pursuant to Section 7 of this act or with meeting and conferring. The Agency shall exercise exclusive

1 nondelegable jurisdiction of the power granted to it by this paragraph.

2 (5) Establish, after consulting with representatives of employee organizations and of public  
3 agencies, panels of qualified persons broadly representative of the public, to be available to serve as  
4 mediators, members of fact-finding boards, or arbitrators.

5 (6) Hold such hearings and make such inquiries, as it deems necessary, to carry out properly  
6 its functions and powers.

7 (7) For the purpose of such hearings and inquiries, administer oaths and affirmations, examine  
8 witnesses and documents, take testimony and receive evidence, compel attendance of witnesses and the  
9 production of documents by the issuance of subpoenas, and delegate such powers to any member of the  
10 Agency or any person appointed by the Agency for the performance of its functions. Such subpoenas  
11 shall be regulated and enforced [under the civil practice law and rules].

12 (8) Make, amend, and rescind, from time to time, such rules and regulations, including but  
13 not limited to those governing its internal organization and conduct of its affairs, and exercise such other  
14 powers, as may be appropriate to effectuate the purposes and provisions of this act.

15 *Section 4. Public Employee Rights.* Public employees shall have the right to form, join, and  
16 participate in the activities of employee organizations of their own choosing for the purpose of meeting  
17 and conferring with public employers or their designated representatives with respect to grievances and  
18 wages, hours, and other terms and conditions of employment. Public employees also shall have the  
19 right to refuse or fail to join or participate in the activities of employee organizations.

20 *Section 5. Supervisory Employees.* Supervisory employees may form, join, and participate in  
21 the activities of employee organizations, provided such organizations do not include non-supervisory  
22 employees. A public agency shall not extend formal recognition to a supervisory organization for the  
23 purpose of meeting and conferring with respect to grievances and conditions of employment, but may  
24 consult or otherwise communicate with such an organization on appropriate matters. The public  
25 employer shall determine whether an individual is to be considered a supervisory or confidential  
26 employee for meet and confer purposes, subject to appeal to the Agency.

27 *Section 6. Public Employer Rights.* Nothing in this act is intended to circumscribe or modify  
28 the existing right of a public agency to:

- 29 (1) direct the work of its employees;  
30 (2) hire, promote, assign, transfer, and retain employees in positions within the public agency;  
31 (3) demote, suspend, or discharge employees for proper cause;  
32 (4) maintain the efficiency of governmental operations;  
33 (5) relieve employees from duties because of lack of work or for other legitimate reasons;  
34 (6) take actions as may be necessary to carry out the mission of the agency in emergencies; and  
35 (7) determine the methods, means, and personnel by which operations are to be carried on.

1        *Section 7. Recognition of Employee Organizations.*

2        (a) Public employers shall recognize certain employee organizations for the purpose of  
3 representing their members in dealings with such employers. Employee organizations may establish  
4 reasonable provisions for an individual's admission to or dismissal from membership.

5        (b) Where a public employer has recognized an employee organization or where such organi-  
6 zation has been certified by the Agency as representing a majority of the employees in an appropriate  
7 unit, or recognized formally, pursuant to the provisions of this act, the public employer shall meet and  
8 confer in good faith with such employee organization in the determination of the terms and conditions  
9 of employment of their public employees as provided in this act, and the administration of grievances  
10 arising thereunder, and may enter into a memorandum of agreement with such employee organization.

11        (c) When a representational question stemming from the designation of an appropriate unit is  
12 raised by a public agency, employee organization, or employees, the Public Employee Relations Agency,  
13 established pursuant to this act, shall, at the request of any of the parties, investigate such question and,  
14 after a hearing, rule on the definition of the appropriate unit. In defining the unit, the Agency shall take  
15 into consideration, along with other relevant factors, the principles of efficient administration of  
16 government, the existence of a community of interest among employees, the history and extent of  
17 employee organization, geographical location, the provisions of Section 5 of this act, and the  
18 recommendations of the parties involved.

19        (d) Following investigation of a question concerning whether an employee organization  
20 represents a majority of the employees in an appropriate unit, the Public Employee Relations Agency,  
21 at the request of any of the parties, shall examine such question and certify to the parties in writing  
22 the name of the representative that has been designated. The filing of a petition for the investigation  
23 or certification of a majority representative by any of the parties shall constitute a question within  
24 the meaning of this section. In any such investigation, the Agency may provide for an appropriate  
25 hearing, may determine voting eligibility, and may take a secret ballot of employees in the appropriate  
26 unit involved to ascertain such representative for the purpose of formal recognition. If the Agency has  
27 certified a formally recognized majority representative in an appropriate unit, as provided in this  
28 section, it shall not be required to consider the matter again for a period of one year. The Agency  
29 may promulgate such rules and regulations as may be appropriate to carry out the provisions of sub-  
30 sections (c) and (d) of this section.

31        *Section 8. Rights Accompanying Formal Recognition.*

32        (a) A public employer shall extend to an employee organization certified or recognized formally,  
33 pursuant to this act, the right to represent the employees of the appropriate unit involved in meet and  
34 confer proceedings and in the settlement of grievances and the right to unchallenged representation  
35 status, consistent with Section 7 (d), during the 12 months following the date of certification or  
36 formal recognition.



1 (b) A public employer may extend to such an organization the right to membership dues  
2 deduction, upon presentation of dues deduction authorization cards signed by individual employees.

3 (c) A reasonable number of representatives of formally recognized employee organizations may  
4 be given time off without loss of compensation during normal working hours to meet and confer with  
5 public employers on matters falling within the scope of discussions.

6 *Section 9. Procedures for Determining the Recognition Status of Local Employee Organizations.*

7 (a) Every public agency, other than the State and its authorities acting through its governing  
8 body, may establish procedures, not inconsistent with the provisions of Sections 7 and 8 of this act  
9 and after consultation with interested employee organizations and employer representatives, to  
10 resolve disputes concerning the recognition status of employee organizations composed of employees  
11 of such agency.

12 (b) In the absence of such procedures, these disputes shall be submitted to the Public Employee  
13 Relations Agency in accordance with Section 7 of this act.

14 *Section 10. Scope of a Memorandum of Agreement.* The scope of a memorandum of agreement  
15 may extend to all matters relating to employment conditions and employer-employee relations, in-  
16 cluding, but not limited to, wages, hours, and other terms and conditions of employment except, how-  
17 ever, that the scope of a memorandum of agreement shall not include proposals relating to (i) any  
18 subject preempted by Federal or State law or by municipal charter, (ii) public employee rights defined  
19 in Section 4 of this act, (iii) public employer rights defined in Section 6 of this act, or (iv) the authority  
20 and power of any civil service commission, personnel board, personnel agency, or its agents established  
21 by constitutional provision, statute, charter, or special act to set and administer standards dealing with  
22 the impartial recruitment of candidates, to conduct and grade merit examinations, and to rate  
23 candidates in the order of their relative excellence from which appointments or promotions may be  
24 made to positions in the competitive division of the classified service of the public employer served  
25 by such civil service commission or personnel board. A memorandum of agreement may contain  
26 a grievance procedure culminating in advisory arbitration of unresolved grievances and disputed  
27 interpretations of such agreement.

28 *Section 11. Implementation of a Memorandum of Agreement.* If agreement is reached by the  
29 representative of the public employer and the recognized employee organization, they shall jointly  
30 prepare a memorandum of understanding and, within [14] days, present it to the governing body for  
31 determination. After receiving a report from the chief financial officer of the public agency as to  
32 the effect the terms of such memorandum will have upon the agency, the governing body, as soon as  
33 practicable, shall consider the memorandum and take appropriate action. If a settlement is reached  
34 with an employee organization, the governing body or the representative of the public employer shall

1 implement the settlement in the form of a law, ordinance, resolution, executive order, rule, or  
2 regulation, as the case may be. If the governing body or the designated representative rejects a  
3 proposed memorandum, the matter shall be returned to the parties for further deliberation.

5 *Section 12. Resolution of Disputes Arising in the Course of Discussions.*

6 (a) Public employers may include in memoranda of agreement concluded with formally  
7 recognized or certified employee organizations a provision setting forth the procedures to be invoked  
8 in the event of disputes which reach an impasse in the course of meet and confer proceedings. For  
9 purposes of this section, an impasse shall be deemed to exist if the parties fail to achieve agreement  
10 at least [60] days prior to the budget submission date of the public employer. In the absence or upon  
11 the failure of dispute resolution procedures contained in agreements, resulting in an impasse, either  
12 party may request the assistance of the Public Employee Relations Agency or the Agency may render  
13 such assistance on its own motion, as provided in subdivision (b) of this section.

14 (b) On the request of either party, or upon the Agency's own motion, if it determines an impasse  
15 exists in meet and confer proceedings between a public employer and a formally recognized or certified  
16 employee organization, the Agency shall aid the parties in effecting a voluntary resolution of the  
17 dispute, and appoint a mediator or mediators, representative of the public, from a list of qualified  
18 persons maintained by the Agency.

19 (c) If the impasse persists [10] days after the mediator(s) has been appointed, the Agency shall  
20 appoint a fact-finding board of not more than [3] members, each representative of the public, from  
21 a list of qualified persons maintained by the Agency. The fact-finding board shall conduct a hearing,  
22 may administer oaths, and may request the Agency to issue subpoenas.

23 It shall make written findings of facts and recommendations for resolution of the dispute and,  
24 not later than [20] days from the day of appointment, shall serve such findings on the public employer  
25 and the recognized employee organization. If the dispute continues [10] days after the report is sub-  
26 mitted to the parties, the report may be made public by the Agency.

27 (d) If the parties have not resolved the impasse by the end of a [40] day period commencing  
28 with the date of appointment of the fact-finding board, (i) the representative of the public employer  
29 involved shall submit to the governing body or its duly authorized committee(s) a copy of the findings  
30 of fact and recommendations of the fact-finding board, together with his recommendations for  
31 settling the dispute; (ii) the employee organization may submit to the governing body or its duly  
32 authorized committee(s) its recommendations for settling the dispute; (iii) the governing body or  
33 such committee(s) shall forthwith conduct a hearing at which the parties shall be required to explain  
34 their positions with respect to the board; and (iv) thereafter, the governing body shall take such

1 action as it deems to be in the public interest, including the interest of the public employees  
2 involved.

3 (e) Meet and confer proceedings and mediation, fact-finding, and arbitration meetings and  
4 investigations shall not be subject to the provisions of [insert State "right to know" law].

5 (f) The costs for mediation services provided by the Agency shall be borne by the Agency.  
6 All other costs, including that of fact-finding services, shall be borne equally by the parties to a  
7 dispute.

8 *Section 13. Prohibited Practices; Evidence of Bad Faith.*

9 (a) Commission of a prohibited practice, as defined in this section, among other actions,  
10 shall constitute evidence of bad faith in meet and confer proceedings.

11 (b) It shall be a prohibited practice for a public employer or its designated representative  
12 wilfully to:

13 (1) interfere, restrain, or coerce public employees in the exercise of rights granted in  
14 Section 4 of this act;

15 (2) dominate, interfere, or assist in the formation, existence, or administration of any  
16 employee organization;

17 (3) Encourage or discourage membership in any employee organization, agency,  
18 committee, association, or representation plan by discrimination in hiring, tenure, or other terms  
19 or conditions of employment;

20 (4) Discharge or discriminate against an employee because he has filed any affidavit,  
21 petition, or complaint or given any information or testimony under this act, or because he has  
22 formed, joined, or chosen to be represented by any employee organization;

23 (5) Refuse to meet and confer with representatives of recognized employee organizations  
24 as required in Section 7 of this act;

25 (6) Deny the rights accompanying certification or formal recognition granted in Section  
26 8 of this act;

27 (7) Blacklist any employee organization or its members for the purpose of denying them  
28 employment because of their organizational activities; or

29 (8) Avoid mediation and fact-finding endeavors as provided in Section 12 of this act.

30 (c) It shall be a prohibited practice for public employees or employee organizations wilfully to:

31 (1) Interfere with, restrain, or coerce public employees in the exercise of rights granted in  
32 Section 4 of this act;

33 (2) Interfere with, restrain, or coerce a public employer with respect to rights protected  
34 in Section 6 of this act or with respect to selecting a representative for the purposes of meeting and  
35 conferring;

1 (3) Refuse to meet and confer with a public employer as required in Section 7 of this  
2 act;

3 (4) Avoid mediation and fact-finding efforts as provided in Section 12 of this act; or

4 (5) Engage in a strike.

5 (d) In applying this section, fundamental distinctions between private and public employment  
6 shall be recognized, and no body of Federal or State law applicable, wholly or in part to the private  
7 employment, shall be regarded as binding or controlling precedent.

8 *Section 14. Violations of Prohibited Practices.*

9 (a) Any controversy concerning prohibited practices may be submitted to the Agency.  
10 Proceedings against the party alleged to have committed a prohibited practice shall be commenced  
11 by service upon it by the Agency of a written notice, together with a copy of the charges. The  
12 accused party shall have [7] days within which to serve a written answer to such charges. The Agency's  
13 hearing shall be held promptly thereafter and at such hearing, the parties shall be permitted to be  
14 represented by counsel and to summon witnesses in their behalf. Compliance with the technical  
15 rules of evidence shall not be required. The Agency may use its rule-making power, as provided in  
16 Section 3, to make any other procedural rules it deems necessary to carry on this function.\*

17 (b) The Agency shall state its findings of facts upon all the testimony and shall either dismiss  
18 **the complaint or determine** that a prohibited practice has been or is being committed. If the Agency  
19 finds that the party accused has committed or is committing a prohibited practice, the Agency shall  
20 petition the [court of appropriate jurisdiction] to punish such violation, and shall file in the [court]  
21 the record in the proceedings. Any person aggrieved by a final order of the Agency granting or denying  
22 in whole or in part the relief sought may obtain a review of such order in the [court of appropriate  
23 jurisdiction] by filing a complaint praying that the order of the Agency be modified or set aside, with  
24 copy of the complaint filed on the Agency, and thereupon the aggrieved party shall file in the [court]  
25 the record in the proceedings, certified by the Agency. Findings of the Agency as to the facts shall  
26 be conclusive unless it is made to appear to the satisfaction of the [court of appropriate jurisdiction]  
27 that the findings of fact were not supported by substantial evidence.

28 *Section 15. Internal Conduct of Public Employee Organizations.*

29 (a) Every employee organization which has or seeks recognition as a representative of  
30 public employees of this state and of its political subdivisions shall file with the Public Employee  
31 Relations Agency a registration report, signed by its president or other appropriate officer, within  
32 [90] days after the effective date of this act. Such report shall be in a form prescribed by the Agency

\* Where a State has adopted an administrative procedures act, this section should be made to conform to it.

1 and shall be accompanied by [two] copies of the employee organization's constitution and bylaws.  
2 A filing by a national or international employee organization of its constitution and bylaws shall be  
3 accepted in lieu of a filing of such documents by each subordinate organization. All changes or  
4 amendments to such constitutions and bylaws shall be promptly reported to the Agency.

5 (b) Every employee organization shall file with the Agency an annual report and an amended  
6 report whenever changes are made. Such reports shall be in a form prescribed by the Agency, and  
7 shall provide the following information:

8 (1) The names and addresses of the organization, any parent organization or organizations  
9 with which it is affiliated, the principal officers, and all representatives;

10 (2) The name and address of its local agent for service of process;

11 (3) A general description of the public employees or groups of employees the  
12 organization represents or seeks to represent;

13 (4) The amounts of the initiation fee and monthly dues members must pay;

14 (5) A pledge, in a form prescribed by the Agency, that the organization will conform  
15 to the laws of the State and that it will accept members without regard to age, race, sex, religion,  
16 or national origin; and

17 (6) A financial report and audit.

18 (c) The constitution or bylaws of every employee organization shall provide that:

19 (1) Accurate accounts of all income and expenses shall be kept, an annual financial  
20 report and audit shall be prepared, such accounts shall be open for inspection by any member of the  
21 organization, and loans to officers and agents shall be made only on terms and conditions available to  
22 all members.

23 (2) Business or financial interests of its officers and agents, their spouses, minor children,  
24 parents, or otherwise, that conflict with the fiduciary obligation of such persons to the organization  
25 shall be prohibited.

26 (3) Every official or employee of an employee organization who handles funds or  
27 other property of the organization, or trust in which an organization is interested, or a subsidiary  
28 organization, shall be bonded. The amount, scope, and form of the bond shall be determined by the  
29 Agency.

30 (d) The governing rules of every employee organization shall provide for: periodic elections  
31 by secret ballot subject to recognized safeguards concerning the equal right of all members to  
32 nominate, seek office, and vote in such elections; the right of individual members to participate in the  
33 affairs of the organization; fair and equal treatment of its members; the right of any member to sue  
34 the organization; and fair and equitable procedures in disciplinary actions.

1 (e) The Agency shall prescribe such rules and regulations as may be necessary to govern the  
2 establishment and reporting of trusteeships over employee organizations. Establishment of such  
3 trusteeships shall be permitted only if the constitution or bylaws of the organization set forth  
4 reasonable procedures.

5 (f) An employee organization that has not registered or filed an annual report, or that has  
6 failed to comply with other provisions of this act, shall not be recognized for the purpose of meeting  
7 and conferring with any public employer regarding the terms and conditions of work of its  
8 members. Recognized employee organizations failing to comply with this act may have such  
9 recognition revoked by the Agency. All proceedings under this subsection shall be conducted in  
10 accordance with [the State administrative procedure act]. Prohibitions shall be enforced by in-  
11 junction upon the petition of the Agency to [court of appropriate jurisdiction]. Complaints of  
12 violation of this act shall be filed with the Agency.

13 *Section 16. Local Public Agency Options.*

14 This act, except for Sections 2, 3(e) (3), 4,5,6,7,8,13,14, and 15, shall be inapplicable to any  
15 public employer, other than the State and its authorities, which, acting through its governing body,  
16 has adopted by local law, ordinance, or resolution its own provisions and procedures which have been  
17 submitted to the Agency by such public employer and as to which there is in effect a determination  
18 by the Agency that such provisions and procedures and the continuing implementation thereof do  
19 not derogate the rights granted under this act.

20 *Section 17. Separability.* [Insert separability clause.]

21 *Section 18. Effective Date.* [Insert effective date.]

NOTE: Following is a draft embodying a “collective negotiations” approach. The Commission favors the “meet and confer in good faith” approach, but recognizes that some States may well wish to consider other language with respect to the topics covered in the sections of this draft legislation; hence, the inclusion of this alternate.

STATE PUBLIC LABOR—MANAGEMENT RELATIONS ACT  
(Collective Negotiations)

*[Title should conform to State requirements. The following is a suggestion: "An Act to Establish a Framework of Public Employer-Employee Relations by Providing Uniform and Orderly Methods for Collective Negotiations Between Employees and Organizations Thereof and Employing Public Agencies and for Related Purposes."']*

*(Be it enacted, etc.)*

1        *Section 1. Findings and Purpose.* The legislature hereby finds and declares that:

2            (1) the people of this State have a fundamental interest in the development of harmonious and cooperative  
3 relationships between government and its employees;

4            (2) recognition by public employers of the right of public employees to organize and full acceptance of the  
5 principle and procedure of collective negotiations between public employers and public employee organizations can  
6 alleviate various forms of strife and unrest. Experience in the private and public sectors of our economy has proved  
7 that unresolved disputes in the public service are injurious to the public, the governmental agencies, and public  
8 employees;

9            (3) experience in private and public employment has also proved that protection by law of the right of  
10 employees to organize and negotiate collectively safeguards employees and the public from injury, impairment and  
11 interruptions of necessary services, and removes certain recognized sources of strife and unrest, by encouraging practices  
12 fundamental to the peaceful adjustment of disputes arising out of differences as to wages, hours, and other working conditions,  
13 and by establishing greater equality of bargaining power between public employers and public employees; and

14            (4) the State has a basic obligation to protect the public by attempting to assure the orderly and uninterrupted  
15 operations and functions of government.

16            It is the purpose of this act to obligate public agencies, public employees, and their representatives to enter into  
17 collective negotiations with affirmative willingness to resolve grievances and disputes relating to wages, hours, and other  
18 terms and conditions of employment. It is also the purpose of this act to promote the improvement of employer-employee  
19 relations within the various public agencies of the State and its political subdivisions by providing a uniform basis for  
20 recognizing the right of public employees to join organizations of their own choice, or to refrain from joining, and be  
21 represented by such organizations in their employment relations and dealings with public agencies.

22        *Section 2. Definitions.* As used in this act:

23            (1) "Public employee" means any person employed by any public agency excepting those persons classed as  
24 legislative, judicial, or supervisory public employees; elected and top management appointive officials; and certain  
25 categories of confidential employees including those who have responsibility for administering the public labor-management  
26 relations law as a part of their official duties.

1 (2) "Supervisory employee" means any individual having authority, in the interest of the employer, (i) to hire,  
2 transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or (ii) responsibly to  
3 direct them, or (iii) to adjust their grievances, or (iv) effectively to recommend such action, if in connection with the  
4 foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent  
5 judgment.

6 (3) "Confidential employee" means one whose unrestricted access to confidential personnel files or  
7 information concerning the administrative operations of a public agency or whose functional responsibilities  
8 or knowledge in connection with the issues involved in the collective negotiations process, would make his  
9 membership in the same organization as rank-and-file employees incompatible with his official duties.

10 (4) "Public agency" or "public employer" means the State of [ ] and every  
11 governmental subdivision; school and non-school special district; public and quasi-public corporation; public  
12 agency; town, city, county, city and county, and municipal corporation; and authority, board, or commission,  
13 whether incorporated or not and whether chartered or not.

14 (5) "Governing body" means the legislative body of the public employer or the body possessing  
15 legislative powers. In the case of independent school districts, it means the board of education, board of  
16 trustees, or sole trustee, as the case may be.

17 (6) "Representative of the public employer" and "designated representative" means the chief executive  
18 officer of the public employer or his designee, except where the governing body provides otherwise.

19 (7) "Employee organization" means any organization which includes employees of a public agency and  
20 which has as one of its primary purposes representing such employees in collective negotiations with that public  
21 agency over grievances and wages, hours, and other terms and conditions of employment.

22 (8) "Recognized employee organization" or "exclusive representative" means an employee organization  
23 which has been formally acknowledged by the public agency or certified as representing a majority of the non-  
24 supervisory employees of an appropriate unit.

25 (9) "Agency" means the Public Employee Relations Agency established pursuant to this act.

26 (10) "Collective negotiations" means performance of the mutual obligation of the employer through its  
27 chief executive officer or designated representative and the recognized employee organization to meet at reasonable  
28 times and negotiate in good faith with respect to wages, hours, and other conditions of employment, or the  
29 negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating  
30 any agreement reached if requested by either party, but such obligations does not compel either party to agree to a  
31 proposal or require the making of a concession.

32 (11) "Agreement" means a written contract between an employer and an employee organization, usually  
33 for a definite term, defining the conditions of employment, including wages, hours, vacations, holidays, and overtime  
34 payments, and the procedures to be followed in settling disputes or handling issues that arise during the term of the  
35 contract.



1 (12) "Mediation" means effort by an impartial third party to assist in reconciling a dispute regarding  
2 wages, hours, and other terms and conditions of employment between representatives of the public agency  
3 and the recognized employee organization through interpretation, suggestion, and advice.

4 (13) "Fact-finding" means investigation of such a dispute by an individual, panel, or board with the  
5 fact-finder submitting a report to the parties describing the issues involved. The report may contain recommendations  
6 for settlement and may be made public.

7 (14) "Binding arbitration" means interpretation of the terms of an existing or a new agreement by an impartial  
8 third party whose decision shall be final and binding.

9 (15) "Voluntary arbitration" means a procedure wherein both parties jointly agree to submit their dispute  
10 over the interpretation of the terms of an existing agreement or over a new agreement to an impartial third party  
11 whose decision may be final and binding or advisory and non-binding, depending on the nature of the initial agreement.

12 (16) "Strike" means the failure by concerted action with others to report for duty, the wilful absence from  
13 one's position, the stoppages of work, or the abstinence in whole or in part from the full, faithful, and proper  
14 performance of the duties of employment, or in any manner interfering with the operation of any public agency,  
15 for the purpose of inducing, influencing, or coercing a change in the conditions or compensation or the rights,  
16 privileges, or obligations of employment.

17 *Section 3. Public Employee Relations Agency.* [ (a) There is hereby created [ in the State department of ]  
18 a board, to be known as the [Public Employee Relations Agency], which shall consist of [5] members appointed by the  
19 Governor, by and with the advice and consent of the Senate from persons representative of the public. Not more than [3]  
20 members of the Agency shall be members of the same political party. Each member shall be appointed for a term of [6] years,  
21 except that [2] shall be appointed for a term to expire [two] years following the effective date of this act, [2] for a term that  
22 shall expire [4] years following the effective date of this act, and [1] for a term that shall expire [6] years following the  
23 effective date of this act. A member appointed to fill a vacancy shall be appointed for the unexpired term of the member  
24 whom he is to succeed.]

25 [ (a) There is hereby created the Public Employee Relations Agency, which shall be composed of  
26 [5] members. The Governor shall appoint two members who shall serve at his pleasure.

27 A State Labor Committee also may be created and its membership shall be open to any labor organization  
28 which represents employees as defined in the act. The Committee shall adopt reasonable rules for the purpose  
29 of designating and removing labor members of the Agency. The first meeting of the Committee shall be convened  
30 by a representative of the labor organization having the largest number of members who are employees as defined  
31 in the act. This representative shall serve as acting chairman of the State Labor Committee until a permanent  
32 chairman is selected in accordance with the rules adopted by the Committee.

33 The State Labor Committee, in accordance with its rules, shall appoint [2] members of the Public Employee  
34 Relations Agency, who shall serve at the pleasure of the Committee. If the Committee fails to appoint such members  
35 within [28] days following the naming of the Governor's appointees, the Governor shall appoint [2] additional  
36 members representative of employee organizations who shall serve at his pleasure. The fifth member of the Agency

1 shall be elected and designated chairman by the unanimous vote of the other [4] members, after which he shall  
2 be appointed by the Governor. If a chairman has not been elected within [10] days following the appointment  
3 of the other [4] members, the Governor shall designate the chairman. The chairman shall serve for [3] years,  
4 commencing from the date of his appointment. Vacancies in the office of any member shall be filled in the  
5 same manner as herein provided for appointment. [3] members, consisting of the chairman, at least one member  
6 appointed by the Governor and at least one member appointed by the Committee shall at all times constitute a  
7 quorum of the Agency.]

8 (b) Members shall hold no other public office or public employment in the State or its political  
9 subdivisions. [The chairman shall give his full time to his duties.]

10 (c) Members of the Agency other than the chairman shall, when performing the duties of the  
11 Agency, shall be compensated at the rate of [one hundred dollars a day], together with an allowance of actual  
12 and necessary expenses incurred in the discharge of their responsibilities hereunder. The chairman shall receive  
13 an annual salary to be fixed [by the Governor] within the amount available therefor by appropriation, in addition  
14 to an allowance for expenses actually and necessarily incurred by him in the performance of his duties.

15 (d) The Agency may appoint an executive director and such other persons, including but not  
16 limited to mediators, members of fact-finding boards, and representatives of employee organizations and public  
17 employers to serve as technical advisers to such fact-finding boards, as it may from time to time deem necessary  
18 for the performance of its functions. The agency shall prescribe their duties, fix their compensation, and provide  
19 for reimbursement of their expenses within the amounts made available therefor by appropriation.

20 (e) In addition to the authority provided in other sections, the Agency may:

21 (1) Make studies and analyses of, and act as a clearing-house of information relating to,  
22 conditions of employment of public employees throughout the State.

23 (2) Provide technical assistance and training programs to assist public employers in their  
24 dealings with employee organizations.

25 (3) Request from any public agency such assistance, services, and data as will enable the  
26 Agency properly to carry out its functions and powers.

27 (4) Establish procedures for the prevention of improper public employer and employee  
28 organization practices as provided in Section 13 of this act, provided that in the case of a claimed violation of  
29 paragraph (5) of subdivision (b) or paragraph (4) of subdivision (c) of such section, procedures shall provide only  
30 for an entering of an order directing the public agency or employee organization to negotiate collectively. The  
31 pendency of proceedings under this paragraph shall not be used as the basis to delay or interfere with determination  
32 of representation status pursuant to Section 7 of this act or with negotiating collectively. The Agency shall exercise  
33 exclusive nondelegable jurisdiction of the power granted to it by this paragraph.

34 (5) Establish, after consulting with representatives of employee organizations and of public  
35 agencies, panels of qualified persons, broadly representative of the public, to be available to serve as mediators,

1 arbitrators, members of fact-finding boards, or arbitrators.

2 (6) Hold such hearings and make such inquiries, as it deems necessary, to carry out properly,  
3 its functions and powers;

4 (7) For the purpose of such hearings and inquiries, administer oaths and affirmations, examine  
5 witnesses and documents, take testimony and receive evidence, compel attendance of witnesses and the production of  
6 documents by the issuance of subpoenas, and delegate such powers to any member of the Agency or any person  
7 appointed by the Agency for the performance of its functions. Such subpoenas shall be regulated and enforced  
8 [under the civil practice law and rules].

9 (8) Make, amend, and rescind, from time to time, such rules and regulations, including but not  
10 limited to those governing its internal organization and conduct of its affairs, and exercise such other powers, as may be  
11 appropriate to effectuate the purposes and provisions of this act.

12 *Section 4. Public Employee Rights.* Public employees shall have the right of self-organization, and may form, join,  
13 or assist any employee organization, to negotiate collectively through representatives of their own choosing on questions  
14 of grievances and wages, hours, and other terms and conditions of employment and to engage in other concerted  
15 activities for the purpose of collective negotiations or other mutual aid or protection, free from interference, restraint  
16 or coercion. Public employees also shall have the right to refuse to join employee organizations.

17 *Section 5. Supervisory Employees.* Supervisory employees may form, join, and participate in the activities  
18 of employee organizations, provided such organizations do not include non-supervisory employees. A public agency  
19 shall not extend exclusive recognition to a supervisory organization for the purpose of negotiating collectively with  
20 respect to grievances and conditions of employment, but may consult or otherwise communicate with such an  
21 organization on appropriate matters. The public employer shall determine whether an individual is to be  
22 considered a supervisory or confidential employee for collective negotiations purposes, subject to appeal to the Agency.

23 [*Section 6. Public Employer Rights.* Nothing in this act is intended to circumscribe or modify the existing  
24 right of a public agency to:

- 25 (1) direct the work of its employees;  
26 (2) hire, promote, assign, transfer, and retain employees in positions within the public agency;  
27 (3) demote, suspend, or discharge employees for proper cause;  
28 (4) maintain the efficiency of governmental operations;  
29 (5) relieve employees from duties because of lack of work or for other legitimate reasons;  
30 (6) take actions as may be necessary to carry out the mission of the agency in emergencies; and  
31 (7) determine the methods, means, and personnel by which operations are to be carried on.]

32 *Section 7. Recognition of Employee Organizations.* (a) Public employers shall recognize certain employee  
33 organizations for the purpose of representing their members in collective negotiations with such employers. Employee  
34 organizations may establish reasonable provisions for an individual's admission to or dismissal from membership.

1 (b) Where a public employer has recognized an employee organization or where such organization has been  
2 certified by the Agency as representing a majority of the employees in an appropriate unit, or recognized exclusively,  
3 pursuant to the provisions of this act, the public employer shall negotiate collectively with such employee organization  
4 in the determination of the terms and conditions of employment, and the administration of grievances arising thereunder,  
5 of their public employees as provided in this act, and may enter into an agreement with such employee organization.

6 (c) When a question concerning the representation of employees stemming from the designation of an  
7 appropriate unit is raised by a public agency, employee organization, or employees, the Public Employee Relations  
8 Agency, established pursuant to this act, shall, at the request of any of the parties, investigate such question and,  
9 after a hearing, rule on the definition of the appropriate unit. In defining the unit, the Agency shall take into  
10 consideration, along with other relevant factors, the principles of efficient administration of government, the  
11 existence of a community of interest among employees, the history and extent of employee organization,  
12 geographical location, the provisions of Section 5 of this act, and the recommendations of the parties involved.

13 (d) Following investigation of a question concerning whether an employee organization represents a  
14 majority of the employees in an appropriate unit, the Public Employee Relations Agency at the request of any of the  
15 of the parties, shall examine such questions and certify to the parties in writing the name of the representative that  
16 has been designated. The filing of a petition for the investigation or certification of majority representative by any  
17 of the parties shall constitute a question within the meaning of this section. In any such investigation, the  
18 Agency may provide for an appropriate hearing, may determine voting eligibility, and may take a secret ballot of  
19 employees in the appropriate unit involved to ascertain such representative for the purpose of exclusive recognition.  
20 If the Agency has certified an exclusively recognized majority representative in an appropriate unit, as provided in  
21 this section, it shall not be required to consider the matter again for a period of one year. The Agency may  
22 promulgate such rules and regulations as may be appropriate to carry out the provisions of subsections (c) and  
23 (d) of this section.

24 *Section 8. Rights Accompanying Exclusive Recognition.* (a) A public employer shall extend to an employee  
25 organization certified or recognized exclusively, pursuant to this act, the right to represent the employees of the  
26 appropriate unit involved in collective negotiations proceedings and in the settlement of grievances and the right  
27 to unchallenged representation status, consistent with Section 7 (d), during the 12 months following the date of  
28 certification or exclusive recognition.

29 (b) A public employer shall extend to such an organization the right to membership dues deduction, upon  
30 presentation of dues deduction authorization cards signed by individual employees, provided that all employee  
31 organizations may have the right to membership dues deduction until the formally recognized representative has  
32 been determined. Public employees who are not members of the exclusively recognized employee organization may  
33 be required to pay fees to such organization for its representational services, provided that such fees shall not exceed

1 the amount of regular membership dues.

2 (c) A reasonable number of representatives of exclusively recognized organizations shall be given time off  
3 without loss of compensation during normal working hours to bargain collectively with public employers on matters  
4 falling within the scope of negotiations.

5 *Section 9. Procedures for Determining the Recognition Status of Local Employee Organizations.* (a) Every  
6 public agency, other than the State and its authorities, acting through its governing body, may establish procedures,  
7 not inconsistent with the provisions of Sections 7 and 8 of this act and after consultation with interested employee  
8 organizations and employer representatives, to resolve disputes concerning the recognition status of employee  
9 organizations composed of employees of such agency.

10 (b) In the absence of such procedures, these disputes shall be submitted to the Public Employee Relations  
11 Agency in accordance with Section 7 of this act.

12 *Section 10. Scope of an Agreement.* The scope of an agreement may extend to all matters relating to  
13 employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other  
14 terms and conditions of employment. An agreement may contain a grievance procedure culminating in final and  
15 binding arbitration of unresolved grievances and disputed interpretations of such agreement. Where there is a  
16 conflict between any agreement reached by a public employer and a recognized employee organization and approved  
17 in accordance with the provisions of this act on matters appropriate to collective negotiations, as defined in this act,  
18 and any rule or regulation adopted by the public employer or its agent. such as a personnel board or civil service  
19 commission, the terms of such agreement shall prevail. [Subject to approval by the governing body,] where there  
20 is a conflict between any agreement reached by a public employer and a recognized employee organization and  
21 approved in accordance with the provisions of this act on matters appropriate to collective negotiations, as defined  
22 in this act, and any charter, special act, ordinance, any general statute directly relating to hours of work of policemen  
23 or firemen, or any general statute providing for the method of covering or removing employees from coverage under  
24 the [ ] employees retirement system, the terms of such agreement shall prevail. Nothing herein shall  
25 diminish the authority and power of any civil service commission, personnel board, personnel agency or its agents  
26 established by constitutional provision, statute, charter, or special act to conduct and grade merit examinations and  
27 to rate candidates in the order of their relative excellence from which appointments or promotions may be made to  
28 positions in the competitive division of the classified service of the public employer served by such civil service  
29 commission or personnel board.

30 *Section 11. Implementation of an Agreement.* (a) Any agreement reached by the public employer and  
31 the exclusive representative shall be reduced to writing and executed by both parties.

32 (b) The agreement shall be valid and enforced under its terms when entered into in accordance with the  
33 provisions of this act. No publication thereof shall be required to make it effective.

34 (c) A request for funds necessary to implement the written agreement and for approval of any other  
35 matter requiring the approval of the governing body, shall be submitted by the representative of the public employer  
36 to the governing body within [14] days of the date on which such agreement is executed. Matters requiring the

1 approval of the governing body shall be submitted by the representative of the public employer within [14]  
2 days of the date the body convenes if it is not in session at the time the agreement is executed. Failure by the  
3 representative of the public employer to submit such request to the governing body within the appropriate period  
4 shall be a refusal to negotiate in good faith, in violation of Section 13 (b) (5) of this act. The request shall be con-  
5 sidered approved if the governing body fails to vote to approve or reject the request within [30] days of the end  
6 of the period for submission to the body. The representative of the public employer may implement provisions  
7 of the agreement not requiring action by the governing body, to be effective and operative in accordance with the  
8 terms of the agreement. If the governing body rejects the provisions submitted to it by the designated represent-  
9 tive, either party may reopen all or part of the remainder of the agreement.

10 *Section 12. Resolution of Disputes Arising in the Course of Negotiations.* (a) Public employers may include  
11 in agreements concluded with exclusively recognized or certified employee organizations a provision setting forth  
12 the procedures to be invoked in the event of disputes which reach an impasse in the course of negotiating proceedings.  
13 For purposes of this section, an impasse shall be deemed to exist if the parties fail to achieve agreement at least [60]  
14 days prior to the budget submission. In the absence or upon the failure of dispute resolution procedures contained in  
15 agreements resulting in an impasse, either party may request the assistance of the Public Employee Relations Agency  
16 or the Agency may render such assistance on its own motion, as provided in subdivision (b) of this section.

17 (b) On the request of either party, or upon the Agency's own motion, in the event it determines an impasse  
18 exists in negotiating proceedings between a public employer and an exclusively recognized or certified employee  
19 organization, the Agency shall aid the parties in effecting a voluntary resolution of the dispute, and appoint a  
20 mediator or mediators, representative of the public, from a list of qualified persons maintained by the Agency.

21 (c) If the impasse persists [10] days after the mediators(s) has been appointed, the Agency shall appoint  
22 a fact-finding board of not more than [3] members, each representative of the public, from a list of qualified  
23 persons maintained by the Agency. The fact-finding board shall conduct a hearing, may administer oaths, and may  
24 request the Agency to issue subpoenas. It shall make written findings of facts and recommendations for resolution  
25 of the dispute and, no later than [20] days from the day of appointment, shall serve such findings on the public  
26 employer and the recognized employee organization. If the dispute continues [10] days after the report is  
27 submitted to the parties, the report is submitted to the parties, the report shall be made public by the Agency.

28 (d) If an impasse persists after the findings of fact and recommendations are made public by the fact-finding  
29 board, the Agency shall have the power to take whatever steps it deems appropriate to resolve the dispute, including  
30 (i) the making of recommendations after giving due consideration to the findings of fact and recommendations of the  
31 fact-finding board, but no other such board shall be appointed, and (ii) upon request of the parties, assisting in  
32 providing for voluntary arbitration.

33 (e) In the event that the parties have not resolved their impasse by the end of a [50] day period commencing  
34 with the date of appointment of the fact-finding board (i) the representative of the public employer involved shall

1 submit to the governing body or its duly authorized committee(s) a copy of the findings of fact and recommendations  
2 of the fact-finding board, together with his recommendations for settling the dispute; (ii) the employee organization  
3 may submit to such governing body or its duly authorized committee(s) recommendations for settling the dispute;  
4 (ii) the employee organization may submit to such governing body or its duly authorized committee(s) recommendations  
5 for settling the dispute; (iii) the governing body or such committee(s) shall forthwith conduct a hearing at which the  
6 parties shall be required to explain their positions with respect to the board; and (iv) thereafter, the governing body  
7 shall take such action as it deems to be in the public interest, including the interest of the public employees involved.

8 (f) Collective negotiations proceedings and mediation, fact-finding, and arbitration meetings and investigations  
9 shall not be subject to the provisions of [insert State "right to know" law].

10 (g) The costs for mediation services provided by the Agency shall be borne by the Agency. All other costs,  
11 including those of fact-finding and arbitrating services, shall be borne equally by the parties to a dispute.

12 *Section 13. Prohibited Practices; Evidence of Bad Faith.* (a) Commission of a prohibited practice, as defined  
13 in this section, among other actions, shall constitute evidence of bad faith in collective negotiations proceedings.

14 (b) It shall be a prohibited practice for a public employer or its designated representative wilfully to:

15 (1) interfere, restrain, or coerce public employees in the exercise of rights granted in Section 4 of this  
16 act;

17 (2) dominate, interfere, or assist in the formation, existence, or administration of any employee  
18 organization;

19 (3) Encourage or discourage membership in any employee organization, agency, committee,  
20 association, or representation plan by discrimination in hiring, tenure, or other terms or conditions of employment.

21 (4) Discharge or discriminate against an employee because he has filed any affidavit, petition, or  
22 complaint or given any information or testimony under this act, or because he has formed, joined, or chosen to be  
23 represented by any employee organization;

24 (5) Refuse to negotiate collectively with representatives of recognized employee organizations as  
25 required in Section 7 of this act;

26 (6) Deny the rights accompanying certification or exclusive recognition granted in Section 8 of this  
27 act;

28 (7) Blacklist any employee organization or its members for the purpose of denying them employment  
29 because of their organizational activities;

30 (8) Avoid in mediation, fact-finding, and arbitration endeavors as provided in Section 12 of this act;

31 (9) Institute or attempt to institute a lockout; or

32 (10) Deal directly with employees on matters falling within the scope of negotiations circumventing  
33 the exclusive representative.

1 (c) It shall be a prohibited practice for public employees or employee organizations wilfully to:

2 (1) Interfere with, restrain, or coerce public employees in the exercise of rights granted in Section 4  
3 of this act;

4 (2) Interfere with, restrain, or coerce a public employer with respect to rights protected in Section 6  
5 of this act or with respect to selecting a representative for the purposes of negotiating collectively;

6 (3) Refuse to bargain collectively with a public employer as required in Section 7 of this act;

7 (4) Avoid in mediation, fact-finding, and arbitration efforts as provided in Section 12 of this act; or

8 (5) Engage in a strike.

9 *Section 14. Violations of Prohibited Practices.* (a) Any controversy concerning prohibited practices may be  
10 submitted to the Agency. Proceedings against the party alleged to have committed a prohibited practice shall be  
11 commenced by service upon it by the Agency of a written notice, together with a copy of the charges. The accused  
12 party shall have [7] days within which to serve a written answer to such charges. The Agency's hearing will be  
13 held promptly thereafter and at such hearing, the parties shall be permitted to be represented by counsel and to  
14 summon witnesses in their behalf. Compliance with the technical rules of evidence shall not be required. The  
15 Agency may use its rule-making power, as provided in Section 3, to make any other procedural rules it deems  
16 necessary to carry on this function.\*

17 (b) The Agency shall state its findings of facts upon all the testimony and shall either dismiss the complaint  
18 or determine that a prohibited practice has been or is being committed. If the Agency finds that the party accused  
19 has committed or is committing a prohibited practice, the Agency shall petition the [court of appropriate  
20 jurisdiction] to punish such violation, and shall file in the [court] the record in the proceedings. Any person  
21 aggrieved by a final order of the Agency granting or denying in whole or in part the relief sought may obtain a  
22 review of such order in the [court of appropriate jurisdiction] by filing in the [court] a complaint praying that the  
23 order of the Agency be modified or set aside, with copy of the complaint filed on the Agency, and thereupon the  
24 aggrieved party shall file in the [court] the record in the proceedings, certified by the Agency. Findings of the  
25 Agency as to the facts shall be conclusive unless it is made to appear to the satisfaction of the [court of appropriate  
26 jurisdiction] that the findings of fact were not supported by substantial evidence.

27 *Section 15. Internal Conduct of Public Employee Organizations.* (a) Every employee organization which  
28 has or seeks recognition as a representative of public employees of this state and of its political subdivisions shall  
29 file with the Public Employee Relations Agency a registration report, signed by its president or other appropriate  
30 officer, within [90] days after the effective date of this act. Such report shall be in a form prescribed by the Agency

\* Where a State has adopted an administrative procedures act, this section should be made to conform to it.



1 and shall be accompanied by [two] copies of the employee organization's constitution and bylaws. A filing by  
2 a national or international employee organization of its constitution and bylaws shall be accepted in lieu of a  
3 filing of such documents by each subordinate organization. All changes or amendments to such constitutions  
4 and bylaws shall be promptly reported to the Agency.

5 (b) Every employee organization shall file with the Agency an annual report and an amended report  
6 whenever changes are made. Such reports shall be in a form prescribed by the Agency, and shall provide  
7 information on the following:

8 (1) The names and addresses of the organization, any parent organization or organizations with  
9 which it is affiliated, the principal officers, and all representatives;

10 (2) The name and address of its local agent for service of process;

11 (3) A general description of the public employees or groups of employees the organization  
12 represents or seeks to represent;

13 (4) The amounts of the initiation fee and monthly dues members must pay;

14 (5) A pledge, in a form prescribed by the Agency, that the organization will conform to the laws  
15 of the State and that it will accept members without regard to age, race, sex, religion, or national origin; and

16 (6) A financial report and audit.

17 (c) The constitution or bylaws of every employee organization shall provide that:

18 (1) Accurate accounts of all income and expenses shall be kept, and annual financial report and  
19 audit shall be prepared, such accounts shall be open for inspection by any member of the organization, and loans  
20 to officers and agents shall be made only on terms and conditions available to all members.

21 (2) Business or financial interests of its officers and agents, their spouses, minor children, parents,  
22 or otherwise, that conflict with the fiduciary obligation of such persons to the organization shall be prohibited.

23 (3) Every official or employee of an employee organization who handles funds or other property  
24 of the organization, or trust in which an organization is interested, or a subsidiary organization, shall be bonded.  
25 The amount, scope, and form of the bond shall be determined by the Agency.

26 (d) The governing rules of every employee organization shall provide for: periodic elections by secret  
27 ballot subject to recognized safeguards concerning the equal right of all members to nominate, seek office, and  
28 vote in such elections; the right of individual members to participate in the affairs of the organization; and fair  
29 and equitable procedures in disciplinary actions.

30 (e) The Agency shall prescribe such rules and regulations as may be necessary to govern the establishment  
31 and reporting of trusteeships over employee organizations. Establishment of such trusteeships shall be permitted  
32 only if the constitution or bylaws of the organization set forth reasonable procedures.

33 (f) An employee organization that has not registered or filed an annual report, or that has failed to comply  
34 with other provisions of this act, shall not be recognized for the purpose of negotiating with any public employer

1 regarding the terms and conditions of work of its members. Recognized employee organizations failing to comply  
2 with this act may have such recognition revoked by the Agency. All proceedings under this subsection shall be  
3 conducted in accordance with [the State administrative procedure act]. Prohibitions shall be enforced by injunction  
4 upon the petition of the Agency to [court of appropriate jurisdiction]. Complaints of violation of this act shall be  
5 filed with the Agency.

6 *Section 16. Local Public Agency Options.* This act, except for Sections 2,3(e) (3), 4,5,6,7,8,13,14, and 15,  
7 shall be inapplicable to any public employer, other than the State and its authorities, which, acting through its  
8 governing body, has adopted by local law, ordinance, or resolution its own provisions and procedures which have  
9 been submitted to the Agency by such public employer and as to which there is in effect a determination by the  
10 Agency that such provisions and procedures and the continuing implementation thereof are substantially equivalent  
11 to the rights granted under this act.

12 *Section 17. Separability.* [Insert separability clause.]

13 *Section 18. Effective Date.* [Insert effective date.]

PUBLISHED REPORTS OF THE ADVISORY COMMISSION  
ON INTERGOVERNMENTAL RELATIONS<sup>1</sup>

- Coordination of State and Federal Inheritance, Estate and Gift Taxes. Report A-1, January 1961. 134 pages.
- Investment of Idle Cash Balances by State and Local Governments. Report A-3, January 1961. 61 pages (out of print; summary available)
- State and Local Taxation of Privately Owned Property Located on Federal Areas. Report A-6, June 1961. 34 pages, offset (out of print; summary available).
- Local Nonproperty Taxes and the Coordinating Role of the State. Report A-9, September 1961. 68 pages.
- Intergovernmental Responsibilities for Water Supply and Sewage Disposal in Metropolitan Areas. Report A-13, October 1962. 135 pages.
- \*The Role of the States in Strengthening the Property Tax. Report A-17, June 1963. Vol. I (187 pages) and Vol. II (182 pages). \$1.25 each.
- Statutory and Administrative Controls Associated with Federal Grants for Public Assistance. Report A-21, May 1964. 108 pages.
- The Intergovernmental Aspects of Documentary Taxes. Report A-23, September 1964. 29 pages.
- State-Federal Overlapping in Cigarette Taxes. Report A-24, September 1964. 62 pages.
- Federal-State Coordination of Personal Income Taxes. Report A-27, October 1965. 203 pages.
- Building Codes: A Program for Intergovernmental Reform. Report A-28, January 1966, 103 pages.
- \*State-Local Taxation and Industrial Location. Report A-30, April 1967. 114 pages. 60¢.
- \*Fiscal Balance in the American Federal Systems. Report A-31, October 1967. Vol. I, 385 pages. \$2.50; Vol. 2 Metropolitan Fiscal Disparities, 410 pages. \$2.25.
- \*Urban and Rural America: Policies for Future Growth. Report A-32, April 1968. 186 pages. \$1.25.
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- \*State Aid to Local Government. Report A-34, April 1969. 105 pages. \$1.00.
- \*Labor-Management Policies for State and Local Government. Report A-35, September 1969. 263 pages. \$2.00
- \*Making the Safe Streets Act Work: An Intergovernmental Challenge. Report A-36, September 1970. 78 pages. \$1.00.
- \*Federal Approaches to Aid State and Local Capital Financing. Report A-37, September 1970. 71 pages. \$.75.
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- \*Performance of Urban Functions: Local and Areawide. Report M-21, September 1963. 281 pages. \$1.50.
- State Technical Assistance to Local Debt Management. Report M-26, January 1965, 80 pages.
- \*A Handbook for Interlocal Agreements and Contracts. Report M-29, March 1967. 197 pages. \$1.00.
- \*Federalism and the Academic Community: A Brief Survey. Report M-44, March 1969. 55 pages. 60¢.
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- \*A State Response to Urban Problems: Recent Experience Under the “Buying In” Approach. A Staff Analysis. Report M-56, December 1970.
- \*State-Local Finances and Suggested Legislation, 1971 Edition. Report M-57, December 1970.
- \*Measuring the Fiscal Capacity and Effort of State and Local Areas. Report M-58, March 1971. 209 pages. \$1.75.
- Annual Report, Twelfth. Report M-59, January 1971. 25 pages.
- \*State Action on Local Problems in 1970. Report M-60, April 1971. 14 pages. \$0.35.
- \*County Reform. Report M-61, April 1971. 31 pages. \$0.40.
- \*The Quest for Environmental Quality: Federal and State Action, 1969-70 (includes annotated bibliography). Report M-62, April 1971. 63 pages. \$0.35.

<sup>1</sup>Publications marked with an asterisk may be purchased directly from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Single copies of other publications may be obtained without charge from the Advisory Commission on Intergovernmental Relations, Washington, D.C. 20575.

