

CHAPTER 1 - OVERVIEW 1-1

- I. LOCAL PRACTICES/LOCAL RULES/JUDICIAL PREFERENCES..... 1-1
- II. CRIMINAL LAW 1-1
- III. COURT ORGANIZATION AND JURISDICTIONAL DISTINCTIONS 1-1
 - A. Supreme Court of Virginia..... 1-1
 - B. Court Of Appeals of Virginia 1-2
 - C. Circuit Courts..... 1-2
 - D. District Courts..... 1-3
- IV. FELONIES AND MISDEMEANORS DISTINGUISHED..... 1-3
 - A. Felonies..... 1-4
 - B. Misdemeanors 1-4
 - C. Other Offenses 1-5
- V. PARTICIPANTS IN THE CRIMINAL JUSTICE SYSTEM 1-5
 - A. Law Enforcement..... 1-5
 - B. Prosecutors 1-6
 - C. Defense Attorneys..... 1-6
 - D. Magistrates 1-7
 - E. Grand Juries 1-8
 - F. Petit Jury 1-11
 - G. Judges..... 1-11
 - H. Sheriffs..... 1-12
 - I. Witnesses 1-12
 - J. Court Reporters..... 1-12
 - K. Probation And Parole Officers..... 1-13
 - L. Virginia Parole Board 1-13
 - M. Department Of Corrections..... 1-14
 - N. Clerks Of Circuit Courts 1-14
 - O. Clerks Of District Courts 1-15
- VI. PROSECUTORIAL DOCUMENTS, ARREST DOCUMENTS AND COURT ORDERS 1-16
 - A. Bill Of Indictment..... 1-16
 - B. Presentment..... 1-17
 - C. Information 1-17
 - D. Warrant 1-17
 - E. Summons..... 1-18
 - F. Capias..... 1-19

CIRCUIT COURT CLERKS' MANUAL - CRIMINAL

TABLE OF CONTENTS

PAGE ii

G. Rule To Show Cause..... 1-19
H. Court Orders..... 1-20
I. Rights Of Criminal Defendants 1-22

VII. DOUBLE JEOPARDY 1-22

VIII. CRIMINAL CASE FLOW - AN OVERVIEW 1-24

A. Complaint/Commission Of Offense 1-24
B. Arrest..... 1-25
C. Booking..... 1-26
D. Bail..... 1-26
E. Crossover Hearings/Bail Hearings..... 1-27
F. Arraignment Hearing 1-27
G. Preliminary Hearing..... 1-28
H. Indictment 1-29
I. Pre-Trial Activity 1-29
J. Trial..... 1-30
K. Sentencing..... 1-31
L. Appeal..... 1-32

CHAPTER 2 - CASE INITIATION..... 2-1

I. CASE INITIATION ACTIVITIES..... 2-1
II. ACKNOWLEDGING RECEIPT OF CASE PAPERS..... 2-2
III. CASE NUMBERING 2-3
IV. INDEXING 2-4
V. PREPARATION OF CASE FILE 2-5
VI. PROCESSING INDICTMENTS AND PRESENTMENTS..... 2-6
VII. PROCESSING INFORMATIONS AND WARRANTS 2-8
VIII. PROCESSING ANCILLARY MISDEMEANORS 2-9
IX. PROCESSING DISTRICT COURT APPEALS 2-9

A. Procedures for District Court Appeals..... 2-11
B. Appeals of Refusal to Take Blood or Breath Test 2-12
C. Procedures for Appeals of District Court Bond Decisions 2-13
D. Animal Violations - Civil Offenses 2-14
E. Appeals of No Photo ID with Concealed Handgun Permit 2-15
F. Appeals of Notary Advertising Legal Advice 2-16

G. Appeals of Red Light Photo Monitoring 2-16
H. Appeals of Failure to Obey Order of Fire Marshall..... 2-17

X. PROCESSING JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT CASES AND APPEALS..... 2-17

A. Transferred Pursuant To § 16.1-269.1(A)..... 2-17
B. Certified Pursuant To § 16.1-269.1(B) 2-17
C. Certified Pursuant To § 16.1-269.1(C) 2-18
D. Juvenile & Domestic Relations Court Case Matrix 2-19

XI. PROCESSING VIOLATIONS OF THE NUTRIENT TRADING ACT 2-19

CHAPTER 3 - CASEFLOW MANAGEMENT..... 3-1

I. TERM DAY ACTIVITIES 3-1

A. Docket Preparation..... 3-1
B. Pre-Court Procedures 3-3
C. Courtroom Procedures 3-5
D. Post-Term Day Activities 3-8
E. Issuance of Criminal Process Upon Indictment..... 3-9

II. CALENDARING..... 3-11

A. General Provisions 3-11
B. Purpose and Types of Calendars..... 3-12
C. Calendar Form 3-12

III. SPEEDY TRIAL..... 3-14

A. Limitations of Prosecution..... 3-15
B. Limitation on Prosecution of Felony Due to Lapse of Time after Finding of Probable Cause..... 3-15
C. Accused Discharged From Jail If Not Indicted In Time..... 3-15
D. Exclusion of Pretrial Appeal Period 3-16

CHAPTER 4 - PRE-TRIAL..... 4-1

I. BOND 4-1

A. Virginia Statutes on Bail..... 4-2
B. Determining Bail Eligibility and Bail Conditions 4-5
C. Determining Adequacy of Surety 4-9
D. Revocation and Forfeiture..... 4-16
E. Termination of Bail Obligation..... 4-30

II.	RIGHT TO COUNSEL.....	4-31
	A. Court-Appointed Counsel.....	4-33
	B. Waiver of Counsel.....	4-42
	C. Retained Counsel.....	4-43
III.	ARRAIGNMENT, PLEAS AND PLEA BARGAINING.....	4-45
	A. Arraignment.....	4-45
	B. Pleas.....	4-46
	C. Plea Bargaining.....	4-47
	D. Procedures for Arraignment, Pleas Or Plea Bargaining.....	4-48
IV.	APPOINTMENT OF SUBSTITUTE COMMONWEALTH'S ATTORNEY.....	4-50
V.	JUDGE DISQUALIFICATIONS AND DISABILITIES.....	4-52
VI.	CHANGE OF VENUE.....	4-55
	A. Receiving Case.....	4-55
	B. Transferring the Case.....	4-56
VII.	AMENDMENT TO THE CHARGE.....	4-57
VIII.	INTERPRETERS.....	4-58
	A. Use of Foreign Language Interpreters.....	4-60
	B. Role of A Foreign Language Interpreter.....	4-61
	C. Certified Language Interpreter Appointments.....	4-61
	D. Use of Non-Certified Foreign Language Interpreters.....	4-62
	E. Spanish Language Interpreter Certifications Accepted by the Judicial Council of Virginia.....	4-63
	F. Clerk's Role in Securing an Interpreter.....	4-63
IX.	PSYCHIATRIC EVALUATIONS AND TREATMENT.....	4-65
	A. Emergency Mental Treatment Prior To Trial.....	4-66
	B. Evaluations of Competency And Sanity.....	4-67
	C. Coordination with DBHDS (Department of Behavioral Health and Developmental Services.....	4-79
X.	WITNESS SUMMONING.....	4-80
	A. Requirements and Issuance.....	4-80
	B. Incarcerated Witnesses.....	4-82
	C. Out-Of-State Witnesses and Proceedings.....	4-82
	D. Procedures for Summoning Witnesses.....	4-82

CIRCUIT COURT CLERKS' MANUAL - CRIMINAL

TABLE OF CONTENTS

PAGE v

XI. JURY SELECTION, SUMMONING, AND ORIENTATION 4-84

- A. Creation of the Master Jury List/It's Use In Jury Management..... 4-84
- B. Appointment of Jury Commissioners 4-87
- C. Master Jury List 4-88
- D. Term Jury List..... 4-91
- E. Petit Jury 4-93
- F. Grand Jurors..... 4-94
- G. Jury Orientation 4-95
- H. Juror Orientation Procedures 4-96
- I. *Voir Dire* 4-97

XII. RECEIPT, MAINTENANCE AND STORAGE OF EVIDENCE 4-97

- A. Subpoenas *duces tecum*..... 4-97
- B. Subpoena *duces tecum* of Analysis Evidence..... 4-98
- C. Subpoena *duces tecum* 4-98
- D. Subpoena *duces tecum* for Financial Records 4-100
- E. Certificate of Analysis 4-102
- F. Request for Certificate of Analysis..... 4-102
- G. Retention of Evidence..... 4-103

XIII. MOTIONS 4-104

- A. Pre-Trial Motions..... 4-104
- B. Motions During Trial 4-107

XIV. VICTIM CONFIDENTIALITY..... 4-109

XV. PREPARATION FOR TRIAL..... 4-110

- A. Procedures/Preparation - To Be Done Upon Setting of the Trial Date..... 4-111
- B. Procedures/Preparation - At Least Seven Days before Trial 4-112
- C. Procedures/Preparation - At Least 3 Full Business Days before Trial 4-112
- D. Procedures/Preparation - To Be Done by the day Before Trial 4-112
- E. Procedures/Preparation - To Be Done By Morning of Trial Date 4-112
- F. Procedures/Preparation - To Be Done Immediately Prior to Trial 4-112

CHAPTER 5 - TRIAL/POST TRIAL..... 5-1

- I. BENCH TRIAL 5-1
- II. JURY TRIAL..... 5-6

 - A. Right to Trial by Jury 5-6
 - B. Eligibility for and Exemption from Jury Service..... 5-7
 - C. Selection of Trial Jurors..... 5-7
 - D. Procedures for Jury Trial 5-7

E.	Conduct of Jury Trial.....	5-9
F.	Procedures During Trial By Jury	5-12
G.	Juror Reimbursement.....	5-17
H.	Procedures For Payment Of Grand Jurors And Petit Jurors	5-17
III.	CONTEMPT OF COURT	5-18
A.	Classification.....	5-18
B.	Adjudication of Contempt.....	5-19
C.	Clerk's Responsibility in Contempt Cases	5-21
D.	Procedures for Contempt Cases.....	5-22
IV.	SENTENCING AND DEFERRED ADJUDICATION DISPOSITIONS.....	5-25
A.	Sentencing.....	5-25
B.	Deferred Adjudication Dispositions	5-33
C.	Procedures for Sentencing/Deferred Disposition.....	5-35
D.	Procedures for Post-Sentence Hearing on Special Sentencing Programs	5-40
V.	REVOCAION OF PROBATION.....	5-41
VI.	POST-TRIAL ACTIVITIES.....	5-44
VII.	FAILURE TO SURRENDER.....	5-46
VIII.	MOTIONS	5-47
A.	Post-Conviction Motions	5-47
B.	Procedures For Processing Motions.....	5-47
IX.	GUIDELINES FOR THE METHOD OF CUSTODY, TRANSFER AND RETURN OF EVIDENCE.....	5-53
X.	WRIT OF ACTUAL INNOCENCE.....	5-55
A.	Biological Evidence.....	5-55
B.	Nonbiological Evidence.....	5-56
C.	Bail Hearings – Writs of Actual Innocence	5-57
XI.	WRIT OF CORAM NOBIS/WRIT OF CORAM VOBIS.....	5-57
XII.	PROTECTIVE ORDERS IN CRIMINAL CASES	5-58
CHAPTER 6 - POST SENTENCING.....		6-1
I.	OVERVIEW	6-1

II.	CASE CLOSING	6-3
	A. Duties upon Final Judgment	6-3
	B. Collection of Fines, Court Costs and Other Monies	6-3
	C. Preparation Of Reports	6-8
	D. Disposal Of Evidence	6-15
	E. Storage Of Case Records	6-16
	F. Procedures To Record And Dispose Of Case	6-17
III.	COURT OF APPEALS OF VIRGINIA (PART FIVE A).....	6-22
	A. Jurisdiction.....	6-22
	B. Discretionary Appeals.....	6-23
	C. Security for the Appeal	6-23
	D. Procedures for Processing an Appeal to Court of Appeals.....	6-25
	E. Subsequent Events: Decision, Costs and Mandate	6-31
	F. Procedures for Cost Assessment – Court of Appeals	6-32
IV.	SUPREME COURT OF VIRGINIA	6-39
	A. Jurisdiction.....	6-39
	B. Security for the Appeal	6-40
	C. Procedures for Processing an Appeal to Supreme Court of Virginia	6-40
	D. Subsequent Events: Decision, Costs And Mandate	6-45
	E. Procedures For Cost Assessment.....	6-45
V.	<i>HABEAS CORPUS</i>	6-45
VI.	EXPUNGEMENT OF CRIMINAL CASES	6-46
	A. Expunging Criminal Records.....	6-48
	B. Expungement Is Voided.....	6-49
VII.	DISPOSITION OF CASE PAPERS IN ENDED CASES.....	6-50
	A. Destroy after 10 years, Discretion of Clerk	6-50
	B. Destroy at Discretion of Clerk/Guidelines.....	6-50
CHAPTER 7 - MISCELLANEOUS MATTERS.....		7-1
I.	SEARCH WARRANTS	7-1
II.	SEARCH WARRANTS FOR A TRACKING DEVICE	7-3
III.	PEN REGISTER/WIRE TRAP	7-4
IV.	EXTRADITION.....	7-5

V. SEALING COURT RECORDS; CONFIDENTIALITY CONSIDERATIONS 7-8

 A. Sealed Records..... 7-8

 B. Confidentiality Considerations 7-16

VI. RECORDS MANAGEMENT 7-25

 A. Statutory Recordkeeping Duties 7-25

 B. Creating A Records Management Program 7-27

VII. DESTROYING CIRCUIT COURT RECORDS 7-30

 A. Generally..... 7-31

 B. Disposition Of Ended Case Files, Exhibits, And Discovery Materials 7-31

 C. Trial Transcripts. Court Reporter Records..... 7-32

 D. Special Grand Jury Report..... 7-33

 E. Special Grand Jury Court Reporter Records..... 7-33

 F. Multi-Jurisdictional Grand Jury..... 7-33

 G. Election Records 7-34

 H. Judgment Abstracts. Executions 7-34

 I. Lists Of Jurors..... 7-34

 J. District Court Papers..... 7-34

GLOSSARY..... Glossary-1

APPENDIX A - DC-40 & DC-40A/IMC FEES/INTERPRETERS/COURT REPORTERS..... A-1

I. DC-40, LIST OF ALLOWANCES..... A-1

II. DC-40(A), APPLICATION FOR AND APPROVAL/DENIAL FOR WAVIER OF FEE CAP..... A-1

III. CHART OF ALLOWANCES..... A-1

IV. INVOLUNTARY MENTAL COMMITMENT FEES..... A-1

V. INTERPRETERS..... A-1

VI. COURT REPORTER SERVICES..... A-1

APPENDIX B - CRIMINAL FEES AND COSTS SCHEDULE..... B-1

I. FEES AND COSTS (A-C)..... B-1

 A. Abandoned Vehicle Costs..... B-1

 B. Add-On Fees/Costs B-1

C.	Appellant Costs.....	B-2
D.	ASAP - Alcohol Safety Action Program Fee	B-3
E.	Bad Check/Credit Card Fee	B-3
F.	Blood Test Fee	B-3
G.	Boating Education Civil Penalty.....	B-7
H.	Bond Forfeiture.....	B-8
I.	Certificate of Analysis Fee.....	B-8
J.	Child Safety Restraint Device Penalty.....	B-9
K.	Clerk's Processing Fee (District Court Clerk).....	B-9
L.	Computer Analysis Fee.....	B-10
M.	Concealed Handgun Permit	B-10
N.	Confiscated Monies/Property.....	B-11
O.	Court Appointed Attorney Costs	B-11
P.	Courthouse Construction Fee (CHCF).....	B-14
Q.	Courthouse Maintenance Fund Fee (CHMF)	B-14
R.	Courthouse Security Fund (CHSF).....	B-14
S.	Court Reporter Costs.....	B-15
T.	Criminal Injury Compensation Fund Fee (CICF).....	B-16
U.	Criminal Justice Training Academy Fund	B-16
II.	FEES AND COSTS (D-J).....	B-17
A.	DNA Analysis Fee	B-17
B.	Driver Improvement Clinic Fee	B-17
C.	Drug Analysis (Forensic Lab) Costs.....	B-18
D.	Drug Enforcement Jurisdiction Fund (DEJF) Fee	B-18
E.	Drug Offender Assessment Fund (DOAF)	B-19
F.	DUI Fee.....	B-19
G.	Electronic Summons (E-Citation).....	B-20
H.	Extradition Costs.....	B-20
I.	Failure to Appear Fee.....	B-20
J.	Failure to Pay Fare	B-21
K.	Highway Litter	B-21
L.	Forfeitures: Other than Bond	B-22
M.	Game Replacement	B-22
N.	Global Positioning System (GPS).....	B-22
O.	<i>Habeas Corpus</i>	B-22
P.	HIV, Hepatitis B or C Blood Test.....	B-22
Q.	Ignition Interlock Fee.....	B-23
R.	Increase Rate Fee	B-23
S.	Interest on Judgments	B-24
T.	Internet Crimes against Children Fee	B-24
U.	Interpreter Fee.....	B-25
V.	Jail Admission Fee.....	B-25
W.	Jury Costs.....	B-26

III. FEES AND COSTS (L-Z) B-27

- A. Legal Aid Services Fund..... B-27
- B. Liquidated Damages/Overweight Violations..... B-28
- C. Medical Costs for Gathering Evidence B-28
- D. Methamphetamine Site Cleanup B-29
- E. Out-Of-State Prisoner Costs (Agreement on Detainers)..... B-29
- F. Pen Register, Wire Trap or Tracing Device Costs..... B-29
- G. Psychiatric Evaluation Costs..... B-30
- H. Public Defender Costs..... B-30
- I. Restitution B-31
- J. Sentencing (Supervision) Fee B-32
- K. Suppression Costs B-32
- L. Transcript Fees..... B-32
- M. Toll Roads Penalties – Failure to Pay Toll/HOT Lane Violations B-33
- N. Transportation Trust Fund B-33
- O. Trauma Center Fund B-34
- P. Virginia Crime Victim Witness Fund (CVWF)..... B-34
- Q. Virginia Stormwater Management Fund B-34
- R. Weighing Costs..... B-35
- S. Weighing Fee..... B-35
- T. Witness Fees B-35

APPENDIX C - FEE SCHEDULE..... C-1

APPENDIX D - RECORDS RETENTION AND DISPOSITION SCHEDULE D-1

APPENDIX E - MANUAL UPDATES E-1

INDEX..... Index-1