

## Chapter 6 – Post Sentencing

### Overview

Upon being found guilty in circuit court, a defendant may seek relief and judicial review of his/her conviction. He/she may present a motion to set aside the verdict to the trial court and, if sufficient cause is demonstrated, the court may acquit the defendant or grant him/her a new trial. Alternatively, the defendant may file a petition for *habeas corpus* in the state and federal courts. A writ of *habeas corpus* challenges the legality of the restraint under which a person is held. For a thorough discussion of *habeas corpus*, see “*Habeas corpus*.” In addition, a defendant may appeal his/her case to the Virginia Court of Appeals or, in certain cases, to the Supreme Court of Virginia.

[Rule 1:1\(a\)](#) of the [Rules of the Supreme Court of Virginia](#) provides all final judgments, orders, and decrees, irrespective of terms of court, shall remain under the control of the trial court and subject to be modified, vacated, or suspended for twenty-one days after the date of entry, and no longer. But notwithstanding the finality of the judgment, in a criminal case the trial court may postpone execution of the sentence in order to give the accused an opportunity to apply for a writ of error and supersedeas; such postponement, however, shall not extend the time limits hereinafter prescribed for applying for a writ of error. The date of entry of any final judgment, order, or decree shall be the date it is signed by the judge either on paper or by electronic means in accord with [Rule 1:17](#).

No appeal shall be allowed unless, within 30 days after entry of final judgment or other appealable order or decree, or within any specified extension thereof granted by the Supreme Court or Court of Appeals, counsel files with the clerk of the circuit court a notice of appeal, and at the same time mails or delivers a copy of such notice to all opposing counsel. A notice of appeal filed after the court announces a decision or ruling – but before the entry of such judgment order – is treated as filed on the date of and after the entry. A party filing a notice of an appeal of right to the Court of Appeals shall simultaneously file in the trial court an appeal bond in compliance with [Va. Code § 8.01-676.1](#). ([Rule 5:9\(a\)](#) and [5A:6\(a\)](#)) Notwithstanding the time limits established by the rules of court, the clerk of the circuit court shall, whether or not so requested, transmit the record in the case in time for delivery to the clerk of the Court of Appeals or the Supreme Court of Virginia within 90 days after entry of the judgment appealed from. ([Rule 5:13\(c\)](#) and [5A:10\(c\)](#))

When a defendant sentenced by the circuit court to confinement in a state correctional facility indicates an intention to appeal, the circuit court is required to postpone the execution of the sentence for such time as it may deem proper. The court may, or in the case of a misdemeanor, shall, set bail in such penalty and for appearance at such time as the nature of the case requires. In any case in which the court denied bail, the reason for the denial must be stated in the record. A writ of error shall lie to any judgment refusing bail or requiring excessive

bail. The circuit court may, upon a defendant's expressed intention to appeal, postpone the execution (judicial collection) of any judgment for fines, costs, restitution or other monetary penalties for such time as the judge deems proper. The postponement of execution of such monetary judgment usually results in the posting of a bond [Va. Code § 19.2-322.1](#).

In a felony case, a pretrial appeal may be taken by the Commonwealth from the following:

- An order of a circuit court dismissing a warrant, information or indictment, or any count or charge thereof on the ground that:
  - the defendant was deprived of a speedy trial, or
  - the defendant would be twice placed in jeopardy
- An order of a circuit court prohibiting the use of certain evidence at trial on the grounds that such evidence was obtained in violation of the Amendments of the Constitution of the United States prohibiting illegal searches and seizures and protecting rights against self-incrimination, provided the Commonwealth certifies that the appeal is not taken for the purpose of delay and that the evidence is substantial proof of a fact material in the proceeding.

A petition for appeal may be taken by the Commonwealth in a felony case from any order of release on conditions pursuant to Article 1, Chapter 9 ([Va. Code § 19.2-119](#) et seq.)

A petition for appeal may be taken by the Commonwealth in a felony case after conviction where the sentence imposed by the circuit court is contrary to mandatory sentencing or restitution terms required by statute.

A pretrial appeal may be taken in any criminal case from an order of a circuit court dismissing a warrant, information or indictment, or any count or charge thereof on the ground that a statute or local ordinance on which the order is based is unconstitutional.

"Perfecting an appeal" refers to the legal process by which an appeal is taken to a higher court. The procedures relating to appeals to the Supreme Court and Court of Appeals are set out in Parts 5 and 5A, respectively, of the Rules of Supreme Court of Virginia. An appeal in a criminal case is deemed perfected, and is considered mature for purposes of further proceedings, upon certification by the clerk of the appellate court to counsel for the appellant, counsel for the appellee, and the tribunal from which the appeal is taken that a petition for appeal has been granted. Rules 5:23 and 5A:16 of the Rules of Supreme Court.

In processing appeals, one of the most important considerations is the proper computation of the time limits for filing and transmitting required notices and documents. Most time limits are specified in the Rules; others are provided by statute. Because the defendant initiates the vast majority of criminal appeals from the circuit court, the following procedures apply to appeals by the defendant. Cases in which the Commonwealth is the appellant (the party initiating the

appeal) and the defendant is the appellee (the party against whom the appeal is taken) are governed by Va. Code §§ 19.2-398 through 19.2-409.

After the Commonwealth's attorney has prepared the brief in opposition to the granting of an appeal (Rule 5A:13 and 5:18 of the Rules of Supreme Court), the Attorney General's Office assumes all further responsibility for the case if the appeal is granted.

The nature of the case dictates to which appellate court an appeal from a circuit court may lie. The following subsections address the jurisdiction of and the procedures involved in filing a criminal appeal from circuit court to the Court of Appeals or from the circuit court to the Supreme Court. For a discussion of procedures relating to appeals from the district court to the circuit court, see this manual, "Case Initiation."

## Case Closing

Whether a defendant is convicted or his/her case dismissed, certain administrative and legal actions must be taken to ensure that the case is properly recorded and disposed of. Such tasks are primarily the responsibility of the clerk's office.

## Duties upon Final Judgment

Once the final decision has been rendered in a case, one of the most important tasks to be completed is the preparation and entry of the court's final order. Pursuant to Va. Code § 19.2-310, in cases in which the defendant has been sentenced to confinement, a certified copy of the final order must be furnished within thirty days to the Department of Corrections. A disposition should be sent to the local jail, treatment center, or other facility in which the defendant will be detained. When the defendant is to be released from confinement, the clerk must make arrangements to secure the defendant's prompt release. Release of a defendant is affected through the preparation of a release order which is normally given to the sheriff's deputy, in court or immediately after court adjourns. The clerk is also responsible for refunding any bond monies paid if the defendant has satisfied the terms and conditions of bail and an order releasing such funds has been entered.

In addition to sending copies of conviction and sentencing orders to local jail, treatment center, or other facilities, many Boards and agencies also require notification when persons licensed by such Board or agency are convicted. For example, [Va. Code § 19.2-291.1](#) requires reporting to the Superintendent of Public Instruction and the division superintendent of any employing school division the conviction of any person, known by the clerk to hold a license issued by the Board of Education, for any felony involving the sexual molestation, physical or sexual abuse, or rape of a child, or a conviction involving drugs. For a more complete list of agency reporting, see *Miscellaneous Manual*, "Other Agency Reporting-Orders/Notices."

## Collection of Fines, Court Costs and Other Monies

Where the defendant has been ordered to pay penalties, fines, court costs or other monies to the Commonwealth, the clerk must promptly docket (record) such monies as a judgment in the Judgment Lien Docket. [Va. Code §§ 8.01-446, 19.2-336, and 19.2-341](#). By docketing these monies as a judgment, the clerk provides official notice to the public of the existence of a lien against the property of the defendant. The judgment should be docketed even if the defendant expresses an intention to appeal. Restitution shall be docketed in the name of the Commonwealth, or a locality if applicable, on behalf of the victim, as provided in [Va. Code § 8.01-446](#) when ordered by the court, unless the victim named in the order of restitution requests in writing that the order be docketed in the name of the victim. [Va. Code § 19.2-305.2](#). Also, a civil restitution judgment shall be docketed at the time of a restitution review hearing pursuant to [Va. Code § 19.2-305.1 \(F\)\(1\)](#) unless previously docketed. Interest is imposed on these judgments at the rates set out below.

### Costs imposed by Statute

In addition to docketing fines, penalties, court costs and restitution, the clerk is also involved in the collection of and accounting for such monies. While fines, penalties and restitution may or may not be ordered in a case, costs (including clerk's fees) are automatically imposed by statute:

- Upon conviction;
- Upon dismissal of a case under [Va. Code § 19.2-151](#) (satisfaction and discharge)
- Pursuant to [Va. Code § 18.2-57.3](#) (assault and battery – family), [Va. Code § 18.2-251](#) (first-time drug offense), [Va. Code § 19.2-298.02](#) (deferral for a criminal offense), [Va. Code § 19.2-303.2](#) (first-time property offense), and [Va. Code § 19.2-303.6](#) (intellectual disability) ; or
- Dismissal on referral to traffic school. [Va. Code § 17.1-275A\(12\)](#).

### Methods of Payment

Defendants may satisfy their debts to the court by paying by cash, check or credit card, if accepted. [Va. Code § 19.2-353.3](#). Many courts accept payments via an online method such as Virginia Judiciary Online Payment System.

### Costs from District Court

The imposition of costs may not be suspended nor the amount reduced (except pursuant to [Va. Code §§ 19.2-358 and 19.2-364](#)) since costs

reimburse the public treasury for the expenses of prosecution and are not part of the penalty. While the circuit court clerk is responsible for collecting monies owed in cases originating in his/her own court, he/she is also responsible for collecting fines, costs, and other monies imposed in cases which originated in the district court and have been appealed to the circuit court. If an appeal is withdrawn more than ten days from the date of conviction in the district court, the judgment is affirmed in the circuit court as a circuit court judgment. Consequently, the circuit clerk is responsible for collecting any fines and costs imposed in such cases for both courts.

#### Costs Due Upon Sentencing. Collection Methods

Generally, the court requires a convicted defendant to pay his/her fine, penalty, court costs and restitution immediately after sentencing. In many cases, however, the court may permit the defendant to satisfy his/her obligation pursuant to a deferred payment plan under which the full amount is due by a certain date. Alternatively, the court or clerk may allow the defendant to fulfill his/her obligation under an installment payment plan pursuant to which the defendant pays a portion of the total costs periodically (weekly, monthly) until the total amount is paid. The court assessing the fine, restitution, forfeiture, or penalty and costs may authorize the clerk to establish and approve individual deferred or installment payment agreements. Any payment agreement authorized under this section shall be consistent with the provisions of [Va. Code 19.2-354.1](#), including any required minimum payments or other required conditions. The requirements established by the provisions of [Va. Code 19.2-354.1](#) shall be posted in the clerk's office and on the court's website, if a website is available. [Va. Code § 19.2-354.](#)

Any fines, costs, penalties, and court-ordered restitution of a sum certain that remain unpaid are to be reported by the clerk to the judge, the [Department of Taxation](#), the [State Compensation Board](#) and Commonwealth's attorney on a monthly basis. [Va. Code § 19.2-349.](#)

Unpaid criminal fines and costs may be recovered by employing a civil enforcement procedure such as a lien on the defendant's property. The Commonwealth's attorney handles such procedures and may contract with the Department of Taxation, a private attorney, the county or city treasurer, a collection agency, or provide the services "in-house" to collect such unpaid fines and costs pursuant to guidelines developed by the [Department of Taxation](#) and the [State Compensation Board](#). [Va. Code § 19.2-349.](#) See Attorney General Opinion to Francis, dated 4/27/17; *The limitation period for civil enforcement of court fines and costs imposed by a*

*circuit court in a traffic or criminal case is twenty years, commencing on the date of the offense or delinquency. It is not tolled during incarceration. For civil enforcement of restitution ordered in any such case, the limitation period is twenty years, beginning when the restitution order is docketed. It is extendable in twenty-year increments upon motion and court approval. It is not tolled during incarceration unless the court so orders.*

**Note:** Effective July 1, 2018, judgment for restitution is enforceable for a period of 60 years, [Va. Code § 19.2-341](#). If a restitution judgment is docketed in the name of the victim it will then no longer be subject to any statute of limitations, [Va. Code § 19.2-305.2](#).

Another means of collecting monies owed the court is the Set-off Debt Collection Act. Under the Act, the court reports any unpaid monies due the court to the [Virginia Department of Taxation](#). Any refund due the defendant from state income taxes is attached and applied to satisfy the court's claim. [Va. Code §§ 58.1-520](#) through [58.1-535](#).

#### Bad Check/Credit Card

Whenever a person provides for payment of fines, costs, forfeiture, restitution or penalty other than by cash and such provision for payment fails, the clerk of court that convicted the person shall send to the person written notice of the failure and of the suspension of his/her license or privilege to drive in Virginia. The license suspension shall be effective ten days from the date of the notice. The notice shall be effective notice of the suspension and of the person's ability to avoid the suspension by paying the full amount owed by cash, cashier's check or certified check prior to the effective date of the suspension if the notice is mailed by first class mail to the address provided by the person to the court pursuant to subsection C of [Va. Code § 46.2-395](#) or [Va. Code § 19.2-354](#). Upon such a failure of payment and notice, the fine, costs, forfeiture, restitution or penalty due shall be paid only in cash, cashier's check or by certified check, unless otherwise ordered by the court, for good cause shown.

**Note:** Clerks will use form DC-215, Notice of Dishonored Check or Credit Card Charge.

### Distribution of Cash Bonds

Another method for recovering unpaid fines and costs is the distribution of cash bonds. The amount needed to satisfy the fines and costs are deducted from the bond monies paid and any remaining amount is refunded to the payor of the bond. Cash bonds cannot be applied to fines and costs without the consent of the person who posted the cash bond except in the following circumstances:

- the defendant posted the cash bond and was tried and convicted in his/her absence. [Va. Code § 19.2-143](#).
- the defendant posted the cash bond and was convicted, even if he/she has complied with bail terms, where the bail bond forms (DC-330, Recognizance) contain pre-printed "consents" to the application of a cash bond posted by the defendant to fines and costs upon conviction.

[Virginia Code §§ 53.1-60](#) and [53.1-131](#) provide additional means of collecting fines and costs from defendants participating in work release programs. The statutes require that the earnings of persons in work release programs be turned over to the jailer who must withhold an amount equal to any fine and costs owed by the defendant.

### Community Service

The court shall establish a program and may provide an option to any person upon whom a fine and costs have been imposed to discharge all or part of the fine or costs by earning credits for the performance of community service work before or after imprisonment, or during imprisonment. The program shall specify the rate at which credits are earned and provide for the manner of applying earned credits against the fine or costs. The court assessing the fine or costs against a person shall inform such person of the availability of earning credit toward discharge of the fine or costs through the performance of community service work under this program and provide such person with written notice of terms and conditions of this program. The court shall have such other authority as is reasonably necessary for or incidental to carrying out this program. [Va. Code § 19.2-354](#)

### List of Allowances

In addition to the foregoing duties, the circuit court clerk must also prepare and submit a "List of Allowances" to the Commonwealth for payment of fees and expenses to jurors, witnesses, experts, vendors, and government officials as a result of their service in connection with the prosecution of a

criminal case and in the investigation of a case or criminal suspect. Specific forms are used to prepare the list of allowances. Each list must be acknowledged in writing by the circuit court clerk, and the expenses and fees listed thereon must be authorized by the judge. The lists are submitted "forthwith" to the Office of the Executive Secretary of the Supreme Court of Virginia for processing. The fees and expenses allowed by statute are paid out of the "Criminal Fund," a special account consisting of monies appropriated by the General Assembly and administered by the Supreme Court. The fees and expenses allowed are outlined on a [Chart of Allowances](#) which is published annually by the Office of the Executive Secretary and distributed to all courts.

## Preparation of Reports

Upon disposition of a criminal case, the circuit court clerk is responsible for preparing notices and reports to various entities to notify them of the outcome of the case and, if applicable, to request the appropriate service (treatment, evaluation, counseling, transportation) from the entity. The primary reports are discussed below:

### Central Criminal Records Exchange (CCRE) Report

The Central Criminal Records Exchange (CCRE) Report is submitted to the [Virginia Department of State Police](#) and contains disposition and case status information in all felonies and certain misdemeanor cases, including cases of criminal non-support ([Va. Code § 20-61](#)) and violation of protective orders ([Va. Code § 16.1-253.2](#)) as provided for in [Va. Code § 19.2-390 \(A\)](#). For every defendant charged with an offense which is required to be reported, the arresting authority must prepare a CCRE form and then transmit it to the clerk's office for completion. The clerk of the circuit court is required to apprise CCRE of any dismissal, *nolle prosequi*, acquittal, acquittal by reason of insanity, or conviction of any person charged with a reportable offense. The clerk must also report the failure of a grand jury to return a true bill on a person charged with a reportable offense as well as any reversal of or amendment to a prior conviction or sentence reported to CCRE. Such reports are to be filed with the Department of State Police no later than thirty days, with certain expedited exceptions noted below, after occurrence of the disposition; any correction, deletion or revision of information previously submitted must be reported promptly.

For cases involving acquittal by reason of insanity, orders for the involuntary commitment to a mental health facility, etc., the Order should be accompanied by the SP-237.



The Virginia Child Protection Accountability System requires that circuit courts be among the list of entities that report information regarding convictions of rape, abduction, sexual crimes, indecent liberties, child pornography, indecent exposure, etc. [Va. Code § 63.2-1530](#).

If a juvenile of any age (i) is convicted of a felony, (ii) is adjudicated delinquent of an offense that would be a felony if committed by an adult, (iii) has a case involving an offense, which would be a felony if committed by an adult, that is dismissed pursuant to the deferred disposition provisions of [Va. Code § 16.1-278.8](#), or (iv) is convicted or adjudicated delinquent of any other offense for which a report to the Central Criminal Records Exchange is required by subsection C of [Va. Code § 19.2-390](#) if the offense were committed by an adult, copies of his fingerprints and a report of the disposition shall be forwarded to the [Central Criminal Records Exchange](#) and to the jurisdiction making the arrest by the clerk of the court which heard the case. [Va. Code § 16.1-299](#)

Clerks using the Circuit Case Management System (CCMS) provided by the Office of the Executive Secretary have CCRE information electronically transmitted to the Virginia State Police via the "State Police Interface". The use of this interface also satisfies the requirements of [Va. Code § 19.2-310.2:1](#) to notify the Department of Forensic Science of the final disposition of criminal proceedings. [6 VAC 40-40-110](#)

#### Adjudications of Incapacity

If an order is entered adjudicating a person incapacitated or restoring such person to capacity the clerk will certify and forward forthwith a copy of such order to the Exchange. [Va. Code § 37.2-1014](#)

#### Sex Offender Registry

Every person convicted on or after July 1, 1994, including juveniles tried and convicted in the circuit court pursuant to [Va. Code § 16.1-269.1](#), whether sentenced as an adult or juvenile, of an offense set forth in Va. Code § 19.1-902 and every juvenile found delinquent of an offense for which registration is required under subsection G of § [9.1-902](#) shall register and reregister with the [Department of State Police](#). Every person found not guilty by reason of insanity on or after July 1, 2007, of an offense set forth in [Va. Code § 9.1-902](#) shall register and reregister as required. Every person serving a sentence of confinement on or after July 1, 1994, for a conviction of an offense set forth in [Va. Code § 9.1-902](#) shall register and reregister as required. Every person under community supervision as defined by § [53.1-1](#) or any similar form of supervision under the laws of the United States or

any political subdivision thereof, on or after July 1, 1994, resulting from a conviction of an offense set forth in § [9.1-902](#) shall register and reregister as required.

Every person found not guilty by reason of insanity on or after July 1, 2007, of an offense set forth in [Va. Code § 9.1-902](#) shall register and reregister as required.

Every person in the custody of the Commissioner of the [Virginia Department of Behavioral and Developmental Services](#), or on conditional release on or after July 1, 2007, because of a finding of not guilty by reason of insanity of an offense set forth in § [9.1-902](#) shall register and reregister as required.

Unless a specific effective date is otherwise provided, all provisions of the Sex Offender and Crimes Against Minors Registry Act shall apply retroactively.

The court shall order the person to provide to the local law-enforcement agency of the county or city all information required by the State Police for inclusion in the Registry.

The court is required to immediately remand persons convicted of these offenses to the custody of the local law enforcement agency for the purpose of obtaining the person's fingerprints and photographs. See form CC-1391, Order of Remand - Sex Offender and Crimes Against Minors Registry. The court shall remand the person to the custody of the local law-enforcement agency for the purpose of obtaining the person's fingerprints and photographs of a type and kind specified by the State Police for inclusion in the Registry. The local law-enforcement agency shall forward to the State Police all the necessary registration information within seven days of the date of sentencing.

Clerks are to make the report of conviction and the offense on the CCRE report to the registry within seven days of sentencing. [Va. Code § 19.2-390 \(C\)](#).

#### Abstract of Conviction

The clerk must prepare an abstract of the record to the Commissioner of the [Department of Motor Vehicles](#) within eighteen days after conviction or final judgment when:

- a person is convicted of a charge described in subdivision 1 or 2 of [Va. Code §§ 46.2-382](#) or [46.2-382.1](#), or
- a person forfeits bail or collateral or other deposit to secure the defendant's appearance on the charges, unless the conviction has been set aside or the forfeiture vacated, or
- a court assigns a defendant to a driver education program or alcohol treatment or rehabilitation program, or both such programs, as authorized by [Va. Code § 18.2-271.1](#), or
- compliance with the court's probation order is accepted by the court in lieu of a conviction under [Va. Code § 18.2-266](#) or the requirements specified in [Va. Code § 18.2-271](#) as provided in [Va. Code § 18.2-271.1](#), or
- there is rendered a judgment for damages against a person as described in [§ 46.2-382](#), every district court or clerk of a circuit court shall forward an abstract of the record to the Commissioner within 18 days after such conviction, failure or refusal to pay, forfeiture, assignment, or acceptance, and in the case of civil judgments, on the request of the judgment creditor or his attorney, within 30 days after judgment has become final. No abstract of the record in a district court shall be forwarded to the Commissioner unless the period allowed for an appeal has elapsed and no appeal has been perfected. On or after July 1, 2013, in the event that a conviction or adjudication has been nullified by separate order of the court, the clerk shall forward to the Commissioner an abstract of that record.

Clerks using the Circuit Case Management System (CCMS) provided by the Office of the Executive Secretary have the abstracts of conviction information transmitted electronically to the Division of Motor Vehicles via the "DMV Interface". [Va. Code § 46.2-383](#).

The information which must be included in the abstract of conviction is set out in [Va. Code § 46.2-386](#).

An amended abstract of conviction should be prepared and sent to DMV to report:

- correction of errors in the original abstracts;
- the court's verdict on rehearing a case after the original abstract has been sent, including any changes in the sentence or revocation of a suspended sentence; and
- On or after July 1, 2013, a conviction or adjudication has been nullified by separate order of the court, the clerk shall forward to the Commissioner an abstract of that record.

#### Entry into Virginia Alcohol Safety Action Program (Form DC-265, Restricted Drivers' License Order and Entry Into Alcohol Safety Action Program)

This order is prepared by the clerk in all cases in which the defendant has been convicted of driving while intoxicated pursuant to [Va. Code § 18.2-266](#) (motor vehicles) and the court, as part of the case disposition, has ordered the defendant to enroll in the Virginia Alcohol Safety Action Program (VASAP).

The form consists of two orders:

1. An order for the defendant to enroll in VASAP; and
  2. An order restricting the defendant's operator's license setting out the terms and conditions of the restrictions.
- [Va. Code §18.2-271](#). Consecutive Suspension of License Privilege. Any suspension of driving privilege for driving while intoxicated shall run consecutively with any other court-ordered period of suspension for driving while intoxicated or for underage driving with a blood alcohol concentration of 0.02 percent or more. DMV shall advise defendant regarding suspension dates and if necessary, advise the defendant regarding the need for an amended restricted operator's license. If ROL dates are invalid, DMV will provide a detailed letter including the recalculated dates of restriction. The defendant will need to return to the 2nd convicting court for an amended ROL.
  - [Va. Code §46.2-398.1](#). Issuance of restricted driver's privilege to out-of-state licensees. When the operator of any motor vehicle who is not licensed to drive in Virginia, but who has a valid driver's license from another jurisdiction, is convicted in Virginia of any violation for which license suspension and issuance of a restricted driving privilege in Virginia upon the same conditions as if the person held a valid Virginia license. The court order, and any writing or communication setting forth the person's restricted

privilege, shall include clear language indicating that the person is not a licensed Virginia driver.

After the form has been prepared by the clerk and signed by the judge, a copy of the form order is issued to the defendant and to the clerk who sends a copy to VASAP. The clerk also sends a copy to [DMV](#) and retains the original for the court's records. The terms and conditions contained in the form order should be the same as those contained in the court's sentencing order. The form order is designed to implement the court's sentencing order since the defendant must carry the form order when driving.

#### Entry into Alcohol Rehabilitation Program (Boat) (Form DC-358, Entry Into Alcohol Rehabilitation Program (Boat))

This form order is prepared by the clerk in all cases in which the defendant has been convicted of operating a motorboat or watercraft while intoxicated pursuant to [Va. Code § 29.1-738](#) and the court has ordered the defendant to enroll in VASAP. The form is similar to Form DC-265, Restricted Drivers' License Order and Entry Into Alcohol Safety Action Program for motor vehicles. After the clerk has prepared the form order and the judge has signed it, the clerk distributes the original to the defendant, a copy to VASAP and the [Department of Wildlife Resources](#), and retains one copy for court records. The terms and conditions contained in this form order should be the same as those contained in the court's sentencing order. The form order is designed to implement the court's sentencing order since the defendant must carry the form order when operating the watercraft.

#### Acknowledgment of Suspension or Revocation of Driver's License (Form CC-1379, Acknowledgment of Suspension or Revocation of Driver's License/Order and Notice of Deferred Payment or Installment Payments)

This form should be prepared in all traffic cases in which the defendant's operator's or chauffeur's license is suspended or revoked by the court. While submission of the form to the [Department of Motor Vehicles](#) (DMV) is not required by statute, doing so is an excellent means of notifying DMV that the defendant has acknowledged revocation or suspension of his/her license and to document the defendant's receipt of the notice of suspension (a necessary element of the offense of driving with a suspended or revoked license). A copy of the form should be accompanied by the Abstract of Conviction. The original acknowledgement form should be retained by the court.

Operator's License Reinstatement Form (Form DC-30, Commonwealth of Virginia Driver's License Reinstatement Form)

This form documents payment of fines and costs after an out-of-state defendant's driving privileges have been suspended by the court (or by DMV as an administrative action) for refusal or failure to pay any fines, costs, restitution, or other monetary penalties. While the form is intended for use by DMV, it is completed and mailed or delivered by the clerk to the defendant, with the receipt for payment of fines and costs. The defendant then presents the form and receipt to [DMV](#) to obtain reinstatement of his/her license if all other conditions for reinstatement have been met.

**Note:** As of July 1, 2019, a DC-30 is no longer required for defendants residing within the Commonwealth of Virginia. As of July 1, 2021, DMV lifted driver's license suspensions for non-payment of fines/costs for non-residents.

Notice of Conviction to State Board of Health Professions

When any person licensed, certified or registered by a board within the [Virginia Department of Health Professions](#) is convicted of any felony or has been adjudged incapacitated, the clerk is required to promptly report such conviction or adjudication to the Department when the clerk is aware that the individual is a licensed health professional. [Va. Code § 54.1-2409](#). Notice may be provided by sending a certified copy of the order of conviction with a brief cover letter.

Occupations regulated by boards within the Virginia Department of Health Professions are listed in [Title 54.1](#), Subtitle III ([§ 54.1-2400](#), et seq).

Notice of Hunting/Trapping License Revocation to Department of Wildlife Resources

When any person having a hunting or trapping license is convicted of recklessly handling a firearm in hunting, trapping or pursuing game and the court, as part of the disposition, revokes such license or the privilege to hunt or trap, the clerk must send the revoked license or notice of the revocation of such person's privilege and the length of the revocation imposed to the [Department of Wildlife Resources](#). [Va. Code § 18.2-56.1\(C\)](#). Such notice may be provided by sending a certified copy of the court's order with the license or notice and a brief cover letter.

Notice to Board of Dentistry

Upon the entry of an order convicting a person of any felony or any crime involving moral turpitude, and known by such clerk to be licensed under Chapter 27 of 54.1, the clerk of the court shall cause a copy of such order to

be forwarded to the [Virginia Board of Dentistry](#). [Va. Code § 54.1-2706](#).

#### Notice to Board of Medicine

Upon the entry of an order convicting a person of any felony or any misdemeanor involving a controlled substance, substance abuse or an act of moral turpitude, the clerk is required to report such conviction to the Department when the clerk is aware that the individual is a licensed health professional. [Va. Code § 54.1-2909 \(G\)](#). The clerk of the court shall cause a copy of such order to be forwarded to the [Virginia Board of Medicine](#).

#### Notice of Juvenile Disposition [Va. Code § 16.1-305.1](#)

Upon a court's disposition of a proceeding where a juvenile is charged with a crime listed in subsection G of [Va. Code § 16.1-260](#) in which a juvenile is adjudicated delinquent, convicted, found not guilty or the charges are reduced, the clerk of the court in which the disposition is entered shall, within fifteen days of the expiration of the appeal period, if there has been no notice of an appeal, provide written notice of the disposition ordered by the court, including the nature of the offense upon which the disposition was based, to the superintendent of the school division in which the child is enrolled at the time of the disposition or, if he is not then enrolled in school, the division in which he was enrolled at the time of the offense.

If the court defers disposition, or the charges are *nolle prosequi*, withdrawn, or dismissed the clerk shall, within fifteen days of such action, provide written notice of such action to the superintendent of the school division in which the child is enrolled at such time or, if he is not then enrolled in school, the division in which he was enrolled at the time of the offense.

If charges are withdrawn in intake or handled informally without a court disposition, the intake officer shall, within fifteen days of such action, provide written notification of the action to the superintendent of the school division in which the child is enrolled at that time or, if he is not then enrolled in school, the division in which he was enrolled at the time of the offense.

#### Notice of Juvenile Disposition [Va. Code § 16.1-309.1](#)

A clerk of the court shall report to the Bureau of Immigration and Customs Enforcement of the U.S. Department of Homeland Security a juvenile who has been detained in a secure facility but only upon an adjudication of delinquency or finding of guilt for a violent juvenile felony and when there is evidence established by the court that the juvenile is in the United States

illegally. See [Other Agency Reporting – Miscellaneous Manual](#)

### Monthly Caseload Report of Criminal Cases

Statistical information on court activity is submitted monthly to the Office of the Executive Secretary (OES) of the Supreme Court of Virginia. Courts using the Case Management System have their reports transmitted automatically and electronically. Courts not on the CMS system use output from their systems to transmit this information. [Va. Code §§ 17.1-221](#) and [17.1-222](#).

The report captures information relating to:

- methods of commencement and disposition of criminal cases;
- the use of juries;
- the age of cases exiting the system; and
- the number of defendants whose cases were initiated.

Such statistics are used to assist in the determination of the need for additional judgeships, changes to judicial circuit and district boundaries, and the filling of vacancies within courts. They are also used to determine the impact of pending legislation. The report must be submitted within fifteen days from the end of each calendar month. Failure to file a report may result in a fine not to exceed \$ 50. The reports are currently being automatically submitted to OES through the Case Management System. Amended reports should clearly marked AMENDED and forwarded to the Department of Judicial Planning.

### Disposal of Evidence

At the conclusion of a criminal case, the court may wish to dispose of items filed or deposited with the clerk's office in connection with the case such as drugs, drug paraphernalia, and weapons. Many clerks' offices are not adequately equipped to store dangerous substances and weapons safely and securely. The clerk should advise the judge of the existence of items stored by the clerk's office and request instruction as to appropriate disposal measures after the time for filing an appeal from the final judgment in a case has expired, or after the parties have exhausted all appellate remedies.

Upon request of the clerk, a judge may order a law-enforcement agency to take custody of or maintain custody of controlled substances and related paraphernalia used or to be used in a criminal prosecution. [Va. Code § 19.2-386.25](#).



[Virginia Code § 19.2-270.4](#) sets out the general provisions relating to destruction or return of exhibits received into evidence during the course of the trial. Under that section, the court may order the destruction of evidentiary exhibits unless an objection with sufficient cause is raised. In some instances, notice of intent to destruct is required. The order authorizing destruction of the evidence may require that photographs be made of all exhibits subject to destruction and that the photographs be labeled for future identification. The court may also order the return of any exhibits to their rightful owners, after notice to the attorneys for the Commonwealth and defense. The owner must acknowledge in a sworn affidavit, to be filed with the case records, that he/she has taken possession of the exhibits. In all cases concluded prior to July 1, 2005, the notice requirement in this section shall not apply.

[Virginia Code § 19.2-270.4 \(D\)](#) provides for the donation of exhibits used in criminal prosecutions to non-profit organizations. The non-profit organization may petition the court for the donation of exhibits at any point after the expiration of the filing of an appeal from the final judgment of the court if no appeal taken or if appeal taken, at any time after exhaustion of all appellate remedies and prior to the destruction of such exhibits.

Notice to the defendant of destruction or donation is not required of certain exhibits used at trial, such as drugs, weapons, or exhibits deemed contraband or paraphernalia. Depending on the type of item that has been deposited with the clerk's office, other statutory provisions for disposal, destruction, or return may apply. The applicable code section should be consulted for details regarding the disposition of such items.

[Virginia Code § 19.2-270.4](#) allows the court to order the immediate destruction, donation, or return of evidence where a defendant is found not guilty.

[Virginia Code § 19.2-270.4:1](#) provides for the storage, preservation and retention of human biological evidence in felony cases and states:

“Notwithstanding any provision of law or rule of court, upon motion of a person convicted of a felony or his attorney of record to the circuit court that entered the judgment for the offense, the court shall order the storage, preservation, and retention of specifically identified human biological evidence or representative samples collected or obtained in the case for a period of up to 15 years from the time of conviction, unless the court determines, in its discretion, that the evidence should be retained for a longer period of time. . .”

For a thorough discussion of disposition of evidence received before, during, or after trial, see “Pre-Trial - Receipt, Maintenance And Storage Of Evidence”.

## Storage of Case Records

The circuit court clerk is responsible for ensuring that the case file and the documents contained therein are in proper order and that the file is stored in accordance with sound record management practices. Records are generally open to public inspection; however, the clerk should require that such inspection take place in the clerk's office under the supervision of court staff.

In preparing the case file for storage with other ended cases, the clerk must ensure that special provisions for limiting access to certain portions of case files are followed. Records which must be sealed include presentence reports, post-sentence reports, and victim impact statements. [Va. Code §§ 19.2-299 \(A\)](#) and [19.2-299.1](#).

## Procedures to Record and Dispose of Case

The procedures listed below should serve as a quick reference and checklist to ensure that the clerk has accomplished all of the tasks necessary to properly record and dispose of a case:

- Step 1** Judge issues order to release bond if the defendant has no bail violations. If defendant posted a cash bond, the court may apply to fine and costs only if defendant agreed in writing to apply such bonds to fines and costs.

**Comments:** If a cash bond was posted and the defendant met the terms and conditions of bail, the clerk refunds the bond, if so ordered, by check made payable to the actual payor of the bond. This may be the defendant or another party. The recipient of the refund should be required to present (in person) his/her receipt verifying payment of the bond and at least one form of identification, preferably a driver's license. If the payor does not come forward to claim a refund, the clerk retains the bond money for twelve months from the final disposition date and then transmits the money to the Division of Unclaimed Property.

- Step 2** Clerk or judge's secretary prepares final orders, Sentencing Guideline Worksheet (prepared by probation officer), and any departure from sentencing guidelines explanation, obtains judge's signature.

**Comments:** Sentencing Guideline Worksheets become part of the court record and are not to be sealed unless ordered by the court. [.Va. Code § 19.2-298.01](#).

- Step 3** Clerk processes/images order and enters and indexes in order book;

clerk places original in case file.

**Step 4** Clerk provides certified copy of final order to the following, if appropriate:

- defendant or his/her attorney
- Department of Corrections
- local jail facility
- mental health facility

Clerk also provides certified copy of final order, original copy of the discretionary sentencing guidelines worksheet, and any departure explanation and forwards, within five days to: Va. Criminal Sentencing Commission.

**Comments:** The facility in which the defendant is to be confined should be furnished a certified copy of the order without delay. For information concerning special sentencing programs, see “Trial/Post-Trial – Sentencing and Deferred Adjudication Dispositions.”

**Step 5** Clerk computes fines, penalties, fees, costs, and restitution imposed and, if directed by the court, advises defendant of same; clerk records amounts to be taxed against defendant.

**Comments:** The judge should advise the defendant of his/her financial obligations immediately after sentencing and before the defendant leaves the courtroom. Interest must be assessed on unpaid fines and costs beginning on the 181st day after final judgment, except where the accused is making full and timely payments on a deferred or installment plan pursuant to an order of the court or while the defendant is incarcerated. The defendant may also move for waiver of interest owed during a period of incarceration. [Va. Code § 19.2-353.5](#).

Fines, penalties, fees, costs and restitution to be taxed against the defendant are generally recorded directly on the case file folder or on a printed costs sheet maintained in the defendant’s file. For a sample of the printed costs sheet, see Form CC-1350, Fines/Penalties/Fees/Costs Assessment Sheet. See also “Schedule of Fees and Costs” appendix in this manual which outlines what can be taxed against a criminal defendant.

**Procedure Decision:** Does the defendant petition the court to make payment on a deferred or installment basis? If no, GO TO STEP 9; If yes, GO TO STEP 7.

**Comments:** The judge, or the clerk (if allowed by court), sets the terms of payment (payment amount, whether paid weekly, monthly). Payment terms must be set out in the court order.

**Step 7** Clerk obtains defendant's social security number, if not previously provided.

**Comment:** The social security number should be obtained in all cases if it becomes necessary to use the Set-Off Debt Collection Act to recover monies owed the court.

**Step 8** Clerk may assist the accused in preparing the petition for deferred or installment payment; clerk provides form to judge for completion of the order portion of the form; clerk distributes copies of executed form to defense counsel and other appropriate parties and places original in case file; if partial payment is made on the day of the proceeding, clerk proceeds to STEP 9; otherwise, clerk proceeds to STEP 10.

**Comments:** See Form CC-1378, [Petition for Deferred or Installment Payment of Fine and Costs](#). Since this form is to be completed and signed by the defendant, his/her attorney, and the judge, the form should be prepared and executed by all parties immediately after sentencing and before leaving the courtroom.

**Step 9** Clerk collects any fine, costs and restitution owed by the defendant; clerk issues receipt for monies collected and marks "paid" on costs sheet or on file cover in accordance with local practice.

**Comments:** If fines and costs are not paid in a traffic case, and no payment order is entered, see STEP 11 regarding suspension or revocation of defendant's driver's license.

**Step 10** Clerk enters in the Judgment Lien Docket Book any fine, costs, and restitution imposed. [Va. Code §§ 8.01-446; 19.2-340](#); see Attorney General Opinion to Wilson, dated 7/19/77 (1977-78, page 64); *Required By Statute To Docket In Judgment Lien Book All Fines Imposed By Circuit Court*.

**Comments:** Restitution shall be docketed in the name of the Commonwealth, or a locality if applicable, on behalf of the victim, as provided in [Va. Code § 8.01-446](#) when ordered by the court unless the victim named in the order of restitution requests, in writing, that the

order be docketed in the name of the victim. An order of restitution docketed in the name of the victim shall be enforced by the victim as a civil judgment. The clerk shall record and disburse restitution payments as provided in subsection D of § 19.2-305.1 and subsection A of § 19.2-354 in accordance with orders of restitution or judgments for restitution docketed in the name of the Commonwealth or a locality. At any time before a judgment for restitution docketed in the name of the Commonwealth or a locality is satisfied, the court shall, at the written request of the victim, order the circuit court clerk to execute and docket an assignment of the judgment to the victim. The circuit court clerk shall remove from its automated financial system the amount of unpaid restitution upon docketing the assignment. A district court may order the circuit court clerk to execute and docket an assignment of the judgment to the victim, and the district court clerk shall remove from its automated financial system the amount of unpaid restitution upon sending the order to the circuit court clerk. If the victim requests that the order of restitution be docketed in the name of the victim or that a judgment for restitution previously docketed in the name of the Commonwealth or a locality be assigned to the victim, the victim shall provide to the court an address where the defendant can mail payment for the amount due and such address shall not be confidential. When a judgment for restitution previously docketed in the name of the Commonwealth or a locality is ordered to be assigned to the victim, the court shall provide notice of such order to the defendant at the defendant's last known address and shall include the mailing address provided by the victim. [Va. Code § 19.2-305.2](#)

**Note:** If restitution is ordered to be paid by the defendant to a victim of crime who can no longer be identified, the clerk shall deposit any such restitution to the [Criminal Injuries Compensation Fund](#) for the benefit of victims. [Va. Code § 19.2-305.1](#).

A defendant who has been sentenced to confinement or granted time to pay, or who has noted an appeal is still considered to be a judgment debtor. Monies owed by such defendant should therefore be recorded as such in the Judgment Lien Docket Book.

Costs associated with cases dismissed pursuant to [Va. Code § 19.2-151](#) (satisfaction and discharge), [Va. Code § 19.2-303.2](#) (first-time property offense), [Va. Code § 18.2-251](#) (first-time drug offense), and dismissal on referral to traffic school should also be docketed.

See also Attorney General Opinion to Davila, dated 11/23/77 (1977-78, page 95); COSTS - May Be Assessed Against Defendant When Deferred Judgment Matters Are Dismissed After Conforming To [§ 18.2-251](#).

Fines, costs, and restitution should be docketed after completion of the reports in STEP 11 for which defendant's signature or a receipt is required.

- Step 11** Clerk prepares and submits the following forms where applicable:
- CCRE report to [Virginia Department of State Police](#); clerk retains copy for case file.
  - Abstract of Conviction/Amended Abstract of Conviction to [DMV](#); clerk retains copy for case file.
  - Report of convictions under [Va. Code §§ 18.2-57.2](#) and [18.2-57.3](#). Assault and battery of spouse or partner by military personnel.
  - Entry into VASAP form to defendant; copies to VASAP and DMV; clerk retains copy for case file.
  - Entry into Alcohol Rehabilitation (Boat) form to defendant; copies to VASAP and [Department of Wildlife Resources](#); clerk retains copy for case file.
  - Ignition Interlock system. Mandatory as condition of RDL for a conviction of [Va. Code §§ 18.2-51.4](#) or [18.2-266](#). The court may also impose the condition of remote alcohol monitoring in addition to an ignition interlock system. [Va. Code § 18.2-270.1](#).
  - Acknowledgement of Suspension or Revocation of Driver's License form copies to DMV and defendant; clerk retains original for case file.
  - Notice of conviction to [Virginia Department of Health Professions, Board of Medicine](#) or [Board of Dentistry](#); clerk retains copy of cover letter for case file.
  - Notice of revocation of hunting or trapping license to [Department of Wildlife Resources](#); clerk retains copy of cover letter.

**Comments:** See Form SP-180 - CENTRAL CRIMINAL RECORDS EXCHANGE for a sample of the CCRE report and instruction for completion.

Clerk may also use CCRE Interface. See Form ABSTRACT OF CONVICTION for a sample of the abstract of conviction and instructions for completion.

Clerk may also use DMV Interface. See CMS report CR41. Clerk will forward to U.S. Armed Forces family advocacy representative. [Va. Code § 18.2-57.4](#). See Form DC-265, Entry Into Alcohol Safety Action Program. See Form DC-358, Entry Into Alcohol Rehabilitation Program (Boat). See Form CC-1379, Acknowledgement Of Suspension Or Revocation Of Driver's License And Order.

If operator's license is reinstated, clerk provides reinstatement form to defendant; clerk retains copy for case file.

A certified copy of the court's order with a brief cover letter constitutes notice.

A certified copy of the court's order with a brief cover letter is sufficient notice. If applicable, attach license.

**Step 12** Clerk seals presentence and post-sentence reports and victim impact statement, if applicable. [Va. Code §§ 19.2-299 \(A\)](#) and [19.2-299.1](#).

**Note:** Sentencing guideline worksheets are not to be sealed unless ordered by court. [Va. Code § 19.2-298.01](#).

**Comments:** Any investigation report, including a presentence report, shall be made available by court order and shall be sealed upon final order of the Court. [Virginia Code §§ 9.1-177.1](#) and [19.2-299](#) identifies who has access upon request.

For procedures regarding sealing, see applicable procedures in this chapter, Expungement.

**Step 13** Clerk certifies DC-40, [Lists of Allowances](#) after obtaining judge's signature on same and submits to the Office of the Executive Secretary; clerk retains copy for administrative purposes.

**Comments:** The Office of the Executive Secretary provides a [Chart of Allowances](#) to each clerk's office in January or July, as needed. The lists of allowances are prepared from the information contained therein.

Once the judge signs or certifies the list of allowances, the list must be submitted to the Office of the Executive Secretary forthwith after certification; however, it should be submitted as soon as the judge certifies the lists to expedite claims processing and prevent backlogs.

**Step 14** Clerk reports case as concluded on the Monthly Caseload Report of Criminal Cases; if submitting manually, preparer and clerk sign and date report; clerk submits report to Office of the Executive Secretary; clerk retains copy of report for administrative purposes.

**Comments:** See form DC-861, Monthly Caseload Report. See also Circuit Case Management System User's Guide published by the Office of the Executive Secretary.

**Step 15** Clerk notifies judge of stored evidence or exhibits associated with the case and requests instructions as to disposal.

**Comments:** For some items, the court may order disposal or storage immediately; other items may be ordered destroyed or otherwise disposed of after a period of time. The clerk should set up a tickler system to note the specific date.

The clerk and trial judge should establish a schedule and procedures for disposal of routine items based on the type of evidence and the nature of the case.

See "Pre-Trial - Receipt, Maintenance And Storage Of Evidence."

## Court of Appeals of Virginia (Part Five A)

The Court of Appeals of Virginia is the intermediate appellate court.

### Jurisdiction

1. Any final conviction in a circuit court in criminal and traffic matters. [Va. Code § 17.1-406](#)

#### Exceptions

- Any final decision on an application for a concealed weapons permit,
  - Any final order involving involuntary treatment of prisoners pursuant to [Va. Code § 53.1-40.1](#),
  - Any final order for declaratory or injunctive relief under [Va. Code § 57-2.02](#).
2. Civil and criminal contempt matters ([Va. Code § 19.2-318](#));



3. Pre-trial and post-trial bail matters ([Va. Code §§ 19.2-124](#) and [19.2-319](#), respectively); and
4. Certain preliminary rulings in felony cases when requested by the Commonwealth ([Va. Code § 19.2-398](#))

A defendant is not entitled to appeal a criminal or traffic infraction to the Court of Appeals simply by asking for it (appeal as a matter of right); while any defendant may file a petition for appeal, the Court of Appeals has discretion to deny or grant the petition. [Va. Code § 17.1-406](#)

### Discretionary Appeals

For the purposes of this manual, the Court of Appeals has the discretion to grant an appeal from any final order involving involuntary treatment of prisoners pursuant to [Va. Code § 53.1-40.1](#).

When an appeal to the Court of Appeals is a discretionary one, the aggrieved party must file a petition of appeal with the clerk of the Court of Appeals. The petition must be filed not more than forty days after the filing of the record with the Court of Appeals. At the time the petition is filed, a copy shall be mailed or delivered to opposing counsel. ([Rule 5A:12](#)).

The petition shall contain the questions presented. At the end thereof, appellant shall include a certificate stating the date of mailing or delivery of a copy to opposing counsel and whether or not he desires to state orally the reasons his/her petition should be granted.

Appellee may file a brief in opposition to granting the appeal with the clerk of the Court of Appeals. It must be filed within twenty-one days after the petition for appeal is served on appellee's counsel. A reply brief may be filed by appellant in lieu of oral argument. ([Rule 5A:13](#)).

### Security for the Appeal

[Rule 5A:17](#) and [Va. Code § 8.01-676.1](#)

#### Form of Bond

All security for appeal required under [Va. Code § 8.01-676.1](#) shall substantially conform to the forms set forth in the Appendix of Part Five A.

#### Amount of Bond

A party filing a notice of an appeal of right to the Court of Appeals shall simultaneously file an appeal bond or irrevocable letter of credit in the

penalty of \$500, or such sum as the trial court may require, conditioned upon paying all costs and fees incurred in the Court of Appeals and the Supreme Court if it takes cognizance of the claim. If the appellant wishes suspension of execution, the security shall also be conditioned and shall be in such sum as the trial court may require. [Va. Code § 8.01-676.1](#)

#### Filing the Appeal Bond

An appellant whose petition for appeal is granted by the Court of Appeals or the Supreme Court shall (if he has not done so) within 15 days from the date of the Certificate of Appeal file an appeal bond or irrevocable letter of credit in the same penalty as provided in subsection A, conditioned on the payment of all damages, costs, and fees incurred in the Court of Appeals and in the Supreme Court.

#### Security for suspension of execution

An appellant who wishes execution of the judgment or award from which an appeal is sought to be suspended during the appeal shall, file an appeal bond or irrevocable letter of credit conditioned upon the performance or satisfaction of the judgment and payment of all damages incurred in consequence of such suspension, and execution shall be suspended upon the filing of such security and the timely prosecution of such appeal.

#### By whom executed

Each bond filed shall be executed by a party or another on his behalf, and by surety approved by the clerk of the court from which appeal is sought, or by the clerk of the Supreme Court or the clerk of the Court of Appeals if the bond is ordered by such Court. Any letter of credit posted as security for an appeal shall be in a form acceptable to the clerk of the court from which appeal is sought, or by the clerk of the Supreme Court or the Court of Appeals if the security is ordered by such court. The letter of credit shall be from a bank incorporated or authorized to conduct banking business under the laws of this Commonwealth or authorized to do business in this Commonwealth under the banking laws of the United States, or a federally insured savings institution located in this Commonwealth.

#### Indigents

No person who is an indigent shall be required to post security for an appeal bond.

## Procedures for Processing an Appeal to Court of Appeals

The procedures that follow are intended to provide the circuit court clerk with a reference for processing a criminal defendant's appeal to the Court of Appeals. These procedures should be followed in conjunction with the applicable [Rules of Court](#) and statutory provisions governing the appellate process.

- Step 1** Written notice of appeal is filed with the circuit court clerk. The notice of appeal shall contain a statement whether any transcript or statement of facts, testimony, and other incidents of the case will be filed. The notice of appeal must also contain a certificate stating:
- The names and addresses of all appellants and appellees, the name, Virginia State Bar number, mailing address, telephone number (and extension), facsimile number, and e-mail address of counsel for each party, and the same information for any party not represented by counsel;
  - that a copy of the notice has been delivered or mailed to all opposing counsel;
  - in a criminal case, a statement whether counsel for defendant has been appointed or privately retained; and
  - that if a transcript is to be filed, a copy has been ordered from the court reporter. [Rule 5A:6\(d\)](#).

**Note:** Upon request, the Clerk is required to cause a transcript to be prepared of the trial and any other court proceedings by the person authorized by the court to prepare transcripts. [Va. Code §§ 17.1-408](#)

**Comments:** Notice of intent to appeal is often given orally at the close of the defendant's sentencing hearing; however, written notice of appeal must be filed with the circuit court clerk within thirty days after the entry of final judgment or other appealable order or decree, or within any specified extension thereof granted by the Court. A notice of appeal filed after the court announces a decision or ruling-but before the entry of such judgment or order-is treated as filed on the date of and after the entry. [Rule 5A:6](#).

**Note:** If oral intention to appeal is given prior to the filing of the written notice of appeal, the clerk may proceed to STEPS 3, 4, 5, 6 and 7, as appropriate.

- Step 2** Clerk notes on written notice of appeal the date of filing.

**Comments:** The circuit court clerk is not authorized to reject a written notice of appeal on the grounds that it was not filed in a timely manner. Such decision rests with the appellate court.

The \$50 filing fee required by [Rule 5A:6\(c\)](#) for the clerk of the Court of Appeals is mailed directly to the clerk of the appellate Court by the defendant with a copy of the notice of appeal. If check is received by the clerk of the trial court, it should be submitted to the clerk of the Court of Appeals. Failure to pay the filing fee will subject the appeal to dismissal. Matters of indigence are determined by the trial court.

**Step 3**

Circuit court judge postpones execution of sentence and, if applicable, sets bail, postpones execution of the judgment and orders a suspending bond.

**Note:** If bail denied at trial court level, the Court of Appeals may review the decision by the trial court to deny bail and overruled such denial. The appellate court shall either set bail or remand the matter to circuit court for such further action regarding bail as the appellate court directs.

Clerk will receive Order from appellate court and may set a Bond Hearing.

**Comments:** The judge may postpone execution of the sentence in accordance with [Va. Code § 19.2-319](#). The defendant may be released from custody if the judge sets bail and the defendant must meet the terms of such bail. While the judge is required to set bail in misdemeanor cases, he/she has discretion to set bail in all other cases. If bail is denied, the reason therefor must be stated in the record. [Va. Code § 19.2-319](#).

Collection of the judgment (fines, costs or other monetary penalties) may be postponed at the judge's discretion. [Va. Code § 19.2-319](#). However, such action is rarely necessary since there is generally no effort to execute on a judgment during the pendency of an appeal. If the trial judge elects to postpone execution of the judgment, he/she may do so at any time prior to the transmission of the case record to the appellate court.

Clerk would enter appealed status in FMS. There must be a stay of execution in the order to halt execution and suspension of license by [DMV](#) See Circuit Case Management System and Financial Accounting System User's Guides for further information.

**Step 4**

Clerk notes on the case summary sheet in the case file, when applicable:

- the date execution of the sentence was postponed
- the amount and terms of bail set by the judge, or

- if bail was denied, the reasons therefor
- the date execution of the judgment was postponed
- and the amount of the suspending bond as established by the judge

**Comments:** If bail previously posted continues without change, no new bail documents need to be executed. If a change in bail is ordered, *see* this manual, “Pre-Trial – Bond.” A suspending bond would only be set when the judge postpones execution of a monetary judgment; however, such bonds are rarely instituted in criminal cases.

- Step 5** Clerk prepares court order reflecting actions taken by the judge as documented in STEP 4. Order may be a separate order or part of the sentencing order.
- Step 6** Clerk obtains judge’s signature on order; clerk images order and indexes and enters order in Criminal Order Book; clerk places original order in case file.
- Step 7** Clerk processes bail or suspending bond, if executed; clerk issues a receipt to the payor if a cash bond is posted; clerk images/scans bond into the Bond Book and files original bond in the case file; clerk provides copy of executed bond to payor or surety, unless bond was prepared by the defendant’s counsel or surety.

**Comments:** *See* form DC-330, Recognizance. For a suspending bond form, clerk uses Bond Form 2 in the Appendix to Parts 5 of the [Rules of Court](#). *See* also [Va. Code § 8.01-676.1 \(C\),\(F\) and \(I\)](#).

If the defendant or a third party posts a cash bond, clerk receipts the bond money under revenue code 502.

An irrevocable letter of credit may be posted as security. Such letter of credit is prepared by a financial institution, not the clerk. The clerk should not make a copy of the letter of credit but should note in the file that the letter of credit has been placed in the court safe. The original letter of credit is not placed in the bond book or case file since the original is needed if collection becomes necessary.

If the bond is to be secured other than by cash, *see* “Pre-Trial – Bond” for instructions on determining adequacy of surety. While these instructions pertain to bail bonds, the same procedures would apply to suspending

bonds as well.

**Step 8** Clerk assembles the record on appeal; pursuant to [Rules](#) 5A:7 and 5A:10

**Comments:** The clerk should begin preparing the record as soon as possible following receipt of the written notice of appeal

An abbreviated record may be prepared only in appeals to the Court of Appeals. Such record is prepared by counsel and filed with the circuit court clerk after being signed by all counsel and the trial judge. [Rule](#) 5A:10(c).

**Step 9** Clerk records the Transcript or Statement of Facts. [Rule](#) 5A:8.

**Comments:** The parties have up to sixty days in which to file a transcript and fifty-five days in which to file a written statement of facts. The deadline may be extended by the Court of Appeals. [Rule](#) 5A:8(a) Such documents are often the last to be incorporated in the record on appeal, and the clerk should not wait for such documents to be filed before compiling the record

The transcript of any proceeding is part of the record when it is filed in the office of the clerk of the trial court within 60 days after entry of the final judgment. Counsel for the appellant shall give written notice to all other counsel of the date the transcript was filed and file a copy of the notice with the trial court. A certificate shall be appended to the notice stating that a copy has been mailed to or service was accepted by all other counsel. The Court of Appeals has authority to extend the time for filing transcripts.

In lieu of a transcript, a party may file a written statement of facts, testimony, and other incidents of the case which becomes a part of the record when filed in the circuit court clerk's office within fifty-five days from the date of entry of the final judgment. [Rule](#) 5A:8(c)(1). The Court of Appeals has authority to extend the time for filing written statements.

A copy of the statement is mailed by counsel to opposing counsel, with a notice that the statement will be presented to the trial judge no earlier than 15 nor later than 20 days after the filing. The clerk shall give prompt notice to the trial judge of the filing of any objections to the statement. [Rule](#) 5A:8(c) and (d).

The statement is signed by the trial judge and filed in the office of the clerk of the trial court. Other "incidents of the case" includes motions, proffers, objections, and rulings of the trial court on any issue a party intends to assign as error or otherwise address on appeal.

**Step 10** Once a notice of appeal has been filed, the circuit court clerk is responsible for preparing the record on appeal and transmitting it to the Court of Appeals. For making up, certifying and transmitting the original record pursuant to the [Rules of the Supreme Court](#), the circuit court clerk does not receive a fee for preparing the record in a criminal case if one of the “fixed fees” is assessed. [Va. Code § 17.1-275\(A\)\(32\)](#).

Contents of the Record:

- original papers and exhibits;
- each jury instruction marked “given” or “refused”, initialed by the judge;
- each exhibit offered into evidence, whether admitted or not, initialed by the trial judge; (or any photograph thereof as authorized by [§ 19.2-70.4\(A\)&\(C\)](#). (All non-documentary exhibits shall be tagged or labeled in the trial court and the tag or label initialed by the judge.);
- original draft or copy of each order entered by the trial court;
- opinion or memorandum decision rendered by the trial judge;
- any deposition or discovery material offered into evidence, whether admitted or rejected;
- Exhibits other than those filed with pleadings may be included in a separate volume or envelope, certified by the clerk of the trial court, including a descriptive list of exhibits contained therein. Any exhibit that cannot be placed in a volume or envelope should be identified by a tag.
- the transcript of written statement of facts, and other incidents of the case, the official videotape of any proceeding; and
- the notice of appeal.

Omitted exhibits shall be noted on the descriptive list of exhibits.

[Rule 5A:10](#)

The clerk of the trial court shall prepare the record as soon as possible after notice of appeal is filed. In the event of multiple appeals in the same case or in cases tried together, only one record need be prepared and transmitted.

Order of record:

- front cover setting forth the name of the court and the short style of the case;
- a table of contents listing each paper included in the record and the page on which it begins;
- each paper constituting a part of the record in chronological order; and
- the certificate of the clerk of the trial court that the foregoing constitutes the true and complete record, except omitted exhibits.
- Each page is numbered at the bottom.

Transcripts, depositions and reports may be included in separate volumes identified by the clerk of the trial court if referred to in the table of contents and at the appropriate place in the record.

Exhibits other than those filed with pleadings may be included in a separate volume or envelope certified by the clerk of the trial court, including on its cover or inside a descriptive list of exhibits contained therein. Any exhibit that cannot be placed in a volume or envelope shall be identified by a tag.

The omitted exhibits shall be noted on the descriptive list of exhibits. Upon motion of counsel the appellate Court may order the trial court to transmit any prohibited exhibits.

Any transcript or statement of facts that the clerk of the trial court deems not a part of the record because of untimely filing shall be certified as such and transmitted with the record.

An abbreviated record, consisting of only the pleadings, facts, testimony and other incidents of the case essential to the issues on appeal, may be prepared by all counsel with the approval of the trial court. The Court of Appeals may consider other parts of the record as it deems necessary. [Rule 5A:10\(c\)](#).

**Comments:** The Clerk shall not transmit the following types of exhibits unless requested by the appellate court:

- drugs
- guns and other weapons
- ammunition
- blood vials and other bio-hazard type materials
- money
- jewelry
- articles of clothing
- bulky items such as large graphs and maps



[Rule 5A:10](#)

- Step 11** Transmitting the record:  
The clerk retains the record for 21 days after the notice of appeal has been filed.

If the notice states a transcript will be filed, retain the record for 21 days after the filing of the transcript or the statement.

If objections are made to the transcript or writing, retain the record 5 days after the objection is acted upon by the trial judge.

If requested in writing by counsel for all parties, transmit the record sooner

**Comments:** Whether requested or not, the clerk shall transmit the record to the appellate court within 90 days after entry of judgment or appealable order. Failure to transmit the record shall not be a ground for dismissal of the appeal by the appellate court. [Rule 5A:10](#)

- Step 12** When the mandate is issued by the appellate Court, the clerk of the Court shall return the record to the clerk of the trial court.

### Subsequent Events: Decision, Costs and Mandate

Not all cases that are appealed to the Court of Appeals are granted a hearing. In cases in which an appeal is denied and the appellant does not petition the court for a rehearing, the clerk of the Court of Appeals, within 35 days after entry of the order of denial, will transmit the case record, with the original order of denial of the petition for appeal, to the circuit court clerk. The order is then entered by the circuit court clerk in the Criminal Order Book.

In cases in which the petition for rehearing is granted, the Court of Appeals will retain the case record but promptly transmit the original order granting the petition for appeal to the circuit court clerk for entry in the Criminal Order Book. A certificate of appeal is attached to the order granting the appeal.

Cases that are granted an appeal will process through the Court of Appeals, and ultimately be heard by the appellate Court.

The final decision from an appealed case is called a “mandate.” The mandate may affirm or reverse the ruling of the trial court, or it may dismiss the appeal. An appeal of a conviction or sentence in which the trial court’s decision is reversed results in dismissal of the charges, a new trial, or re-sentencing. The Clerk of the Court of Appeals forwards its mandate to the clerk of the circuit court from which the appeal proceeded. If the judgment order is supported by an opinion, a certified copy of the opinion is sent with the mandate.

The clerk should carefully review the mandate to determine his/her duties with respect to the case. The clerk should also consult with the Commonwealth’s Attorney and trial judge as to any further action necessary in the case.

### Dismissal

The vast majority of appeals end in dismissal or with the trial court’s ruling being affirmed. In either case, the circuit court clerk’s remaining responsibilities in the case are essentially limited to recording the appellate court’s final order or mandate, merging the case record returned by the appellate court into the circuit court case file and proceeding with normal case closing procedures. *See Case Closing, this chapter.*

### Appeal Granted

Where an appeal ends in reversal of the trial court’s decision, the circuit court clerk’s administrative responsibilities will vary.

- Nullifying Conviction – In cases where the appellate court reverses and enters final judgment as to a conviction (its mandate nullifies the defendant's conviction and orders his/her release), the case ends, and the circuit court clerk may proceed with normal case closing procedures. Appropriate parties such as attorneys of record, probation officers, etc., should be notified of the dismissal of the case, and the CCMS should be updated appropriately. If the defendant is incarcerated, DOC should be notified immediately, and if the conviction had been of such a nature that the defendant was required to register as a sex offender, that agency should be notified as well.
- Remand for New Trial – If the appellate court reverses and remands the case for a new trial, the circuit court clerk's administrative responsibilities in the case will be similar to those associated with a new case, unless the Commonwealth elects not to proceed with further prosecution and moves for dismissal.
- Remand for Rehearing, etc. – Where the appellate court has remanded a case for re-sentencing or rehearing (redetermination of bail or other pre-trial or trial matter), the clerk's responsibilities in the case will likewise continue.

### Procedures for Cost Assessment – Court of Appeals

In the interest of uniformity, effective 07/01/02, the Attorney General's Office will no longer offer criminal appellants the choice of paying their appellate costs to the Attorney General's Office or the Circuit Court. All appellants will be advised to pay appellate costs to the Circuit Court.

- Step 1** Review all orders, mandates, DC-40's, AND, itemized statements of costs (if any) from the appellate courts for assessment of court appointed counsel fees and their expenses, other attorney costs (Attorney General), printing costs, and damages.

#### **COURT OF APPEALS**

Items typically received include:

- **Order** ("red-stamped") authorizing payment of attorney fees prior to issuance of final mandate;
- **Itemized Statement of Costs** – lists ONLY requested reimbursement of Commonwealth costs by Attorney General; and
- **Final Mandate** – May include Damages, COA fees and approval of sum uncertain costs and/or expenses.

**From Court Appointed Counsel:**

- DC-40 with attachments as specified in Step 8.

**Note:** Separate DC-40's may be submitted at different times.

**SUPREME COURT**

Items typically received include:

- ***Final Mandate*** – May include Damages, COA fees and approval of sum uncertain costs and/or expenses. Processed copy of DC-40 for brief printing submitted to S.C. during pendency of appeal.
- ***Itemized Statement of Costs*** – lists ONLY requested reimbursement of Commonwealth costs by Attorney General.

**From Court Appointed Counsel:**

- DC-40 with attachments as specified in Step 8.

**Note:** Separate DC-40's may be submitted at different times.

**Comments:**

- Some assessments are listed in the order with others on a statement of costs or DC-40.
- Some are written out using numeric characters while others are written out in alpha characters.
- Examine the date of each order to avoid assessing the same fee twice.
- Assess fees twice when ordered by different courts or on different days. (Example # 1: \$30 damages may be assessed by the Court of Appeals and again by the Supreme Court. The total damages entered into FAS would be \$60. Example # 2: It is common to have multiple allowances for court appointed counsel. Check for different order dates.)
- Court appointed counsel may seek reimbursement on a DC-40 for certain expenses whose dollar amount is not specified by order or statement of costs. Be sure to add these expenses to the FMS account.

[Va. Code §19.2-326](#) In any felony or misdemeanor case wherein the judge of the circuit court, from the affidavit of the defendant or any other evidence certifies that the defendant is financially unable to pay

his attorneys' fees, costs and expenses incident to an appeal, the court to which an appeal is taken shall order the payment of such attorneys' fees in an amount not less than \$300, costs or necessary expenses of such attorneys in an amount deemed reasonable by the court, by the Commonwealth out of the appropriation for criminal charges. If the conviction is upheld on appeal, the attorney's fees, costs and necessary expenses of such attorney paid by the Commonwealth under the provisions hereof shall be assessed against the defendant.

**Step 2** Add any additional TRIAL costs that had not been received by the circuit court at the time the original FAS account was established. The following account codes should be used in FAS:

- 120--Court appointed counsel/expenses
- 113--Transcripts (part of trial costs rather than appeal costs since preparation/payment ordered by circuit court)

Processing DC-40's and docketing/amending judgment related to additional TRIAL costs should also be performed at this time.

**Comments:** Bills for court appointed attorney fees for the trial in circuit court as well as for preparing the appeal transcript are often received after the initial case set up in FAS. These should be added in FAS upon receipt.

**DO NOT** post interest to the account prior to adding these additional TRIAL costs. **Note:** [Va. Code § 19.2-353.5](#) says "No interest shall accrue on any fine or costs imposed in a criminal case or in a case involving a traffic infraction (i) for a period of 180 days following the date of the final judgment imposing such fine or costs; (ii) during any period the defendant is incarcerated; and (iii) for a period of 180 days following the date of the defendant's release from incarceration if the sentence includes an active term of incarceration." For TRIAL COSTS, the date of final judgment is the circuit court trial date and not from the time the cost is incurred.

- **DO NOT** change the interest date in FAS. Confinement periods are entered in the "Interest" tab of FAS for proper calculation of interest accrual. If no incarceration period, the 180-day calculation will be based on the trial date. Any changes to due-on date should be made in accordance with the respective policy of each court.

**Step 3** Wait until all additional charges and expenses are received from the appellate court(s) and perform one FAS update for all APPELLATE

costs/damages. The following account codes should be used in FAS:

- 120--Court appointed counsel/expenses
- 162--Other attorney charges (Atty. Gen.) ([Rule](#) 5:37 & [Rule](#) 5A:30)
- 113--Briefs
- 113—Damages

Special Note on Free Copies: An indigent defendant is entitled to a free copy of his trial transcript to perfect an appeal. An indigent defendant, however, is not entitled to a copy of a trial transcript at public expense, even though the transcript is already in existence, for the purpose of combing the record in the hope of discovering some error. Circuit court, and not clerk, must make specific finding that indigent defendant has demonstrated particularized need for free copy of his trial transcript. Funds expended for preparation of transcript for indigent defendant may be reimbursed pursuant to circuit court order specifically providing for such payment. Indigent defendant previously provided with copy of arrest warrant, indictments and conviction orders is not entitled to additional copies. Circuit court clerk may not waive fees for copying document previously furnished to indigent defendant at no charge. *See Attorney General Opinion to Worthington dated 10/30/01 (2001, page 115); Circuit court, and not clerk, must make specific finding that indigent defendant has demonstrated particularized need for free copy of his trial transcript. Funds expended for preparation of transcript for indigent defendant may be reimbursed pursuant to circuit court order specifically providing for such payment. Indigent defendant previously provided with copy of arrest warrant, indictments and conviction orders is not entitled to additional copies. Circuit court clerk may not waive fees for copying document previously furnished to indigent defendant at no charge.*

**Comments:** Costs in an unsuccessful appeal become add-on trial costs. No statute or rule directs courts to treat trial and appellate costs as two different obligations of the defendant. During the pendency of the appeal, the court may use the additional information screen to list various fees which will be added to the FAS account once the appeal is denied or the trial court judgment is affirmed.

If you are unsure if you have received notification of all appellate costs, you may want to wait until the appellate court has returned the record to the trial court and examine the record. Appellate costs should be entered in FAS after receiving the order denying the appeal or affirming the circuit court's decision:

POST INTEREST to the account PRIOR to adding APPELLATE costs if **account is subject to interest**. (Do not calculate interest when defendant is incarcerated or where a stay was ordered or where a defendant is complying with a payment agreement.)

**Note:** [Va. Code § 19.2-353.5](#) states costs accrue interest 180 days “from the date of the final judgment imposing such fines or costs.”

For APPEAL COSTS, the date of final judgment is the date of the final order from the appellate court and not from the time the cost is incurred. See Circuit Financial Accounting System User’s Guide, “Procedures”

Delete APL from the FAS action code, if applicable.

- Step 4** No additional notice of costs is due the defendant if the court has had the defendant sign CC-1351, Clerk’s Notice of Fines and Costs or CC-1379, Acknowledgment of Suspension or Revocation of Driver’s License/Order and Notice of Deferred Payment or Installment Payments at the time of his original conviction or mailed a DC-225, Notice to Pay to the defendant within two business days of original conviction.

**Comments:** There is no statutory duty to inform the defendant of the amount of trial costs owed, or to inform the defendant when additional costs are later added. The notice provided by forms CC-1351, CC-1379, and DC-225 are required to inform the defendant of what will happen if he fails to pay. **While there is no prohibition from providing notice of added costs, this is left up to the discretion of the particular court, as well as any decision to require a new partial payment plan.** [Va. Code §§ 46.2-395 \(C\)](#) and [19.2-354 \(D\)](#).

- Step 5** Docket the judgment for the additional costs and record the order(s) and/or mandate(s) in the Criminal Order Book. [Va. Code § 8.01-685](#).

**Comments:** There is no requirement to docket appellate costs arising from the Court of Appeals separately from those appellate costs arising from the Supreme Court.

- Step 6** Examine the FAS account and file documents for evidence of the posting of CASH BONDS.

**Comments:** Security that is acceptable to the clerk of the court from which appeal is sought, or the clerk of the appellate court, if the bond is set by the Court of Appeals or Supreme Court, may include personal or corporate surety or letter of credit rather than cash.

Most appellate bonds will not involve payment of cash to the clerk of the trial court. Pursuant to [Va. Code § 8.01-676.1 \(N\)](#), “no person who is an indigent shall be required to post security for an appeal bond.”

There are 3 types of bonds the court may be holding:

- **COST BOND FOR APPEAL**-A bond conditioned upon paying all costs and fees incurred in the Court of Appeals or Supreme Court. In matters where the appeal is a matter of right, the \$500 bond is posted simultaneously with the notice of appeal. In matters where the appeal is by petition, the bond must be posted within fifteen days after the date of certificate of awarded appeal.
- **SUSPENSION BOND FOR APPEAL**-A bond given to secure suspension of execution of the court’s judgment conditioned upon the performance or satisfaction of the judgment and payment of all damages incurred in consequence of such suspension. The bond is posted with the trial court when ordered by the trial court.
- **BAIL BOND FOR APPEAL**-A bond that permits release pending appeal and is set by the trial court.

**Step 7** Determine the types and amounts of any cash bonds being held by the court and what action should be taken.

**BAIL BOND:** Refund unless person posting it has given written approval to apply to costs or court has ordered it forfeited under the provisions of [Va. Code § 19.2-143](#).

In instances where bail is applied to costs, it is suggested that the court enter an order showing the disposition of these funds. Send a copy of the court’s order to the defendant and his surety, if applicable. (The order can also address matters such as the issuance of a *capias* or establishing a date for the defendant to report to jail, if applicable.)

**COST BOND:** Do NOT refund until all APPEAL COSTS including damages, printing costs of briefs, Attorney General’s fee, expenses (noted on DC-40’s) of court appointed counsel, and appointed counsel fee allowed by the Court of Appeals and/or Supreme Court order or mandate are paid



in full.

In instances where a cost bond is applied to costs, a court order is needed to establish the disposition of the bond. Send a copy of the court's order to the defendant and his surety, if applicable. (The order can also address matters like the issuance of a *capias* or establishing a date for the defendant to report to jail, if applicable.)

**SUSPENDING BOND:** Do NOT refund the bond until there is "satisfaction of the judgment and payment of all damages incurred in consequence of the suspension." In instances where a suspending bond is applied to costs, a court order is needed to establish the disposition of the bond. Send a copy of the court's order to the defendant and his surety, if applicable. (The order can also address matters like the issuance of a *capias* or establishing a date for the defendant to report to jail, if applicable.) **Refer to the comments on this step pertaining to processing COST bonds.**

Process DC-40's related to appeal. **DC-40's for appeals must be signed by counsel and the clerk. Documentation such as invoices, proof of payment, and copies of the court order or certificate of award must be attached.**

**Comments:** If the defendant abides by the conditions of his bail, the BAIL BOND must be refunded to the person who posted it unless the person who posted it gives approval to apply the money to costs. [Va. Code § 19.2-121](#). Refer to the back of the DC-330, Recognizance for a place for the surety to give consent to apply the bail bond to costs. **If bond to be refunded**, see FAS Procedure for Refunding Bond. If permission is given to keep the bond, see FAS Procedure for Applying a Bond to Costs. Both procedures are found in the *Circuit Accounting Management System User's Guide*, "Procedures."

It is suggested that the clerk contact the person who posted the bond and seek his approval in writing to apply the bond to the costs of appeal. If attempts are unsuccessful in securing approval, ask the court to consider if the bond should be applied to appellate costs or disposed of in some other manner.

**Note:** [Virginia Code § 8.01-676.1](#) prescribes the conditions of COST BONDS and SUSPENDING BONDS. The bond forms which are found in the [Rules](#) of Court 5 and 5A Appendix of Forms specify that upon payment of the obligation described in each bond type that the

obligation shall be void, otherwise to remain in full force and virtue. There are no procedures prescribed by the code for defaulting these types of bonds, so disposition of such bonds are within the discretion of the court.

Effective 4/15/02, court appointed attorneys will prepare their own DC-40's to request their fee and expenses such as mileage, postage, phone calls, and brief printing (if initially paid by counsel.)

**Step 8** Upon completion, send DC-40s to the Accounts Payable Department for processing.

These DC-40s may contain allowances for expenses which are allowed by appellate court order but whose amount has not been established by court order. Be sure to add these expenses with other costs itemized by order to the unsuccessful appellant's account.

**Comments:** If counsel has not advanced the costs of brief printing and wishes payment to be made directly to the printing company at the conclusion of the case, a separate DC-40 should be completed and signed by the attorney and clerk and submitted at the same time as any DC-40 requesting attorney fee.

**SUPREME COURT NOTES:** Effective 4/15/02, if reimbursement for printing expenses is sought while a case is still pending in the Supreme Court, the attorney shall submit DC-40 for printing expenses only directly to the Supreme Court.

Copies of DC-40's processed by the Supreme Court will be attached to the final order in the case to notify the Circuit Court that reimbursement has been made and as a means to notify the Circuit Court of brief printing costs that should be added to the defendant's account.

After a case is concluded by the Supreme Court, reimbursement for printing will be handled by the Circuit Court.

**COURT OF APPEALS NOTES:** Effective 04/15/02, at the same time that the Court of Appeals mails the Circuit Court the red stamped order that authorizes the payment of court appointed attorney fees, the Court of Appeals will also send an award certificate to the attorney with instructions to prepare a DC-40 and submit it to the Circuit Court for processing. (This process is only utilized in Court of Appeals cases.)

The DC-40 must be signed the attorney and the clerk.

The Court of Appeals will not process any DC-40's for brief-printing, whether a case is pending before that court or not.

## Supreme Court of Virginia

The Supreme Court of Virginia is the highest court in the Commonwealth and is frequently referred to as the state court of last resort.

### Jurisdiction

1. Felony cases on appeal from the Court of Appeals. ([Va. Code §17.1-411](#))
2. Misdemeanor cases on appeal from the Court of Appeals in which incarceration has been imposed. ([Va. Code §17.1-411](#))
3. Bail matters on appeal from the Court of Appeals. ([Va. Code §19.2-124](#))
4. Any decision from the Court of Appeals involving a substantial constitutional question or matter of significant precedential value ([Va. Code §17.1-410\(B\)](#))
5. Selected cases certified due to imperative public importance or heavy caseload in the Court of Appeals. ([Va. Code §17.1-409](#))
6. A final decision, judgment or order of a circuit court involving a petition for a writ of habeas corpus. ([Va. Code §17.1-310](#))
7. Jurisdiction to issue writs of mandamus and prohibition to circuit and district courts and to the State Corporation Commission. ([Va. Code §17.1-309](#))

### Security for the Appeal

In discretionary criminal appeals in which the defendant is not indigent, the Supreme Court will order a costs bond with security, generally in the amount of \$500, upon awarding the appeal. [Va. Code § 8.01-676.1 \(B\)](#).

Any bond ordered by the Supreme Court must be filed and processed in the circuit court clerk's office.

All bonds required pursuant to [Va. Code § 8.01-676.1](#) must conform to the bond forms set forth in the Appendix to Part 5 of the Rules of Court. [Rule 5:24\(a\)](#).

## Procedures for Processing an Appeal to Supreme Court of Virginia

The procedures that follow are intended to provide the circuit court clerk with a reference for processing a criminal defendant's appeal to the Supreme Court of Virginia. These procedures should be followed in conjunction with the applicable [Rules of Court](#) and statutory provisions governing the appellate process.

**Step 1** Written notice of appeal is filed with the circuit court clerk. The notice of appeal shall contain a statement whether any transcript or statement of facts, testimony, and other incidents of the case will be filed. The notice of appeal must also contain a certificate stating:

- The names and addresses of all appellants and appellees, the name, Virginia State Bar number, mailing address, telephone number (and extension), facsimile number, and e-mail address of counsel for each party, and the same information for any party not represented by counsel;
- that a copy of the notice has been delivered or mailed to all opposing counsel;
- in a criminal case, a statement whether counsel for defendant has been appointed or privately retained; and
- that if a transcript is to be filed, a copy has been ordered from the court reporter. [Rule](#) 5:9(b)

**Note:** Upon request, the Clerk is required to cause a transcript to be prepared of the trial and any other court proceedings by the person authorized by the court to prepare transcripts. [Va. Code §§ 17.1-408](#)

Whenever two or more cases were tried together in the trial court, one notice of appeal and one record may be used to bring all such cases before the Supreme Court even though such cases were not consolidated by formal order [Rule](#) 5:9(c)

**Comments:** Notice of intent to appeal is often given orally at the close of the defendant's sentencing hearing; however, written notice of appeal must be filed with the circuit court clerk within thirty days after the entry of final judgment or other appealable order or decree, or within any specified extension thereof granted by the Court. A notice of appeal filed after the court announces a decision or ruling-but before the entry of such judgment or order-is treated as filed on the date of and after the entry. [Rule](#) 5:9(a). **Note:** If oral intention to appeal is given prior to the filing of the written notice of appeal, the clerk may proceed to STEPS 3, 4, 5, 6 and 7, as appropriate.

**Step 2** Clerk notes on written notice of appeal the date of filing.

**Comments:** The circuit court clerk is not authorized to reject a written notice of appeal on the grounds that it was not filed in a timely manner. Such decision rests with the appellate court.

**Step 3** Circuit court judge postpones execution of sentence and, if applicable, sets bail, postpones execution of the judgment and orders a suspending bond. **Note:** If bail denied at trial court level, the Court of Appeals may review the decision by the trial court to deny bail and overruled such denial. The appellate court shall either set bail or remand the matter to circuit court for such further action regarding bail as the appellate court directs.

Clerk will receive Order from appellate court and may set a Bond Hearing.

**Comments:** The judge may postpone execution of the sentence in accordance with [Va. Code § 19.2-319](#). The defendant may be released from custody if the judge sets bail and the defendant must meet the terms of such bail. While the judge is required to set bail in misdemeanor cases, he/she has discretion to set bail in all other cases. If bail is denied, the reason therefor must be stated in the record. [Va. Code § 19.2-319](#).

Collection of the judgment (fines, costs or other monetary penalties) may be postponed at the judge's discretion. [Va. Code § 19.2-319](#). However, such action is rarely necessary since there is generally no effort to execute on a judgment during the pendency of an appeal. If the trial judge elects to postpone execution of the judgment, he/she may do so at any time prior to the transmission of the case record to the appellate court.

Clerk would enter appealed status in FAS. There must be a stay of execution in the order to halt execution and suspension of license by [DMV](#). See Circuit Case Management System and Financial Accounting System User's Guides for further information.

**Step 4** Clerk notes on the case summary sheet in the case file, when applicable:

- the date execution of the sentence was postponed

- the amount and terms of bail set by the judge, or
- if bail was denied, the reasons therefor
- the date execution of the judgment was postponed

and the amount of the suspending bond as established by the judge

**Comments:** If bail previously posted continues without change, no new bail documents need to be executed. If a change in bail is ordered, *see* this manual, “Pre-Trial – Bond.”

A suspending bond would only be set when the judge postpones execution of a monetary judgment; however, such bonds are rarely instituted in criminal cases.

**Step 5** Clerk prepares court order reflecting actions taken by the judge as documented in STEP 4. Order may be a separate order or part of the sentencing order.

**Step 6** Clerk obtains judge’s signature on order; clerk scans order and indexes and enters order in Criminal Order Book; clerk places original order in case file.

**Step 7** Clerk processes bail or suspending bond, if executed; clerk issues a receipt to the payor if a cash bond is posted; clerk images/scans bond into the Bond Book and files original bond in the case file; clerk provides copy of executed bond to payor or surety, unless bond was prepared by the defendant’s counsel or surety.

**Comments:** *See* form DC-330, Recognizance. For a suspending bond form, clerk uses Bond Form 2 in the Appendix to Part 5 of the [Rules of Court](#). *See* also [Va. Code § 8.01-676.1](#).

If the defendant or a third party posts a cash bond, clerk receipts the bond money under revenue code 502.

An irrevocable letter of credit may be posted as security. Such letter of credit is prepared by a financial institution, not the clerk. The clerk should not make a copy of the letter of credit but should note in the file that the letter of credit has been placed in the court safe. The original letter of credit is not placed in the bond book or case file since the original is needed if collection becomes necessary.

If the bond is to be secured other than by cash, *see* “Pre-Trial – Bond”

for instructions on determining adequacy of surety. While these instructions pertain to bail bonds, the same procedures would apply to suspending bonds as well.

**Step 8** Clerk assembles the record on appeal; pursuant to [Rule 5:10](#).

For making up, certifying and transmitting the original record pursuant to the [Rules of the Supreme Court](#), the circuit court clerk does not receive a fee for preparing the record in a criminal case if one of the “fixed fees” is assessed. [Va. Code § 17.1-275\(A\)\(32\)](#).

**Comments:** The clerk should begin preparing the record as soon as possible following receipt of the written notice of appeal. An abbreviated record may be prepared only in appeals to the Court of Appeals. Such record is prepared by counsel and filed with the circuit court clerk after being signed by all counsel and the trial judge.

**Step 9** Clerk records the Transcript or Statement of Facts.

**Comments:** The parties have up to sixty days in which to file a transcript and fifty-five days in which to file a written statement of facts. Such documents are often the last to be incorporated in the record on appeal, and the clerk should not wait for such documents to be filed before compiling the record.

**Step 10** Exhibits other than those filed with pleadings may be included in a separate volume or envelope, certified by the clerk of the trial court, including a descriptive list of exhibits contained therein. Any exhibit that cannot be placed in a volume or envelope should be identified by a tag. Contents of the Record:

- original papers and exhibits;
- each instruction marked “given” or “refused”, initialed by the judge;
- each exhibit offered into evidence, whether admitted or not, initialed by the trial judge; (or any photograph thereof as authorized by § 19.2-70.4(A)&(C). (All non-documentary exhibits shall be tagged or labeled in the trial court and the tag or label initialed by the judge.);
- original draft or copy of each order entered by the trial court;

- opinion or memorandum decision rendered by the trial judge;
- any deposition or discovery material offered into evidence, whether admitted or rejected;
- the transcript of any proceeding or a written statement of facts, testimony, and other incidents of the case when made a part of the record, or the official videotape recording of any proceeding
- the notice of appeal

Omitted exhibits shall be noted on the descriptive list of exhibits.

Order of record:

- front cover setting forth the name of the court and the short style of the case;
- a table of contents listing each paper included in the record and the page on which it begins;
- each paper constituting a part of the record in chronological order; and
- the certificate of the clerk of the trial court that the foregoing constitutes the true and complete record, except omitted exhibits.
- Each page is numbered at the bottom.

Transcripts, depositions and reports may be included in separate volumes identified by the clerk of the trial court if referred to in the table of contents and at the appropriate place in the record.

Any transcript or statement of facts that the clerk of the trial court deems not a part of the record because of untimely filing shall be certified as such and transmitted with the record.

**Comments:** The Clerk shall not transmit the following types of exhibits unless requested by the appellate court:

- drugs
- guns and other weapons
- ammunition
- blood vials and other bio-hazard type materials
- money
- jewelry
- articles of clothing



- bulky items such as large graphs and maps

**Step 11** Transmitting the record:

- The clerk retains the record for 21 days after the notice of appeal has been filed.
- If the notice states a transcript will be filed, retain the record for 21 days after the filing of the transcript or the statement.
- If objections are made to the transcript or writing, retain the record 5 days after the objection is acted upon by the trial judge.
- If requested in writing by counsel for all parties, transmit the record sooner.

**Comments:** Whether requested or not, the clerk shall transmit the record to the appellate court within 90 days after entry of judgment or appealable order. Failure to transmit the record shall not be a ground for dismissal of the appeal by the appellate court.

**Step 12** When the mandate is issued by the appellate Court, the clerk of the Court shall return the record to the clerk of the trial court.

### Subsequent Events: Decision, Costs and Mandate

See Subsequent Events: Decision, Costs and Mandate – Court of Appeals, this chapter.

### Procedures For Cost Assessment

See Procedures for Cost Assessment – Court of Appeals, this chapter

### *Habeas Corpus*

*Habeas corpus* is a Latin phrase meaning “you have the body.” Black’s Law Dictionary 638 (5th ed. 1979). A *habeas corpus* action is a civil suit brought to challenge the legality of the restraint under which a person is held. While *habeas corpus* is a civil, rather than a criminal, proceeding, it is discussed in this manual because it is closely linked to a number of criminal proceedings. A petition for a writ of *habeas corpus* is not a substitute for a direct appeal and concerns only the legality of confinement, not the prisoner’s guilt or innocence.

A writ of *habeas corpus* is available only to a person who is in custody. For purposes of *habeas corpus*, a person is deemed to be in custody when he/she is currently incarcerated or when he/she has been released subject to the control of the parole board, probation officer, or the

court which imposed a suspended sentence. See *Jones v. Cunningham*, 371 U.S. 236 (1973). To obtain a writ of *habeas corpus*, the person allegedly unlawfully imprisoned must file a petition for writ of *habeas corpus*. The petition and the related transactions are handled as a civil proceedings, except as noted below. The form of the petition is provided by [Va. Code § 8.01-655](#), and it must be filed in the court where the original conviction was entered. [Va. Code § 8.01-654 \(B\)\(1\)](#).

Not all petitions will result in a court hearing. If the court finds that the petition for *habeas corpus* is frivolous on its face, or if the court can make a decision on the merits by referring to records of previous judicial proceedings, the court may rule on the petition without a full evidentiary hearing. *Arey v. Peyton*, 209 Va. 370 (1968). See also [Va. Code § 8.01-654 \(B\)\(4\)](#). If a hearing is held, the petitioner and the Commonwealth have an opportunity to present evidence. Prisoners may be subpoenaed to appear pursuant to a writ of *habeas corpus ad testificandum*. See this manual, "Pre-Trial - Witness Summoning."

Court-appointed counsel should be provided to indigent petitioners who request counsel in *habeas corpus* proceedings. For a discussion of appointment of counsel for indigent defendants, see this manual, "Pre-Trial - Right to Counsel."

If the court denies the petition, before or after a hearing, the petitioner will be remanded to custody. If the court grants the petition and issues a writ of *habeas corpus*, the petitioner will be discharged from custody, but the court may suspend execution of its order to allow the Commonwealth to appeal, or to institute a new trial within a specified period of time. If a new trial is ordered, the original criminal case is reopened, and the clerk must put it back on the criminal docket. The court also has authority to admit the petitioner to bail, pending the Commonwealth's appeal or initiation of a new trial. [Va. Code § 8.01-662](#).

The trial court's ruling on a petition for *habeas corpus* is appealable to the Supreme Court of Virginia. [Va. Code § 17.1-406](#). A petition for *habeas corpus* may also be filed in a federal court. Circuit clerks may be required to provide copies of documents to federal courts.

Because *habeas corpus* actions are civil and not criminal in nature, the circuit court clerk, upon receipt of a petition for *habeas corpus*, should consult the procedures contained in the Circuit Court Clerk's Manual - Civil.

## Expungement of Criminal Cases

The Virginia General Assembly has determined that arrest, police, and court records of citizens who are acquitted, or pardoned for unjust convictions can hinder an innocent citizen's ability to obtain employment, an education, and credit. [Va. Code § 19.2-392.1](#). Hence, the Code of Virginia provides for the expungement of such records under certain circumstances.

If a person who is charged with the commission of a crime or any offense defined in Title 18.2 is

(i) acquitted; or when (ii) a *nolle prosequi* is taken, he/she may file a petition with the circuit court requesting expungement. [Va. Code § 19.2-392.2 \(A\)](#). When a person has been granted an absolute pardon for the commission of a crime that he did not commit, the Secretary of the Commonwealth shall forward a copy of the absolute pardon to the circuit court for the county or city the person was convicted. Upon receiving a copy of the absolute pardon, the court shall enter an order requiring expungement of the police and court records, including electronic records, relating to the charge and conviction. The order of expungement shall contain a statement that the expungement is a result of an absolute pardon. [Va. Code § 19.2-392.2\(I\)](#). A person whose name or other identification has been used without authorization by another person who has been charged or arrested under that name or identification may also petition the circuit court for expungement. [Va. Code § 19.2-392.2 \(B\)](#). When a charge is dismissed because the court finds that the person arrested or charged is not the person named in the summons, warrant, indictment, or presentment, the court dismissing the charge shall, upon motion of the person improperly arrested or charged, enter an order requiring expungement of the police and court records relating to the charge. [Va. Code § 19.2-392.2 \(A\)](#).

Any person whose name or other identification has been used without his consent or authorization by another person who has been charged or arrested using such name or identification may file a petition with the court for relief pursuant to [Va. Code § 19.2-392.2](#). A person who has petitioned the court pursuant to [Va. Code § 19.2-392.2](#) as a result of a violation of [Va. Code § 18.2-186.3](#), may submit to the [Attorney General](#) a certified copy of a court order obtained pursuant to [Va. Code § 19.2-392.2](#). The Office of the Attorney General, in cooperation with the [State Police](#), may issue an "Identity Theft Passport" stating that such an order has been submitted. The Office of the Attorney General may provide access to identity theft information to criminal justice agencies and individuals who have submitted a court order pursuant to this section. [Va. Code § 18.2-186.5](#)

The petition requesting expungement must be filed in the circuit court of the city or county in which the case was disposed of. [Va. Code § 19.2-392.2 \(C\)](#). Costs shall be as provided by [Va. Code § 17.1-275](#), but shall not be recoverable against the Commonwealth. If the court enters an order of expungement, the clerk of the court shall refund to the petitioner such costs paid by the petitioner.

A copy of the petition shall be served on the attorney for the Commonwealth of the city or county in which the petition is filed. The attorney for the Commonwealth may file an objection or answer to the petition or may give written notice to the court that he does not object to the petition within 21 days after it is served on him. [Va. Code § 19.2-392.2 \(D\)](#).

If an order of expungement is entered, the clerk shall forward a copy of the order to the [State Police](#) which will direct the manner in which the records are to be removed or expunged.

Any party aggrieved by the decision of the court may file an appeal as provided in civil cases. [Va. Code § 19.2-392.2 \(F\)](#).

Unauthorized disclosure of expunged records constitutes a Class 1 misdemeanor. [Va. Code § 19.2-392.3](#).

Upon receiving a copy of a writ vacating a conviction pursuant to [Va. Code §§ 19.2-327.5](#) or [19.2-327.13](#), the court shall enter an order requiring expungement of the police and court records relating to the charge and conviction. Such order shall contain a statement that the dismissal and expungement are ordered pursuant to [Va. Code § 19.2-392.2](#).

Order of expungement is voidable within three years of entry upon failure to comply with expungement procedures, or if entered contrary to law.

### Expunging Criminal Records

**Step 1** Expungement may be initiated by an appellate court that grants writ of actual innocence, by an absolute pardon from the Governor, or by filing of a petition for Expungement by a defendant. These are civil procedures. See Circuit Court Clerk's Manual – Civil for how to process the various petitions or orders that will come before the court. Court orders expungement of records. **Note:** When petition is filed, petitioner provides copy of petition to a law enforcement agency to obtain fingerprint card to be submitted to CCRE. CCRE will then forward, under seal, petitioner's criminal history, copy of source documents, and the set of fingerprints. [Va. Code § 19.2-392.2 \(E\)](#).

**Note:** Fingerprinting and criminal history record information is not required for an expungement based upon an absolute pardon.

**Step 2** Clerk forwards copy ([Va. Code § 19.2-392.2 \(I\)](#)) of order of expungement, petition, other supporting documents to:

[Virginia State Police](#)  
P.O. Box 27472  
Richmond, VA 23261-7472  
ATTN: Virginia Gunn

**Step 3** Print CMS screens to facilitate re-entry of information into CMS in the event expungement is voided. Place in sealed envelope with record.

**Step 4** If the [Department of Criminal Justice Services](#) directs that the court records be sealed, clerk places all records pertaining to expunged information in an envelope bearing the case number and seals envelope; clerk labels envelope "EXPUNGED RECORD TO BE UNSEALED ONLY BY COURT ORDER."

**Comments:** The petition and order of expungement, as well as related court documents ordered expunged should be placed in the sealed file.

If the information to be expunged is included among other information that has not been expunged on the same form or piece of paper, the clerk must obliterate the expunged information on the original, or retype the original, omitting the expunged information.

**Step 5** Clerk deletes information to be expunged from index to criminal warrants and other indexes. Clerk places criminal warrants in sealed file.

**Step 6** If the expunged information is on a CCRE form, the clerk destroys the criminal history record information. Court will return fingerprint card at the conclusion of the hearing.

**Step 7** If the information to be expunged is maintained in an automated system, the clerk copies the automated record onto an off-line medium (tape, disk, or hard copy). The clerk files the expunged record, in whatever form, as described in STEP 3.

**Comments:** No notification that expunged data exists should be left in normally accessed files.

**Step 8** The clerk files the sealed envelope in a secure location apart from normally accessed files. Note date of expungement order on face of envelope.

**Comments:** The file shall be properly indexed for later retrieval, if required by court order.

**Step 9** After clerk has expunged records as directed, clerk notifies State Police within 60 days of receipt of the request for expungement.

**Comments:** [Virginia State Police](#)

P.O. Box 27472

Richmond, VA 23261-7472

## Expungement Is Voided

**Step 1** Upon receipt of court order voiding the expungement, unseal the record. Using the printed screens from CMS, re-enter case with same information as initially entered.

**Comments:** CMS will not re-transmit criminal case data to State Police as a new charge.

**Step 2** Note in remarks field of the Hearing/Disposition screen the date of expungement and date the expungement was voided.

**Step 3** Re-scan/re-index all court orders.

**Step 4** Send certified copy of order voiding expungement to:

[Virginia State Police](#)

P.O. Box 27472

Richmond, VA 23261-7472

## Disposition of Case Papers in Ended Cases

### Destroy after 10 years, Discretion of Clerk

The circuit court clerk is responsible for the maintenance and eventual destruction of case files. The following cases, ending on or after January 1, 1913 shall be retained for 10 years after conclusion: [Va. Code § 17.1-213](#).

- conditional sales contracts;
- Concealed handgun permit applications;
- Minister appointments;
- Petitions for appointment of trustee;
- Name changes;
- *Nolle prosequi* cases;
- Civil actions voluntarily dismissed, including nonsuits, dismissed as settled, dismissed with or without prejudice, discontinued or dismissed under [Va. Code § 8.01-335](#) and district court appeals dismissed under [Va. Code § 16.1-133](#) prior to 1988;
- Misdemeanor and traffic cases; except those as set out below, including those which were commenced on a felony charge but concluded as misdemeanor
- Suits to enforce a lien;
- Garnishments;
- Executions except those covered in [Va. Code § 8.01-484](#); and
- Miscellaneous oaths and qualifications, but only if the order or oath or qualification is recorded in the appropriate order book.

- Civil cases pertaining to declarations of habitual offender status and full restoration of driving privileges.

### Destroy at Discretion of Clerk/Guidelines

All other records or cases ending on or after January 1, 1913 shall be retained subject to the following guidelines: [Va. Code § 17.1-213](#).

- All civil (not related to real estate) cases files which are not considered by the clerk to have a historical or genealogical significance shall be retained twenty years from the court order date;
- All criminal cases dismissed, including those not a true bill, acquittals, and not guilty verdicts shall be retained ten years from the court order date;
- Criminal case files involving a felony conviction and all criminal case files involving a misdemeanor conviction under [Va. Code §§ 16.1-253.2](#), [18.2-57.2](#), or [18.2-60.4](#) shall be retained (i) 20 years from the sentencing date or (ii) until the sentence term ends, whichever comes later. Case files involving a conviction for a sexually violent offense as defined in [Va. Code § 37.2-900](#), a violent felony as defined in [§17.1-805](#), or an act of violence as defined in [Va. Code § 19.2-297.1](#) shall be retained (a) 50 years from the sentencing date or (b) until the sentence term ends, whichever comes later.

Clerks should also refer to [General Schedule No. 12](#) provided by the [Library of Virginia](#).

Except as provided in subsection A, the clerk of a circuit court may cause (i) any or all papers or documents pertaining to civil and criminal cases; (ii) any unexecuted search warrants and affidavits for unexecuted search warrants, provided at least three years have passed since issued; (iii) any abstracts of judgments; and (iv) original wills, to be destroyed if such records, papers, documents, or wills no longer have administrative, fiscal, historical, or legal value to warrant continued retention, provided such records, papers, or documents have been imaged or converted to an electronic format. Such imaging and microphotographic processes and equipment shall meet state archival microfilm standards pursuant to [Va. Code § 42.1-82](#), or such electronic format shall follow state electronic records guidelines, and such records, papers, or documents so converted shall be placed in conveniently accessible files and provisions made for examining and using same. The clerk shall further provide security negative copies of any such microfilmed materials for storage in The Library of Virginia.

Each agency shall ensure that records created after July 1, 2006 and authorized to be destroyed or discarded are destroyed or discarded in a timely manner...provided, however, such records that contain identifying information as defined in clauses (iii) through (ix), or clause (xii) of subsection C [Va. Code § 18.2-186.3](#), shall be destroyed within six months of the expiration of the records retention period. [Va. Code § 42.1-86.1](#).

