

Chapter 1 - Overview 1-1

- Local Practices/Local Rules/Judicial Preferences..... 1-1
- Criminal Law..... 1-1
- Court Organization and Jurisdictional Distinctions..... 1-1
 - Supreme Court of Virginia..... 1-1
 - Court of Appeals of Virginia 1-2
 - Circuit Courts 1-2
 - District Courts 1-3
- Felonies and Misdemeanors Distinguished 1-3
 - Felonies 1-3
 - Misdemeanors 1-4
 - Other Offenses 1-5
- Participants in The Criminal Justice System..... 1-5
 - Law Enforcement 1-5
 - Prosecutors 1-6
 - Defense Attorneys 1-6
 - Magistrates 1-7
 - Grand Juries 1-8
 - Petit Jury 1-11
 - Judges..... 1-12
 - Sheriffs 1-12
 - Witnesses 1-13
 - Court Reporters 1-13
 - Probation and Parole Officers..... 1-13
 - Virginia Parole Board 1-14
 - Department of Corrections 1-14
 - Clerks Of Circuit Courts 1-14
 - Clerks Of District Courts 1-16
- Prosecutorial Documents, Arrest Documents and Court Orders 1-16
 - Bill Of Indictment 1-16
 - Presentment 1-17
 - Information 1-18
 - Warrant..... 1-18

Summons 1-18

Capias 1-19

Rule To Show Cause 1-20

Court Orders 1-21

Rights of Criminal Defendants 1-22

Double Jeopardy 1-23

Criminal Case Flow - An Overview 1-25

 Complaint/Commission of Offense 1-25

 Arrest 1-26

 Booking 1-27

 Bail 1-27

 Crossover Hearings/Bail Hearings 1-28

 Arraignment Hearing 1-29

 Preliminary Hearing 1-29

 Indictment 1-30

 Pre-Trial Activity 1-31

 Trial 1-31

 Sentencing 1-32

 Appeal 1-33

Chapter 2 - Case Initiation 2-1

 Case Initiation Activities 2-1

 Acknowledging Receipt of Case Papers 2-2

 Case Numbering 2-4

 Indexing 2-5

 Preparation of Case File 2-5

 Processing Indictments and Presentments 2-7

 Processing Informations And Warrants 2-9

 Processing Ancillary Misdemeanors 2-10

 Processing District Court Appeals 2-10

 Procedures for District Court Appeals 2-12

 Appeals of Refusal to Take Blood or Breath Test 2-13

 Procedures for Appeals of District Court Bond Decisions 2-13

 Animal Violations - Civil Offenses 2-15

Appeals of No Photo ID with Concealed Handgun Permit..... 2-16

Appeals of Notary Advertising Legal Advice 2-16

Appeals of Red-Light Photo Monitoring 2-17

Appeals of Failure to Obey Order of Fire Marshall 2-17

Processing Juvenile And Domestic Relations District Court Cases And Appeals 2-18

 Transferred Pursuant To [§ 16.1-269.1\(A\)](#) 2-18

 Certified Pursuant To [§ 16.1-269.1\(B\)](#) 2-18

 Certified Pursuant To [§ 16.1-269.1\(C\)](#) 2-18

 Processing Violations of The Nutrient Trading Act 2-20

Chapter 3 – Caseflow Management..... 3-1

 Term Day Activities 3-1

 Docket Preparation 3-1

 Pre-Court Procedures..... 3-4

 Courtroom Procedures 3-5

 Post-Term Day Activities 3-9

 Issuance of Criminal Process Upon Indictment 3-10

 Calendaring 3-12

 General Provisions 3-12

 Purpose and Types of Calendars..... 3-13

 Calendar Form..... 3-13

 Speedy Trial..... 3-15

 Limitations of Prosecution 3-16

 Limitation on Prosecution of Felony Due to Lapse of Time after Finding of Probable Cause 3-16

 Accused Discharged From Jail If Not Indicted In Time 3-17

 Exclusion of Pretrial Appeal Period..... 3-17

Chapter 4 – Pre-Trial 4-1

 Bond 4-1

 Virginia Statutes on Bail 4-2

 Determining Bail Eligibility and Bail Conditions 4-6

 Determining Adequacy of Surety..... 4-10

 Revocation and Forfeiture 4-15

 Financial Accounting for Processing Bond Forfeitures 4-20

 Bond Refund Requests..... 4-21

Termination of Bail Obligation 4-21

Right To Counsel 4-24

 Court-Appointed Counsel 4-25

Arraignment, Pleas and Plea Bargaining 4-39

 Arraignment 4-39

 Pleas 4-40

 Plea Bargaining 4-41

Appointment Of Substitute Commonwealth’s Attorney 4-44

 Procedures for Appointment of Substitute Commonwealth’s Attorney 4-45

Judge Disqualifications and Disabilities 4-46

 Procedures for Disqualification Process of Judge: 4-47

Change of Venue 4-49

 Receiving Case 4-50

 Transferring the Case 4-51

Amendment to The Charge 4-51

Interpreters 4-53

 Use of Foreign Language Interpreters 4-54

 Role of A Foreign Language Interpreter 4-55

 Certified Language Interpreter Appointments 4-55

 Use of Non-Certified Foreign Language Interpreters 4-56

 Spanish Language Interpreter Certifications Accepted by the Judicial Council of Virginia 4-57

 Clerk’s Role in Securing an Interpreter 4-57

Psychiatric Evaluations and Treatment 4-60

 Mental Health Defense – Time of Offense 4-60

 Emergency Mental Treatment Prior To Trial 4-61

 Evaluations of Competency and Sanity 4-62

 Coordination with DBHDS (Department of Behavioral Health and Developmental Services 4-76

Witness Summoning 4-77

 Requirements and Issuance 4-77

 Incarcerated Witnesses 4-78

 Out-Of-State Witnesses and Proceedings 4-78

 Procedures for Summoning Witnesses 4-79

Jury Selection, Summoning, And Orientation 4-81

Creation of the Master Jury List/It's Use In Jury Management 4-81

Who Liable to Serve as Jurors..... 4-81

Who Cannot Serve as Jurors: 4-81

Who Are Automatically Exempt from Jury Service 4-82

Who May Claim Exemptions/Not Automatically Exempt..... 4-82

Who May Ask To Be Excused During Specific Calendar Periods 4-83

Appointment of Jury Commissioners..... 4-84

Master Jury List 4-84

Term Jury List 4-88

Petit Jury 4-90

Grand Jurors..... 4-91

Jury Orientation 4-92

Voir Dire 4-94

Receipt, Maintenance and Storage Of Evidence..... 4-94

 Subpoenas *duces tecum*..... 4-94

 Subpoena *duces tecum* of Analysis Evidence..... 4-96

 Subpoena *duces tecum* 4-96

 Subpoena *duces tecum* for Financial Records 4-98

 Certificate of Analysis 4-100

 Request for Certificate of Analysis..... 4-101

 Retention of Evidence..... 4-101

Motions 4-102

 Pre-Trial Motions 4-102

 Motions During Trial 4-106

Victim Confidentiality..... 4-107

Preparation for Trial..... 4-109

 Procedures/Preparation - To Be Done Upon Setting of the Trial Date..... 4-109

 Procedures/Preparation - At Least Seven Days before Trial..... 4-110

 Procedures/Preparation - At Least 3 Full Business Days before Trial..... 4-110

 Procedures/Preparation - To Be Done by the day Before Trial 4-110

 Procedures/Preparation - To Be Done by Morning of Trial Date 4-111

 Procedures/Preparation - To Be Done Immediately Prior to Trial 4-111

Chapter 5 - Trial/Post Trial 5-1

| | |
|--|------|
| Bench Trial | 5-1 |
| Jury Trial | 5-6 |
| Right to Trial by Jury..... | 5-6 |
| Eligibility for and Exemption from Jury Service | 5-7 |
| Selection of Trial Jurors..... | 5-7 |
| Procedures for Jury Trial | 5-7 |
| Conduct of Jury Trial | 5-9 |
| Procedures During Trial by Jury | 5-12 |
| Juror Reimbursement | 5-17 |
| Contempt of Court..... | 5-19 |
| Classification | 5-19 |
| Adjudication of Contempt..... | 5-20 |
| Clerk's Responsibility in Contempt Cases | 5-22 |
| Procedures for Contempt Cases | 5-23 |
| Sentencing and Deferred Adjudication Dispositions | 5-26 |
| Sentencing..... | 5-26 |
| Deferred Adjudication Dispositions | 5-34 |
| Procedures for Sentencing/Deferred Disposition..... | 5-37 |
| Procedures for Post-Sentence Hearing on Special Sentencing Programs | 5-42 |
| Revocation of Probation | 5-44 |
| Post-Trial Activities | 5-47 |
| Failure To Surrender | 5-50 |
| Motions | 5-50 |
| Post-Conviction Motions..... | 5-50 |
| Procedures For Processing Motions | 5-50 |
| Guidelines For The Method Of Custody, Transfer And Return Of Evidence..... | 5-57 |
| Instructions for Completion of RFLE for Evidence Storage:..... | 5-58 |
| Writ Of Actual Innocence..... | 5-59 |
| Biological Evidence..... | 5-59 |
| Nonbiological Evidence | 5-60 |
| Bail Hearings – Writs of Actual Innocence | 5-60 |
| Writ Of Coram Nobis/Writ Of Coram Vobis..... | 5-61 |
| Protective Orders In Criminal Cases..... | 5-62 |

Procedures for Issuance of Protective Orders In Criminal Cases:..... 5-62

Protective Order Firearm Certification Contempt..... 5-65

Chapter 6 – Post Sentencing..... 6-1

Overview 6-1

Case Closing 6-3

 Duties upon Final Judgment 6-3

 Collection of Fines, Court Costs and Other Monies 6-4

 Preparation of Reports..... 6-8

 Disposal of Evidence 6-16

 Storage of Case Records 6-18

 Procedures to Record and Dispose of Case 6-18

Court of Appeals of Virginia (Part Five A) 6-24

 Jurisdiction 6-24

 Discretionary Appeals 6-25

 Security for the Appeal 6-25

 Procedures for Processing an Appeal to Court of Appeals 6-26

 Subsequent Events: Decision, Costs and Mandate 6-33

 Procedures for Cost Assessment – Court of Appeals..... 6-34

Supreme Court of Virginia..... 6-42

 Jurisdiction 6-42

 Security for the Appeal 6-43

 Procedures for Processing an Appeal to Supreme Court of Virginia 6-43

 Subsequent Events: Decision, Costs and Mandate 6-48

 Procedures For Cost Assessment..... 6-48

Habeas Corpus 6-48

Expungement of Criminal Cases 6-50

 Expunging Criminal Records..... 6-51

 Expungement Is Voided 6-53

Disposition of Case Papers in Ended Cases..... 6-53

 Destroy after 10 years, Discretion of Clerk..... 6-53

 Destroy at Discretion of Clerk/Guidelines 6-54

Chapter 7 - Miscellaneous Matters..... 7-1

 Search Warrants..... 7-1

| | |
|---|------------|
| Search Warrants for a Tracking Device | 7-3 |
| Pen Register/Wire Trap..... | 7-4 |
| Procedures For Pen Register/Wire Trap | 7-5 |
| Extradition..... | 7-6 |
| Procedures For Extradition Of The Accused | 7-7 |
| Records Management..... | 7-9 |
| Statutory Recordkeeping Duties | 7-9 |
| Creating A Records Management Program | 7-11 |
| Destroying Circuit Court Records..... | 7-14 |
| Generally | 7-15 |
| Disposition Of Ended Case Files, Exhibits, And Discovery Materials | 7-15 |
| Trial Transcripts. Court Reporter Records | 7-16 |
| Special Grand Jury Report..... | 7-17 |
| Special Grand Jury Court Reporter Records..... | 7-17 |
| Multi-Jurisdictional Grand Jury | 7-17 |
| Election Records..... | 7-18 |
| Judgment Abstracts. Executions | 7-18 |
| Lists Of Jurors | 7-18 |
| District Court Papers | 7-18 |
| Appendix A - DC-40 & DC-40A/Interpreters/Court Reporters | A-1 |
| DC-40, List Of Allowances | A-1 |
| DC-40(A), Application For And Approval/Denial For Wavier Of Fee Cap..... | A-1 |
| Chart Of Allowances..... | A-1 |
| Interpreters | A-1 |
| Court Reporter Services | A-1 |
| Appendix B - Criminal Fees and Costs Schedule | B-1 |
| Fees and Costs (A-C)..... | B-1 |
| Abandoned Vehicle Costs | B-1 |
| Add-On Fees/Costs..... | B-1 |
| Appellant Costs | B-3 |
| ASAP - Alcohol Safety Action Program Fee | B-3 |
| Bad Check/Credit Card Fee | B-4 |
| Blood Test Fee..... | B-4 |

| | |
|---|------|
| Boating Education Civil Penalty | B-8 |
| Bond Forfeiture | B-8 |
| Certificate of Analysis Fee | B-9 |
| Child Safety Restraint Device Penalty | B-9 |
| Cigarettes: Tax-Paid Contraband Cigarettes | B-10 |
| Clerk's Processing Fee (District Court Clerk) | B-10 |
| Computer Analysis Fee | B-11 |
| Concealed Handgun Permit | B-11 |
| Confiscated Monies/Property | B-12 |
| Court Appointed Attorney Costs | B-12 |
| Courthouse Construction Fee (CHCF) | B-15 |
| Courthouse Maintenance Fund Fee (CHMF) | B-15 |
| Courthouse Security Fund (CHSF) | B-16 |
| Court Reporter Costs | B-16 |
| Criminal Injury Compensation Fund Fee (CICF) | B-17 |
| Criminal Justice Training Academy Fund | B-18 |
| Fees and Costs (D-J) | B-18 |
| DNA Analysis Fee | B-18 |
| Driver Improvement Clinic Fee | B-19 |
| Drug Analysis (Forensic Lab) Costs | B-19 |
| Drug Enforcement Jurisdiction Fund (DEJF) Fee | B-20 |
| Drug Offender Assessment Fund (DOAF) | B-20 |
| DUI Fee | B-21 |
| Electronic Summons (E-Citation) | B-21 |
| Electronic Summons (Virginia State Police) | B-21 |
| Extradition Costs | B-22 |
| Failure to Appear Fee | B-22 |
| Failure to Pay Fare | B-22 |
| Highway Litter | B-23 |
| Forfeitures: Other than Bond | B-23 |
| Game Replacement | B-23 |
| Global Positioning System (GPS) | B-24 |
| Habeas Corpus | B-24 |

CIRCUIT COURT CLERKS' MANUAL - CRIMINAL

TABLE OF CONTENTS

PAGE x

HIV, Hepatitis B or C Blood Test.....B-24

Ignition Interlock Fee/Remote Alcohol Monitoring DeviceB-25

Increase Rate Fee B-25

Interest on JudgmentsB-26

Internet Crimes against Children FeeB-26

Interpreter Fee.....B-27

Investigator Fee B-27

Jail Admission FeeB-28

Jury CostsB-29

Fees and Costs (L-Z) B-30

 Legal Aid Services Fund.....B-30

 Liquidated Damages/Overweight ViolationsB-30

 Medical Costs for Gathering Evidence.....B-31

 Methamphetamine Site Cleanup.....B-31

 Out-Of-State Prisoner Costs (Agreement on Detainers).....B-32

 Pen Register, Wire Trap or Tracing Device Costs.....B-32

 Psychiatric Evaluation Costs.....B-32

 Public Defender CostsB-33

 Restitution.....B-34

 Sentencing (Supervision) Fee.....B-35

 Suppression CostsB-35

 Transcript Fees.....B-35

 Toll Roads Penalties – Failure to Pay Toll/HOT Lane ViolationsB-35

 Transportation Trust FundB-36

 Trauma Center FundB-36

 Virginia Crime Victim Witness Fund (CVWF)B-37

 Virginia Stormwater Management FundB-37

 Weighing Costs.....B-37

 Weighing FeeB-38

 Witness FeesB-38

Appendix C - Fee Schedule C-1

Appendix D - Records Retention and Disposition Schedule.....D-1

Appendix E - Manual Updates E-1

Appendix F - Sealing Court Records/Confidentiality Considerations..... F-1

Glossary..... **1**

A..... 1

B..... 2

C..... 2

D..... 4

E..... 5

F..... 5

G..... 5

H..... 6

I..... 6

J..... 6

L..... 7

M..... 7

N..... 7

O..... 8

P..... 8

R..... 10

S..... 10

T..... 12

V..... 12

W..... 13

Index **i**