## Volume 12

## PART I. LAWYER'S ENTRY INTO THE CRIMINAL CASE

### CHAPTER 1. RIGHT TO COUNSEL

§ 101	Constitutional	provisions
8 101	Constitutional	provisions

- § 102 Washington state statutes and court rules
- § 103 Scope and nature of right to counsel
- § 104 Scope and nature of right to counsel—Police investigation
- § 105 Scope and nature of right of counsel—Grand jury
- § 106 Scope and nature of right to counsel—Arrest
- § 107 Scope and nature of right to counsel—Preliminary appearance/arraignment
- § 108 Scope and nature of right to counsel—Sentencing and post-conviction proceedings
- § 109 Appointment of counsel
- § 110 Appointment systems
- § 111 Waiver of right to counsel
- § 112 Right to pro se representation
- § 113 Nature and quality of assistance
- § 114 Ethical considerations
- § 115 Joint representation of codefendants
- § 116 Other counsel and withdrawal
- § 117 Forms

## CHAPTER 2. INITIAL CONTACT

- § 201 In general
- § 202 Notice to appointed counsel
- § 203 The "one" telephone call
- § 204 Contact at the jail
- § 205 Contact by subject of search
- § 206 Contact by suspect

#### Washington Criminal Practice and Procedure

- § 207 Compensation to appointed counsel § 208 Compensation of retained counsel
- § 209 Decision to enter the case
- § 210 Notice of appearance
- § 211 Forms

### CHAPTER 3. CLIENT INTERVIEW

- § 301 Preparation for the interview
- § 302 Promptly interview the client
- § 303 General goals of the interview
- § 304 Closing the interview
- § 305 Commencing investigation
- § 306 Forms

#### CHAPTER 4. PRETRIAL RELEASE

- § 401 Pretrial release in general
- § 402 Constitutional provisions
- § 403 Washington state statutes and court rules
- § 404 Personal recognizance release from jail before first court hearing
- § 405 Setting of bail before first court hearing
- § 406 Posting of bail before first court hearing
- § 407 Setting conditions of release at first court hearing
- § 408 Criteria to determine conditions of release
- § 409 Order for release
- § 410 Review and modification of release conditions
- § 411 Violation of terms of release
- § 412 Imposition of bail
- § 413 Nature of bail
- § 414 Amount of bail
- § 415 Types of bail
- § 416 Appearance and exoneration of bail
- § 417 Forfeiture of bail
- § 418 Forms

## PART II. DISTRICT COURT FELONY PRACTICE

## CHAPTER 5. DISTRICT COURT FELONY PRACTICE IN GENERAL

§ 501	Introduction
§ 502	District court felony jurisdiction in general
§ 503	District court felony jurisdiction in general— Jurisdiction obtained by arrest
§ 504	District court felony jurisdiction in general— Jurisdiction obtained by complaint
§ 505	Preliminary appearance in district court
§ 506	Preliminary appearance in district court—In custody time limits
§ 507	Preliminary appearance in district court—Out of custody time limits
§ 508	Forms

## CHAPTER 6. MOTIONS IN DISTRICT COURT

- § 601 Challenging probable cause
- § 602 Pretrial release
- § 603 Competency determination
- § 604 Return of property
- § 605 Forms

## CHAPTER 7. DISPOSITION IN DISTRICT COURT

- § 701 Disposition in general
- § 702 Compromise of misdemeanors
- § 703 Deferred prosecution
- § 704 Guilty plea
- § 705 Forms

### CHAPTER 8. PRELIMINARY HEARING

- § 801 Purpose of preliminary hearing in general
- § 802 Nature of the preliminary hearing
- § 803 Right to preliminary hearing
- § 804 Setting of preliminary hearing
- § 805 Prosecutor's bypass of preliminary hearing
- § 806 Waiver of preliminary hearing
- § 807 Conduct of the preliminary hearing
- § 808 Use of the hearing for discovery
- § 809 Use of the hearing to fix testimony
- § 810 Presentation of defense case
- § 811 Closing motions

- § 812 Findings of the court
- § 813 Forms

## PART III. PRETRIAL PROCEEDINGS

### CHAPTER 9. INCOMPETENCY

- § 901 Incompetence distinguished from insanity
- § 902 Standards for competency in general
- § 903 Standards for competency in general—Amnesia
- § 904 Standards for competency in general—Effect of prior adjudication of incompetence
- § 905 Right to legal counsel
- § 906 Initial procedures to determine competency
- § 907 Competency hearing
- § 908 Effect of incompetence determination
- § 909 Effect of incompetency on insanity plea
- § 910 Forms

#### CHAPTER 10. INSANITY

- § 1001 Insanity in general
- § 1002 Presumption of sanity
- § 1003 Standard for insanity: m'naughten test
- § 1004 Voluntary intoxication
- § 1005 Advantages and disadvantages of insanity defense
- § 1006 Initiation of sanity determination
- § 1007 Appointment of sanity commission
- § 1008 Rights to legal counsel and psychiatric expert
- § 1009 Burden of proof
- § 1010 Motion for judgment of acquittal
- § 1011 Determination by jury
- § 1012 Admissibility of evidence at trial
- § 1013 Admissibility of defendant's statements
- § 1014 Verdict or finding
- § 1015 Legal effect of finding of insanity
- § 1016 Proceedings to obtain release
- § 1017 Forms

## CHAPTER 11. THE INFORMATION AND ARRAIGNMENT

#### A. THE INFORMATION

- § 1101 The information in general
- § 1102 Nature and contents
- § 1103 Challenges to the information
- § 1104 Amendment of the information

#### **B. ARRAIGNMENT**

- § 1105 Arraignment in general
- § 1106 Time of arraignment
- § 1107 Necessity of arraignment
- § 1108 Presence of defendant
- § 1109 Right to counsel
- § 1110 Entry of plea
- § 1111 Conduct of the arraignment
- § 1112 Forms

#### CHAPTER 12. SPEEDY TRIAL

- § 1201 Speedy trial right—In general
- § 1202 Sanctions for speedy trial violation
- § 1203 Constitutional provisions
- § 1204 Constitutional provisions—Sixth Amendment speedy trial violation
- § 1205 Constitutional provisions—Fifth Amendment due process violation
- § 1206 Court rules
- § 1207 Court rule and constitutional provisions compared
- § 1208 When right attaches
- § 1209 Joinder of offenses
- § 1210 Time limits for arraignment and trial
- § 1211 Excluded periods
- § 1212 Excluded periods—Continuances
- § 1213 Excluded periods—Defendant imprisoned in foreign jurisdiction
- § 1214 Extensions and cure period
- § 1215 Extensions of time for trial—Mistrial
- § 1216 Extensions of time for trial—Delays
- § 1217 Duties of parties
- § 1218 Waiver of speedy trial right
- § 1219 Forms

#### CHAPTER 13. DISCOVERY

#### Washington Criminal Practice and Procedure

§ 1301	Introduction
§ 1302	Constitutional provisions and court rules
§ 1303	Scope of discovery
§ 1304	Matters not subject to disclosure
§ 1305	Initial defense request for discovery
§ 1306	Prosecutor's obligation to disclose
§ 1307	Prosecutor's obligation to disclose—Broadening scope of prosecutor's obligation
§ 1308	Prosecutor's obligation to disclose—Preservation of evidence
§ 1309	Prosecutor's obligation to disclose—Material held by other government personnel
§ 1310	Prosecutor's obligation to disclose—Discretionary disclosures
§ 1311	Constitutionality of defense disclosure requirements
§ 1312	Defendant's obligation to disclose
§ 1313	Continuing duty to disclose
§ 1314	Regulation of discovery
§ 1315	Regulation of discovery—Sanctions in general
§ 1316	Regulation of discovery—Criminal sanctions
§ 1317	Ethical considerations
§ 1318	Forms

## CHAPTER 14. OMNIBUS HEARING

§ 1401	Omnibus hearing in general
§ 1402	Court rules

- § 1403 Nature of the hearing and motions
- § 1404 Time for omnibus hearing and motions
- § 1405 Preparation
- § 1406 Presence of defendant
- § 1407 Closure of omnibus hearing
- § 1408 Scope of the hearing
- § 1409 Pretrial conferences
- § 1410 Forms

## PART IV. MOTIONS PRACTICE

# CHAPTER 15. MOTION PRACTICE IN GENERAL

§ 1501 Purpose and scope of chapter

§ 1502 Motion practice in general
§ 1503 Washington court rule
§ 1504 Form of motion
§ 1505 Briefs and testimony
§ 1506 Timing and notice of hearing
§ 1507 Conduct of the motion hearing
§ 1508 Forms

#### CHAPTER 16. CHANGE OF VENUE

- $\S~1601$   $\,$  Criminal jurisdiction and venue in general
- § 1602 Criminal jurisdiction and venue in general—Lack of jurisdiction
- § 1603 Criminal jurisdiction and venue in general— Venue
- § 1604 Change of venue in general
- § 1605 Change of venue in general—Grounds for change of venue
- § 1606 Change of venue in general—Prejudicial pretrial publicity
- § 1607 Change of venue in general—Other grounds
- § 1608 Making the record
- § 1609 Discharge of jury
- § 1610 Costs when case transferred to another county
- § 1611 Selection and moving jury from another county
- § 1612 Forms

## CHAPTER 17. JOINDER AND SEVERANCE OF DEFENDANTS AND OFFENSES

#### A. IN GENERAL

- § 1701 Introduction
- § 1702 Constitutional considerations
- § 1703 Court rules and statutes

#### B. DEFENDANTS

- § 1704 Grounds for joinder of defendants
- § 1705 Application of joinder of defendants rules
- § 1706 Joinder of defendants on motion of court
- § 1707 Effects of joinder of defendants
- § 1708 Effect of improper joinder of defendants

#### Washington Criminal Practice and Procedure

§ 1709	Severance—General standard for severance of
	defendants
§ 1710	Severance—Discretion of trial court
§ 1711	Severance—Joint representation of codefendants
§ 1712	Severance—Co-defendant's statements
§ 1713	Severance—Failure of prosecution to establish grounds for original joinder
§ 1714	Timeliness and waiver of motion to sever defendants
§ 1715	Severance of defendants on motion of court

#### C. OFFENSES

- § 1716 Grounds for joinder of offenses
- § 1717 Application of joinder of offenses rules
- § 1718 Joinder of offenses on motion of court
- § 1719 Effects of joinder of offenses
- § 1720 Effect of improper joinder of offenses
- § 1721 Failure to join related offenses
- § 1722 Effect of guilty plea
- § 1723 General standard for severance of offenses
- § 1724 Timeliness and waiver of motion to sever offenses
- § 1725 Severance of offenses on motion of court
- § 1726 Application of speedy trial rule
- § 1727 Motion to dismiss

### D. FORMS

§ 1728 Forms

### CHAPTER 18. CONTINUANCE

- § 1801 Continuance—In general
- § 1802 Grounds for continuance
- § 1803 Supporting affidavits
- § 1804 Time of application
- § 1805 Subsequent applications
- § 1806 Application by the prosecution
- § 1807 Lack of preparation
- § 1808 Absence of witness or evidence
- § 1809 Absence of witness or evidence—Probability of procuring witness or evidence
- § 1810 Absence of witness or evidence—Competency and materiality of expected evidence

§ 1811 Diligence in attempting to obtain evidence
§ 1812 Incapacitation of accused
§ 1813 Absence or incapacitation of counsel
§ 1814 Public prejudice
§ 1815 Surprise
§ 1816 Admissions to prevent continuance
§ 1817 Forms

### CHAPTER 19. BILL OF PARTICULARS

- § 1901 Bill of particulars—In general
- § 1902 Bill of particulars—Sufficiency of information
- § 1903 Bill of particulars—Grounds for acceptance of bill
- § 1904 Bill of particulars—Grounds for refusal of bill
- § 1905 Amendatory effect on information
- § 1906 Time for bringing motion for bill
- § 1907 Forms

## CHAPTER 20. APPOINTMENT OF EXPERTS

- § 2001 The need for defense experts
- § 2002 Discovery and disclosure of experts
- § 2003 Discovery and disclosure of experts—Practice tip
- § 2004 Application for appointment of experts
- § 2005 Application for appointment of experts—Types of experts
- § 2006 Appointment of experts
- § 2007 Compensation of experts
- § 2008 Forms

### CHAPTER 21. DISMISSAL

- § 2101 Dismissal—In general
- § 2102 Dismissal—Lack of jurisdiction over defendant
- § 2103 Dismissal—Lack of jurisdiction over subject matter
- § 2104 Dismissal—Improper venue
- § 2105 Dismissal—Untimely arraignment and trial
- § 2106 Dismissal—Defective information and unconstitutional statute
- § 2107 Double jeopardy
- § 2108 Double jeopardy—Several sovereignties
- § 2109 Double jeopardy—Mistrial
- § 2110 Double jeopardy—Reversal upon review sought

#### Washington Criminal Practice and Procedure

	by state
§ 2111	Double jeopardy—Reversal upon review sought by defendant
§ 2112	Double jeopardy—Collateral estoppel
§ 2113	Dismissal in furtherance of justice
§ 2114	Dismissal in furtherance of justice—Selective prosecution
§ 2115	Dismissal in furtherance of justice—Prosecutorial misconduct
§ 2116	Dismissal in furtherance of justice— Constitutional violations
§ 2117	Dismissal in furtherance of justice—Failure to comply with discovery rule
§ 2118	Effect of dismissal
§ 2119	Forms

## CHAPTER 22. MISCELLANEOUS MOTIONS

§ 2201 Miscellaneous motions in general
 § 2202 Motions concerning the defendant
 § 2203 Motions concerning record and conduct of pretrial proceedings
 § 2204 Motions concerning evidence and witnesses
 § 2205 Motions for return of property in general
 § 2206 Forms

# PART V. EXCLUSIONARY MOTIONS

## CHAPTER 23. EXCLUSIONARY MOTIONS

§ 2301	Purpose and scope of chapter
§ 2302	Exclusionary motions—In general
§ 2303	Plea negotiations and the exclusionary motion
§ 2304	Notice, timeliness and waiver
§ 2305	Burden of proof
§ 2306	Testimony of defendant
§ 2307	Conduct of the suppression hearing
§ 2308	Practice tips
§ 2309	Forms

## CHAPTER 24. EXCLUSIONARY RULE

#### § 2401 Exclusionary rule in general

Δ	ST	$\Gamma \mathbf{A}$	N	DI	NG

- § 2402 Establishing standing in general
  § 2403 Expectation of privacy in area searched
  § 2404 Expectation of privacy in property seized
- § 2405 Automatic standing via possession

#### B. THE EXCLUSIONARY RULE

- § 2406 The exclusionary rule
- § 2407 Exclusionary rule and private citizens
- § 2408 Searches
- § 2409 Arrests
- § 2410 Identifications
- § 2411 Confessions
- § 2412 Permissible uses of excluded evidence
- § 2413 Return of seized property

### CHAPTER 25. PROBABLE CAUSE

- § 2501 Constitutional provisions
- § 2502 Searches
- § 2503 Arrests
- § 2504 Establishing probable cause
- § 2505 Police investigation
- § 2506 Information received from other police
- § 2507 Information received from other sources
- § 2508 Information received from confidential informants
- § 2509 Confidential informants—Basis of knowledge
- § 2510 Confidential informants—Veracity (credibility or reliability)
- § 2511 Confidential informants—Disclosure of identity
- § 2512 Confidential informants—In camera inquiry
- § 2513 Confidential informants—When disclosure mandated
- § 2514 Police corroboration

#### CHAPTER 26. STOP AND FRISK

- § 2601 Detention based upon a reasonable suspicion
- § 2602 Stop defined
- § 2603 Circumstances justifying stop

#### Washington Criminal Practice and Procedure

§ 2604 Length of stop
§ 2605 Scope of questioning
§ 2606 Circumstances justifying frisk
§ 2607 Scope of the frisk
§ 2608 Items subject to seizure
§ 2609 Arrest flowing out of search
§ 2610 Further searches incident to arrest

## CHAPTER 27. WARRANTLESS SEARCHES

#### A. WARRANTLESS SEARCHES IN GENERAL

§ 2701 Constitutional provisions § 2702 Warrantless searches allowed if reasonable § 2703 Warrantless searches allowed if reasonable— Determination of reasonableness § 2704 Warrantless searches allowed if reasonable— Validity determined at inception § 2705 Warrantless searches allowed if reasonable— Unlawfulness by intensity Warrantless searches allowed if reasonable— § 2706 Exploratory searches prohibited § 2707 Property and persons that may be seized Right to counsel during warrantless searches § 2708 § 2709 [Reserved]

## B. EXCEPTIONS TO REQUIREMENT OF WARRANT

§ 2710	Consent exception to warrantless search
§ 2711	Consent exception to warrantless search— Knowledge of right to refuse
§ 2712	Consent exception to warrantless search— Consent must be voluntary
§ 2713	Consent exception to warrantless search— Third party consent
§ 2714	Consent exception to warrantless search—Area of search
§ 2715	Consent exception to warrantless search— Termination of consent
§ 2716	Plain view exception
§ 2717	Plain view exception—Areas subject to view
§ 2718	Plain view exception—Prior justification

§ 2719	Plain view exception—Inadvertent discovery
$\S~2720$	Incident to lawful arrest exception
§ 2721	Incident to lawful arrest exception—Sequence of arrest and search
§ 2722	Incident to lawful arrest exception—Arrest must be lawful
§ 2723	Incident to lawful arrest exception—Nature of offense for which arrested
§ 2724	Incident to lawful arrest exception—Scope of search
§ 2725	Incident to lawful arrest exception—Search of persons
§ 2726	Incident to lawful arrest incident—Search of immediate vicinity
§ 2727	Abandoned property exception
§ 2728	Exigent circumstances exception
$\S~2729$	Jailhouse and parolee exception
$\S 2730$	Border checkpoint exception
$\S~2731$	Plain feel exception
$\S 2732$	Open fields exception
$\S 2733$	Prevent destruction of evidence exception
$\S~2734$	Save life exception
$\S~2735$	School search exception
$\S~2736$	"Special needs" exception
§ 2736.5	"Pervasively regulated industry" exception

### C. MISCELLANEOUS

§ 2737 Forms

## CHAPTER 28. SEARCH AND SEIZURE OF VEHICLES

§ 2801 Stopping and searching vehicles in general
§ 2802 Contraband
§ 2803 Traffic stops and violations
§ 2804 Arrest of occupants
§ 2805 Impoundment and inventory

# CHAPTER 29. ELECTRONIC EAVESDROPPING

§ 2901 Electronic privacy in general§ 2902 Court authorized eavesdropping

- § 2903 Court authorized eavesdropping upon one party's consent.
- § 2904 Police initiated eavesdropping upon one party's consent

#### CHAPTER 30. SEARCH WARRANTS

#### A. SEARCH WARRANTS IN GENERAL

- § 3001 Constitutional provisions
- § 3002 Search warrants in general
- § 3003 Property and persons that may be seized
- § 3004 Right to counsel

#### **B. ISSUANCE AND EXECUTION**

- § 3005 Securing the search warrant
- § 3006 The supporting affidavit
- § 3007 The supporting affidavit—Requirement of oath
- § 3008 The supporting affidavit—Requirement of writing or electronic record
- § 3009 The supporting affidavit—Information must be current
- § 3010 Defendant's right to inspect affidavit
- § 3011 Search warrant must be issued by magistrate
- § 3012 Magistrate must be detached
- § 3013 Magistrate must find probable cause
- § 3014 The search warrant
- § 3015 The search warrant—Description of place to be searched
- § 3016 The search warrant—Description of person
- § 3017 The search warrant—Description of things to be seized
- § 3018 Execution and return—In general
- § 3019 Execution and return—Timeliness of execution
- § 3020 Execution and return—Knock and announce requirement
- § 3021 Execution and return—Forcible entry after refusal
- § 3022 Execution and return—Exigent circumstances
- § 3023 Execution and return—Serving the warrant
- § 3024 Execution and return—Presence of others
- § 3025 Execution and return—Arrest of persons present
- § 3026 Execution and return—Scope of the search

§ 3027	Execution	and return—Items	to be seized
0.000	T .	1	

## § 3028 Inventory and receipt for property

## C. MISCELLANEOUS

§ 3029 Forms

## **CHAPTER 31. ARREST**

### A. INTRODUCTION

§ 3101	Constitutional provisions
§ 3102	Arrest in general
§ 3103	Arrest in general—Definition of lawful arrest
§ 3104	Arrest in general—When an arrest occurs
§ 3105	Arrest in general—Effect of officer's intent
§ 3106	Jurisdiction of court as affected by unlawful arrest
$\S 3107$	Right to counsel

#### **B. ARREST IN GENERAL**

§ 3108	Officials who may arrest
§ 3109	Geographic limitations and jurisdiction
§ 3110	Authority of officers outside state
§ 3111	Arrest by private person
§ 3112	Persons subjected to arrest generally
§ 3113	Persons subjected to arrest generally—Arrests of persons suspected of committing crime
§ 3114	Persons subjected to arrest generally—Arrest of persons for questioning or investigation
§ 3115	Persons subjected to arrest generally—Arrest for violation of parole
§ 3116	Persons subjected to arrest generally—Arrest of fugitives
§ 3117	Persons subjected to arrest generally—Arrest for failure to appear in court
§ 3118	Persons subjected to arrest generally—Arrest of

## C. ARRESTS WITHOUT WARRANT

material witness

§ 3119 Place of arrest

§ 3120	Arrest without warrant in general
§ 3121	Arrest without warrant in general—Felonies

## WASHINGTON CRIMINAL PRACTICE AND PROCEDURE

	committed in presence of officer
§ 3122	Arrest without warrant in general—Felonies not committed in presence of officer
§ 3123	Arrest without warrant in general— Misdemeanors committed in presence of officer
§ 3124	Arrest without warrant in general— Misdemeanors not committed in presence of officer
§ 3125	Fresh pursuit and hot pursuit compared
§ 3126	Fresh pursuit
§ 3127	Hot pursuit
D. AI	RRESTS WITH WARRANT
§ 3128	Issuance of arrest warrants
§ 3129	Requirement of affidavit or sworn testimony
§ 3130	Requisite contents of arrest warrant
§ 3131	Teletype warrants
§ 3132	Governor's warrant for arrest of fugitive
§ 3133	Jurisdictional reach of warrant and summons
§ 3134	Knock and announce requirement
§ 3135	Summons
§ 3136	Executing summons
<b>E. M</b>	ISCELLANEOUS
§ 3137	Resistance to arrest
§ 3138	Use of force by officer
§ 3139	Civil liability of officer
§ 3140	Use of force by private person
§ 3141	Procedure following arrest of adult
§ 3142	Return of warrant
§ 3143	Forms
CHAPTER 32. IDENTIFICATION	

## A. IDENTIFICATION IN GENERAL

§ 3201	Constitutional provisions
§ 3202	General rule
§ 3203	Right to due process
§ 3204	Right to due process—Impermissibly suggestive procedures
§ 3205	Right to due process—Effect of taint on

	subsequent identification
§ 3206	Right to counsel
§ 3207	Right to counsel—Role of counsel
§ 3208	Right to counsel—Waiver of counsel
§ 3209	Right to counsel—Effect of taint on subsequent identification
В. Т	YPES OF IDENTIFICATION
§ 3210	On-the-scene "showup" identification
§ 3211	On-the-scene "showup" identification-due process considerations
§ 3212	On-the-scene "showup" identification-right to counsel
§ 3213	On-the-scene "showup" identification—Uses of showup identification evidence
§ 3214	"Photo montage" identification
§ 3215	"Photo montage" identification—Due process considerations
§ 3216	"Photo montage" identification—Right to counsel
§ 3217	"Photo montage" identification—Preparation and presentation
§ 3218	"Photo montage" identification—Uses of photographic lineup evidence
§ 3219	Lineup identification
§ 3220	Lineup identification—Due process considerations
§ 3221	Lineup identification—Right to counsel
§ 3222	Lineup identification—Refusal to participate in lineup
§ 3223	Lineup identification—Conducting a lineup
§ 3224	Lineup identification—Uses of lineup evidence
§ 3225	Forensic identification-reasonableness and due process considerations
§ 3226	Forensic identification—Self-incrimination
§ 3227	Forensic identification—Right to counsel
§ 3228	Forensic identification—Fingerprints
§ 3229	Forensic identification—Blood samples
§ 3230	Forensic identification—Handwriting exemplars
§ 3231	Forensic identification—Hair identification
§ 3232	Forensic identification—Identity recalled through hypnosis
§ 3233	Forensic identification—Uses of forensic identification evidence

## § 3234 Forms

## **CHAPTER 33. CONFESSIONS**

§ 3301	Introduction
§ 3302	Constitutional provisions—Fourth Amendment considerations
§ 3303	Constitutional provisions—Fifth Amendment considerations
§ 3304	Constitutional provisions—Fourteenth Amendment considerations
§ 3305	Constitutional provisions—Sixth Amendment considerations
§ 3306	The miranda warnings
§ 3307	The Miranda warnings—Custody
§ 3308	The Miranda warnings—Interrogation
§ 3309	The Miranda warnings—Interrogation The miranda warnings—When interrogation is custodial
§ 3310	The miranda warnings—General on-the-scene questioning
§ 3311	The giving of miranda warnings
§ 3312	The giving of miranda warnings—Successive interrogations and need for warnings
§ 3313	The giving of miranda warnings—Procedures when privilege invoked
§ 3314	Waiver of constitutional rights
§ 3315	Waiver of constitutional rights—Totality of circumstances in general
§ 3316	Waiver of constitutional rights—Voluntariness
§ 3317	Waiver of constitutional rights—Characteristics of defendant
§ 3318	Waiver of constitutional rights—Physical coercion
§ 3319	Waiver of constitutional rights—Mental coercion
§ 3320	Waiver of constitutional rights—Express waiver
§ 3321	Waiver of constitutional rights—Implied waiver
§ 3322	Waiver of constitutional rights—Selective waiver
§ 3323	Admissibility and use—In general
§ 3324	Admissibility and use—Substantive evidence
§ 3325	Admissibility and use—Impeachment evidence
§ 3326	Admissibility and use—Confession of co-defendant
§ 3327	Forms

## Volume 13

## PART VI. DISPOSITION WITHOUT TRIAL

### **CHAPTER 34. PLEA NEGOTIATION**

- § 3401 In general
- § 3402 General plea bargaining types
- § 3403 Initiation and timing
- § 3404 The bargaining process
- § 3405 General guidelines
- § 3406 Role of prosecuting attorney
- § 3407 Prosecution incentives
- § 3408 Prosecution disincentives
- § 3409 Role of defense counsel
- § 3410 Role of defendant
- § 3411 Defense incentives
- § 3412 Defense disincentives
- § 3413 Dismissal
- § 3414 Reduction of charge
- § 3415 Reduction of counts
- § 3416 Sentencing recommendation
- § 3417 Role of the court
- § 3418 Breach of plea bargain agreement
- § 3419 Forms

### **CHAPTER 35. DIVERSION**

- § 3501 In general
- § 3502 Washington statutory provisions
- § 3503 Scope of chapter
- § 3504 Purposes of diversion
- § 3505 Voluntariness
- § 3506 Effect of diversion
- § 3507 Role of prosecutor
- § 3508 Prosecutorial discretion
- § 3509 Diversion guidelines
- § 3510 Diversion procedures
- § 3511 Rejection and termination
- § 3512 Role of defense counsel
- § 3513 Role of the court
- § 3514 Forms

### CHAPTER 36. DRUG COURT

#### WASHINGTON CRIMINAL PRACTICE AND PROCEDURE

§ 3601	In general
§ 3602	Referral and eligibility
§ 3603	Waiver of rights
§ 3604	Treatment contract
§ 3605	Revocation and termination
§ 3606	Forms

## **CHAPTER 37. PLEA OF GUILTY**

§ 3701	Introduction
§ 3702	Right to plead guilty
§ 3703	Washington court rules
§3704	Constitutional provisions
§ 3705	Role of defense counsel
§ 3706	Role of court
§ 3707	Guilty plea—In general
§ 3708	Guilty plea—Voluntariness of guilty plea
§ 3709	Guilty plea—Mental competence
§ 3710	Guilty plea—Understanding nature of charge
§ 3711	Guilty plea—Understanding consequences of plea
§ 3712	Guilty plea—Waiver of rights
§ 3713	Guilty plea—Factual basis requirement
§3714	Conditional plea of guilty
§ 3715	Remedies for improvident plea
§3716	Withdrawal of plea
§3717	Effect of plea
§ 3718	Right to appeal
§ 3719	Use of plea in subsequent criminal proceedings
8 3720	Forms

# PART VII. DISPOSITION BY TRIAL

# CHAPTER 38. SUBPOENAS AND WITNESSES

§ 3801	Defendant's right to confrontation and compulsory process in general
§ 3802	Attendance of witnesses in general
§ 3803	Subpoena and subpoena duces tecum
§ 3804	Service of process
$\S 3805$	Witness fees
§ 3806	Enforcing subpoenas

§ 3807	Material witness
§ 3808	Obtaining testimony of prisoner
§ 3809	Out-of-state witness
§ 3810	Depositions
§ 3811	Privilege against self-incrimination and grant of
	immunity
§ 3812	Forms

## **CHAPTER 39. JUDGES**

In general
Requirement of impartiality
Motion to disqualify judge
Motivation for motion
Number of applications
Time of application
Preassignment of judge
Disability of judge
Forms

## CHAPTER 40. JURORS

	I LITE TO: O CITOTED
§ 4001	Right to trial by jury in general
§ 4002	Trial by the court compared
§ 4003	Waiver of jury trial
§ 4004	Selection of jurors
$\S 4005$	Qualifications of jurors
§ 4006	Challenge to jury panel
§ 4007	Compensation
§ 4008	Forms

## **CHAPTER 41. VOIR DIRE**

§ 4101	Voir dire in general
$\S 4102$	Duty of court
§ 4103	Scope of examination
§ 4104	Voir dire techniques
$\S 4105$	General voir dire questions
§ 4106	Questions concerning propositions of law
$\S 4107$	Questions probing prejudice
§ 4108	Questions concerning defense theories
§ 4109	Challenges for cause
§ 4110	Death qualified jury
§ 4111	Peremptory challenges
§ 4112	Alternate jurors

§ 4113	Procedures following voir dire
§ 4114	Forms
CHAI	PTER 42. OPENING STATEMENT
§ 4201	
	Opening statement in general
§ 4202	Scope
§ 4203	Misconduct
§ 4204	Prosecution anticipation of defense theories
§ 4205	Waiver of opening statement
§ 4206	Reservation of defense opening statement
§ 4207	Defense opening statements
§ 4208	Preparation and delivery
CHAI	PTER 43. CONDUCT OF TRIAL
§ 4301	Introduction
§ 4302	Conduct of trial—In general
§ 4303	Conduct of trial—Presence of judge
§ 4304	Conduct of trial—Presence of defendant
$\S 4305$	Conduct of trial—Security measures
§ 4306	Conduct of trial—Arrangement of courtroom Conduct of trial—Public trial
§ 4307	Conduct of trial—Public trial
§ 4308	Conduct of trial—Exclusion of witnesses
§ 4309	Conduct of the judge
§ 4310	Conduct of the jury during trial—In general
§ 4311	Conduct of the jury during trial—Sequestration of jury
§ 4312	Conduct of the jury during trial— Communications with jurors
§ 4313	Conduct of the jury during trial—Note-taking by jurors
§ 4314	Conduct of the jury during trial—View of premises by jury
§ 4315	Conduct of the jury during trial—Discharge upon declaration of mistrial
§ 4316	Misconduct and mistrial
§ 4317	Taking the case from the jury
§ 4318	Defendant as witness at trial
§ 4319	Forms
CHAI	PTER 44. JURY INSTRUCTIONS

- § 4401 In general
- § 4402 Washington pattern instructions

xxii

§ 4403	Requests for instructions
§ 4404	Preparation and distribution of instructions
§ 4405	Disposition of requested instructions
§ 4406	Disposition of requested instructions—Standard and burden of proof
§ 4407	Disposition of requested instructions— Presumption
§ 4408	Disposition of requested instructions—Lesser included offenses
§ 4409	Disposition of requested instructions—Witnesses
§ 4410	Disposition of requested instructions—Defenses
§ 4411	Disposition of requested instructions—Character of defendant
$\S 4412$	Giving instructions
§ 4413	Additional or subsequent instructions
§ 4414	Erroneous instructions
§ 4415	Comment on evidence
CHAP	TER 45. CLOSING ARGUMENT
§ 4501	In general
$\S~4502$	Permissible subjects in closing argument
§ 4503	Objectionable subjects in closing argument
§ 4504	Objectionable subjects in closing argument— Defendant's failure to testify
$\S~4505$	Making objections during argument
$\S~4506$	Effect of misconduct in closing argument
$\S~4507$	Closing argument techniques
§ 4508	Closing arguments in trial to court
СНАР	PTER 46. VERDICTS
§ 4601	Introduction
§ 4602	General and special verdicts—In general
§ 4603	General and special verdicts—Alternative means of committing offense
§ 4604	General and special verdicts—Lesser included offenses
§ 4605	General and special verdicts—Special verdicts and findings
§ 4606	General and special verdicts—Deadly weapon special findings
§ 4607	General and special verdicts—Sexual motivation in criminal offenses
§ 4608	General and special verdicts—Insanity

#### WASHINGTON CRIMINAL PRACTICE AND PROCEDURE

§ 4609	General and special verdicts—Self-defense interrogatories
§ 4610	Jury deliberations
§ 4611	Deadlocked jury
§ 4612	Delivering the verdict
§ 4613	Reconsideration of verdict upon mistake of law
§ 4614	Polling of jurors
§ 4615	Inconsistency of verdicts
§ 4616	Consistency of general verdict and special findings
§ 4617	Validity of verdict
§ 4618	Forms

# PART VIII. POST-TRIAL PROCEEDINGS

## **CHAPTER 47. POST-TRIAL MOTIONS**

§ 4701	Conditions of release
§ 4702	Arrest of judgment
§ 4703	New trial
§ 4704	Ruling on alternative motions
§ 4705	Relief from judgment
§ 4706	Merger of counts
$\S 4707$	Disposition of exhibits
§ 4708	Forms

## **CHAPTER 48. SENTENCING**

§ 4801	In general
$\S~4802$	Constitutional provisions
§ 4803	Cruel and unusual punishment
§ 4804	Sentencing Reform Act
$\S~4805$	Sentencing guidelines
§ 4806	Maximum sentence
§ 4807	Minimum sentence
§ 4808	Mandatory minimum sentence
§ 4809	Enhanced penalties
$\S~4809.5$	Consecutive or concurrent sentences
§ 4810	Exceptional sentences
§ 4811	Sentencing alternatives
§ 4812	Confinement
§ 4813	Fines and financial obligations

xxiv

Restitution
Community supervision
Noncompliance with condition of sentence
Presentence investigation and preparation
Sentencing hearing
Advisement of rights and responsibilities
Review of sentence
Forms

## CHAPTER 49. APPEAL

## A. WASHINGTON APPELLATE PRACTICE

§ 4901	Introduction
§ 4902	Types of review
§ 4903	Initiating the appeal or discretionary review
§ 4904	Seeking review at public expense
§ 4905	Record on appeal
§ 4906	Briefs
$\S 4907$	Oral argument
§ 4908	Scope of review
§ 4909	Appellate court decision, reconsideration and mandate
§ 4910	Withdrawal and payment of court-appointed counsel
§ 4911	Release pending appeal

## B. CERTIORARI TO THE UNITED STATES SUPREME COURT

$\S~4912$	Review by the united states supreme court
§ 4913	Filing and contents of petition for certiorari
§ 4914	Proceeding in forma pauperis
$\S 4915$	Service and response to petition

### C. MISCELLANEOUS

§ 4916 Forms

# CHAPTER 50. HABEAS CORPUS AND PERSONAL RESTRAINT PETITION

$\S 5001$	Collateral attack in general
§ 5002	Time limits

### WASHINGTON CRIMINAL PRACTICE AND PROCEDURE

§ 5003	Superior court habeas corpus
§ 5004	Personal restraint petition (PRP)
§ 5005	Unlawful restraint
§ 5006	Inadequacies of other remedies
§ 5007	Repetitive petitions
§ 5008	Consideration of the PRP
§ 5009	Forms

# PART IX. SPECIAL PROCEEDINGS

# CHAPTER 51. GRAND JURY AND SPECIAL INQUIRY JUDGE

§ 5101 In general

### A. GRAND JURY

§ 5102	Convening grand jury
§ 5103	Functioning of grand jury
$\S 5104$	Attendance and rights of witnesses
$\S 5105$	Self-incrimination and immunity
§ 5106	Secrecy and disclosure
§ 5107	Indictment
§ 5108	Grand jury report

## B. SPECIAL INQUIRY JUDGE

§ 5109	Special inquiry judge
§ 5110	Authority of special inquiry judge
§ 5111	Disqualification from subsequent proceedings

# CHAPTER 52. FUGITIVES, EXTRADITION AND DETAINERS

### A. FUGITIVES

§ 5201	Washington fugitives in washington
§ 5202	Washington fugitives in other states
§ 5203	Fugitives from other states in washington

### **B. EXTRADITION**

§ 5204 Extradition in general

xxvi

§ 5205	Extradition in general—Arrest of fugitive and bail
§ 5206	Extradition in general—Preliminary hearing, commitment and bail
§ 5207	Extradition in general—Making demand for fugitive
§ 5208	Extradition in general—Receiving demand for fugitive
§ 5209	Extradition in general—Governor's warrant and no bail
§ 5210	Extradition in general—Habeas corpus
§ 5211	Extradition in general—Transporting fugitive

#### C. UNTRIED CHARGES AND DETAINERS

- § 5212 Untried charges
- § 5213 Detainers and untried charges

# CHAPTER 53. RESTORATION OF RIGHTS AND EXPUNGEMENT OF RECORD

§ 5301 Governor's pardon § 5302 ISRB's and DOC's restoration of civil rights Court's restoration of civil rights § 5303 § 5304 Restoration of employment rights § 5305 Vacation and expungement of record § 5306 Vacating misdemeanor records § 5307 Firearms ownership § 5308 Forms

## CHAPTER 54. SEXUALLY VIOLENT PREDATORS

§ 5401 In general § 5402 Application § 5403 **Definitions** § 5404 Petition § 5405 Custody pending hearings § 5406 Probable cause hearing § 5407 If probable cause is found § 5408 Trial rights § 5409 Issues at trial § 5410 Mistrial

#### WASHINGTON CRIMINAL PRACTICE AND PROCEDURE

§ 5411	Release if state fails to prove petition
§ 5412	Continued custody if state proves petition
§ 5413	Certain rights retained
§ 5414	Provisions for medical care
§ 5415	Annual review of custody
§ 5416	Petition for release
§ 5417	Required findings
§ 5418	Summary judgment or verdict
§ 5419	Conditional release
§ 5420	Treatment providers
§ 5421	Notification of release
8 5499	Modification or revocation of conditional release

# CHAPTER 55. INMATE'S RIGHT TO ADEQUATE MEDICAL CARE

### A. IN GENERAL

§ 5501	In general
§ 5502	State claims in general
§ 5503	Federal claims in general
§ 5504	State court Jurisdiction
§ 5505	Federal court jurisdiction
§ 5506	Statute of limitations
§ 5507	Personal representative for deceased inmate claims

## B. STATE CLAIMS—ELEMENTS AND PROOF

§ 5508	Negligence
§ 5509	Negligent medical care
§ 5510	Respondent superior
§ 5511	Nondelegable (statutory) duty to provide medical car
§ 5512	Nondelegable ("special relationship") duty to provide care
§ 5513	Breach of contract
§ 5514	Writ of mandamus and available relief
§ 5515	Writ of prohibition and available relief
xxviii	

- § 5516 Injunctive relief § 5517 Declaratory judgment
- $\S 5518$  County entity and power to sue and be sued

## C. FEDERAL CLAIMS—ELEMENTS AND PROOF

- § 5519 Constitutional right to adequate medical care
- § 5520 42 USC Section 1983 claim for constitutional violation
- § 5521 Color of law
- § 5522 Deliberate indifference
- § 5523 Serious medical need
- § 5524 Common types of deliberate indifference
- § 5525 Section 1983 defendants
- § 5526 Immunity defenses
- § 5527 Elements of municipal liability based upon policy (4 types)
- § 5528 Proving municipal liability based upon "failure to train"
- § 5529 Anticipating defenses or excuses

#### D. AVAILABLE RELIEF

- § 5530 State claims
- § 5531 Federal Section 1983 claim