

TABLE OF CONTENTS

Page

Volume 14
**CHAPTER 1. LAWYER'S ENTRY INTO THE CRIMINAL
CASE**

A. THE RIGHT TO COUNSEL

Sec.		
1.1	Introduction	3
1.2	Constitutional Provisions.....	4
1.3	Colorado State Statutes	9
1.4	Colorado Court Rules	10
1.5	Scope of Right to Counsel—In General	11
1.6	Scope of Right to Counsel—Police Investigation.....	13
1.7	Scope of Right to Counsel—Grand Jury	14
1.8	Scope of Right to Counsel—Arrest	15
1.9	Scope of Right to Counsel—Initial Appearance, Arraign- ment, and Preliminary Hearing	16
1.10	Scope of Right to Counsel—Trial	17
1.11	Scope of Right to Counsel—Sentencing, Appeal, Postconvic- tion, Habeas Corpus, and Extradition Proceedings	18
1.12	Waiver of Right to Counsel and the Right to Self-Represen- tation.....	21
1.13	Right to Retain Counsel	27
1.14	Court-Appointed Counsel	28
1.15	Effective Assistance of Counsel—In General	31
1.16	Effective Assistance of Counsel—The <i>Strickland</i> Standard ..	33
1.17	Effective Assistance of Counsel—Application of the <i>Strick- land</i> Standard	36

B. COUNSELING CLIENTS IN CUSTODY

1.20	Right to Meet With Persons in Custody	41
1.21	Initial Steps to Protect the Client—Investigation	42
1.22	Initial Steps to Protect the Client—Protecting the Client From Self-Incrimination	47
1.23	Initial Steps to Protect the Client—Lineups and Other Nontestimonial Identification Procedures	52
1.24	Statutory Rights of Persons in Custody	53
1.25	Booking Procedures	54

TABLE OF CONTENTS

Sec.		Page
1.26	Habeas Corpus	56
1.27	Bail Setting and Posting Bond	57
1.28	Contact by a Suspect	59
1.29	Form—Notice of Invocation of Right to Counsel and Right to Remain Silent	60
C. THE DECISION TO ENTER THE CASE		
1.30	Retained Counsel	61
1.31	Initial Evaluation of Case—Fee Considerations	62
1.32	Checklist—Fee Agreements	65
1.33	Court—Appointed Counsel	68
1.34	Entry of Appearance	68
1.35	Form—Entry of Appearance (Misdemeanor)	69
1.36	Form—Entry of Appearance (Felony)	70
D. CASE PREPARATION		
1.40	Interviewing the Defendant	71
1.41	Interview Checklist	73
1.42	Trial Preparation Checklist	75
1.43	Developing a Theory of the Case	78
1.44	The Trial Notebook	81
E. DEFENSE COUNSEL’S ROLE IN INVESTIGATING THE CASE		
1.50	Defense Counsel’s Duty to Investigate the Case	82
1.51	General Approach to Investigation	85
1.52	Handling Physical Evidence	86
1.53	Polygraph Examinations	89
1.54	Securing Expert Witnesses	91
1.55	Contact With Witnesses	93
1.56	Contact With Prosecutors	96
F. ETHICAL CONSIDERATIONS		
1.60	Ethics—In General	96
1.61	Defense Counsel’s Duty as Counselor and Advocate	98
1.62	The Client—Lawyer Relationship—Client Confidences	101
1.63	Conflicts of Interest—In General	103
1.64	Conflicts of Interest—Representation of Codefendants	107
1.65	The Duties of the Public Prosecutor	109
G. WITHDRAWAL OF COUNSEL		
1.70	Withdrawal of Counsel	112

TABLE OF CONTENTS

Sec.		Page
1.71	Form—Motion to Withdraw	114
1.72	Form—Notice of Request to Withdraw	116
1.73	Form—Order of Withdrawal	117
CHAPTER 2. COMMENCEMENT OF CRIMINAL PROCEEDINGS		
A. INTRODUCTION		
2.1	Commencing Prosecution—In General	120
2.2	Modes of Accusation	122
B. THE CHARGING DOCUMENT		
2.10	In General	125
2.11	Surplusage	135
2.12	Lesser Included Offenses	136
2.13	Duplicitous Charges	137
2.14	Prosecution of Multiple Counts for the Same Act	138
2.15	Variance	139
2.16	List of Witnesses	140
C. PROSECUTION BY INFORMATION AND FELONY COMPLAINT		
2.20	Filing Procedures—In General	144
2.21	Felony Complaint	146
2.22	Information	147
2.23	Supporting Affidavit	148
2.24	Filing Procedure After Preliminary Hearing or Waiver in County Court	150
2.25	Direct Filing in District Court	151
2.26	Defects in the Information	152
2.27	Amending the Information	153
2.28	Form—Felony Complaint/Information	156
D. SUMMONS ISSUED UPON FELONY FILING		
2.30	In General	157
2.31	Contents of Summons	158
2.32	Service and Return of Summons	159
2.33	Form—Summons Upon Filing of Complaint—Felony	159
E. SIMPLIFIED PROCEDURES FOR MISDEMEANOR PROSECUTIONS		
2.40	Initiation of Prosecution for Misdemeanor	160
2.41	Issuance of Summons and Complaint	161

TABLE OF CONTENTS

Sec.		Page
2.42	Arrest Followed by Misdemeanor Complaint	162
2.43	Penalty Assessment Procedures	162
2.44	Traffic Magistrates and Traffic Violations Bureau	164
F. GRAND JURY INDICTMENT		
2.50	Introduction	164
2.51	Nature and Function of the Grand Jury	167
2.52	Types of Grand Juries and Their Jurisdiction	169
2.53	Procedure for Convening a Grand Jury	172
2.54	Summoning and Selecting Grand Jurors	173
2.55	Term of Grand Jury	175
2.56	Appointment and Duties of Foreman	176
2.57	Oath of Grand Jurors	176
2.58	Charge of the Court	177
2.59	Appointment of Grand Jury Investigator	178
2.60	Conduct of Grand Jury Proceedings—An Overview	179
2.61	Court’s Supervisory Power Over Grand Jury	182
2.62	Persons Who May Be Present During Grand Jury Inquiry	183
2.63	Presentation of Evidence—In General	184
2.64	Presentation of Evidence—Exculpatory Evidence	185
2.65	Presentation of Evidence—Unlawfully Seized Evidence	186
2.66	Grand Jury Witness—In General	188
2.67	Grand Jury Witness—Target Witness	189
2.68	Grand Jury Witness—Right to Representation by Counsel	190
2.69	Grand Jury Witness—Witness Privacy and Right to Dis- close Testimony	191
2.70	Grand Jury Witness—Right to Release of Testimony	192
2.71	Grand Jury Witness—Privilege Against Self-Incrimination	192
2.72	Grand Jury Witness—Immunity	196
2.73	Grand Jury Subpoena Power	200
2.74	Contempt Proceedings	205
2.75	Deliberations and Voting Procedures	207
2.76	Discharge of Grand Juror	209
2.77	Record of Grand Jury Proceedings and Grand Jury Reports	209
2.78	Secrecy of Grand Jury Proceedings—In General	211
2.79	Secrecy of Grand Jury Proceedings—Indicted Defendant’s Discovery Rights	213
2.80	Return of Indictment—Procedure and Designation of Ven- ue	214
2.81	Sealing of Indictment	216
2.82	The Indictment—In General	216
2.83	The Indictment—Amendment	217
2.84	Challenging the Indictment—Irregularities and Misconduct in Grand Jury Proceedings	219
2.85	Challenging the Indictment—Probable Cause Review	221

TABLE OF CONTENTS

Sec.		Page
2.86	Checklist—Objections to Grand Jury Indictment	222
2.87	Form—Motion to Review Probable Cause and to Quash Indictment	223
2.88	Form—Motion to Quash Indictment.....	224
2.89	Form—Motion for Discovery of Grand Jury Proceedings	225
G. JURISDICTION		
2.90	In General	226
2.91	Jurisdiction Over the Person	230
2.92	Subject Matter Jurisdiction	232
2.93	Waiver of Jurisdiction	234
2.94	Jurisdiction of Colorado Courts—In General	235
2.95	Jurisdiction of District Court	236
2.96	Jurisdiction of County Court	236
2.97	Jurisdiction of Municipal Courts	237
2.98	Jurisdiction of Juvenile Court	238
H. VENUE		
2.100	In General	240
2.101	Special Statutory Provisions	241
2.102	Proof of Venue	243
2.103	Transfer of Venue	244
2.104	Waiver of Proper Venue	245
I. STATUTE OF LIMITATIONS AND RIGHT TO SPEEDY PROCESS		
2.110	In General	246
2.111	State Offenses	251
2.112	Municipal and County Offenses	252
2.113	Traffic Offenses	253
2.114	Right to Speedy Process	253
J. FORMER JEOPARDY AND RELATED BARS TO PROSECUTION		
2.120	In General	256
2.121	Double Jeopardy—Applicability	258
2.122	Double Jeopardy—When Jeopardy Attaches	260
2.123	Double Jeopardy—Reprosecution Following Successful Ap- peal	262
2.124	Double Jeopardy—Reprosecution Following Successful Ap- peal—Resentencing Upon Conviction in New Trial	263
2.125	Double Jeopardy—Waiver and Fraud	264
2.126	Double Jeopardy—Doctrine of Dual Sovereignty	265

TABLE OF CONTENTS

Sec.		Page
2.127	Double Jeopardy—Same Offense Test	267
2.128	Double Jeopardy—Multiple Punishment for Same Conduct	270
2.129	Double Jeopardy—Effect of Mistrial on Reprosecution	272
2.130	Double Jeopardy—Effect of Prior Acquittal or Dismissal of Charges.....	273
2.131	The Doctrine of Collateral Estoppel.....	275
2.132	Compulsory Joinder of Related Offenses	277
2.133	Form—Motion to Dismiss for Failure to Join Offense in Prior Prosecution	281

K. THE DECISION TO PROSECUTE

2.140	The Discretion of the District Attorney to Prosecute	282
2.141	Prosecutorial Misconduct in Charging Process.....	283
2.142	Prosecution Initiated by Judicial Order—Special Prosecu- tors	288
2.143	Prosecutor’s Immunity From Civil Liability	290
2.144	Dismissal and Nolle Prosequi	291

CHAPTER 3. ARREST AND CUSTODY

A. INTRODUCTION

3.1	Constitutional Provisions—In General.....	295
3.2	Definition of “Seizure”	296
3.3	The “Reasonableness” Standard.....	299
3.4	Police–Citizen Encounters and Detention Short of Arrest....	301
3.5	The Exclusionary Rule and Unlawful Seizures.....	301
3.6	Jurisdiction of Court Not Affected by Unlawful Arrest	304
3.7	Arrest—Right to Counsel.....	305

B. POLICE–CITIZEN ENCOUNTERS AND DETENTION SHORT OF ARREST

3.10	In General.....	305
3.11	Investigatory Surveillance	306
3.12	Consensual Interview	307
3.13	Investigatory Stop	310
3.14	Investigatory Stop—The Limited Authority to Frisk.....	322
3.15	Nontestimonial Identification Procedures	324

C. ARREST—IN GENERAL

3.20	Definition of Arrest.....	325
3.21	The Warrant Requirement	327
3.22	The “Probable Cause” Requirement	328

TABLE OF CONTENTS

Sec.		Page
3.23	The “Probable Cause” Requirement—First-Hand Knowledge.....	330
3.24	The “Probable Cause” Requirement—Information From Other Police Officers.....	331
3.25	The “Probable Cause” Requirement—Information From Informants and Tipsters.....	332
D. ARREST WITHOUT WARRANT		
3.30	In General.....	334
3.31	Procedure—Right to Judicial Determination of Probable Cause.....	335
3.32	Authority of Police to Arrest Without a Warrant.....	336
3.33	By Police—Outside Home Jurisdiction.....	337
3.34	By Police—Fresh Pursuit.....	339
3.35	By Private Citizen.....	340
E. ARREST WARRANTS		
3.40	Issuance.....	342
3.41	Jurisdictional Reach.....	342
3.42	Contents of Warrant.....	343
3.43	Defects.....	343
3.44	Execution of Warrant.....	345
3.45	Form—Warrant for Arrest Upon Affidavit.....	346
3.46	Form—Affidavit for Arrest Warrant.....	347
F. PROCEDURES FOLLOWING ARREST		
3.50	In General.....	349
3.51	Booking Procedure Following Arrest.....	349
3.52	Procedure Following Arrest—Juvenile.....	351
G. MISCELLANEOUS		
3.60	Resisting Arrest.....	352
3.61	Use of Force to Make an Arrest—By Police.....	353
3.62	Use of Force to Make an Arrest—Civil Remedy for Unlawful Arrest.....	354
3.63	Use of Force to Make an Arrest—By Private Person.....	355
3.64	Shopkeeper’s Statute.....	356
3.65	Civil Protective Custody.....	356
3.66	Checklist—Arrest or Detention—Issue Analysis.....	357
CHAPTER 4. FIRST APPEARANCE		
A. FIRST APPEARANCE AND ADVISEMENT OF RIGHTS		
4.1	In General.....	359

TABLE OF CONTENTS

Sec.		Page
4.2	“Unnecessary Delay” in Presenting the Arrestee Before a Judge.....	360
B. ARRAIGNMENT AND ENTRY OF PLEA		
4.10	In General.....	363
4.11	Presence of Defendant or Appearance by Counsel	364
4.12	Critical Stage in the Proceedings	365
4.13	Arraignment—Motion for Bill of Particulars.....	365
4.14	Arraignment—Speedy Trial Rights	366
4.15	Arraignment—Preliminary Hearing.....	366
4.16	Arraignment—Jury Trial Request.....	367
4.17	Arraignment—Motions Raising Defenses and Objections Based on Defects in Prosecution	367
4.18	Arraignment—Affirmative Defenses.....	368
4.19	Effect of Irregularities in Arraignment Proceedings.....	368
C. TYPES OF PLEAS		
4.20	In General.....	369
4.21	Plea of Not Guilty	369
4.22	Plea of Not Guilty by Reason of Insanity.....	370
4.23	Guilty Plea	371
4.24	Plea of Nolo Contendere.....	372

CHAPTER 5. COMPETENCY, INSANITY AND IMPAIRED MENTAL CONDITION

A. COMPETENCY

5.1	In General.....	374
5.2	Statutory Standard of Incompetence	376
5.3	Due Process Standard of Incompetence.....	376
5.4	Incompetency Distinguished From Insanity.....	377
5.5	General Procedure For Raising the Issue of Competency.....	378
5.6	Duty to Raise Issue of Competency	379
5.7	Effect of Raising Issue of Competency	380
5.8	Mandatory Advisement to Defendant	380
5.9	Right to Bond	381
5.10	Determination of Competency	382
5.11	Preliminary Competency Determination by Court	382
5.12	Competency Examination	383
5.13	Competency Hearing.....	384
5.14	Final Determination of Competency by Court.....	385
5.15	Appealability of Final Competency Determination.....	385
5.16	General Procedures After Determination of Competency.....	386
5.17	Incompetent Defendant’s Right to Treatment.....	387

TABLE OF CONTENTS

Sec.		Page
5.18	Effect of a Defendant's Incompetency	387
5.19	Term of Confinement	388
5.20	Permanent Incompetence	389
5.21	Effect of Prior Adjudication of Incompetency or Insanity.....	389
5.22	Restoration to Competency	390
5.23	Competency of Persons to be Executed	391

B. INSANITY

5.30	In General	393
5.31	Insanity Defined	394
5.32	Pleading Not Guilty by Reason of Insanity	396
5.33	Preliminary Hearing Requirement	399
5.34	Court-Ordered Psychiatric Examinations and Reports.....	399
5.35	Unitary Trial for Determination of Issues Raised by Plea of Not Guilty and Not Guilty by Reason of Insanity	402
5.36	Jury Trial for Sanity Determination—Presumption of San- ity and Burden of Proof	403
5.37	Jury Trial for Sanity Determination—Verdict.....	404
5.38	Disposition After a Verdict of Not Guilty by Reason of Insanity	405
5.39	Test for Post-Verdict Release From Commitment	406
5.40	Post-Verdict Release Proceedings	407
5.41	Conditional Release From Commitment.....	409
5.42	Revocation of Conditional Release From Commitment	410
5.43	Right of Appeal	412

C. IMPAIRED MENTAL CONDITION (IMC)

5.50	In General	412
5.51	Impaired Mental Condition (IMC) Defined	415
5.52	Impaired Mental Condition (IMC) Distinguished From In- sanity	415
5.53	Impaired Mental Condition (IMC) Distinguished From De- fense Based on Lack of Culpable Mental State	416
5.54	Asserting the Affirmative Defense of Impaired Mental Con- dition.....	417
5.55	Court-Ordered Examination After Raising Impaired Mental Condition Defense	419
5.56	Trial When Impaired Mental Condition Defense Raised	419
5.57	Commitment and Release	420

D. MISCELLANEOUS

5.60	Privilege Against Self-Incrimination and Waiver of Statuto- ry Privileges	420
------	--	-----

TABLE OF CONTENTS

Sec.		Page
5.61	Evidence—In General	424
5.62	Evidence—Opinion Testimony of Lay Witnesses	426
5.63	Evidence—Opinion Testimony of Expert Witnesses	427
5.64	Limited Use of Evidence Obtained from Court-Ordered Examination and from Compelled Waiver of Privilege	428
5.65	Right to Counsel and Physicians	429
5.66	Right to Advisement Prior to Raising Mental Health Issues	430
5.67	Right to Treatment for Persons Found Not Guilty by Reason of Insanity	432
5.68	Forced Administration of Antipsychotic Drugs	432
5.69	Discovery Procedures	433
5.70	Asserting a Mental Condition Defense to Offenses Occur- ring on or after July 1, 1999	434
5.71	Consequences of the Defense Endorsing a Psychiatric Ex- pert on the Issue of the Defendant’s Mental Condition	436

CHAPTER 6. PRETRIAL RELEASE

A. INTRODUCTION

6.1	Purpose of Pretrial Release	439
6.2	Definitions	440
6.3	Constitutional and Statutory Provisions	440

B. BAIL BEFORE CONVICTION

6.10	Purpose of Bail	443
6.11	Right to Bail—In General	444
6.12	Capital Cases	445
6.13	Misdemeanor Cases	447
6.14	Preventive Detention	447
6.15	Insanity Plea or Incompetent Defendant	448
6.16	Miscellaneous Situations	449
6.17	Duration of Bond	450
6.18	Modification and Revocation of Bond—In General	451
6.19	Modification and Revocation of Bond—Speedy Trial Right ..	452
6.20	Bond Forfeiture	452
6.21	Unjust Enrichment	456
6.22	Exoneration From Bond Liability	457

C. SETTING THE AMOUNT OF BAIL

6.30	Presumptive Bail	458
6.31	Bond Criteria	459
6.32	Hearing to Set Bond	461
6.33	Remedy for Excessive Bail	462
6.34	Motion to Reduce Bond	464

TABLE OF CONTENTS

Sec.		Page
6.35	Appellate Review	464
6.36	Form—Motion for Reduction of Bail	466
6.37	Form—Motion to Allow Defendant to Leave the State	467
6.38	Form—Appearance Bond	468
6.39	Form—Appearance Bond	470

D. TYPES OF BOND

6.40	In General	471
6.41	Personal Recognizance Bond	472
6.42	Personal Recognizance Bond With Co-signer	473
6.43	Secured Bonds—In General	473
6.44	Secured Bonds—Cash, Stocks and Bonds, or Surety	474
6.45	Secured Bonds—Property	475
6.46	Conditions Attached to Bonds	476

CHAPTER 7. PRELIMINARY HEARINGS

A. INTRODUCTION

7.1	In General	479
7.2	Purpose and Scope of Preliminary Hearing	481
7.3	Procedure for Requesting Preliminary Hearing	483
7.4	Waiver of Preliminary Hearing	484
7.5	Defendant's Discovery Rights Prior to Preliminary Hearing	485
7.6	Form—Request for a Preliminary Hearing and Discovery Prior to Preliminary Hearing	485

B. CONDUCT OF PRELIMINARY HEARING

7.10	Defendant's Rights at Preliminary Hearing—In General	487
7.11	Conduct of Preliminary Hearing and Evidentiary Proof	488
7.12	Effect of Dismissal of Charges	490
7.13	Bind Over of Charges for Trial	495
7.14	Duty of Prosecutor to File Charges in District Court	495
7.15	Arraignment After Preliminary Hearing	495
7.16	Tactical Considerations	496
7.17	Use of Preliminary Hearing Testimony at Trial	497
7.18	Defendant's Right to Transcript	498
7.19	Defects in Proceedings and Appeal	499

CHAPTER 8. DISCOVERY AND PROCEDURES AIDING PREPARATION FOR TRIAL

A. INTRODUCTION

8.1	In General	502
8.2	Due Process Right to Disclosure	503

TABLE OF CONTENTS

	Page
Sec.	
8.3 State's Duty to Collect and Preserve Evidence	507
8.4 Pretrial Discovery in Colorado—Crim.P.Rule 16	516
8.5 Pretrial Discovery in Colorado—Death Penalty Cases	518
8.6 Pretrial Discovery in Colorado—Statutory Provisions	518
B. PRETRIAL DISCOVERY UNDER CRIM.P.RULE 16—IN GENERAL	
8.10 In General	519
8.11 Continuing Duty to Disclose and Duty Not to Impede Discovery	520
8.12 Compelling Disclosure	521
8.13 Sanctions for Failure to Disclose	522
8.14 Protective Orders and Related Matters	525
8.15 Making a Record	527
8.16 Cost of Providing Discoverable Material and Custody of Materials	527
8.17 Omnibus Hearings	528
8.18 Pretrial Conference	529
8.19 Form—Checklist for Action Taken at Omnibus Hearing	531
C. CRIM.P.RULE 16—DISCOVERY BY THE DEFENSE	
8.20 In General	536
8.21 Prosecution Disclosure Required by Crim.P.Rule 16	537
8.22 Matters Not Subject to Disclosure	539
8.23 Prosecutor's Performance of Obligations—In General	542
8.24 Material Held by Other Governmental Personnel	543
8.25 Prosecutor's Ethical Obligations	544
8.26 Prosecutor's Duty to Collect and Preserve Evidence	545
8.27 Court-Ordered Disclosure	545
8.28 Form—Motion for Discovery	546
8.29 Form—Defense Discovery Confirmation Letter	547
8.30 Form—Motion for Preservation and Production of Evidence	548
8.31 Form—Motion for Disclosure of Impeaching Information	549
8.32 Form—Motion for Disclosure of Confidential Informant	551
8.33 Form—Motion to Dismiss—Destruction of Evidence	553
8.34 Form—Prosecutor's Discovery Confirmation Letter	554
D. CRIM.P.RULE 16—DISCOVERY BY THE PROSECUTION	
8.40 In General	555
8.41 Defense Disclosure Required by Crim.P.Rule 16	556
8.42 Nontestimonial Identification Procedures	557
8.43 Reports of Defense Experts	557
8.44 Nature of Defenses and Names and Addresses of Witnesses	559

TABLE OF CONTENTS

Sec.		Page
8.45	Notice of Alibi Defense	561
8.46	Ethical Obligations of Defense Counsel.....	561
8.47	Constitutional Limitations on Discovery by the Prosecution	561
8.48	Form—Defendant’s Disclosure Under Crim.P.Rule 16	562

E. NOTICE PLEADINGS

8.50	In General	563
8.51	Notice of Alibi	563
8.52	Notice of Defense of Mental Condition	564

F. SECURING ATTENDANCE OF WITNESSES AT TRIAL AND SUBPOENA DUCES TECUM

8.60	In General	565
8.61	Issuance of Subpoena	565
8.62	Service of Process	566
8.63	Subpoenaing In-State Witnesses.....	566
8.64	Subpoenaing Out-of-State Witnesses	567
8.65	Subpoena Duces Tecum.....	568
8.66	Subpoena Duces Tecum—Modifying or Quashing	569
8.67	Contempt	570
8.68	Form—Subpoena.....	570
8.69	Form—Motion to Subpoena Out-of-State Witness	572
8.70	Form—Motion to Incur Costs for Attendance of Out-of-State Witness.....	573

G. DEPOSITIONS

8.80	Depositions—In General.....	574
8.81	Procedure.....	574
8.82	Use of Deposition in Criminal Hearings and Trials	576

CHAPTER 9. PRETRIAL MOTIONS PRACTICE

A. IN GENERAL

9.1	Scope and Purpose of Chapter	580
9.2	Preparation and Form of Motions	581
9.3	Pretrial Motions Practice—Defense Perspective	581
9.4	Use of Stipulations	582
9.5	Procedural Requirements—In General	583
9.6	Timeliness	585
9.7	Service	585
9.8	Hearing on Motions—In General	585
9.9	Hearing on Motions—Burdens of Proof	586
9.10	Hearing on Motions—Excluding Press and Public	588

TABLE OF CONTENTS

Sec.		Page
9.11	Pretrial Motions—Interlocutory Appeal	589
9.12	Form—Criminal Defense Pretrial Motion Checklist	591
B. JOINDER AND SEVERANCE		
9.20	In General	592
9.21	Joinder and Severance—Terminology	594
9.22	Relief From Prejudicial Joinder	595
9.23	Joinder of Offenses	596
9.24	Severance of Offenses	599
9.25	Joinder of Defendants	601
9.26	Severance of Defendants—In General	602
9.27	Severance of Defendants—Codefendant’s Statement	606
9.28	Severance of Defendants—Timeliness and Waiver of Objec- tion	608
9.29	Joinder and Severance—Speedy Trial	609
9.30	Form—Defense Counsel’s Severance Checklist	610
9.31	Form—Motion for Severance of Charges	611
9.32	Form—Motion for Severance of Defendants	613
C. MOTIONS TO DISMISS		
9.40	In General	615
9.41	Defects in Grand Jury Proceedings	616
9.42	Defects in the Information or Complaint	616
9.43	Unconstitutional Statute—In General	617
9.44	Unconstitutional Statute—Due Process	619
9.45	Unconstitutional Statute—Vagueness and Overbreadth	620
9.46	Unconstitutional Statute—Equal Protection	623
9.47	Unconstitutional Statute—Ex Post Facto Prohibition	626
9.48	Unconstitutional Statute—Separation of Powers Doctrine	628
9.49	Statute of Limitations and Delay in Bringing the Charge	630
9.50	Former Jeopardy and Related Grounds	631
9.51	Denial of Speedy Process	632
9.52	Delay in Bringing Defendant to Trial	633
9.53	Discriminatory Prosecution	634
9.54	Failure of Prosecution to Comply With Court Order or Other Prosecutorial Misconduct Prior to Trial	635
D. MOTION FOR CHANGE OF VENUE		
9.60	In General	635
9.61	Procedure to Request Change of Venue	636
9.62	Grounds for Change of Venue—In General	637
9.63	Grounds for Change of Venue—Pretrial Publicity	637
9.64	Procedure After Change of Venue	640

TABLE OF CONTENTS

Sec.		Page
9.65	Form—Motion for Change of Venue	641
E. MOTION FOR CHANGE OF JUDGE		
9.70	In General	642
9.71	Grounds for Recusal of Judge	643
9.72	Motion for Change of Judge	645
9.73	Selection of New Judge—Administrative Procedure	647
9.74	Disability of Judge	648
9.75	Form—Motion to Recuse Judge	648
F. BILL OF PARTICULARS		
9.80	In General	649
9.81	Effect on Prosecution’s Case at Trial	650
9.82	Child Molestation Prosecution	651
9.83	Filing Requirements	652
9.84	Form—Motion for a Bill of Particulars	652

CHAPTER 10. MOTIONS TO EXCLUDE UNLAWFULLY OBTAINED EVIDENCE—IN GENERAL

A. INTRODUCTION

10.1	Scope and Purpose of Chapter	654
10.2	The Exclusionary Rule	655
10.3	The Practical Effect of Suppression Motions	658
10.4	The Defense Perspective and Drafting Considerations	659
10.5	Motion in Limine Distinguished	660
10.6	Standing to Object to the Introduction of Unlawfully Seized Evidence	661
10.7	Requirement of State Action	662
10.8	“Fruit of the Poisonous Tree” Doctrine	662
10.9	Exceptions to the Exclusionary Rule—In General	663
10.10	Exceptions to the Exclusionary Rule—Attenuation Doctrine	664
10.11	Exceptions to the Exclusionary Rule—Independent Source Rule	665
10.12	Exceptions to the Exclusionary Rule—Inevitable Discovery Doctrine	665
10.13	Exceptions to the Exclusionary Rule—Good Faith Excep- tion	667
10.14	Exceptions to the Exclusionary Rule—Medical Emergency Exception	668
10.15	Exceptions to the Exclusionary Rule—Public Safety Excep- tion	668
10.16	Suppression of Evidence Obtained Outside Colorado in Violation of Colorado Law	668

TABLE OF CONTENTS

Sec.		Page
10.17	Using Suppressed Evidence at Trial	669
10.18	Form—Motion to Suppress	670

B. PROCEDURE

10.20	Timeliness of Objection and Waiver or Forfeiture of Issue ...	671
10.21	Burdens and Standards of Proof and Persuasion	673
10.22	Timing and Conduct of the Suppression Hearing	676
10.23	Use at Trial of Defendant’s Testimony at the Suppression Hearing.....	678
10.24	Interlocutory Appeal	680
10.25	Appellate Review	681

CHAPTER 11. SUPPRESSION OF EVIDENCE SEIZED WITHOUT A SEARCH WARRANT

A. INTRODUCTION

11.1	Presumption of Illegality	685
11.2	Protected Areas and Interests	685
11.3	Reasonableness of Police Conduct—In General	687
11.4	The <i>Katz</i> Expectation of Privacy Test	688
11.5	Standing to Object	690
11.6	The “Plain View” Doctrine	691
11.7	The “Curtilage” and “Open Fields” Doctrines.....	693
11.8	Financial, Telephone, and Other Records	694
11.9	Electronic Surveillance.....	695
11.10	Abandonment	696
11.11	Jailhouse Searches.....	697
11.12	Checklist—Warrantless Search—Issue Analysis	698

B. EXCEPTIONS TO WARRANT REQUIREMENTS

11.20	In General.....	699
-------	-----------------	-----

C. CONSENT SEARCHES

11.30	In General.....	700
11.31	Nature and Scope of Consent	700
11.32	Burden of Proof.....	702
11.33	Test for Determining Valid Consent	702
11.34	Authority of Third Party to Consent—In General	703
11.35	Authority of Third Party to Consent—Family Members	705
11.36	Authority of Third Party to Consent—Landlords and Co- tenants	705

D. “STOP AND FRISK” DETENTION

11.50	In General	706
-------	------------------	-----

TABLE OF CONTENTS

Sec.		Page
11.51	Arrest Distinguished	708
11.52	The “Stone” Doctrine	709
11.53	Source of Information Justifying the Contact	710
11.54	Circumstances Justifying the “Stop”	711
11.55	Permissible Scope of “Stop”	712
11.56	Circumstances Justifying “Frisk”—In General	713
11.57	Permissible Scope of “Frisk”	715
11.58	Arrest Flowing Out of “Frisk”	715
E. SEARCH INCIDENT TO VALID ARREST		
11.70	What Constitutes an “Arrest”	716
11.71	Arrest Must Be Lawful	717
11.72	Arrest of Parolees or Probationers	718
11.73	Sequence of Arrest and Incident Search	718
11.74	Authority of Police to Arrest	719
11.75	Nature of Offense	719
11.76	Territorial Limitations	720
11.77	“Hot Pursuit”	721
11.78	Search Incident to Arrest by Private Person	721
11.79	Scope of Search	722
11.80	Search of the Person Arrested	722
11.81	At Scene of Arrest	723
11.82	Inspections and Intrusions Into the Body	723
11.83	Search of the Person’s Personal Effects	724
11.84	Search of Premises Where Arrest Made	724
11.85	Search of Vehicle Following Arrest of Driver or Passenger ..	725
F. SEARCH AND SEIZURE OF VEHICLES		
11.90	Stopping Motor Vehicles	726
11.91	Searches of Passengers and Driver	729
11.92	Searches of Vehicles and Containers Therein for Evidence of Crime	730
11.93	Impoundment of Vehicles	731
11.94	Roadblocks	732
G. ADMINISTRATIVE SEARCHES		
11.100	Inspections and Regulatory Searches	732
11.101	Inspections of Housing	733
11.102	Inspections of Businesses	733
11.103	Inspections at Fire Scenes	734
11.104	Airport Searches	734
11.105	Parolees and Probationers	735
11.106	School Children	735

TABLE OF CONTENTS

Sec.	Page
11.107 Inspections and Intrusions Into the Body	736
H. EXIGENT CIRCUMSTANCES	
11.110 In General	736
11.111 Destruction or Removal of Evidence	738
11.112 Death Scene Investigation	739
11.113 To Prevent Risk of Death or Bodily Harm	739
I. PLAIN VIEW	
11.120 In General	740
CHAPTER 12. SUPPRESSION OF EVIDENCE SEIZED PURSUANT TO WARRANT	
A. INTRODUCTION	
12.1 The Requirement of Probable Cause	743
12.2 The Nexus Between Criminality and Information	745
12.3 The Nexus Between Information and Place to Be Searched	745
12.4 Requirement That Materials Be Subject to Seizure.....	746
12.5 Requirement That Materials Are To Be Found on the Person	746
12.6 Requirement That Materials Be Located In a Particular Place	747
12.7 Checklist—Search Warrant—Issue Analysis	748
B. ESTABLISHING PROBABLE CAUSE	
12.10 Objective Test Standard	750
12.11 Degree of Probability Required	750
12.12 When the Determination Is to Be Made	751
12.13 Absence of Probable Cause	751
12.14 Time of Information	752
12.15 Officer’s First Hand Information as Basis for Probable Cause	753
12.16 Officer’s First Hand Information as Basis for Probable Cause—“Fellow Officer” Exception.....	754
12.17 Information From Crime Victim and Citizen Witnesses.....	754
12.18 Hearsay and Confidential Information—In General.....	755
12.19 Hearsay and Confidential Information— <i>Gates</i> and the To- tality of the Circumstances Test	755
12.20 Hearsay and Confidential Information—Basis of Knowledge	756
12.21 Hearsay and Confidential Information—Past Reliability of Informant.....	757

TABLE OF CONTENTS

Sec.		Page
12.22	Hearsay and Confidential Information—Credibility of Informant.....	757
12.23	Hearsay and Confidential Information—Confidentiality of Informant’s Identity	758
12.24	Hearsay and Confidential Information—In Camera Proceedings	758
12.25	Hearsay and Confidential Information—Corroboration of Information From Known or Unknown Informant	759
12.26	Procedure for Attacking Statements in the Application for the Warrant.....	760
12.27	Procedure for Attacking Statements in the Application for the Warrant—Right of Defendant to Inspect Affidavit	761
12.28	Form—Motion to Suppress Search Warrant	761
C. ISSUANCE OF SEARCH WARRANTS		
12.40	Application for Warrant—In General.....	763
12.41	Preparation of the Warrant.....	764
12.42	The Supporting Affidavit	764
12.43	Timeliness of the Application	764
12.44	Telephonic Applications.....	765
12.45	No Knock Warrant	765
12.46	Authority to Issue Warrant—In General.....	766
12.47	Must Be Issued by a Judge.....	766
12.48	“Neutral and Detached Magistrate” Requirement.....	766
12.49	Finding of Probable Cause	767
12.50	Contents and Form of Warrant—In General.....	768
12.51	Contents and Form of Warrant—Incorporation of Affidavit	768
12.52	Contents and Form of Warrant—Description of Place to Be Searched	769
12.53	Contents and Form of Warrant—Description of Persons to Be Searched.....	770
12.54	Contents and Form of Warrant—Description of Things to Be Seized	770
12.55	Form—Search Warrant	772
12.56	Form—Affidavit for Search Warrant	773
D. EXECUTION AND RETURN OF WARRANT		
12.60	In General	774
12.61	Persons Who May Execute a Warrant.....	774
12.62	Timeliness of Execution	775
12.63	Manner of Execution and Service—In General.....	775
12.64	Number of Times a Search Warrant May Be Executed	776
12.65	Entry Without Notice or By Force.....	776
12.66	Detention and Search of Persons	778

TABLE OF CONTENTS

Sec.		Page
12.67	Scope and Intensity of Search	778
12.68	What May Be Seized	779
12.69	Exhibiting or Delivering Warrant to Defendant	780
12.70	“Good Faith” Exception	780
12.71	Return—In General	782
12.72	Return—Receipt for Property Taken	782
12.73	Return—Procedure Following Return	783
12.74	Form—Search Warrant Return and Inventory	783

CHAPTER 13. MOTIONS TO SUPPRESS STATEMENTS BY DEFENDANT

A. INTRODUCTION

13.1	In General	786
13.2	An Overview	786
13.3	Definition of “Statement” and Related Terms	788
13.4	Adoptive Admission by Silence	789
13.5	Confessions and Statements of Others	790
13.6	Statements by Juveniles	793

B. PRETRIAL PROCEDURE

13.10	In General	795
13.11	Procedure for Filing Motion to Suppress Statements	797
13.12	Timeliness and Waiver of Objection	799
13.13	Hearing on Motion to Suppress Statements	799
13.14	Burden and Standard of Proof	801
13.15	Ruling on Motion to Suppress and Interlocutory Appeal of Suppression Order	801
13.16	Use at Trial of Defendant’s Suppression Hearing Testimo- ny	803
13.17	Use at Trial of Suppressed Statements	804
13.18	“Fruit of the Poisonous Tree Doctrine”: Derivative Evi- dence and Exceptions Permitting Use of Tainted State- ments	805
13.19	Requirement of State Action	807
13.20	Successive Interrogations	809
13.21	Checklist—Exclusion of Statements	814
13.22	Form—Motion to Suppress Defendant’s Statements	816

C. TRADITIONAL DUE PROCESS “VOLUNTARINESS” DOCTRINE

13.30	In General	818
13.31	Test for Voluntariness	820
13.32	Characteristics and Condition of the Defendant	821

TABLE OF CONTENTS

		Page
Sec.		
13.33	Circumstances Surrounding the Statement—In General	826
13.34	Physical Coercion and Duress	827
13.35	Threats, Promises and Deceit	828
13.36	Length and Circumstances of Interrogation	833
13.37	Successive Interrogations	833
13.38	Procedure for Determining Voluntariness—In General	834
13.39	Right to “ <i>Jackson-Denno</i> ” Hearing	835
13.40	Burden and Standard of Proof at Pretrial Hearing	835
13.41	Effect of Judge’s Ruling That Statement Is Involuntary	836
13.42	Jury Instruction on Issue of Voluntariness	836
D. SIXTH AMENDMENT RIGHT TO COUNSEL		
13.50	In General	836
13.51	The Sixth Amendment Right and <i>Miranda</i> Rule Distin- guished	838
13.52	When the Right to Counsel Attaches	840
13.53	Exercise and Waiver of Sixth Amendment Right to Counsel	841
13.54	Right to Counsel—Successive Interrogations	845
E. FOURTH AMENDMENT CONSIDERATIONS		
13.60	In General	845
13.61	Statements Obtained by Unlawful Seizure	846
13.62	Intervening Events Which Remove “Taint” of Unlawful Seizure	846
F. MIRANDA REQUIREMENTS UNDER THE FIFTH AMENDMENT		
13.70	In General	847
13.71	The <i>Miranda</i> Warnings	848
13.72	Issue Analysis Under <i>Miranda</i> —Overview	850
13.73	Who Must Give the Warnings	850
13.74	What Constitutes “Interrogation”	852
13.75	When Interrogation Is “Custodial”	856
13.76	Adequacy of the Warnings	863
13.77	Scope and Subject Matter of Interrogation	865
13.78	Successive Interrogations	866
13.79	Waiver of <i>Miranda</i> Rights By Defendant	868
13.80	Exercise of <i>Miranda</i> Rights by Defendant	874
13.81	Burden and Standard of Proof	877
13.82	Exceptions to <i>Miranda</i> Requirements—In General	878
13.83	Exceptions to <i>Miranda</i> Requirements—General On-the- Scene Questioning, Officer and Public Safety, and Book- ing Procedures	878

TABLE OF CONTENTS

Sec.		Page
13.84	Exceptions to <i>Miranda</i> Requirements—Volunteered Statements	879
13.85	Exceptions to <i>Miranda</i> Requirements—Questioning by Private Persons	880
G. MISCELLANEOUS GROUNDS AND ISSUES		
13.90	Statutory and Procedural Grounds to Suppress Statements—Unnecessary Delay in Bringing Defendant Before Judge.....	880
13.91	Statements During Plea Negotiations and Court Proceedings	882
13.92	Ethical Violations by Prosecutor	883
13.93	Right to Contact Consulate	884
H. TRIAL PROCEDURE		
13.100	In General	884
13.101	Introducing a Defendant’s Statements Into Evidence at Trial—In General	885
13.102	Use at Trial of Suppressed Statements	887
13.103	Direct and Collateral Use at Trial of Defendant’s Silence or Assertion of Rights—In General	889
13.104	Improper Comment on Exercise of Right to Silence	892
13.105	Corpus Delicti Rule.....	893

Volume 15

CHAPTER 14. MOTIONS TO SUPPRESS IDENTIFICATION EVIDENCE

A. INTRODUCTION

14.1	In General	3
14.2	Defense Strategies With Respect to Identification Evidence—An Overview	4
14.3	Admissibility of Identification Evidence—Constitutional Principles	6
14.4	Impact of Unconstitutional Pretrial Identification Upon the Trial Identification—The Independent Source Doctrine	7
14.5	Requirement of State Action	10
14.6	Harmless Error Analysis	11

B. SIXTH AMENDMENT RIGHT TO COUNSEL RULE

14.10	In General	11
14.11	Waiver of Right to Counsel	13
14.12	The Independent Source Doctrine	14

TABLE OF CONTENTS

Sec.		Page
	C. DUE PROCESS PROTECTIONS	
14.20	In General—Due Process “Totality of the Circumstances Test”	15
14.21	Determining When Identification Procedures Are “Suggestive”	16
14.22	Exigencies Justifying Necessarily Suggestive Identification Procedures	18
14.23	Factors Determining When Suggestive Identification Procedures Are Reliable	19
14.24	The Independent Source Doctrine	21
	D. DERIVATIVE EVIDENCE RULE	
14.30	In General	21
14.31	Identification as the “Fruit” of a Fourth Amendment Violation	22
14.32	Identification as the “Fruit” of a Fifth Amendment Violation	24
14.33	Unnecessary Delay Under Crim.P.Rule 5(a)	24
	E. PRETRIAL IDENTIFICATION PROCEDURES	
14.40	In General	24
14.41	Lineups	25
14.42	Defendant’s Compelled Participation in a Lineup	26
14.43	Role of Counsel at Lineup	27
14.44	Showups and “Accidental” Encounters	29
14.45	Photographic Lineups	30
14.46	Loss of Photographic Identification Evidence	32
14.47	Voice Identification Evidence	33
14.48	Requiring Defendant to Submit to Pretrial Identification Procedures—In General	34
14.49	Crim.P.Rule 41.1	35
14.50	Refusal to Cooperate in Pretrial Identification Procedure	37
14.51	Defendant’s Right to Compel Identification Procedure	38
14.52	Form—Objection to Prosecution’s Motion for Nontestimonial Identification Evidence	39
14.53	Form—Lineup Requests and Objections	40
14.54	Checklist—Identification Witness Interview	42
	F. PRETRIAL AND TRIAL PROCEDURE	
14.60	In General	44
14.61	Motion to Compel Disclosure of Identification Evidence	44
14.62	Motion to Suppress Identification Evidence—Timeliness of Motion and Waiver of Objection	45

TABLE OF CONTENTS

Sec.		Page
14.63	Motion to Suppress Identification Evidence—Right to Pre-trial Hearing	45
14.64	Motion to Suppress Identification Evidence—Burden and Standard of Proof at Pretrial Hearing	46
14.65	Motion to Suppress Identification Evidence—Interlocutory Appeal	46
14.66	In-Court Identification Procedures	47
14.67	Identification Evidence at Trial—In General	48
14.68	Proof of Prior Identification or Lack of an Identification	51
14.69	Requiring Defendant to Exhibit Himself or Herself to the Jury	53
14.70	Use of “Mug Shots,” “Fingerprint Cards” and Evidence of Aliases	54
14.71	Expert Testimony	55
14.72	Jury Instructions	56
14.73	Checklist—Motion to Exclude Identification Evidence	56
14.74	Form—Motion to Produce Identification Evidence	58
14.75	Form—Motion to Suppress In-Court Identification	60

CHAPTER 15. GUILTY PLEAS AND DISPOSITION WITHOUT TRIAL

A. INTRODUCTION

15.1	In General	63
15.2	Limiting Access to Criminal Records	63
15.3	Form—Petition to Seal Arrest and Criminal Records	66

B. TYPES OF DISPOSITIONS

15.5	In General	68
15.6	Deferred Prosecution	71
15.7	Deferred Judgment and Sentence	72
15.8	Diversion Programs	76

C. PLEA NEGOTIATIONS

15.10	In General	77
15.11	The Pretrial Conference	79
15.12	The Plea Bargaining Process	80
15.13	Prosecutor’s Conduct	82
15.14	Defense Counsel’s Duties	85
15.15	Trial Judge’s Role	90
15.16	Admissibility of Plea Discussions	92
15.17	Breach of the Plea Agreement—The “Broken Bargain”	95
15.18	Breach or Withdrawal From Plea Agreement by Defendant	100

TABLE OF CONTENTS

Sec.		Page
15.19	District Attorney’s Sentencing Recommendations to the Court	102
15.20	Disposition on the Plea Agreement	104
15.21	Checklist—Defense Attorney’s Plea Negotiation Checklist...	104

D. PLEA OF GUILTY

15.30	In General	105
15.31	Plea of Guilty—Class 1 Felonies	108
15.32	Presence of Defendant at Entry of Guilty Plea	109
15.33	Right to Counsel at Entry of Guilty Plea	109
15.34	Rule 11 Advisement—In General	110
15.35	Rule 11 Advisement—Nature of Charge	115
15.36	Rule 11 Advisement—Penalty	118
15.37	Rule 11 Advisement—Effect of Plea	123
15.38	Rule 11 Advisement—Assuring Plea Is Voluntary	125
15.39	Rule 11 Advisement—Waiver of Rights	129
15.40	Rule 11 Advisement—Factual Basis for Plea	131
15.41	Rule 11 Advisement—Factual Basis for Plea—Waiver Under <i>Alford</i> Plea	132
15.42	Judgment and Sentence on the Guilty Plea	134
15.43	Record of the Guilty Plea	134
15.44	Conditional Plea of Guilty With Reserved Right to Appeal ..	135
15.45	Attacks on Guilty Pleas	136
15.46	Nolo Contendere Plea	139
15.47	Admissibility of Guilty Plea and Collateral Effects	140
15.48	Checklist—Entry of Plea of Guilty or Nolo Contendere	142
15.49	Form—Plea Agreement, Advisement Pursuant to Criminal Procedure Rule 11 and Plea of Guilty—Felony Plea	144

E. WITHDRAWAL OF PLEA

15.50	In General	148
15.51	Withdrawal of Plea—Prior to or at Sentencing	149
15.52	Remedy After Sentencing	151

CHAPTER 16. THE TRIAL FRAMEWORK—A SPEEDY AND PUBLIC TRIAL

A. SPEEDY TRIAL

16.1	In General	153
16.2	Constitutional Provisions	155
16.3	Statutory and Procedural Provisions—In General	159
16.4	Exclusions From and Extensions of Time for Speedy Trial ..	161
16.5	Retrial Following Postconviction Appeal or Mistrial	168
16.6	Effect of Revocation of Bail	169

TABLE OF CONTENTS

	Page
Sec.	
16.7 Waiver of Speedy Trial Rights	170
16.8 Pretrial Appellate Review	172
16.9 Dismissal, Refiling and Amendment of Charges	172
16.10 Uniform Mandatory Disposition of Detainers Act	173
16.11 Form—Defendant’s Waiver of Speedy Trial	176
B. CONTINUANCE OF THE TRIAL	
16.20 In General	177
16.21 Insufficient Time to Prepare for Trial	179
16.22 Absence of Material Witness	181
16.23 Surprise at Trial—Discovery and Notice Violations	182
C. PUBLIC TRIAL AND PUBLICITY	
16.30 In General	182
16.31 Defendant’s Right to a Public Trial—In General	183
16.32 Waiver by Defendant	186
16.33 Fair Trial, Free Press and Public Access	187
16.34 Exclusion of the Public	188
16.35 Closure Orders Excluding the Press	190
16.36 “Gag Orders” and Other Restrictions	193
16.37 Form—Motion to Restrict Pretrial Publicity	195
16.38 Form—Motion to Close Preliminary Hearing	196
D. PRESENCE OF DEFENDANT AT TRIAL	
16.40 In General	198
16.41 The Right to Be Present	198
16.42 Waiver of Right to Be Present	200
16.43 Disruptive Conduct	202
16.44 Appearance in Shackles or Prison Clothes	203
16.45 Form—Motion for Court Order to Allow Defendant to Dress in Civilian Clothes for Jury Trial	205
CHAPTER 17. THE TRIAL JURY	
A. THE RIGHT TO A JURY TRIAL	
17.1 Introduction	208
17.2 Trial to the Court Distinguished	209
17.3 Right to Jury Trial—In General	210
17.4 Number of Jurors	214
17.5 Waiver of Jury Trial	215
17.6 Unanimity of Verdict	218
B. THE JURY PANEL	
17.10 Qualifications for Juror Service	220

TABLE OF CONTENTS

Sec.		Page
17.11	Selecting and Summoning the Jury Panel	222
17.12	Deferments, Excuses and Discharge From Jury Service.....	224
17.13	Juror Questionnaires and Records	224
17.14	Challenge to the Jury Panel	226
17.15	Length of Jury Service	227
17.16	Communication With and Investigation of Jurors	228
17.17	Form—Juror Summons and Questionnaire	230
17.18	Form—Juror Reimbursement Guidelines for First Three Days of Juror Service	231
C. SELECTING THE JURY—IN GENERAL		
17.20	An Overview	233
17.21	Jury Oath.....	237
17.22	Jury Voir Dire—In General.....	237
17.23	Court Restriction of Jury Voir Dire by Counsel.....	238
17.24	Voir Dire of Jurors Individually	240
17.25	Voir Dire Concerning the Defendant’s Theory of the Case ...	241
17.26	Voir Dire Concerning Propositions of Law.....	242
17.27	Nondisclosure of Information by Jurors and Improper Re- sponses or Comments by Jurors, Counsel or the Court	243
17.28	Acceptance and Swearing of the Jury	244
17.29	Appellate Review	245
17.30	Alternate Jurors	247
17.31	Voir Dire Techniques—In General	249
17.32	Sample Questions Concerning Basic Principles of Law Ap- plicable to Criminal Cases.....	251
17.33	Sample Questions Concerning the Defense Theory of the Case	253
D. SELECTING THE JURY—CHALLENGE FOR CAUSE		
17.40	In General	254
17.41	Grounds to Challenge for Cause	257
17.42	Juror’s Actual Bias and Prejudice	258
17.43	Juror’s Prior Knowledge About the Case.....	263
17.44	Juror’s Prior Involvement in Other Proceedings Concern- ing the Defendant.....	264
17.45	Juror’s Relationship to Parties or Counsel	264
17.46	Juror’s Prior Relationship With the Case	265
17.47	Compensated Employee of a Public Law Enforcement Agency or a Public Defender’s Office	266
17.48	Other Grounds	267
17.49	Waiver	267
17.50	Review of Trial Court’s Ruling	268
17.51	Capital Cases	269

TABLE OF CONTENTS

Sec.		Page
	E. SELECTING THE JURY—PEREMPTORY CHALLENGES	
17.60	In General	270
17.61	Number	271
17.62	Manner of Exercising	273
17.63	Race, Ethnic, and Gender-Based Challenges	274
17.64	Multiple Defendants	277
	 CHAPTER 18. THE CRIMINAL TRIAL	
	A. INTRODUCTION	
18.1	Scope of the Chapter	282
18.2	Phases of the Trial—An Overview	282
	 B. SEQUESTRATION OF WITNESSES	
18.10	The Sequestration Rule	283
18.11	Witnesses Exempted From Sequestration	286
18.12	Sanctions for Violation of Sequestration Order	287
	 C. OPENING STATEMENT	
18.20	In General	288
18.21	Scope of Opening Statement	289
18.22	Prosecution’s Opening Statement—In General	291
18.23	Judgment of Acquittal Based on Prosecutor’s Opening Statement	292
18.24	Prosecutorial Misconduct in Opening Statement	292
18.25	Defense Opening Statement	293
	 D. THE PROSECUTION’S CASE-IN-CHIEF	
18.30	In General	296
18.31	Burden and Order of Proof—Presentation of Evidence	296
18.32	Stipulations	298
18.33	Presentation of a Prima Facie Case—In General	299
18.34	Presentation of a Prima Facie Case—Jurisdiction and Ven- ue	299
18.35	Presentation of a Prima Facie Case—Date	300
18.36	Presentation of a Prima Facie Case—Identity	301
18.37	Proof of the Charged Offense—In General	302
18.38	Proof of the Charged Offense—Culpable Mental State	304
18.39	Proof of the Charged Offense—Strict Liability Offense	310
18.40	Proof of the Charged Offense—Causation	311
18.41	Proof of the Charged Offense—Attempt	312
18.42	Parties to Offense—In General	314
18.43	Parties to Offense—Complicitors	316

TABLE OF CONTENTS

Sec.		Page
18.44	Parties to Offense—Conspirators	321
18.45	Parties to Offense—Conspirators—Admissibility of Acts and Declarations of Co-conspirator	324
18.46	Parties to Offense—Accessory to Crime	328
18.47	Solicitation	329
18.48	Presenting Testimony by an Accomplice	330
E. DEFENSE MOTIONS AT CONCLUSION OF PROSECUTION’S CASE-IN-CHIEF AND AT THE CLOSE OF ALL THE EVIDENCE		
18.50	In General	332
18.51	Motion for Judgment of Acquittal—Overview	332
18.52	Motion for Judgment of Acquittal—Procedure	333
18.53	Motion for Judgment of Acquittal—Standard of Review by Trial Judge	335
18.54	Motion for Judgment of Acquittal—Grounds	336
18.55	Motion for Judgment of Acquittal—Appellate Review and Double Jeopardy	340
18.56	Motion to Compel Election	342
18.57	Motion to Sever	345
18.58	Defense Motions at Close of Evidence	345
F. THE DEFENSE CASE AND THE DEFENDANT’S DECISION TO TESTIFY		
18.60	In General	346
18.61	The Defendant as a Witness at Trial	348
18.62	The Decision Whether to Take the Stand	349
18.63	Waiving the Right to Testify at Trial—The “ <i>Curtis</i> ” Ad- visement	354
18.64	Jury Voir Dire When Defendant Elects Not to Testify	359
18.65	Comment on Defendant’s Not Testifying	359
18.66	Client Perjury	361
G. PRESENTING AFFIRMATIVE AND STATUTORY DEFENSES		
18.70	In General	367
18.71	The Burden of Pleading, Production and Persuasion, and Jury Instructions	368
18.72	Affirmative Defenses—Overview	370
18.73	Affirmative Defenses—Age of Victim	372
18.74	Affirmative Defenses—Choice of Evils	372
18.75	Affirmative Defenses—Consent	374

TABLE OF CONTENTS

	Page
Sec.	
18.76 Affirmative Defenses—Defense of Self, Other Persons and Property, and Use of Force in Special Relationships	374
18.77 Affirmative Defenses—Duress	379
18.78 Affirmative Defenses—Entrapment	379
18.79 Affirmative Defenses—Mistake of Fact or Law	380
18.80 Affirmative Defenses—Independent Intervening Act	382
18.81 Affirmative Defenses—Insanity and Impaired Mental Con- dition	382
18.82 Affirmative Defenses—Intoxication	383
18.83 Affirmative Defenses—Renunciation and Abandonment	384
18.84 Defendant’s Right to Present Proof of Mental Condition	385
18.85 Defense of Alibi	385
18.86 Age of Responsibility	386
18.87 Miscellaneous Statutory Defenses	386
H. REBUTTAL EVIDENCE AND REOPENING PROOF	
18.90 Rebuttal and Surrebuttal Evidence—In General	387
18.91 Reopening Proof	389
I. MISTRIAL	
18.100 In General	389
18.101 Remedial Actions and Standard of Trial Court Discretion— “Manifest Necessity”	391
18.102 Motion for Mistrial by Prosecutor	394
18.103 Motion for Mistrial by Defendant	395
18.104 Misconduct of Judge	397
18.105 Misconduct by Prosecutor	398
18.106 Juror Misconduct and Other Circumstances	401
18.107 Reprosecution After Mistrial	402
18.108 Effect of Mistrial on Speedy Trial Rights	404
J. JURY INSTRUCTIONS	
18.110 In General	404
18.111 Sources of Jury Instructions—Colorado Pattern Jury In- structions	407
18.112 Form and Content of Instructions—In General	408
18.113 Manner of Giving Instructions to the Jury	410
18.114 Objections to Jury Instructions	411
18.115 Defense Perspective	412
18.116 Instructions—Elements of the Offense	412
18.117 Instructions—Lesser Offenses	416
18.118 Instructions—Affirmative Defenses	427
18.119 Instructions—Theory of Defense	428

TABLE OF CONTENTS

Sec.		Page
18.120	Instructions—Presumptions and Inferences	431
18.121	Instructions—Witnesses	434
18.122	Requests for Instructions—In General	436
18.123	Instructions on Defendant’s Character	437
18.124	Special Prosecution Instructions	438
18.125	Supplemental Instructions and Questions From Jurors	440
18.126	Appellate Review of Jury Instructions	441
18.127	Checklist—Jury Instructions	444

K. CLOSING ARGUMENT

18.130	In General	445
18.131	Court—Imposed Time Limit on Closing Argument	446
18.132	Scope of Closing Argument	446
18.133	Closing Argument by Prosecutor	447
18.134	Prosecutor’s Rebuttal Argument	451
18.135	Closing Argument by Defense Counsel	452
18.136	Closing Argument by Defense Counsel—Practice Pointers ...	453
18.137	Use of Exhibits, Summaries and Transcripts in Closing Argument	455
18.138	Appellate Review of Closing Argument	455

L. JURY SEQUESTRATION, CONDUCT AND DELIBERATIONS

18.140	In General	457
18.141	Custody of the Jury	458
18.142	Separation of Jurors From Outside Influences	459
18.143	Jurors Notetaking and Questioning of Witnesses	461
18.144	Juror Notebooks	461
18.145	Jurors Use of Exhibits and Transcripts During Delibera- tions	462
18.146	Jury View During Trial	463
18.147	Third Party Communication With Jurors and Outside In- fluences	463
18.148	Communications With the Court—Supplemental Instruc- tions	464
18.149	Length of Deliberations	466
18.150	Deadlocked Jury—Aiding or Urging a Verdict	467
18.151	Discharge of Jury Without a Verdict	470
18.152	Excusing Alternate Jurors	471

M. VERDICT AND MOTIONS FOLLOWING VERDICT

18.160	In General	472
18.161	Return of Verdict	474

TABLE OF CONTENTS

Sec.		Page
18.162	Return of Verdict—Verdict by Reconstituted Jury	475
18.163	Form of Verdict—Lesser Included Offenses	476
18.164	Form of Verdict—Inconsistent Verdicts	476
18.165	Form of Verdict—Partial Verdict	478
18.166	Form of Verdict—Special Verdicts	479
18.167	Polling the Jury	481
18.168	Impeaching the Jury’s Verdict	482
18.169	Defense Motions After Verdict—In General	485
18.170	Motion for Bail After Verdict	485
18.171	Motion for Judgment of Acquittal and for Judgment Notwithstanding the Verdict	486
18.172	Motion in Arrest of Judgment	486
18.173	Motion for New Trial	487
18.174	Jury Nullification	490
18.175	Form—Motion for New Trial	491

CHAPTER 19. WITNESS TESTIMONY AND INTRODUCTION OF EVIDENCE

A. INTRODUCTION

19.1	Scope of Chapter	495
19.2	Admissibility—In General	495
19.3	Objections to Evidence	498
19.4	Making the Record and Offers of Proof	500
19.5	Stipulations	502
19.6	Motion in Limine	502
19.7	Form—Motion in Limine	504

B. WITNESS EXAMINATION—IN GENERAL

19.10	Competency of Persons to Be Witnesses	505
19.11	Examination of Witnesses—In General	508
19.12	Direct Examination	509
19.13	Cross-Examination	510
19.14	Redirect and Recross Examination	512
19.15	Witness Statements	512
19.16	Opinion Testimony—In General	517
19.17	Opinion Testimony—Lay Witness	518
19.18	Opinion Testimony—Expert Witness	520

C. PRIVILEGES AND PRIVILEGED TESTIMONY

19.20	In General	528
19.21	Privilege Against Self-Incrimination	530
19.22	Attorney–Client Privilege	533
19.23	Marital Privilege	536

TABLE OF CONTENTS

Sec.		Page
19.24	Parent–Child Privilege	539
19.25	Patient–Physician and Patient–Therapist Privilege	540
19.26	Psychologist, Counselor, Therapist or Social Worker Privilege	542
19.27	Reports of Child Abuse	543
19.28	Other Privileges	543

D. CHARACTER EVIDENCE

19.30	In General	544
19.31	Admissibility	546
19.32	Methods of Proving Character	546
19.33	Witness Veracity	548
19.34	Particular Traits	550

E. IMPEACHMENT

19.40	In General	554
19.41	Deals in Exchange for Testimony	557
19.42	Prior Convictions	559
19.43	Prior Bad Acts	562

F. MISCELLANEOUS

19.50	Real and Demonstrative Evidence	563
19.51	Collateral Criminal Activity and Similar Transaction Evidence	568
19.52	Hearsay Evidence and Confrontation	578
19.53	Judicial Notice	589

CHAPTER 20. SENTENCING

A. INTRODUCTION

20.1	In General	592
20.2	Determinate Sentencing for Felony Convictions—An Overview	595
20.3	Effect of Amendatory Legislation	597
20.4	Pleading Requirements	599
20.5	Relocation of Sentencing Provisions	601

B. PENALTIES AND GENERAL PRINCIPLES OF SENTENCING

20.10	In General	602
20.11	Penalties for Misdemeanors and Petty Offenses	602
20.12	Presumptive Penalties for Felony Conviction—In General...	604

TABLE OF CONTENTS

Sec.		Page
20.13	Presumptive Penalties for Felony Conviction—Aggravating Factors and Extraordinary Risk Crimes	608
20.14	Enhanced Penalty Offender—Habitual Criminal Statute.....	615
20.15	Enhanced Penalty Offender—Statutory Crime of Violence ..	621
20.16	Enhanced Penalty Offender—Special Offenders	624
20.17	Enhanced Penalty Offender—Other Offenders.....	626
20.18	Sentence Under Sex Offenders Act of 1968.....	627
20.19	Sentence Under Sex Offender Lifetime Supervision Act of 1998	629
20.20	Juvenile Offender Sentenced as Adult	631
20.21	Imposition of the Death Penalty	632
20.22	Concurrent and Consecutive Sentences.....	633
20.23	Proportionality Review	638
20.24	Presentence Confinement Credit	640
20.25	Earned Time Deductions and Good Time Reductions.....	644
20.26	Parole—In General	646
20.27	Parole—Eligibility and Criteria for Granting Parole	649
20.28	Parole—Revocation Proceedings	653
C. THE SENTENCING HEARING		
20.30	In General	656
20.31	Presentence Report.....	659
20.32	Victim Impact Statement.....	661
20.33	Role of Defense Counsel	662
20.34	Checklist—Preparation for Sentencing	665
D. SENTENCING ALTERNATIVES		
20.40	In General	666
20.41	Sentence to Incarceration	668
20.42	Court Costs, Surcharges, and Fees	668
20.43	Fines	670
20.44	Restitution	671
20.45	Probation—In General	679
20.46	Probation—Criteria for Granting or Denying Probation	685
20.47	Probation—Revocation Proceedings	687
20.48	Probation—Sentencing Following Revocation	690
20.49	Community Corrections Programs	691
20.50	Restitution and Community Service Programs.....	695
E. APPELLATE REVIEW OF SENTENCE		
20.60	In General	696
20.61	Scope of Review.....	697
20.62	Procedure.....	699

TABLE OF CONTENTS

Sec.		Page
20.63	Sentencing on Remand Following Successful Appeal	699
F. MISCELLANEOUS		
20.70	Judgment of Conviction	700
20.71	Postconviction Modification of Sentence	701
20.72	Commutation and Pardons	704
CHAPTER 21. POSTCONVICTION REMEDIES AND COLLATERAL ATTACKS ON JUDGMENTS		
A. INTRODUCTION		
21.1	In General	707
21.2	The Right to Counsel and the Withdrawal of Counsel	708
B. CORRECTION OF ILLEGAL SENTENCE		
21.10	In General	710
21.11	Trial Court Jurisdiction	712
21.12	Procedure and Right to a Hearing	713
21.13	Plea Bargains	714
C. REDUCTION OF SENTENCE		
21.20	In General	714
21.21	Trial Court Jurisdiction to Reduce a Sentence	717
21.22	Sentence Reductions for Crimes of Violence and Other Mandatory Sentences	720
21.23	Appeal	721
21.24	Form—Motion for Sentence Reconsideration	722
D. CHALLENGES TO JUDGMENTS OF CONVICTION		
21.30	In General	723
21.31	Consequences of a Successful Challenge to a Conviction	725
21.32	Burdens of Proof	726
21.33	Motions to Vacate Convictions—In General	727
21.34	Summary Dismissal of the Motion	730
21.35	Right to a Hearing and a Ruling on the Motion	731
21.36	Grounds to Challenge a Conviction—Overview	732
21.37	Grounds to Challenge a Conviction—Invalid Guilty Plea	733
21.38	Grounds to Challenge a Conviction—Violation of the Right to Counsel	734
21.39	Grounds to Challenge a Conviction—Newly Discovered Evi- dence	737
21.40	Grounds to Challenge a Conviction—Violation of the Right to Testify	739

TABLE OF CONTENTS

Sec.		Page
21.41	Prosecution Defenses—Overview	740
21.42	The Collateral Attack Statutes—In General	741
21.43	The Collateral Attack Statutes—Definition of a Collateral Attack	744
21.44	The Collateral Attack Statutes—Justifiable Excuse or Ex- cusable Neglect	744
21.45	The Collateral Attack Statutes—Date of Conviction	748
21.46	The Collateral Attack Statutes—The Effect of an Adjudica- tion of Insanity or Incompetence	749
21.47	The Collateral Attack Statutes—The Effect of a Prior Di- rect Appeal	749
21.48	The Collateral Attack Statutes—Constitutional Challenges	750
21.49	Present Need	751
21.50	Laches	752
21.51	Collateral Estoppel and Res Judicata	753
21.52	Successive Postconviction Challenges to a Judgment	756
21.53	Appeal	757
21.54	Form—Motion for Postconviction Relief Pursuant to Crim. P.Rule 35(c)	758
E. OTHER POSTCONVICTION REMEDIES		
21.60	Changes in Law and Amendatory Legislation	763
21.61	Release From Incarceration After the Service of Sentence ...	764
21.62	Unlawful Revocation of Parole, Probation, or Conditional Release	765
21.63	Correction of a Clerical Error	765
21.64	Postconviction Testing of DNA	765
CHAPTER 22. APPELLATE PROCEDURE		
A. PREPARATION FOR APPEAL		
22.1	In General	768
22.2	Motion for New Trial	769
22.3	Requirement of Final Judgment	769
22.4	Advising Defendant of Right to Appeal	770
22.5	Waiver of Appeal	771
22.6	Duties of Counsel Regarding Appeal	771
22.7	Bail Pending Appeal	773
22.8	In Forma Pauperis	774
B. COLORADO APPELLATE PRACTICE		
22.20	Composition of Appellate Courts	775
22.21	Types of Review	775
22.22	Original Proceedings	776

TABLE OF CONTENTS

Sec.		Page
22.23	Rule 106 Actions	778
22.24	Court of Appeals Review	779
22.25	Interlocutory Appeal	780
22.26	Notice of Appeal	781
22.27	Designation of Record	783
22.28	Briefs	785
22.29	Motions	787
22.30	Oral Argument	787
22.31	Issuance of Decision	788
22.32	Petition for Rehearing	788
22.33	Petition for Writ of Certiorari	788
22.34	Issuance of Mandate	790
22.35	Dismissal of Appeal	790
22.36	Standards of Review	791
22.37	Error Doctrines	792
22.38	Stay of Execution of Sentence	795
22.39	Application of Overruling Decision	796
22.40	Appeal From County Court	798
22.41	Appeal From Municipal Court	799
22.42	Checklist—County Court to District Court Appeal	800
22.43	Checklist—District Court to Court of Appeals Appeal	801
C. COLORADO APPELLATE FORMS		
22.50	Form—Notice of Appeal (Appeal From District Court)	802
22.51	Form—Notice of Appeal (Appeal From County Court)	804
22.52	Form—Designation of Record (Appeal From District Court)	805
22.53	Form—Designation of Record (Appeal From County Court)	807
22.54	Form—Motion for Extension of Time to Transmit Record on Appeal	808
22.55	Form—Request for Extension of Time on Filing of Opening Brief	809
22.56	Form—Motion for Remand to Trial Court	810
22.57	Form—Request for Oral Argument	811
22.58	Form—Motion to Withdraw	812
22.59	Form—Motion to Dismiss Appeal	813
22.60	Form—Complaint Under C.R.C.P. Rule 106	815
22.61	Form—Order to Show Cause Under C.R.C.P. Rule 106	816
D. CERTIORARI TO THE UNITED STATES SUPREME COURT		
22.70	Scope of Review	817
22.71	Filing and Contents of Petition for Writ of Certiorari	818
22.72	Proceeding in Forma Pauperis	819

TABLE OF CONTENTS

Sec.		Page
	CHAPTER 23. EXTRADITION AND INTERSTATE DETAINERS	
	A. INTRODUCTION	
23.1	Overview	821
23.2	Extradition and Interstate Detainers Distinguished—Ter- minology	823
23.3	Extradition Authority—Sources of Law	824
23.4	Extraditable Offenses	828
23.5	Extraditable Persons	828
23.6	Executive Agreements for Extradition of Persons Imprisoned or Awaiting Trial in Asylum State	832
23.7	Related Statutes	833
23.8	International Extradition	837
	B. EXTRADITION TO COLORADO FROM ANOTHER STATE	
23.10	Basic Procedures for Obtaining Extradition to Colorado From Another State	838
23.11	Location and Arrest of Fugitive in Asylum State	840
23.12	Application for Requisition	841
23.13	Appointment of Agent	842
23.14	Proceedings in Asylum State	842
23.15	Prosecution for Other Offenses	843
23.16	Right to Counsel	843
23.17	Immunity From Civil Process	843
23.18	Credit for Time Spent in Custody of Asylum State	845
23.19	Effect of Unsuccessful Extradition	845
23.20	Effect of Unlawful Extradition	846
23.21	Payment of Costs Incident to Extradition	846
	C. EXTRADITION FROM COLORADO	
23.30	Defense Representation of a Fugitive in Colorado	847
23.31	Arrest in Colorado on the “Fugitive Warrant” and Proceedings Prior to Requisition	848
23.32	Waiver of Extradition	851
23.33	Duty and Authority of Governor—In General	853
23.34	Authority of Governor to Recall Warrant of Extradition	854
23.35	Documentation From Demanding State	855
23.36	Documentation From Demanding State—Time Limit	860
23.37	Issuance of Warrant of Extradition	861
23.38	Contents of Warrant of Extradition	861
23.39	Rights of the Accused—Initial Advisement and Right to Counsel	863
23.40	Right to Bail	864

TABLE OF CONTENTS

Sec.		Page
23.41	Attacking the “Fugitive Warrant”	865
23.42	Habeas Corpus Proceedings—In General	865
23.43	Application for Writ of Habeas Corpus and Conduct of the Hearing.....	866
23.44	Scope of Issues in Habeas Corpus Proceeding	868
23.45	Burdens of Proof	874
23.46	Appellate Review	876
23.47	Successive Proceedings and Res Judicata	876
23.48	Demand for Return of Persons Under Prosecution in Colo- rado.....	878
23.49	Costs of Extradition Proceedings	878
23.50	Form—Waiver of Extradition	879

D. INTERSTATE DETAINERS

23.60	In General	880
23.61	Application of Interstate Agreement on Detainers (IAD)	883
23.62	Request by Prosecutor for Temporary Custody	884
23.63	Request by Inmate for Disposition of Interstate Detainer	885
23.64	Speedy Trial Provisions	887
23.65	Securing Temporary Custody of Inmate From Jurisdiction Not Party to IAD.....	889

CHAPTER 24. MISCELLANEOUS PROCEEDINGS

A. HABEAS CORPUS

24.1	In General	891
24.2	Nature of Habeas Proceeding	892
24.3	Applicability of the Writ of Habeas Corpus in Criminal Proceedings	894
24.4	Petitioning for a Writ of Habeas Corpus	900
24.5	Issuance and Service of the Writ	901
24.6	Return and Answer to the Writ	903
24.7	Hearing on the Writ	904
24.8	Successive Applications for the Writ	904
24.9	Form—Petition for Writ of Habeas Corpus.....	905
24.10	Form—Order for Writ of Habeas Corpus.....	906
24.11	Form—Writ of Habeas Corpus.....	907
24.12	Form—Application for Writ of Habeas Corpus Ad Prose- quendum.....	908
24.13	Form—Order and Writ of Habeas Corpus Ad Prosequen- dum.....	909

B. JUVENILE TRANSFER PROCEEDINGS AND DIRECT FILING PROCEDURE

24.20	In General	910
-------	------------------	-----

TABLE OF CONTENTS

	Page
Sec.	
24.21 Juvenile Court Jurisdiction in Transfer Proceeding	911
24.22 Eligibility for Transfer for Trial as an Adult	912
24.23 Initiation of Juvenile Transfer Proceedings	913
24.24 Conduct of Juvenile Transfer Hearing—In General	914
24.25 Conduct of Juvenile Transfer Hearing—Rights of the Juvenile	915
24.26 Transfer Findings and Effect	916
24.27 Nature of the Transfer Decision—Double Jeopardy	917
24.28 Direct Filing of Information in District Court	918
24.29 Form—Request for Waiver of Jurisdiction and Transfer to District Court	920
C. CONTEMPT PROCEEDINGS	
24.40 In General	921
24.41 Punitive Sanctions	925
24.42 Remedial Sanctions	926
24.43 Contemptuous Behavior of Lawyers, Witnesses and Spectators	928
24.44 Appellate Review of Contempt Citation	930
24.45 Double Jeopardy	931
D. CRIME VICTIMS' RIGHTS IN COLORADO	
24.50 In General	932
24.51 Colorado Crime Victim Compensation Act—Overview	933
24.52 Colorado Crime Victim Compensation Act—Victim and Witness Rights at “Critical Stages of the Criminal Justice Process”	933
24.53 Colorado Crime Victim Compensation Act—Compensation Provisions	934
24.54 Victims of Domestic Violence—Relief From Deportation	937
E. FORFEITURE ACTIONS	
24.60 In General	937
24.61 Public Nuisance Abatement Act—Overview	937
24.62 Public Nuisance Abatement Act—Owner’s Standing to Contest a Forfeiture Action and Defenses	938
24.63 Public Nuisance Abatement Act—Currency	939
24.64 Public Nuisance Abatement Act—Procedure	940
24.65 Public Nuisance Abatement Act—Judgment	941
24.66 Colorado Contraband Forfeiture Act	942
24.67 Constitutional Concerns	943
F. BASIC RULES OF STATUTORY CONSTRUCTION	
24.70 In General	944

TABLE OF CONTENTS

	Page
Sec.	
24.71 Basic Limitations on Criminal Legislation	945
24.72 Rules for Construing Criminal Statutes	949
24.73 General Rules of Statutory Construction	951
24.74 Resolving Conflicts Between Statutes and Procedural Rules	953
Appendices	954
Table of Statutes	975
Table of Rules	1009
Table of Cases	1031
Index	1149