

Table of Contents

CHAPTER 1. THE SOURCES OF CRIMINAL PRACTICE AND PROCEDURE IN MASSACHUSETTS

A. THE CONSTITUTION OF MASSACHUSETTS AS A SOURCE OF CRIMINAL PRACTICE AND PROCEDURE

- § 1:2 In general
- § 1:3 Massachusetts Constitution and the United States Supreme Court

B. THE LEGISLATURE AS A SOURCE OF CRIMINAL PRACTICE AND PROCEDURE

- § 1:6 Enactment of criminal statutes
- § 1:7 Challenging the criminal statutes—Introduction
- § 1:8 Challenging the criminal statutes—Vagueness
- § 1:9 Lenity
- § 1:11 Challenging criminal statutes—Equal protection
- § 1:13 How challenges to statutes are made

C. THE JUDICIARY AS A SOURCE OF CRIMINAL PRACTICE AND PROCEDURE

- § 1:18 The decisions of the Supreme Court as a source of criminal practice and procedure in the Commonwealth
- § 1:20 Effect of the decisions of the Supreme Court upon the criminal practice and procedure of the Commonwealth
- § 1:21 Retroactivity of court decisions

D. THE EXECUTIVE AS A SOURCE OF CRIMINAL PROCEDURE AND PRACTICE *[New]*

- § 1:22 In general *[New]*

CHAPTER 2. JURISDICTION AND VENUE AS IT RELATES TO CRIME

A. INTRODUCTION

- § 2:1 Definition of criminal jurisdiction and venue

B. JURISDICTION OF THE COURT

- § 2:3 The legislature and the jurisdiction of the courts
- § 2:4 Jurisdiction of the Supreme Judicial Court
- § 2:7 Criminal jurisdiction of the Superior Court
- § 2:9 Criminal jurisdiction of the District Court Department and
Municipal Court of the City of Boston
- § 2:10 Criminal jurisdiction of the Juvenile Court Department

C. JURISDICTION TO RESTRAIN CRIME OR TO PREVENT PROSECUTION

- § 2:11 Restraining violations of criminal statutes
- § 2:12 Restraining prosecutions of crime

E. JURISDICTION AND VENUE OF CERTAIN OFFENSES

- § 2:18 Jurisdiction of offenses that occur outside the Commonwealth
- § 2:20 Procedure if location of crime is in doubt
- § 2:25 Larceny, embezzlement, receiving stolen goods—Where
prosecuted
- § 2:26 Miscellaneous crimes—Where prosecuted
- § 2:27 Federal Preemption

CHAPTER 3. THE LAW OF ARREST

A. GENERALLY

- § 3:1 Arrest, seizure of the person and the federal and Massachusetts
constitutions
- § 3:7 Probable cause determination for persons arrested without a
warrant

B. ELEMENTS OF AN ARREST

- § 3:16 Elements of an arrest—Physical restraint and submission to
authority

C. ARREST WITH A WARRANT

- § 3:21 Arrest in a dwelling without a warrant—Exigent circumstances
- § 3:44 Service of arrest warrants—Knock and announce rule

D. ARREST WITHOUT A WARRANT

- § 3:49 Authority to arrest without a warrant—Police officers—
Misdemeanors
- § 3:52 Limitations on power of arrest without a warrant as to places

E. PROBABLE CAUSE

- § 3:55 The requirement of probable cause in regard to an arrest
- § 3:56 The definition of probable cause

TABLE OF CONTENTS

- § 3:57 When must the police officer have probable cause
 - § 3:60 Factors that may establish probable cause for arrest—
Introduction
 - § 3:62 Factors that may establish probable cause for arrest—Flight
 - § 3:63 Factors that may establish probable cause for arrest—Evasive
answers, conflicting stories
 - § 3:65 Direct observations of the police as a source of probable cause
 - § 3:70 Distinctions between probable cause to arrest and probable
cause to search
- Appendix 3A. The Law of Arrest Decisions

CHAPTER 4. STOP AND FRISK OF PERSONS

- § 4:3 The different types of encounters with police
 - § 4:4 Conduct of the police that does not constitute a seizure of the
person
 - § 4:6 Conduct of the police that constitutes an investigatory stop
 - § 4:7 Conduct of the police that constitutes an investigatory stop—
Pursuit
 - § 4:8 Conduct of the police that converts a stop into an arrest
 - § 4:9 Factors that may justify stop and frisk
 - § 4:12 Evasion or flight
 - § 4:14 Reasonable suspicion for a stop
 - § 4:17 Hearsay information may be used to justify stop
 - § 4:18 *Aguilar-Spinelli* and reasonable suspicion
 - § 4:20 Investigatory stop ordered by radio broadcast
 - § 4:22 Reasonable suspicion for a frisk
 - § 4:25 Frisk of containers
 - § 4:28 The scope of the frisk
- Appendix 4A. Stop and Frisk of Persons Decisions

CHAPTER 5. SEARCH AND SEIZURE

A. GENERALLY

- § 5:3 The test of the reasonableness of the police conduct
- § 5:5 The requirement of state action—Government officials
- § 5:6 Actions of private persons are not governed by the Fourth
Amendment
- § 5:7 Requirement of a search or seizure
- § 5:8 Standing
- § 5:9 The expectation of privacy
- § 5:9.50 Reasonable expectation of privacy—Analysis and testing of
seized evidence *[New]*
- § 5:11 Reasonable expectation of privacy—Overnight guests
- § 5:12 Reasonable expectation of privacy—Information or items
knowingly exposed to a third party *[New]*
- § 5:19 Reasonable expectation of privacy—Pre-trial detainees and
convicted persons *[Retitled]*
- § 5:20 Reasonable expectation of privacy—Electronic monitoring
- § 5:22 Reasonable expectation of privacy—Probationers

- § 5:23 Reasonable expectation of privacy—Parolees
- § 5:26 Administrative inspections
- § 5:27 Areas that are generally protected by the Fourth Amendment
- § 5:28 Areas outside dwellings—The theory of curtilage

B. THE WARRANT REQUIREMENT

- § 5:34 Blood and other bodily fluids
- § 5:35 Articles that may be seized—Mere evidence
- § 5:36 Articles that may be seized—Mere evidence—Probable cause
- § 5:40 Exceptions to the warrant requirement
- § 5:42 Search of a dwelling
- § 5:44 Search of a dwelling—Exigency
- § 5:45 The requirement of a search warrant—Murder scene
- § 5:46 The requirement of a warrant in an arson investigation
- § 5:48 Global Positioning Systems (GPS)
- § 5:58 Technical errors and their effect on the warrant
- § 5:59 The purpose of the affidavit
- § 5:62 Challenging the facts contained in affidavit
- § 5:64 Requirement of threshold showing before evidentiary hearing may be held
- § 5:69 Probable cause—Search warrants
- § 5:70 Search warrants—Residence
- § 5:71 Anticipatory warrants
- § 5:73 Third-party search warrants
- § 5:74 Staleness of the information in regard to probable cause
- § 5:79 Hearsay statements from informers
- § 5:80 Confidential informants
- § 5:83 Test to determine if there should be disclosure
- § 5:84 Requirement of defense counsel to make showing of need
- § 5:91 The basis of knowledge prong—Self-verifying tip
- § 5:92 The veracity prong
- § 5:105 Detaining persons while search warrant is being executed
- § 5:109 Description of things to be seized—Documents and business records
- § 5:110 Computers, computer discs, and email
- § 5:114 Plain view and the seizure of objects not mentioned in the warrant
- § 5:122 Knock and announce rule in executing warrant
- § 5:123 Time that search warrant must be served
- § 5:126 Disposal of property seized
- § 5:127 Securing a dwelling to prevent destruction of evidence

C. EXCEPTIONS TO THE WARRANT REQUIREMENT

1. SEARCHES INCIDENT TO A LAWFUL ARREST

- § 5:132 Scope of the search—The body of the person
- § 5:133 Scope of the search—Strip and visual body cavity searches at police station

TABLE OF CONTENTS

- § 5:135 Scope of the search—Seizure of clothing and items in possession of the defendant
- § 5:136 Search incident to arrest—Area that may be searched
- § 5:137 Search incident to arrest—Protective sweep of the premises
- § 5:138 Search incident to arrest—Plain view and inadvertence
- § 5:139 Inventory searches at police station or jail

2. CONSENT

- § 5:140 Generally
- § 5:142 Consent may be inferred from defendant's actions
- § 5:143 Factors to consider when evaluating consent
- § 5:145 Submission to authority—Voluntariness of consent
- § 5:148 Consent cannot be gained by fraud
- § 5:149 Who may consent to a search

3. EXIGENT CIRCUMSTANCES

- § 5:154 Exigence and probable cause—Exception to warrant requirement
- § 5:155 Entry into premises as a result of hot pursuit
- § 5:156 Pure emergency—Exception to the warrant requirement
- § 5:157 Entry on belief that person needs immediate aid

D. ELECTRONIC SEARCHES, SEIZURES, AND SURVEILLANCE.

- § 5:159 Wiretaps
- § 5:160 Recordings in jail or prison *[New]*
- § 5:161 Exigency or destruction or degradation of electronic evidence *[New]*
- § 5:162 Use of electronic communications records in ongoing criminal investigations; subpoena of records *[New]*
- § 5:163 Search of cellular telephones and computers *[New]*
- § 5:164 The problem of particularity in searches of cell phones, computers, and other devices *[New]*
- § 5:165 Compelled decryption of device *[New]*
- § 5:166 Geofence Warrants and Tower Dumps *[Retitled]*
- § 5:167 Pole cameras *[New]*
- § 5:168 Aerial surveillance *[New]*
- § 5:169 Keyword warrants *[New]*

Appendix 5A. Search and Seizure Decisions

CHAPTER 6. AUTOMOBILE STOPS AND SEARCHES

- § 6:2 The automobile exception to the warrant requirement
- § 6:5 The automobile exception—The scope of the search
- § 6:9 Inventory searches of vehicles—Introduction
- § 6:10 Inventory search of automobiles—Limitations as to scope
- § 6:12 Stop and frisk of motor vehicles
- § 6:13 The stop

- § 6:14 The search for weapons in an automobile *Terry* stop
 - § 6:15 Exit orders
 - § 6:16 *Terry* stop of automobile—Scope of the search
 - § 6:17 Trained dogs and inspections of stopped vehicles
 - § 6:18 Traffic stops
 - § 6:21 Selective enforcement—The defendant’s burden
 - § 6:22 The method by which the defendant may meet initial burden of showing selective enforcement
 - § 6:24 Search incident to lawful arrest—Automobiles
 - § 6:26 Roadblocks
 - § 6:27 Community caretaking [*New*]
- Appendix 6A. Automobile Stops and Searches Decisions

CHAPTER 7. CONSTITUTIONAL AND STATUTORY RIGHTS OF DEFENDANTS AS TO INTERROGATION

A. INTRODUCTION

- § 7:2 Electronic recording of interrogations
- § 7:7 When does *Massiah* apply
- § 7:8 Statements that are not excluded under the rule

B. THE FIFTH AMENDMENT AND *MIRANDA*

- § 7:13 The Fifth Amendment and interrogation
- § 7:18 Use of inadmissible statements for impeachment purposes permitted in certain instances
- § 7:21 Meaning of custody
- § 7:23 Place of questioning as factor
- § 7:27 Threshold investigation and *Miranda*
- § 7:29 Meaning of interrogation
- § 7:30 Questioning by private persons
- § 7:37 The right to remain silent—Use of silence is prohibited
- § 7:38 Use of silence for impeachment
- § 7:39 Silence after waiving *Miranda* rights and speaking with police
- § 7:42 The right to have counsel present
- § 7:49 The comprehension of the *Miranda* warnings
- § 7:51 Procedure if the suspect exercises his right to remain silent or asks for an attorney
- § 7:52 Resuming interrogation after suspect has exercised his right to silence or has requested the presence of an attorney
- § 7:53 Test used if violation of *Miranda* and subsequent admissions or confessions
- § 7:54 Waiver

C. VOLUNTARINESS

- § 7:58 Voluntariness of waiver and of statements of defendant
- § 7:59 Meaning of “voluntariness” in Fourteenth Amendment sense
- § 7:60 Factors considered as to voluntariness of waiver and voluntariness of statement are usually the same

TABLE OF CONTENTS

- § 7:61 Test used to determine voluntariness of waiver or of statements
- § 7:64 Factors that are considered in regard to voluntariness of waiver or of statements
- § 7:66 Voluntariness—Age of accused and interested adult
- § 7:69 Voluntariness—Influence of alcohol or drugs
- § 7:70 Voluntariness—Tricks or misrepresentations
- § 7:71 Voluntariness—Prior experience of accused with police practices
- § 7:72 Voluntariness—Promises and threats
- § 7:74 Voluntariness—Failure to inform accused he is a suspect
- § 7:84 The “humane practice”—Initial inquiry by the judge
- § 7:87 If judge determines statement is admissible—Submission to the jury
- § 7:89 When judge must submit voluntariness of statement to jury

D. STATUTORY RIGHT TO USE THE TELEPHONE

- § 7:91 The statute

CHAPTER 8. EYEWITNESS IDENTIFICATION EVIDENCE

- § 8:2 Manner by which question of identification is raised
- § 8:3 Discovery of the identification process
- § 8:9 Burden and standard of proof—Initial burden
- § 8:10 Burden and standard of proof—If pretrial identification is suppressed—Independent source
- § 8:12 Allowing experts to testify at hearing or at trial
- § 8:23 The due process standard
- § 8:26 Suggestiveness of the out-of-court identification—“Totality of the circumstances”
- § 8:27 Factors to be considered in evaluating likelihood of misidentification
- § 8:29 Suggestiveness of photographic identification
- § 8:30 Protocol to be used when photographic array is shown to eyewitness
- § 8:33 Difference in features of photographs
- § 8:35 Repeated exposure of the defendant
- § 8:41 Formal identification procedures are preferred by the court
- § 8:43 No per se rule of exclusion
- § 8:44 Confrontations shortly after the crime
- § 8:45 Exhibition of single photograph—Whether unduly suggestive
- § 8:48 Accidental encounters
- § 8:50 Procedure if out-of-court identification is suppressed
- § 8:56 Evidentiary effect of out-of-court identification—If witness cannot or will not make an in-court identification and denies making an out-of-court identification
- § 8:65 Jury instructions as to identification
- § 8:66 Instructions and one-on-one confrontation, photographic arrays, and lineups. *[Retitled]*
- § 8:67 Jury instructions as to identification—Instructions as to cross-racial identification
- § 8:68 Jury instructions as to identification—Sobriety
- § 8:70 Identification of inanimate objects and dead bodies

- § 8:73 In-court identification where there has been no out-of-court identification *[New]*
- § 8:74 In-court identification where there has been an equivocal out-of-court identification *[New]*
- § 8:75 Generally accepted scientific principals *[New]*

CHAPTER 9. BAIL

- § 9:1 The right to bail
- § 9:3 Bail and the criminal rules
- § 9:4 Statutory right to bail
- § 9:5 The right to bail in capital cases
- § 9:32 The right to be released on personal recognizance under certain conditions
- § 9:33 Factors that must be considered by person authorized to admit to bail
- § 9:54 Changing the terms and conditions of bail once set
- § 9:59 Pretrial detention based on dangerousness: charges for which the statute applies *[Retitled]*
- § 9:60 Initiation of the procedure—Motion by the Commonwealth
- § 9:62 Continuance of dangerousness hearing
- § 9:70 Judge's decision—Pretrial detention
- § 9:71 Detention order—Written findings and statement of reasons
- § 9:73 Judge's decision—Pretrial release with conditions
- § 9:80 Revocation of bail
- § 9:82 If bail revocation order entered—Duration of order

CHAPTER 13. RULE 3—COMPLAINT AND INDICTMENT; WAIVER OF INDICTMENT

A. RULE 3—GENERALLY

- § 13:8 Criminal proceedings against juveniles
- § 13:22 Procedure as to issuance of complaints—If complaint based on warrantless arrest
- § 13:25 Probable cause is required in issuance of all complaints

CHAPTER 15. PROBABLE CAUSE HEARING

- § 15:4 Definition and function of probable cause hearing
- § 15:6 Importance of the probable cause hearing to the defendant

CHAPTER 16. RULE 4—FORM AND CONTENTS OF COMPLAINTS OR INDICTMENT; AMENDMENT

- § 16:28 Complaints or indictments for attempts to commit crime
- § 16:32 Requirement of sufficiency of description of crime in complaint or indictment
- § 16:33 Sufficiency of description and double jeopardy
- § 16:43 Indictments may be based upon incompetent evidence
- § 16:47 Immaterial variance
- § 16:52 Amendment must be of form and not of substance

TABLE OF CONTENTS

Table of Laws and Rules

Table of Cases

Table of Contents

CHAPTER 17. RULE 5—THE GRAND JURY

- § 17:7 The amount of evidence necessary to indict
- § 17:8 The amount of evidence necessary to indict—Challenge to its sufficiency
- § 17:12 Questioning of grand jurors forbidden after service of venire
- § 17:17 The effect of disqualification of the grand juror upon the indictments
- § 17:32 The role of the District Attorney—Presenting the evidence
- § 17:33 The role of the District Attorney—Advising the Grand Jury of the law
- § 17:34 The role of the District Attorney—Preserving the integrity of the Grand Jury in presenting evidence
- § 17:36 Challenge to integrity of Grand Jury proceedings—How raised
- § 17:40 Restrictions upon the presence of persons in the Grand Jury room
- § 17:43 Right of Grand Jury to have testimony of witness
- § 17:46 The extent of the privilege
- § 17:56 The granting of immunity
- § 17:57 No constitutional right to judicial immunity
- § 17:59 Crimes for which immunity may be granted
- § 17:70 Grand jury best practices *[New]*

CHAPTER 19. RULE 7—ARRAIGNMENT

- § 19:5 When person under arrest must appear in court to be arraigned
- § 19:6 Unreasonable delay in arraignment of arrested person—Safe harbor rule as to statements
- § 19:26 Conflict of interest—Introduction
- § 19:27 Various situations that give rise to conflicts of interests
- § 19:28 Burden is on defendant to show conflict
- § 19:29 The showing that must be made by the defendant
- § 19:31 Joint representation

CHAPTER 20. RULE 8—ASSIGNMENT OF COUNSEL

- § 20:4 The right to counsel
- § 20:5 Defendants to whom the right of counsel applies
- § 20:7 Abandonment of right to counsel—By conduct
- § 20:8 Forfeiture of right to counsel
- § 20:9 Procedure at hearing at which forfeiture of right to counsel is considered
- § 20:11 Stages of the proceedings at which the right to counsel does not apply

- § 20:12 The defendant's right to retain counsel at own expense
- § 20:12.50 Substitute counsel [*New*]
- § 20:13 The giving of the advice as to the right to counsel
- § 20:14 Person who gives the advice
- § 20:15 Investigation into indigency by probation department
- § 20:16 Inquiry by the court as to indigency
- § 20:17 Definitions in establishing indigency
- § 20:18 Appointment of counsel
- § 20:19 Finding by the court
- § 20:20 Procedure if defendant fails or refuses to obtain counsel
- § 20:21 Committee for Public Counsel Services
- § 20:22 Private attorney to be appointed only in exceptional circumstances
- § 20:23 Qualifications of private counsel—Superior court
- § 20:26 Qualifications for private counsel—Postconviction matters
- § 20:28 Procedure as to assignment of counsel—District court
- § 20:30 Procedure as to assignment of counsel in special cases
- § 20:32 Procedure in first degree murder cases—Superior court
- § 20:33 The defendant's right to represent himself
- § 20:35 Procedure as to waiver in certain cases—Question of competency
- § 20:42 Written waiver
- § 20:43 Procedure if the defendant refuses to sign the waiver
- § 20:51 The appointment of standby counsel
- § 20:63 Standard used to govern judge's determination

CHAPTER 21. RULE 9—JOINDER OF OFFENSES OR DEFENDANT

- § 21:7 When joinder of offenses against single defendant in pleading stage is applicable
- § 21:24 Standards used to guide the court in regard to severance of offenses for trial
- § 21:31 Spillover of evidence
- § 21:32 Defenses or lawyers are antagonistic
- § 21:39 Failure of codefendant to testify at trial as factor
- § 21:42 Defendant's name not mentioned in written or oral statement
- § 21:44 Statement admissible against defendant under exception to hearsay rule

CHAPTER 22. RULE 10—CONTINUANCES

- § 22:5 When continuances may be granted
- § 22:15 Continuances and the right to assistance of counsel
- § 22:17 Time given to retain counsel
- § 22:20 Withdrawal of counsel and request for continuance

CHAPTER 24. RULE 12—PLEAS AND WITHDRAWAL OF PLEAS

A. RULE 12—GENERALLY

- § 24:1 Rule 12—Text of Rule and Reporters' Notes

TABLE OF CONTENTS

- § 24:4 Types of pleas
- § 24:9 Effect of plea of guilty
- § 24:13 Stipulated trials and guilty pleas
- § 24:18 Guilty plea or continuance without a finding in district and Municipal Courts—With or without agreement of Commonwealth
- § 24:27 Conduct of prosecutor relative to plea bargaining
- § 24:28 The plea bargain and ineffective assistance of counsel
- § 24:33 Prosecutor’s office is bound by the promise
- § 24:41 Withdrawal of plea if judge intends to exceed recommendation
- § 24:52 Procedure if record not available
- § 24:54 Assistance by competent counsel required
- § 24:58 Competency of defendant to enter plea of guilty or nolo contendere
- § 24:60 Judge may refuse to accept guilty plea, plea of nolo contendere, or admission to sufficient facts
- § 24:68 Waiver of constitutional rights
- § 24:69 Notice of consequences as result of plea
- § 24:71 Constitutional requirement of notice of consequence of deportation
- § 24:72 Statutory warning required as to effect of plea on alien status
- § 24:73 Statutory warning required as to effect of plea on alien status—Admission to sufficient facts
- § 24:74 Statutory warning required as to effect of plea on alien status—Procedure if defendant claims he did not receive the warnings
- § 24:75 Hearing as to factual basis of offense and plea
- § 24:82 Motion for new trial is proper vehicle to challenge plea
- § 24:84 No requirement of a hearing on defendant’s motion
- § 24:86 Burden of proof—Challenge raised after long period of time
- § 24:91 Procedures in Hinton drug laboratory cases
- § 24:92 Procedures in the Amherst drug laboratory cases *[New]*
- § 24:93 Procedure for defendants in drug lab cases to collect fees stemming from convictions *[New]*
- § 24:94 Forensic Science Oversight Board *[New]*

CHAPTER 25. RULE 13—PRETRIAL MOTIONS

A. THE RULE: TECHNICAL AND PROCEDURAL REQUIREMENTS

- § 25:4 Motions that rule governs
- § 25:6 Grounds
- § 25:7 Requirement of affidavit

C. MOTION TO DISMISS

- § 25:38 Matters that may be raised by motion to dismiss
- § 25:39 Double jeopardy
- § 25:40 How defense of double jeopardy is raised
- § 25:41 Waiver of defense of double jeopardy

- § 25:43 Proceedings to which the prohibition does not apply
- § 25:44 When an acquittal not an acquittal for purposes of double jeopardy
- § 25:50 Termination of first trial before verdict
- § 25:52 Termination of first trial—Prosecutorial or judicial overreaching
- § 25:53 Termination of first trial before verdict over defendant’s objection—Manifest necessity
- § 25:54 Mistrial because of protracted jury deliberations without verdict
- § 25:56 Second prosecution for same offense is prohibited
- § 25:57 Second prosecution for same offense is prohibited—Collateral estoppel
- § 25:61 Multiple punishments for same offense is prohibited
- § 25:62 Felony murder

D. MOTION TO SUPPRESS

- § 25:71 Motion to suppress
- § 25:72 The exclusionary rule—Definition
- § 25:75 The exclusionary rule—Conduct that it does not cover—Mistakes by government agencies
- § 25:77 The fruit of the poisonous tree doctrine
- § 25:78 Exceptions to the “fruit of the poisonous tree doctrine”
- § 25:79 The “attenuated connection” exception
- § 25:80 The “independent source” exception
- § 25:81 The “inevitable discovery” exception
- § 25:83 Statements as fruit of illegal arrest or illegal search
- § 25:86 Standing in cases involving search and seizure [*Retitled*]
- § 25:87 Automatic standing—Massachusetts
- § 25:88 Target standing
- § 25:89 Abandonment or denial of ownership and its effect on standing
- § 25:99 Findings of fact after suppression hearing
- § 25:101 No objection necessary at trial if suppression motion is denied

CHAPTER 26. RULE 14—PRETRIAL DISCOVERY

- § 26:1 Rule 14—Text of Rule and Reporter’s Notes
- § 26:7 Mandatory discovery for defendant—Possession of items and information in custody or control of Commonwealth and its agents
- § 26:8 Items subject to mandatory discovery
- § 26:15 Discovery of exculpatory evidence
- § 26:19 The prosecutor’s duty to disclose—The importance of a specific request
- § 26:21 Evidence must be in possession, custody, or control of prosecutor or persons under his direction and control
- § 26:23 *Brady* situations
- § 26:24 Loss or destruction of evidence is a *Brady* situation
- § 26:26 Prosecution must reveal any agreements with key witness

TABLE OF CONTENTS

- § 26:29 Delayed disclosure of exculpatory evidence
- § 26:31 Basic criteria for a *Brady* violation
- § 26:74 Pretrial discovery under Rule
- § 26:86 Penalty for failure to file notice
- § 26:87 Relief for nondisclosure
- § 26:92 Motion in limine

CHAPTER 27. RULE 15—INTERLOCUTORY APPEAL

- § 27:1 Rule 15—Text of Rule and Reporter’s Notes
- § 27:11 Appellate court that hears Commonwealth’s appeal
- § 27:17 Time that application for leave to appeal must be filed
- § 27:23 Costs and attorney’s fees if Commonwealth appeals or files an application
- § 27:24 Bail if Commonwealth appeals
- § 27:27 Conditions under which relief is available
- § 27:30 Appeal to full court from single justice order—Procedure

CHAPTER 28. RULE 16—DISMISSAL BY THE PROSECUTION

- § 28:11 Dismissal of case by court after continuance
- § 28:14 Difference between dismissal and continuance without a finding

CHAPTER 29. RULE 17—SUMMONSES FOR WITNESSES

- § 29:7 Misuse of summons forbidden
- § 29:9 Witness Summons
- § 29:13 Discretion of the judge
- § 29:18 Production of evidence in possession of third party prior to trial
- § 29:19 Production of evidence in possession of third party prior to trial—Claim of statutory privilege
- § 29:20 Production of evidence in possession of third party prior to trial—Claim of statutory privilege—The *Dwyer* protocol
- § 29:29 Quashing or modifying summons

CHAPTER 30. RULE 18—PRESENCE OF DEFENDANT

- § 30:4 Introduction
- § 30:7 Presence required when evidence is taken
- § 30:8 Presence required when evidence is taken—Presence on view is an exception
- § 30:17 Presence at suppression hearings
- § 30:22 Presence at trial—Communications between judge and jury
- § 30:23 Presence at trial—Legal conferences
- § 30:25 Prosecutor may not comment on defendant’s presence at trial and tailoring of testimony
- § 30:33 Procedure if defendant absents himself during trial

CHAPTER 31. RULE 19—TRIAL BY JURY OR BY THE COURT

- § 31:1 Rule 19—Text of Rule and Reporter’s Notes
- § 31:7 Waiver of jury trial
- § 31:8 Jury trial cannot be waived in capital case
- § 31:13 The requirement of a colloquy with the judge—Contents of colloquy
- § 31:16 Judge can decline jury waiver
- § 31:19 Waiver of full jury

CHAPTER 32. RULE 20—TRIAL JURORS

- § 32:1 Rule 20—Text of Rule and Reporter’s Notes
- § 32:5 Investigation of persons summoned for jury duty
- § 32:13 The effect of technical errors in the jury selection process
- § 32:14 Public trial right and the jury selection process
- § 32:16 Challenges to the Array
- § 32:24 Burden of proof when petit jury composition is challenged
- § 32:26 Identity of class that is excluded
- § 32:27 Exclusion must be systematic in regard to petit jury
- § 32:34 Challenges for cause—Judge’s power to discharge prospective juror because of hardship
- § 32:36 The excusing of jurors in certain cases because of possible embarrassment
- § 32:38 The discretion of the judge in excusing prospective jurors for cause
- § 32:39 Excusing for cause—Relationship with attorneys
- § 32:40 Excusing for cause—Prospective juror’s occupation
- § 32:42 Excusing for cause—Publicity
- § 32:43 Excusing for cause—Physically handicapped persons
- § 32:44 Questioning of the prospective jurors—Persons who may ask the questions
- § 32:46 Questions that must be asked under the rule *[Retitled]*
- § 32:47 The asking of additional questions
- § 32:47.50 Post-verdict inquiry of jurors *[New]*
- § 32:48 The asking of additional questions—Questions about the law *[Deleted]*
- § 32:51 Examination upon extraneous issues
- § 32:52 Purpose of the statute *[Deleted]*
- § 32:53 Motion required to trigger inquiry
- § 32:54 Discretion of judge as to form of questions
- § 32:55 Groups that constitute “classes” under statute
- § 32:56 Individual questioning is mandatory if judge finds extraneous issues are in case
- § 32:57 Extraneous issues and interracial cases
- § 32:58 Extraneous issues always present in interracial sex cases
- § 32:66 Limitations on peremptory challenges
- § 32:67 Procedures to be followed if peremptory challenge is questioned
- § 32:69 Time of making peremptory challenge
- § 32:72 Number of peremptory challenges where jury of more than 12 is empaneled

TABLE OF CONTENTS

- § 32:81 Procedure as to jurors if case is to be protracted
- § 32:83 Procedure if juror becomes disabled during deliberations
- § 32:84 Procedure to be followed when juror is observed to be sleeping during trial
- § 32:85 Identity of jurors *[New]*
- Appendix 32A. “Good Cause” to Discharge Deliberating Juror Decisions

CHAPTER 33. RULE 21—SEQUESTRATION OF WITNESSES

- § 33:4 Sequestration orders
- § 33:5 Discretion of judge to order sequestration

CHAPTER 34. RULE 22—OBJECTIONS

- § 34:10 Appellate review if no objection made

CHAPTER 35. RULE 23—STIPULATIONS

I. STIPULATIONS

- § 35:1 Rule 23 Stipulations *[Retitled]*

CHAPTER 36. RULE 24—OPENING STATEMENTS; ARGUMENTS; INSTRUCTIONS TO JURY

A. OPENING STATEMENTS

- § 36:8 Function and scope of opening statements

B. REQUESTS FOR JURY INSTRUCTIONS

- § 36:12 Time of filing requests
- § 36:15 The judge’s action on the requests for instructions
- § 36:15.50 Sua sponte instructions *[New]*

C. CLOSING ARGUMENTS

- § 36:20 The role of the judge in regard to closing arguments—Curative instructions
- § 36:21 The duty of the attorneys in regard to their closing arguments
- § 36:22 The limited application of the “fighting fire with fire” theory
- § 36:23 Time that objection should be made
- § 36:24 Test used to determine if improper argument is prejudicial
- § 36:25 Test used to determine if prejudicial argument should cause reversal
- § 36:26 What is permitted—In general
- § 36:28 Comment on credibility of defendant or witness
- § 36:29 Characterization of the defendant
- § 36:30 Prosecutor cannot comment on failure of defendant to testify

- § 36:31 Counsel cannot state personal beliefs, opinions, or experiences
- § 36:32 Counsel cannot use insulting names for parties or witnesses
- § 36:33 Counsel cannot appeal to sympathy or prejudice
- § 36:36 Counsel cannot argue facts nor display objects not previously introduced in evidence
- § 36:38 Counsel may not misquote the evidence
- § 36:39 Counsel should not argue law to the jury

D. JURY INSTRUCTIONS

- § 36:42 The role of the judge
- § 36:45 Instructions to jurors' regarding the use of Internet and cellular telephones during deliberations
- § 36:49 The effect of certain incorrect instructions—Law of the case
- § 36:52 The judge cannot comment on the credibility of witnesses
- § 36:56 Supplemental instructions
- § 36:57 Objections to charge
- § 36:59 Test used to determine if charge is fair
- § 36:60 Instructions if the jury is deadlocked
- § 36:61 Time that instruction should be given
- § 36:62 If jury fails to agree

CHAPTER 37. RULE 25—MOTION FOR REQUIRED FINDING OF NOT GUILTY

- § 37:8 Evidence that is considered
 - § 37:10 Standard of review
 - § 37:13 Judge's action on motion filed at close of Commonwealth's case
 - § 37:20 The judge's power to reduce charge after a guilty finding
 - § 37:27 Costs
- Appendix 37A. Rule 25—Motion for Required Finding of Not Guilty Decisions

CHAPTER 39. RULE 27—VERDICT

- § 39:3 The verdict must be unanimous
- § 39:4 Specific unanimity instruction required in certain instances
- § 39:5 General verdicts
- § 39:6 Verdict slips
- § 39:10 Inconsistent verdicts

Table of Laws and Rules

Table of Cases

Table of Contents

CHAPTER 40. RULE 28—JUDGMENT

- § 40:6 The address to the court by defense counsel
- § 40:7 Conflict between oral sentence and docket entry
- § 40:12 Preparation and contents of criminal record
- § 40:26 Factors the judge may consider in sentencing
- § 40:27 Resentencing or sentencing after retrial
- § 40:28 Appellate review of sentences

CHAPTER 41. RULE 29—REVISION OR REVOCATION OF SENTENCE

- § 41:1 Rule 29—Text of Rule and Reporter’s Notes
- § 41:4 Judge may increase sentence on revise or revoke motion
- § 41:5 Judge may decrease sentence
- § 41:13 Factors that a judge may take into consideration

CHAPTER 42. RULE 30—POSTCONVICTION RELIEF

- § 42:3 Purpose of Rule
- § 42:8 Definition of writ of habeas corpus ad subjiciendum
- § 42:10 Motion to correct illegal sentence
- § 42:11 Motion for new trial
- § 42:13 Motion for a new trial in capital cases
- § 42:14 Motion for new trial in capital case after review—
Gatekeeper provision
- § 42:16 Grounds for new trial—In general
- § 42:17 Plea of guilty may be subject of motion for new trial
- § 42:18 Burden of proof is on defendant
- § 42:22 Newly discovered evidence as ground
- § 42:23 Standards for granting the motion
- § 42:24 The evidence must be “newly-discovered”
- § 42:30 The use of discovery and award of costs
- § 42:30.50 Statutory postconviction access to forensic and scientific
discovery [*New*]
- § 42:36 The use of the affidavits by the judge
- § 42:38 The judge’s discretion as to methods to dispose of motion
- § 42:41 Judge must make findings of fact
- § 42:47 Claims already raised [*New*]

CHAPTER 43. RULE 31—STAY OF EXECUTION; RELIEF PENDING REVIEW

- § 43:7 Matters that will be considered by the judge—Security

- § 43:8 Matters that will be considered by the judge—Likelihood of success on appeal
- § 43:9 Burden of proof is on the defendant
- § 43:11 If execution of sentence is stayed—Order of judge, bail
- § 43:15 Form of the motion
- § 43:16 The hearing before the single justice
- § 43:17 Further appeal if application denied by single justice
- § 43:18 The Commonwealth's appeal if stay granted

CHAPTER 44. RULE 32—FILING AND SERVICE OF PAPERS

- § 44:1 Rule 32—Text of Rule and Reporter's Notes

CHAPTER 46. RULE 34—REPORT

- § 46:5 Contents of the report

CHAPTER 48. RULE 36—CASE MANAGEMENT AND SPEEDY TRIAL RIGHTS

- § 48:8 Time limitations on commencement of trials
- § 48:10 Burden of proof is on Commonwealth
- § 48:15 Excluded periods
- § 48:18 Delay resulting from defendant being mentally incompetent or physically unable to stand trial
- § 48:25 Delay resulting from the absence or unavailability of defendant or witness
- § 48:28 Delay resulting from certain continuances
- § 48:29 Delay resulting from certain continuances—Judge must state reasons for continuance
- § 48:32 Dismissal for prejudicial delay
- § 48:35 Essential factors to speedy trial right under rule
- § 48:38 Reasons for the delay
- § 48:46 The interstate agreement on detainers and its effect on the rule
- § 48:48 The requirement and meaning of “detainer”
- § 48:61 Effect on charges if defendant is not tried within time period
- § 48:67 Delay prior to arrest or charge
- § 48:72 Constitutional right to a speedy trial
- § 48:74 The defendant's assertion of his right to a speedy trial
- § 48:75 Prejudice to the defendant

CHAPTER 49. RULE 37—TRANSFER OF CASES

- § 49:9 Transfer because of prejudice
- § 49:18 The voir dire examination of the prospective jurors as a factor

CHAPTER 52. RULE 40—PROOF OF OFFICIAL RECORDS

- § 52:4 Authentication of Massachusetts records

TABLE OF CONTENTS

**CHAPTER 53. RULE 41—INTERPRETERS
AND EXPERTS**

- § 53:6 The appointment of an interpreter is within the judge's discretion
- § 53:9 The appointment of interpreters when the barrier is other than language

**CHAPTER 57. RULE 45—REMOVAL OF THE
DISRUPTIVE DEFENDANT**

- § 57:11 Security in the courtroom—The role of the judge

**CHAPTER 61. PROCEEDINGS INVOLVING
JUVENILES**

- § 61:1 Goal of delinquency statutes
- § 61:5 Jurisdiction of courts as to offenses committed by juveniles
- § 61:7 Effect if juvenile reaches 18 pending adjudication of his case
- § 61:8 Effect if juvenile apprehended after 18th birthday and before 19th birthday for offense committed prior to his 18th birthday
- § 61:9 Effect if juvenile apprehended after 18th birthday for an offense committed prior to his 18th birthday
- § 61:10 The requirement of the Constitution as to juvenile proceedings
- § 61:11 Due process requirements applicable to juvenile proceedings
- § 61:13 The right to be represented by counsel
- § 61:22 Detention if juvenile cannot furnish bail
- § 61:27 Issuance of an indictment—Youthful offender
- § 61:43 Dispositions
- § 61:45 No adjudication of delinquency—Juvenile placed on probation
- § 61:51 Sentence if youthful offender adjudicated to be guilty of first or second degree murder
- § 61:59 Appeal from adjudication of delinquency
- § 61:62 Delinquency complaint must be commenced and dismissed before adult criminal proceedings started

**CHAPTER 62. COMMITMENT OF SEXUALLY
DANGEROUS PERSONS**

- § 62:2 Sexually dangerous persons proceedings and the criminal rules
- § 62:4 Definition of sexual offenses
- § 62:5 Constitutionality of the sexually dangerous persons laws
- § 62:12 Commitment to treatment center after person serves a sentence
- § 62:13 Certain “prisoners” who do not fall under M.G.L. c. 123A
- § 62:14 Filing of the petition
- § 62:19 Proceedings after probable cause hearing—Trial
- § 62:20 Evidence that is admissible at trial
- § 62:23 The examination

CHAPTER 63. APPEAL

A. THE APPELLATE DIVISION OF THE SUPERIOR COURT

§ 63:7 The hearing

B. APPEALS TO THE SUPREME JUDICIAL COURT AND THE APPEALS COURT

- § 63:17 Appeal to Appellate Courts
- § 63:20 The scope of review as to a first-degree murder conviction
- § 63:22 The filing of the notice of appeal
- § 63:27 Extension of time for filing notice of appeal
- § 63:28 Dismissal of appeal for failure to prosecute
- § 63:30 Agreed statement as the record on appeal
- § 63:35 The transcript of the proceedings
- § 63:39 Procedure if no report is made or no transcript available
- § 63:42 Standards of review
- § 63:44 Structural error
- § 63:49 Sexually dangerous persons
- § 63:50 Ineffective assistance of counsel
- § 63:51 Mootness

CHAPTER 65. PROBATION VIOLATION PROCEEDINGS

- § 65:1 The history of probation in Massachusetts
- § 65:2 District/Municipal Courts rules for probation violation proceedings *[Retitled]*
- § 65:3 Definition of terms *[Deleted]*
- § 65:4 Scope and purpose *[Deleted]*
- § 65:5 Commencement of violation proceedings: criminal conduct *[Deleted]*
- § 65:6 Commencement of violation proceedings: violations other than charged criminal conduct *[Deleted]*
- § 65:7 Conduct of hearings *[Deleted]*
- § 65:8 Hearsay evidence *[Deleted]*
- § 65:9 Finding and disposition *[Deleted]*
- § 65:10 Preliminary violation hearings *[Deleted]*
- § 65:11 Violation of conditions of a continuance without a finding *[Deleted]*
- § 65:12 General principles applicable to District, Municipal, and Superior Court
- § 65:16 Probation conditions and fees *[Retitled]*
- § 65:17 Restitution as a condition
- § 65:18 Notice of probation conditions
- § 65:19 Standard of proof
- § 65:20 Due process
- § 65:23 Right to present a defense
- § 65:29 Disposition

TABLE OF CONTENTS

- § 65:34 Mootness
- § 65:35 Probation contracts are enforceable as judicial orders, not contracts
- § 65:37 Collateral estoppel *[New]*

CHAPTER 66. INTERSTATE RENDITION PROCEEDINGS

- § 66:2 Interstate rendition and the Federal Law
- § 66:6 The authority of the Governor
- § 66:21 Jail time credits
- § 66:22 Speedy trial

CHAPTER 67. SEX OFFENDER REGISTRY LAW

- § 67:1 Obligation to register
- § 67:3 Sex offender
- § 67:4 Juveniles
- § 67:5 Classification
- § 67:6 Initial classification
- § 67:8 Final classification
- § 67:9 Reclassification
- § 67:10 Challenges to regulation
- § 67:12 De novo administrative review
- § 67:14 Due process
- § 67:19 Expert funds
- § 67:22 Right of appeal to Superior Court
- § 67:23 Right of appeal to Appellate Court
- § 67:24 Motion for reclassification
- § 67:26 Registration obligations after classification
- § 67:27 Amendment of complaint for failure to register
- § 67:29 Transcripts *[New]*

CHAPTER 68. ABUSE PREVENTION ORDERS

- § 68:3 Purpose of statute
- § 68:5 Show cause hearing
- § 68:6 Abuse prevention order—Violation
- § 68:7 Notice
- § 68:8 Due Process—Generally
- § 68:11 Extensions
- § 68:14 Duplicative offenses
- § 68:16 Appeals
- § 68:17 Appeals—Mootness
- § 68:18 Expungement from Domestic Violence Registry *[Retitled]*

CHAPTER 69. FINES AND FEES *[New]*

- § 69:1 Generally
- § 69:2 Notification to defendants

CRIMINAL PRACTICE AND PROCEDURE

§ 69:3 Uniform fee waiver standard
§ 69:4 Committed time for unpaid money

Table of Laws and Rules

Table of Cases

Index