

TABLE OF CONTENTS

CHAPTER 1. INTRODUCTION

- § 1:1 Scope of volume
- § 1:2 The United States Constitution as a source of criminal practice and procedure
- § 1:3 The Missouri Constitution as a source of criminal practice and procedure
- § 1:4 Legislation as a source of criminal practice and procedure
- § 1:5 The judiciary as a source of criminal practice and procedure
- § 1:6 Other sources of criminal practice and procedure

CHAPTER 2. JURISDICTION AND VENUE

- § 2:1 Introduction
- § 2:2 Jurisdiction—Generally
- § 2:3 Jurisdiction—Over the offense
- § 2:4 Jurisdiction—Over the Person
- § 2:5 Jurisdiction—Other limitations
- § 2:6 Jurisdiction of courts—Generally
- § 2:7 Jurisdiction of courts—Supreme Court
- § 2:8 Jurisdiction of courts—Court of Appeals
- § 2:9 Jurisdiction of courts—Circuit Courts
- § 2:10 Jurisdiction of courts—Associate circuit judges
- § 2:11 Jurisdiction of Courts—Municipal divisions and municipal judges
- § 2:12 Venue—Generally
- § 2:13 Venue—Venue within a county
- § 2:14 Venue—Ambulatory offenses

CHAPTER 3. ARREST AND DETENTION

- § 3:1 Introduction
- § 3:2 Authority to arrest
- § 3:3 Arrest warrant
- § 3:4 Summons
- § 3:5 Citations
- § 3:6 Detentions which do not constitute arrests

CHAPTER 4. SEARCH AND SEIZURE

- § 4:1 Introduction
- § 4:2 Reasonable expectation of privacy
- § 4:3 Search warrant requirements

TABLE OF CONTENTS

§ 4:4	Affidavits for a search warrant
§ 4:5	Search warrant
§ 4:6	Execution and return of search warrant
§ 4:7	Warrantless searches generally
§ 4:8	Search incident to arrest
§ 4:9	Search of motor vehicles
§ 4:10	Consent search
§ 4:11	Inventory and administrative searches
§ 4:12	Other exigent circumstances
§ 4:13	Plain view
§ 4:14	Searches conducted by use of sensory aids
§ 4:15	Seizure of incriminating objects
§ 4:16	Disposition of seized property
§ 4:17	Disposition of unclaimed property
§ 4:18	Remedies for violation of Fourth Amendment rights—Civil remedies
§ 4:19	Remedies for violation of Fourth Amendment rights—The exclusionary rule
§ 4:20	Remedies for violation of Fourth Amendment rights—Standing
§ 4:21	Remedies for violation of Fourth Amendment rights—Challenging the search or seizure
§ 4:22	Remedies for violation of Fourth Amendment rights—Preserving the issue for appeal

CHAPTER 5. INTERROGATIONS

§ 5:1	Introduction
§ 5:2	The Miranda rule
§ 5:3	Administration of the Miranda warning
§ 5:4	Waiver of Miranda rights
§ 5:5	Criteria for assessing Miranda waivers
§ 5:6	Assertion of the right to remain silent
§ 5:7	Assertion of the right to counsel
§ 5:8	Limits of Miranda—Custody
§ 5:9	Limits of Miranda—Volunteered statements
§ 5:10	Limits of Miranda—Traffic and misdemeanor offenses
§ 5:11	Consequences of Miranda violations—Primary statements and derivative evidence
§ 5:12	Consequences of Miranda violations—Impeachment exception
§ 5:13	Statements as the fruit of other violations
§ 5:14	Comment on failure to make a pretrial declaration
§ 5:15	Applicability of the Sixth Amendment right to counsel
§ 5:16	Limits of Sixth Amendment right to counsel—Adversary proceedings
§ 5:17	Limits of Sixth Amendment right to counsel—Interrogation or deliberate elicitation
§ 5:18	Waiver of the Sixth Amendment right to counsel
§ 5:19	The voluntariness standard
§ 5:20	Criteria for assessing voluntariness
§ 5:21	Burden of proof in challenging the admission of statements
§ 5:22	Procedure for challenging the admission of statements

TABLE OF CONTENTS

- § 5:23 Ruling on challenges to the admission of statements
- § 5:24 Interrogation of juveniles

CHAPTER 6. THE RIGHT TO COUNSEL

- § 6:1 Federal and Missouri sources
- § 6:2 Counsel at trial
- § 6:3 The right to counsel at other proceedings
- § 6:4 Right to counsel of choice
- § 6:5 Waiver of counsel and pro se representation
- § 6:6 Multiple representation
- § 6:7 State interference with the right to counsel
- § 6:8 Effective assistance of counsel
- § 6:9 Public defender and assigned counsel representation
- § 6:10 Eligibility and reimbursement

CHAPTER 7. IDENTIFICATIONS

- § 7:1 Identifications and self-incrimination
- § 7:2 Right to counsel in adversary judicial proceedings
- § 7:3 Consequences of denial of right to counsel
- § 7:4 Limitation of right to counsel to adversary judicial proceedings
- § 7:5 Alternatives, waiver and role of counsel
- § 7:6 Photographic identifications and the right to counsel
- § 7:7 Identifications and due process of law
- § 7:8 The independent source and reliability tests
- § 7:9 Admissibility of eyewitness testimony
- § 7:10 Right to participate in or resist an identification procedure
- § 7:11 Objection to identification testimony
- § 7:12 Circumstantial evidence of identity

CHAPTER 8. COMMENCEMENT OF THE COURT ACTION

- § 8:1 Introduction
- § 8:2 Obtaining jurisdiction over the offense
- § 8:3 Obtaining jurisdiction over the person
- § 8:4 Filing of charges
- § 8:5 Procedure following arrest and detention
- § 8:6 Initial proceedings before a judge
- § 8:7 Arraignment
- § 8:8 Preliminary hearing
- § 8:9 Notice of charges
- § 8:10 Representation by counsel
- § 8:11 Setting bail
- § 8:12 Continuances
- § 8:13 Transfer to other courts

TABLE OF CONTENTS

CHAPTER 9. BAIL

§ 9:1	Introduction
§ 9:2	Constitutional authority
§ 9:3	Statutory and court rule authorities
§ 9:4	Pretrial bail—Generally
§ 9:5	Bail in other cases—Generally
§ 9:6	Criteria in setting bail
§ 9:7	Recognizance release
§ 9:8	Non-monetary conditions of release
§ 9:9	Monetary bail—Ten percent deposit
§ 9:10	Monetary bail—Other factors
§ 9:11	Procedure for setting and accepting bail
§ 9:12	Modification and review of release conditions
§ 9:13	Violation of conditions
§ 9:14	Forfeiture of security
§ 9:15	Release of surety

CHAPTER 10. PRELIMINARY HEARINGS INVOLVING FELONIES

§ 10:1	Introduction
§ 10:2	Preliminary hearings generally
§ 10:3	Necessity and value of the preliminary hearing
§ 10:4	Presence of defendant
§ 10:5	Representation by counsel
§ 10:6	Waiver of the preliminary hearing
§ 10:7	Assignment and reassignment
§ 10:8	Rules of procedure
§ 10:9	Transcript of evidence in the proceeding
§ 10:10	Rules of evidence
§ 10:11	Sufficiency of the evidence
§ 10:12	Double jeopardy considerations
§ 10:13	Requirements in certain homicide proceedings
§ 10:14	Coroner's investigation and inquest

CHAPTER 11. ADJUDICATION OF MISDEMEANORS AND INFRACTIONS

§ 11:1	Introduction
§ 11:2	Proceedings before associate circuit judges—Procedure, generally
§ 11:3	Proceedings before associate circuit judges—Presence of defendant
§ 11:4	Proceedings before associate circuit judges—Representation by counsel
§ 11:5	Proceedings before associate circuit judges—Pretrial and trial procedures
§ 11:6	Proceedings before associate circuit judges—Jury trials
§ 11:7	Proceedings before associate circuit judges—Assignment and transfer
§ 11:8	Proceedings before associate circuit judges—Rules of evidence
§ 11:9	Proceedings before associate circuit judges—Dispositions

TABLE OF CONTENTS

- § 11:10 Proceedings before associate circuit judges—Appeals and trials de novo
- § 11:11 Proceedings before associate circuit judges—Post-conviction proceedings

CHAPTER 12. THE GRAND JURY

- § 12:1 Nature of the grand jury
- § 12:2 Function of the grand jury
- § 12:3 Convening a grand jury
- § 12:4 Term of the grand jury
- § 12:5 Selection of grand jurors
- § 12:6 Grand jury procedure
- § 12:7 Compulsory process
- § 12:8 Rights of grand jury witnesses
- § 12:9 Evidence before the grand jury
- § 12:10 Secrecy of grand jury proceedings
- § 12:11 Double jeopardy considerations

CHAPTER 13. INDICTMENTS AND INFORMATIONS

- § 13:1 Nature of indictment or information
- § 13:2 Filing of information or indictment
- § 13:3 Documentary requirements
- § 13:4 Challenge to indictment or information
- § 13:5 Joinder and severance

CHAPTER 14. DEFENSIVE MOTIONS AND PLEAS

- § 14:1 Pretrial motions generally
- § 14:2 Lack of jurisdiction
- § 14:3 Improper venue
- § 14:4 Change of venue
- § 14:5 Disqualification of judge
- § 14:6 Improper joinder of defendants
- § 14:7 Limitations of actions
- § 14:8 Speedy trial motions—Constitutional right to speedy trial—Generally
- § 14:9 Speedy trial motions—Missouri statutory provisions
- § 14:10 Incompetency—Generally
- § 14:11 Incompetency—Initiation of competency proceedings
- § 14:12 Incompetency—Mental examination
- § 14:13 Incompetency—The competency hearing
- § 14:14 Incompetency—Review of the competency determination and disposition of criminal charges
- § 14:15 Suppression of illegally obtained evidence—Generally
- § 14:16 Suppression of illegally obtained evidence—Form and content of the motion
- § 14:17 Suppression of illegally obtained evidence—Time of making
- § 14:18 Suppression of illegally obtained evidence—Burden of offering evidence and burden of proof
- § 14:19 Other issues that may be raised by pretrial motion—Generally

TABLE OF CONTENTS

§ 14:20	Other issues that may be raised by pretrial motion—Discovery
§ 14:21	Other issues that may be raised by pretrial motion—Entrapment
§ 14:22	Other issues that may be raised by pretrial motion—Double jeopardy
§ 14:23	Other issues that may be raised by pretrial motion—Vindictive prosecution
§ 14:24	Selective prosecution
§ 14:25	Battered spouse syndrome
§ 14:26	Duress
§ 14:27	Attorney—Conflict of interest

CHAPTER 15. DISCOVERY AND DISCLOSURE

§ 15:1	Introduction
§ 15:2	Pretrial discovery from the state without court order
§ 15:3	Requirements for defense discovery
§ 15:4	Discovery from state upon court order
§ 15:5	Duty of the prosecutor under discovery rules
§ 15:6	Sanctions for noncompliance
§ 15:7	Matters not subject to disclosure
§ 15:8	The prosecutor’s constitutional disclosure obligation
§ 15:9	Disclosure by the defendant to the state without court order
§ 15:10	Disclosure by the defendant to the state pursuant to court order
§ 15:11	Sanctions for defense failure to comply
§ 15:12	Protective orders
§ 15:13	Depositions
§ 15:14	Bill of particulars
§ 15:15	Other discovery procedures

CHAPTER 16. DISPOSITION WITHOUT TRIAL

§ 16:1	Introduction
§ 16:2	Dismissal
§ 16:3	Amendment
§ 16:4	Immunity
§ 16:5	Withholding charges
§ 16:6	Merger of charges
§ 16:7	Consolidation of charges
§ 16:8	Concurrent or consecutive sentences
§ 16:9	Probation and probation revocation
§ 16:10	Special conditions
§ 16:11	The plea of guilty
§ 16:12	Withdrawal of guilty plea
§ 16:13	Guilty plea checklist

TABLE OF CONTENTS

CHAPTER 17. ASSIGNMENT AND REASSIGNMENT FOR TRIAL AND CONTINUANCES

- § 17:1 Assignment and reassignment for trial—Assignment for trial—Circuit court
- § 17:2 Assignment and reassignment for trial—Assignment—Associate circuit judge divisions
- § 17:3 Assignment and reassignment for trial—Reassignment generally
- § 17:4 Speedy trial considerations
- § 17:5 Continuance—Generally
- § 17:6 Continuance—Absence or unavailability of witnesses
- § 17:7 Continuance—Necessitated because of procedural rules
- § 17:8 Continuance—Necessitated because of action of the parties
- § 17:9 Continuance—Legislative continuance
- § 17:10 Continuance—Illness, disability or unavailability of judge, defendant or attorney
- § 17:11 Continuance—Lack of preparation
- § 17:12 Continuance—Other reasons

CHAPTER 18. PRODUCTION OF EVIDENCE FOR TRIAL

- § 18:1 Introduction
- § 18:2 Subpoena power—Generally
- § 18:3 Subpoena power—Issuance of subpoena
- § 18:4 Subpoena power—Service of subpoena
- § 18:5 Subpoena power—Return of service
- § 18:6 Subpoena power—Expert witnesses
- § 18:7 Subpoena power—Witness fees
- § 18:8 Subpoena power—Enforcement of subpoena
- § 18:9 Subpoena power—Relief from subpoena
- § 18:10 Bail for material witness
- § 18:11 Depositions—Generally
- § 18:12 Depositions—Attendance of witnesses
- § 18:13 Depositions—Place of taking
- § 18:14 Depositions—Notice of deposition
- § 18:15 Depositions—Presence of defendant and counsel
- § 18:16 Depositions—Manner of taking
- § 18:17 Depositions—Use of deposition
- § 18:18 Transcript of previous court testimony
- § 18:19 Special proceedings for out-of-state witnesses and prisoners—Out-of-state witnesses
- § 18:20 Special proceedings for out-of-state witnesses and prisoners—Missouri witnesses subpoenaed by out-of-state courts
- § 18:21 Special proceedings for out-of-state witnesses and prisoners—Prisoners

CHAPTER 19. TRIAL PROCEEDINGS

- § 19:1 Docket control
- § 19:2 Disposition of preliminary issues—Generally
- § 19:3 Disposition of preliminary issues—Pending motions
- § 19:4 Disposition of preliminary issues—Severance
- § 19:5 Disposition of preliminary issues—Discovery
- § 19:6 Disposition of preliminary issues—Presence of witnesses and defendant

TABLE OF CONTENTS

- § 19:7 Disposition of preliminary issues—Trial procedures
- § 19:8 Disposition prior to trial of evidentiary matters

CHAPTER 20. TRIAL PROCEDURE

- § 20:1 Introduction
- § 20:2 Function of the trial judge—Generally
- § 20:3 Function of the trial judge—Control of courtroom
- § 20:4 Function of the trial judge—Presence and appearance of the defendant
- § 20:5 Function of the trial judge—Contempt power
- § 20:6 Function of the trial jury—Generally
- § 20:7 Function of the trial jury—Oath and initial instructions
- § 20:8 Function of the trial jury—Sequestration of jurors
- § 20:9 Function of the trial jury—Communications during trial
- § 20:10 Trial framework—Overview
- § 20:11 Trial framework—Opening statements
- § 20:12 Trial framework—Case for the prosecution—Burden of proof
- § 20:13 Trial framework—Case for the prosecution—Corroboration of confessions
- § 20:14 Trial framework—Case for the prosecution—Accomplice testimony
- § 20:15 Trial framework—Case for the defense—Generally
- § 20:16 Trial framework—Case for the defense—Burden of injecting issues and burden of persuasion
- § 20:17 Trial framework—Case for the defense—Testimony of the defendant
- § 20:18 Trial framework—Case for the defense—Case in rebuttal
- § 20:19 Trial framework—Case for the defense—Instructions to the jury
- § 20:20 Trial framework—Closing arguments—Generally
- § 20:21 Trial framework—Closing arguments—Scope of arguments
- § 20:22 Trial framework—Trial motions and objections—Generally
- § 20:23 Trial framework—Trial motions and objections—Motions for preventive action
- § 20:24 Trial framework—Trial motions and objections—Motions for remedial action
- § 20:25 Trial framework—Trial motions and objections—Motions for judgment of acquittal
- § 20:26 Trial framework—Trial motions and objections—Other trial motions

CHAPTER 21. JURY SELECTION PROCESS

- § 21:1 Right to trial by jury
- § 21:2 Jury size and unanimity requirements
- § 21:3 Waiver of jury trial
- § 21:4 Jury panel selection procedures—Statutory requirements
- § 21:5 Summoning jury panel
- § 21:6 Challenges to panel selection—Constitutional
- § 21:7 Standards for challenging jury panel

TABLE OF CONTENTS

§ 21:8	Juries in capital cases
§ 21:9	Prejudicial publicity and jury selection
§ 21:10	Juror qualifications and exemptions
§ 21:11	Peremptory challenges
§ 21:12	Challenges for cause
§ 21:13	Voir dire
§ 21:14	Making the objection

CHAPTER 22. WITNESSES, EVIDENCE AND PROOF OF FACTS

I. WITNESSES

§ 22:1	Oaths
§ 22:2	Competence
§ 22:3	Privileges
§ 22:4	Compelling testimony—Sanctions
§ 22:5	Separation of witnesses
§ 22:6	Indorsement on information or indictment

II. ADMISSIBILITY OF EVIDENCE

§ 22:7	Relevance and prejudicial effect
§ 22:8	Evidence of other crimes
§ 22:9	Identification of the defendant
§ 22:10	The best evidence rule
§ 22:11	Reputation and character—Generally
§ 22:12	Reputation and character—Witnesses
§ 22:13	Reputation and character—The defendant
§ 22:14	Reputation and character—Victim
§ 22:15	Reputation and character—Rape victim
§ 22:16	Hearsay
§ 22:17	Leading questions, narration and refreshing memory—Leading questions
§ 22:18	Leading questions, narration and refreshing memory—Asking the witness to narrate
§ 22:19	Leading questions, narration and refreshing memory—Refreshing memory
§ 22:20	Objections and preservation of error
§ 22:21	Photographs, motion pictures and sound recordings
§ 22:22	Conclusions, opinions, and invading the province of the jury
§ 22:23	Expert testimony
§ 22:24	Offering physical evidence—Technique of offering physical evidence
§ 22:25	Offering physical evidence—Chain of custody
§ 22:26	Offering physical evidence—Documents and records
§ 22:27	Demonstrative evidence
§ 22:28	Mental state

TABLE OF CONTENTS

III. SPECIAL CONSIDERATIONS OF CROSS-EXAMINATION

- § 22:29 The right of confrontation
- § 22:30 Scope of cross-examination—Non-party witness
- § 22:31 Scope of cross-examination—The defendant or spouse
- § 22:32 Impeachment—Generally
- § 22:33 Impeachment—Prior inconsistent statements
- § 22:34 Impeachment—Prior convictions
- § 22:35 Rebuttal evidence
- § 22:36 Bias

IV. PROOF, INFERENCES, AND PRESUMPTIONS

- § 22:37 Burdens of proof
- § 22:38 Direct and circumstantial evidence
- § 22:39 Inference and presumptions
- § 22:40 Judicial notice
- § 22:41 The physical facts rule

CHAPTER 23. JURY DELIBERATIONS AND VERDICT

- § 23:1 Jury deliberations generally
- § 23:2 Submission of the case to the jury
- § 23:3 Control of jury during deliberation
- § 23:4 Continuation and termination of deliberations
- § 23:5 Return of the verdict
- § 23:6 Sufficiency of the verdict and acceptance of the verdict
- § 23:7 Subsequent jury proceedings

CHAPTER 24. JUDGMENT AND SENTENCE

- § 24:1 Judgment and sentence—Generally
- § 24:2 Presentence investigation and report
- § 24:3 Function of counsel in sentencing
- § 24:4 Range of punishment
- § 24:5 Sentencing alternatives
- § 24:6 Concurrent or consecutive sentences
- § 24:7 Functions of the court and jury—Jury verdict
- § 24:8 Prior, persistent or dangerous offenders
- § 24:9 Fines
- § 24:10 Sentencing procedure
- § 24:11 Execution of judgment and sentence—Generally
- § 24:12 Execution of death sentence
- § 24:13 Place of imprisonment
- § 24:14 Satisfaction of sentence of imprisonment
- § 24:15 Disabilities from conviction
- § 24:16 Civil forfeiture

CHAPTER 25. POST-TRIAL RELIEF IN THE TRIAL COURT

- § 25:1 Post-trial relief in the trial court—Generally
- § 25:2 Motion for judgment of acquittal
- § 25:3 Arrest of judgment

TABLE OF CONTENTS

§ 25:4	Motion for new trial—Generally
§ 25:5	Motion for new trial—Time for filing motion
§ 25:6	Motion for new trial—Allegations in the motion
§ 25:7	Motion for new trial—Bench trials
§ 25:8	Motion for new trial—Newly discovered evidence
§ 25:9	Motion for new trial—Determination of motion
§ 25:10	Motion for reduction of sentence
§ 25:11	Rules 24.035 and 29.15 motions—To vacate sentence—Generally
§ 25:12	Rules 24.035 and 29.15 motions—Examples of grounds
§ 25:13	Rules 24.035 and 29.15 motions—Limitations on relief
§ 25:14	Rules 24.035 and 29.15 motions—Form of motion, procedure and hearing
§ 25:15	Rules 24.035 and 29.15 motions—Determination and judgment
§ 25:16	Rules 24.035 and 29.15 motions—Appeal
§ 25:17	Writ of error coram nobis
§ 25:18	Habeas corpus

CHAPTER 26. PROBATION, PAROLE AND CONDITIONAL RELEASE

§ 26:1	Definitions
§ 26:2	Eligibility for probation
§ 26:3	Duration of probation
§ 26:4	Conditions of probation
§ 26:5	Revocation of probation
§ 26:6	Jurisdiction to revoke probation
§ 26:7	Disposition after revocation
§ 26:8	Appellate review
§ 26:9	Eligibility for parole
§ 26:10	Parole release procedures
§ 26:11	Revocation of parole
§ 26:12	Conditional release
§ 26:13	House arrest

CHAPTER 27. EXECUTIVE CLEMENCY

§ 27:1	Nature of executive clemency
§ 27:2	Authority to grant clemency
§ 27:3	Limitations on the clemency power
§ 27:4	Medical clemency
§ 27:5	Delivery of pardon
§ 27:6	Grounds for a pardon
§ 27:7	Revocation of clemency
§ 27:8	Effect of a pardon

TABLE OF CONTENTS

CHAPTER 28. CLOSING AND EXPUNGEMENT OF CRIMINAL RECORDS

- § 28:1 Arrests not followed by a criminal charge
- § 28:2 Effect of failure to convict
- § 28:3 Enforcement procedures
- § 28:4 Effect of closure and expungement
- § 28:5 Youthful drug offenders
- § 28:6 Juvenile records
- § 28:7 Other expungement provisions

CHAPTER 29. DOUBLE JEOPARDY

- § 29:1 Constitutional restrictions
- § 29:2 The attachment of jeopardy
- § 29:3 The dual sovereignty exception
- § 29:4 Mistrials without defense consent
- § 29:5 Mistrials with defense consent
- § 29:6 Characteristics of a mistrial ruling
- § 29:7 Retrials after other aborted trials
- § 29:8 Retrial following defense appeal
- § 29:9 Double jeopardy and sentencing
- § 29:10 Collateral estoppel
- § 29:11 Double jeopardy and multiple punishments

	Page
Table of Laws and Rules	847
Table of Cases	871
Index	979