

Table of Contents

Volume 14

CRIMINAL LAW—PROCEDURE

I. GENERAL PROVISIONS

A. SCOPE, PURPOSE, AND CONSTRUCTION OF RULES

1. Florida Rules of Criminal Procedure

- § 1 Generally
- § 2 Scope
- § 3 Purpose and construction
- § 4 —Use of Committee Notes
- § 5 —Pending proceedings
- § 6 Noncompliance

2. Other Rules

- § 7 Florida Rules of Judicial Administration
- § 8 Florida Rules of Juvenile Procedure

B. FORM, SERVICE, AND FILING OF PLEADINGS AND PAPERS

1. In Proceedings at Trial

a. Form

- § 9 Size of paper
- § 10 Party represented by an attorney; signing
- § 11 —Effect of attorney's signature
- § 12 —Nonverification of pleadings
- § 13 Party not represented by attorney

b. Service

- § 14 Scope of service requirement

- § 15 How service is made
- § 16 Proof of service; form
- § 17 Time for service of motion and notice of hearing
- § 18 Additional time after service by mail

c. Filing

- § 19 Scope of filing requirement
- § 20 How filing is made

2. In Juvenile Proceedings

a. Form

- § 21 Party represented by attorney; signing
- § 22 —Effect of attorney's signature
- § 23 —Nonverification of pleadings
- § 24 Party not represented by attorney

b. Service and Filing

- § 25 Scope of service requirement
- § 26 How service is made
- § 27 Proof of service; form
- § 28 Time for service of motions and notice of hearing
- § 29 Additional time after service by mail
- § 30 Filing and style of pleadings
- § 30.50 Service of orders

C. TIME COMPUTATIONS AND EXTENSIONS

1. Florida Rules of Criminal Procedure

a. Computation

- § 31 Generally
- § 32 Counting first and last days
- § 33 Last day falling on a Saturday, Sunday, or legal holiday
- § 34 —Definition of legal holiday
- § 35 Time periods of less than seven days

b. Extensions

- § 36 Enlargement of time
- § 37 New or amended indictment or information

2. Florida Rules of Juvenile Procedure

- § 38 Computation

TABLE OF CONTENTS

§ 39 Extensions

D. PROSPECTIVE OR RETROACTIVE OPERATION OF STATUTES, RULES, AND DECISIONS

1. Procedural Statutes and Rules

§ 40 Statutes

§ 41 Rules

2. Court Decisions Announcing New Rules

a. Federal Constitutional Rights

§ 42 In general

§ 43 Cases pending on direct review

§ 44 Cases on collateral review

§ 45 What is a new rule

b. Approach Used by Florida Courts

§ 46 In general

§ 47 Cases pending on direct appeal

§ 48 Cases on collateral review

§ 49 Effect of evolutionary refinements

E. ADMINISTRATIVE REGULATION OF CRIMINAL PROCESS

§ 50 Duties of state attorney

§ 51 Processing of criminal complaints

II. COMMENCEMENT OF CRIMINAL PROCESS AND PRELIMINARY PROCEEDINGS

A. ARREST

1. In General

§ 52 Generally; definition of arrest

§ 53 Persons subject to arrest; exemption from arrest

§ 54 Rearrest

§ 55 Effect of illegality of arrest on prosecution or defenses of defendant

§ 56 Delay in making arrest

2. Standard Supporting Arrest; Probable Cause

a. In General

- § 57 Generally; constitutional requirement
- § 58 Probable cause as question of fact or law

b. Definition and Determination of Probable Cause, In General

- § 59 Generally
- § 60 Significance of offense for which charged
- § 61 View of officer determining probable cause; objective standards; reasonable or prudent man standard
- § 62 Level of certainty required
- § 63 Time as of which probable cause is determined; events subsequent to arrest

c. Personal Knowledge or Observation by Arresting Officer as Basis of Probable Cause

(1) In General

- § 64 Suspicious behavior, generally; location of conduct
- § 65 Flight or attempt to avoid police encounter
- § 66 Responses to police questions; admissions
- § 67 —Giving false or no information
- § 68 Odors; identification of drugs by dogs
- § 69 Bulges

(2) Possession of Item Connecting Defendant with Crime

- § 70 Generally
- § 71 Possession of item found in public place; constructive or joint possession
- § 72 Narcotics or drug-related items
- § 73 —Packages or containers
- § 74 Firearms

d. Information Supplied by Others as Basis of Probable Cause; Existence of Warrant

- § 75 Generally; existence of warrant

TABLE OF CONTENTS

§ 76	Information supplied by informants
§ 77	—Corroboration of information by police
§ 78	Information supplied by citizens, generally; witnesses and victims
§ 79	—Defendant's proximity to crime scene as additional basis of probable cause
§ 80	Information supplied by fellow officers
§ 81	—Be-on-lookout bulletin
3. Arrest Warrants and Summons	
a. In General	
§ 82	Generally
§ 83	Powers of committing trial court judge
§ 84	Complaint requirements
b. Issuance of Warrant	
§ 85	Who may issue warrant
§ 86	When warrant to issue
§ 87	—For violation of probation or community control
§ 88	Contents of warrant
§ 89	Issuance of capias; after indictment or information filed
§ 90	—When presence of defendant is necessary
§ 91	When arrest may be made
c. Who May Execute Arrest Warrants or Make Arrest with Warrant	
§ 92	Sheriffs
§ 93	Other persons or bodies
d. Challenges to Arrest with Warrant	
(1) In General	
§ 94	Defects in form or warrant of service thereof
§ 95	False statements or misstatements in supporting affidavits
§ 96	Arrest of wrong person
(2) Arrest with Void or Nonexistent Warrant	
§ 97	Generally
§ 98	Arrest based on outdated police records or erroneous information

§ 99 Warrant or capias valid at time of arrest

e. Summons in Lieu of Warrant

§ 100 Who may issue summons

§ 101 When summons will issue

§ 102 Contents

§ 103 Service

§ 104 Effect of failure to appear

4. Arrest Without Warrant

a. In General

§ 105 Generally; arrest in public place

§ 106 Arrests for federal offenses

§ 107 Arrest warrant held by another officer

b. Types of Offenses Subject to
Warrantless Arrest

(1) In General; Felonies

§ 108 Offense committed in presence of officer

§ 109 Other circumstances authorizing warrantless
arrest

(2) Misdemeanors or Violations of
Ordinances

§ 110 Commission in presence of officer

§ 111 —All elements of offense

§ 112 Observations of arresting officer

§ 113 Delegation to another officer of authority to arrest

§ 114 When arrest must be made

c. Who May Arrest Without Warrant

(1) In General

§ 115 Law enforcement officers, generally

§ 116 Parole and probation officers or supervisors

§ 117 Florida Highway Patrol officers

§ 118 Auxiliary law enforcement officers

§ 119 Other state bodies or officials with power to arrest

§ 120 Federal law enforcement officers

§ 121 Private citizens

TABLE OF CONTENTS

§ 122	Military forces; Florida State Defense Force
	(2) Officer Outside of Jurisdiction
§ 123	Generally
§ 124	Officer deputized in other jurisdiction; rendering aid under Mutual Aid Act agreement
§ 125	Arrest while in fresh pursuit
§ 126	—Definition of fresh pursuit, generally
§ 127	—Arrest by officer of another state; Uniform Law on Fresh Pursuit
§ 128	When officer acts at direction of another officer with jurisdiction
§ 129	Effect of office; color of office doctrine, generally
§ 130	Arrest as private citizen
	5. Manner of Arrest
	a. In General
§ 131	Generally; duty of officer when making arrest
§ 132	Circumstances rendering requirements inapplicable
§ 133	Summoning persons to assist
	b. Notice to Appear
§ 134	Generally
§ 135	Issuance by arresting officer
§ 136	Issuance by booking officer
§ 137	Service of notice to appear; release of arrested person from custody
§ 138	Filing of witness list and copies of notice to appear
§ 139	Contents of notice to appear
§ 140	Procedure upon appearance; failure to appear
§ 141	—Liability and punishment for failure to appear
	c. Force and Resistance
	(1) In General
§ 142	Generally; use of force in making arrest
§ 143	Use of force to prevent escape of arrested person
§ 144	Resistance to arrest; use of force in resisting
§ 145	—Resistance without violence

- § 146 Use of force in defense to use of excessive force
 - (2) Arrest in Home; Forcible Entry into or Exit from Private Property
 - (a) In General; Constitutional and Statutory Requirements
- § 147 Generally; constitutional limitations on arrest in home
- § 148 “Knock and announce” statute
 - (b) Circumstances in Which Constitutional and Statutory Requirements are Inapplicable
- § 149 Consensual entries
- § 150 —Implied consent to re-enter premises
- § 151 Exigent and other circumstances
- § 152 Entry on signal of officer inside residence
- 6. Procedure After Arrest
 - a. In General
 - § 153 Generally; disposition of defendant upon arrest
 - § 154 Arrest in county other than one in which warrant was issued
 - § 155 Arrest in county other than one in which offense triable
 - § 156 Arrest outside jurisdiction of arresting officer
 - § 157 —Arrest by officer from another state
 - § 158 Search of person arrested for identifying device indicating medical disability
 - § 159 Arrest of diplomatic representative
 - § 160 Criminal report
 - b. First Appearance
 - § 161 Generally; prompt first appearance
 - § 162 Advice to defendant
 - § 163 Counsel for defendant
 - § 164 —Waiver of right to counsel

TABLE OF CONTENTS

7. Liabilities Arising Out of Arrest

a. Liability of Arresting Officer and Employer

- § 165 Generally
- § 166 False arrest
- § 167 Use of excessive force
- § 168 —Use of force in arresting fleeing felon
- § 169 Arrest made in fresh pursuit
- § 170 Medical expenses of ill or injured arrestee

b. Liability of Persons Commanded to Assist in Arrest

- § 171 Persons assisting in arrest
- § 172 Persons refusing to assist

B. BAIL AND RECOGNIZANCE

1. In General

- § 173 Generally
- § 174 Purpose of bail and recognizance
- § 175 Bond for payment of fines and costs
- § 176 —Court's power to remit forfeiture of bond
- § 177 Guaranteed traffic arrest bond certificates of automobile clubs
- § 178 —Certificate as cash bail
- § 179 Recognizance of witnesses
- § 180 —In perjury cases

2. Regulation of Bail Bond Agents

- § 181 Generally
- § 182 Definitions
- § 183 Qualifications; restrictions on engaging in bail bond business
- § 184 Licensing and other requirements; regulation of activities
- § 185 Actions against licensee; suspension, revocation, or refusal to renew license
- § 186 —Administrative fine; probation
- § 187 Ownership requirements for bail bond agencies
- § 188 Primary bail bond agents

3. Authority to Admit to Bail

- § 189 Authority of courts

- § 190 Admission to bail; when arrest occurs in another county
- § 191 —When offense is triable in another county
- § 192 Authority of state highway patrol and other law enforcement officers

4. Right to Bail, Generally

- § 193 Generally
- § 194 Right to bail in certain proceedings

5. Pretrial Release

a. In General

- § 195 Generally; discretion of court
- § 196 Consideration of pretrial release at first appearance
- § 197 Burden of proof; Arthur hearing
- § 198 Sufficiency and form of proof
- § 199 Information provided by defendant in application for bail; penalty for providing false or misleading information or omitting material information
- § 200 Subsequent application for bail; consideration of bail on continuance of trial
- § 201 Finality of order denying or granting bail; res judicata
- § 202 Review of order denying or granting bail

b. Conditions of Release

- § 203 Generally
- § 204 Refraining from criminal activity and from contact with victim; compliance with conditions of release
- § 205 Under Florida Rules of Criminal Procedure

c. Amount of Bail; Bail Endorsements

- § 206 Amount of bail
- § 207 Effect of excessive bail
- § 208 Bail endorsements

d. Criteria for, or Factors Considered in, Determining Pretrial Release

- § 209 Generally
- § 210 Defendant's past and present conduct; consequences of failure to appear

TABLE OF CONTENTS

§ 211	Source of funds used to post bail or procure an appearance bond
§ 212	Street value of drug or controlled substance connected to or involved in criminal charge; whether crime charged involves criminal gang violations
e. Modification of Bail or Conditions	
§ 213	Modification
§ 214	Increase of bail
§ 215	—Application by State
§ 216	Reduction of bail; application by defendant
f. Arrest and Commitment of Defendant Who is on Bail	
§ 217	Generally
§ 218	Bail after recommitment
6. Revocation of Bail and Pretrial Detention	
a. In General	
§ 219	Revocation of bail
§ 220	Revocation of bail, and pretrial detention, where defendant has committed new crime while on pretrial release
§ 221	—Constitutionality
§ 222	Revocation of bail after trial has begun
b. Pretrial Detention Based on Substantial Probability That Certain Circumstances Exist; Procedure	
§ 223	Generally
§ 224	Particular circumstances warranting pretrial detention
§ 225	—Defendant poses threat of harm to community
§ 226	Notification of State attorney of defendant's arrest; detention by arresting agency
§ 227	First appearance; motion for pretrial detention
§ 228	Motion for pretrial detention filed after first appearance
§ 229	Pretrial detention hearing
§ 230	—Admissibility and use of evidence presented at hearing

§ 231 Final order of pretrial detention; dissolution of order

§ 232 Credit for time of detention; review of pretrial detention order

7. Bond, Undertaking, or Recognizance; Deposit of Money or Securities as Bail

§ 233 Generally

§ 234 Nature and purpose of criminal surety bail bond

§ 235 Condition of undertaking where person is admitted to bail before conviction

§ 236 Condition of undertaking where person is admitted to bail after conviction and upon appeal

§ 237 Effect of defects or omissions in bond

§ 238 Requirements as to description of offense charged

§ 239 —Effect of substantial change in charge by State

§ 240 Time of appearance

§ 241 Approval of bond

§ 242 Qualifications of surety

§ 243 —Attorney as surety for client

§ 244 Contracts to indemnify sureties; indemnity affidavit or statement in lieu of affidavit

§ 245 Deposit of money or securities as bail

8. Discharge or Exoneration of Bail

§ 246 Generally

§ 247 Adjudication of guilt or innocence, acquittal, or withholding of adjudication of guilt

§ 248 Dismissal of information or indictment; failure to indict

§ 249 —Where new or amended information or indictment is filed

§ 250 Surrender of defendant

§ 251 —Arrest by surety before forfeiture

§ 252 Interference by State with surety's right to control defendant

9. Forfeiture of Bail

a. In General; Prerequisites to Forfeiture

§ 253 Generally; requirement that information, indictment, or affidavit was filed within six months from date of arrest

TABLE OF CONTENTS

§ 254	Requirement of notice to surety of defendant's scheduled appearances
§ 255	—Effect of failure to give notice
§ 256	Arrest of principal by surety after forfeiture
b. Forfeiture Proceedings	
§ 257	Forfeiture for breach of bond
§ 258	Forfeiture for defendant's failure to appear
§ 259	Transmission of bond and recording of forfeiture; bond and affidavits as lien
§ 260	Payment of forfeiture
§ 261	Discharge of forfeiture
§ 262	—Payment of costs
c. Judgment to Enforce, and Motion to Set Aside or Stay, Forfeiture; Appellate Review	
§ 263	Judgment to enforce forfeiture of surety bonds
§ 264	—Payment of judgment
§ 265	Motion to set aside or stay judgment
§ 266	—Time limit for making motion as absolute
§ 267	Appellate review
d. Remission of Forfeiture	
§ 268	Generally; purpose of remission
§ 269	Conditions for remission
§ 270	—Deduction of costs
§ 271	Effect of State's refusal or inability to extradite
§ 272	Effect of defendant's death prior to recapture on surety's right to remission
§ 273	Application for remission; notice of, and hearing on, application
e. Criminal Liability for Forfeiture of Bail; Bail Jumping	
§ 274	Generally
§ 275	Effect of number of cases or offenses pending
§ 276	Sufficiency of evidence showing requisite "willfulness"
§ 277	Where defendant is arrested for traffic violation and released on own recognizance

C. PROBABLE CAUSE DETERMINATIONS
AND PRELIMINARY HEARINGS

1. Introduction

§ 278 Necessity for judicial determination after arrest

2. Nonadversary Probable Cause
Determinations

a. In General

§ 279 Generally

§ 280 Role of judge; standard of proof

§ 281 Evidence upon which nonadversary determination
may be based

§ 282 Writing and filing requirements

b. Stages at Which Nonadversary
Determination May be Made

§ 283 Generally

§ 284 Upon defendant's motion after release

§ 285 Redetermination after finding of no probable cause

c. Effect of Failure to Meet Time Limits
for Determination

§ 286 Defendant's release

§ 287 State's second chance to establish probable cause

d. Action on Determination

§ 288 Holding defendant over to answer charge

§ 289 Defendant's release

§ 290 Further prosecution of defendant

3. Adversary Preliminary Hearings on
Probable Cause

a. In General

§ 291 Generally

§ 292 Purpose of hearing

§ 293 Effect of filing of indictment or information

§ 294 Effect of defendant's pretrial release

§ 295 Time for hearing

§ 296 Writing and filing of probable cause determination

TABLE OF CONTENTS

b. Conduct of Hearing

(1) In General

- § 297 Judge's powers
- § 298 Defendant's right to counsel
- § 299 Restriction of hearing to felony charges in certain cases
- § 300 Inadmissibility of hearsay testimony
- § 301 Record of hearing

(2) Witnesses

- § 302 Compulsory process
- § 303 Defendant's right to offer witnesses
- § 304 Swearing and examination of witnesses
- § 305 Defendant's right to testify
- § 306 Sequestration of witnesses

c. Action on Determination

- § 307 Holding defendant over to answer charge
- § 308 Defendant's release
- § 309 Further prosecution of defendant
- § 310 Redetermination of probable cause

D. EXTRADITION

1. Introduction

- § 311 Definition and purpose
- § 312 Role of federal law
- § 313 Role of state law
- § 314 —The Uniform Criminal Extradition Act
- § 315 Construction of extradition laws

2. Persons Subject to Extradition

- § 316 Fugitives from justice
- § 317 Effect of motive or reason for leaving demanding state
- § 318 Persons leaving with knowledge of authorities
- § 319 Persons absent from demanding state when alleged crime was committed
- § 320 —Persons charged with nonsupport
- § 321 Escaped convicts; violators of parole, probation, or bail

- § 322 Persons accused of crime in asylum state
- § 323 Mentally incompetent persons
- § 324 Witnesses

3. Extraditable Offenses

- § 325 Generally

4. Extradition Proceedings

a. In General

- § 326 Nature of proceedings
- § 327 Waiver of formal proceedings

b. Arrest and Detention of Accused Prior to Requisition

- § 328 Generally
- § 329 Precommitment hearing
- § 330 Commitment; time limits
- § 331 Right to be admitted to bail
- § 332 Effect of irregularities

c. Extradition Papers

- § 333 Demand; requirement of issuance by “executive authority”
- § 334 —Form and content
- § 335 Application to Governor for requisition
- § 336 —Content of application
- § 337 Requirement that charging document, judgment, or sentence accompany demand
- § 338 —Warrant and supporting affidavit
- § 339 —Judgment or sentence
- § 340 Sufficiency of charging document accompanying demand
- § 341 Authentication of documents
- § 342 Use of supporting papers to sustain demand

d. Governor’s Inquiry in Asylum State

- § 343 Duty of Governor
- § 344 —Scope of Governor’s inquiry
- § 345 Governor’s discretion as to rendition of certain persons

e. Rendition Warrant

- § 346 Generally

TABLE OF CONTENTS

§ 347	Form and sufficiency of warrant
§ 348	—Consideration of papers from demanding state
§ 349	Effect of issuance of Governor’s rendition warrant
§ 350	Bail after warrant issues
§ 351	Right of Governor to recall or revoke warrant
f. Judicial Review after Warrant Issues	
(1) In General	
§ 352	Overview of accused’s rights
§ 353	Notice of writ of habeas corpus
§ 354	Scope of inquiry
§ 355	—Particular matters beyond proper scope of inquiry
(2) Evidence, Burden of Proof, and Presumptions	
§ 356	Generally
§ 357	Fugitive status
§ 358	—Proof by testimony of witnesses
§ 359	—Proof by hearsay evidence
§ 360	Identification of prisoner
§ 361	Substantial charge of crime
g. Delivery to Extradition Agent	
§ 362	Generally
§ 363	Time limit for receipt of fugitive by extradition agent
§ 364	—Tolling
5. Effect of Extradition on Rights of States and Accused	
§ 365	Right of responding state to return of fugitive
§ 366	Right of demanding state to try accused for offense not specified in requisition
§ 367	Accused’s exemption from civil process pending outcome of criminal proceedings
§ 368	Effect of grant of habeas corpus by asylum state on demanding state’s right to subsequent inquiry
E. DETAINERS	
1. Introduction	
§ 369	Generally; the Interstate Agreement on Detainers Act (IADA)

- § 370 Definitional provisions
- § 371 Construction of the IADA
- § 372 Persons to whom the IADA applies
- § 373 —Violators of parole or probation
- § 374 Withdrawal from the IADA; effect on pending proceedings

2. Prisoner-Initiated Transfer

- § 375 Request for final disposition
- § 376 —As consent by prisoner to be delivered to receiving state and returned to original place of imprisonment
- § 377 —As waiver of extradition
- § 378 Custodian's duties relating to request
- § 379 Voiding of request after prisoner's escape
- § 380 Imposition of concurrent sentence

3. Prosecutor-Initiated Transfer

- § 381 Generally; request for temporary custody
- § 382 Custodian's duties relating to request
- § 383 Time to act upon request
- § 384 Prisoner's right to contest delivery

4. Delivery and Acceptance of Prisoner

- § 385 Generally
- § 386 Effect of failure or refusal to accept delivery

5. Trial

a. In General

- § 387 Generally
- § 388 Right to try prisoner for crime not specified in detainer

b. Right to Speedy Trial of Detainer Charges

- § 389 Prisoner-initiated transfers
- § 390 —Effect of irregularities in request for final disposition
- § 391 Prosecutor-initiated transfers
- § 392 Tolling of time limits
- § 393 Waiver of right to speedy trial; prisoner-initiated transfers

TABLE OF CONTENTS

- § 394 Effect of failure to meet time limits
- § 395 Effect of speedy trial provision in Rules of Criminal Procedure
- 6. Return of Prisoner to Sending State
- § 396 Generally
- § 397 Effect of return prior to trial; rule against shuttling of prisoner
- § 398 Effect of custodian's failure to give notice of transfer
- § 399 Prisoner's waiver of anti-shuttling rule

III. ASSISTANCE OF COUNSEL

A. RIGHT TO COUNSEL

1. In General

a. General Principles

- § 400 Generally; right as guaranteed by United States Constitution
- § 401 Right as guaranteed by state constitution
- § 402 Nature and scope of right
- § 403 Effect of prosecution interference
- § 404 Representation by person not licensed to practice law or suspended from practice of law
- b. Proceedings or Offenses to Which Right Applies
- § 405 Generally
- § 406 Criminal contempt proceedings; juvenile delinquency proceedings

c. Duty of Court When Defendant Appears Without Counsel

- § 407 Generally
- § 408 Affirmative obligations of the state

2. Stage of Proceeding at Which Right Applies

- § 409 Generally; "critical" stages
- § 410 Preliminary hearing
- § 411 Charge conference

- § 412 Arraignment; where plea of guilty is entered
- § 413 —Where plea of not guilty is entered
- § 414 Withdrawal of plea
- § 415 Sentencing
- § 416 —Placing defendant on probation
- § 417 Appeal; first or direct appeal as of right
- § 418 Revocation of probation
- § 419 Revocation of parole

3. Particular Matters or Circumstances As Affecting, or As Constituting Violation of, Right to Counsel

a. In General

- § 420 Denial of adequate time to prepare defense
- § 421 Specific instructions to jury
- § 422 Denial of right, or limiting time, to argue case
- § 423 Use of informant

b. Denial of Opportunity to Engage, Obtain, or Secure Presence of, Counsel of Choice

- § 424 Generally
- § 425 Effect of delayed arrival or temporary absence of retained counsel
- § 426 Effect of withdrawal or discharge of counsel

c. Denial of Opportunity to Communicate and Consult with Counsel

- § 427 Generally
- § 428 Denial during brief recess called while accused is on witness stand
- § 429 Necessity of showing prejudice
- § 430 Denial of privacy

d. Discrediting Counsel for Accused

- § 431 Generally
- § 432 Discharging for contempt

TABLE OF CONTENTS

4. Effectiveness or Adequacy of Representation

a. In General

(1) Right to Effective Assistance of Counsel

§ 433 Generally

§ 434 Right as extending to initial or direct appeal as of right

§ 435 Right as applicable to appointed or retained counsel

§ 436 Right as not applicable to defendant's self-representation

(2) Raising Posttrial Claim of Ineffective or Inadequate Representation

§ 437 Generally

§ 438 Necessity of specific allegations

§ 439 Successive or amended motions

(3) Standard and Test for Determining Effectiveness of Representation

(a) In General

§ 440 Generally

§ 441 Strickland test, generally; deficient performance and prejudice to defense

§ 442 Requirement that both deficient performance and prejudice be shown

(b) Deficient Performance Element of Test

§ 443 Generally

§ 444 Deferential scrutiny required

§ 445 Presumption of reasonableness

(c) Prejudice Element of Test

§ 446 Generally

§ 447 What is "reasonable probability" that result would have been different

- § 448 —Particular results
- § 449 Determination as to prejudice
 - (d) Other Considerations in Application of Test or Standard
- § 450 Alleging and determining claim
- § 451 Necessity of specific allegations
- § 452 Review of determination
 - (4) Particular Matters or Circumstances as Affecting, or Constituting a Violation of, Right to Effective or Adequate Representation
 - (a) Conflict of Interest
- § 453 Generally
- § 454 Court's duty to inquire into joint representation of codefendants
- § 455 Determination as to existence of actual conflict
- § 456 Particular cases finding conflict of interest
- § 457 Particular cases finding no conflict of interest
- § 458 Waiver of conflict of interest
 - (b) Other Particular Matters or Circumstances
- § 459 Strategic decisions
- § 460 —Particular decisions as not ineffective
- § 461 Failure to anticipate change in the law
- § 462 Matters or circumstances pertaining to counsel-defendant relationship
- § 463 Counsel's qualifications, experience, training, or education
- § 464 Illness of counsel; substance abuse
 - (5) Duty of Court When Defendant Requests Discharge of Counsel for Incompetency; Necessity of Nelson Inquiry or Hearing
- § 465 Generally
- § 466 When inquiry or hearing is not required

TABLE OF CONTENTS

- § 467 —Discharge based on grounds other than
ineffectiveness of counsel
- § 468 Scope and extent of inquiry
- § 469 Court's duty where there is reasonable basis for
defendant's request
- § 470 Court's duty where there is no reasonable basis
for defendant's request
- § 471 Effect of failure to conduct required inquiry or
hearing

b. Pretrial and Trial Representation

(1) In General

- § 472 Discovery and investigation
- § 473 —Failure to interview or depose potential
witnesses
- § 474 Change of venue
- § 475 Severance of offenses; particular circumstances
- § 476 Speedy trial

(2) Plea Process

- § 477 Generally; guilty plea
- § 478 Misadvice regarding sentence or gain time
- § 479 Misadvice regarding collateral consequences or
subsequent sentences
- § 480 Failure to advise that deportation is possible
consequence of plea
- § 481 Plea offer or bargain

(3) Jury Trial

- § 482 Generally
- § 483 Failure to object to excusal of juror
- § 484 Failure to object to inclusion of juror
- § 485 Failure to complain about juror's misconduct;
particular circumstances
- § 486 Failure to request sequestration of jury during
deliberations
- § 487 Failure to file motion for disqualification

(4) Evidence and Witnesses; Argument or Comments

(a) Overview

- § 488 Failure to seek suppression of evidence

- § 489 —Confessions or statements given by defendant
- § 490 Introduction of evidence; particular circumstances
- § 491 Interference with defendant's right to testify
- § 492 Failure to challenge or object to admission of evidence
- § 493 Cross-examination of witness; particular circumstances
- § 494 Failure to object to argument or comment of prosecutor
- § 495 Improper closing argument by defense counsel
- (b) Failure to Present Evidence or Witnesses During Trial or Guilt Phase of Trial
- § 496 Generally
- § 497 Conceding guilt
- (c) Failure to Present Evidence or Witnesses During Sentencing or Penalty Phase of Trial
- § 498 Generally; effect
- § 499 Capital murder prosecution
- § 500 Perjured or false testimony
- (d) Presentation of, or Failure to Present, Defenses
- § 501 Generally; self-defense
- § 502 Alibi defense
- § 503 Double jeopardy
- § 504 Insanity and other related defenses
- § 505 Intoxication
- § 506 Other defenses
- (5) Instructions to Jury
- § 507 Failure to request jury instruction
- § 508 —Relating to particular defenses
- § 509 Failure to object to jury instruction
- § 510 —Relating to particular defenses
- (6) Judgment and Sentence
- § 511 Generally

TABLE OF CONTENTS

- § 512 Sentencing; failure to object to imposition of nonguideline sentence
- § 513 Failure to inform defendant as to noneligibility for parole

c. Representation on Appeal

- § 514 Generally
- § 515 Failure to timely file notice of appeal
- § 516 Failure or delay in obtaining transcript or filing appeal brief
- § 517 Failure to argue or raise certain issues; where issue has merit
- § 518 —Where issue has no merit
- § 519 —Where issue has not been preserved for appellate review
- § 520 Failure to cite in appeal brief particular court decision as supporting authority

d. Conflict of Interest; Joint Representation of Codefendants

- § 521 Generally
- § 522 Joint representation as violative of right to effective representation
- § 523 Test for conflict of interest barring joint representation
- § 524 Representation on motions to withdraw plea
- § 525 Representation of witness or victim
- § 526 Other circumstances of conflict
- § 527 Showing of prejudice as not necessary to establish violation of right
- § 528 Duty of court when there is possible conflict of interest
- § 529 Waiver

Table of Laws and Rules

Key Number Table

Correlation Table

Volume 14A

5. Waiver or Loss of Right to Counsel; Right of Self-Representation

a. Waiver or Loss of Right to Counsel

- § 530 Generally; right to waive assistance by counsel
- § 531 Limitation of waiver to charges or stage of proceedings where made
- § 532 Failure to request assistance of counsel as waiver
- § 533 Guilty plea as waiver
- § 534 Court's duty to renew offer of counsel after waiver
- § 535 —Particular stages of proceedings

b. Establishing Valid Waiver of Counsel

(1) In General

- § 536 Generally
- § 537 Requirement that waiver be of record or in writing
- § 538 Effect of particular circumstances on validity of waiver

(2) Requirement that Waiver Be Voluntary, Knowing, and Intelligent; Farett Inquiry

- § 539 Generally
- § 540 Determining whether waiver was knowing and intelligent; Farett inquiry
- § 541 Necessity of inquiry in particular cases
- § 542 Factors considered
- § 543 Sufficiency of inquiry
- § 544 Particular waivers of counsel as voluntary, knowing, and intelligent

c. Right of Defendant to Self-Representation

(1) In General

- § 545 Generally
- § 546 Right as guaranteed by state constitution
- § 547 Right of self-representation on appeal
- § 548 Court's duty to inform defendant of right to self-representation

TABLE OF CONTENTS

§ 549	Necessity of timely request
§ 550	Necessity of unequivocal request
§ 551	Specific rights included in right of self-representation
§ 552	Waiver of right
	(2) Duty of Court Where Request for Self-Representation is Made by Defendant; Faretta Inquiry
§ 553	Generally
§ 554	Necessity for Faretta inquiry
§ 555	Particular warnings or determinations required
§ 556	Factors considered by court
§ 557	—Legal knowledge or experience
§ 558	Particular inquiries as sufficient
§ 559	Particular inquiries as insufficient
	(3) Limitations or Restrictions on Right
	(a) In General
§ 560	Generally
§ 561	Right as dependent on waiver of counsel
§ 562	Right as subject to termination for cause
	(b) Hybrid Representation; Defendant Acting as Co-Counsel
§ 563	Lack of constitutional right to hybrid representation
§ 564	—Proceedings other than trial
§ 565	When hybrid representation may be permitted
	(4) Appointment of Standby Counsel Where Defendant Exercises Right of Self-Representation
§ 566	Generally
§ 567	Permissibility of standby counsel's participation with defendant's approval
§ 568	Permissibility of standby counsel's participation relating to courtroom protocol and procedures
§ 569	Limitations on standby counsel's participation

B. COURT-APPOINTED COUNSEL AND PUBLIC DEFENDERS

1. In General

a. Generally

- § 570 In general; constitutional right to court-appointed counsel
- § 571 Statutory provision for court-appointed counsel
- § 572 Right as limited to services of not more than one court-appointed counsel
- § 573 Right to hybrid representation
- § 574 Right as limited to state court system
- § 575 Right to particular or different counsel

b. When Counsel Provided

- § 576 Generally; under court rule or statute implementing constitutional right
- § 577 Duty of booking officer concerning right to counsel

c. Offenses or Proceedings for Which Counsel Provided

- § 578 Generally
- § 579 Additional offenses
- § 580 Drunk driving
- § 581 Appeal; postconviction proceedings
- § 582 Order of no imprisonment as effecting right to counsel

d. Appointment in Capital Cases

- § 583 Generally; minimum standards for appointment
- § 584 Appeal from judgment imposing death penalty
- § 585 Application for executive clemency

e. Duty of Court Prior to Appointment of Public Defender

- § 586 Generally
- § 587 When there is conflict of interest between defendant and court-appointed attorney
- § 588 When there is conflict of interest between or among codefendants represented by court-appointed counsel
- § 589 —Where conflict arises from excessive caseload of court-appointed counsel

TABLE OF CONTENTS

§ 590	Duty of court-appointed counsel
	f. Duty of Appointed Counsel to Appeal
§ 591	Generally
§ 592	Withdrawal from appeal on ground that appeal is frivolous or without merit
§ 593	—Withdrawal from appeal after transmittal of record of proceedings to appellate court
§ 594	Withdrawal from appeal on ground of defendant's waiver of right to appeal
	g. Duty of Court When Defendant Requests Discharge of Court-Appointed Counsel
§ 595	Generally
§ 596	Failure to conduct inquiry or discharge counsel; illustrations
	2. Determination of Indigency
§ 597	Generally
§ 598	When determination of indigency must be made
§ 599	Affidavit of indigency; application fee
§ 600	—Financial information
§ 601	Presumptions and burden of proof
§ 602	Determination of indigency by clerk
§ 603	—Specific facts or circumstances considered
§ 604	—Review of clerk's determination
§ 605	Indigent minors or adult tax-dependent persons
§ 606	Partial indigency
§ 607	Where defendant is erroneously or improperly determined to be indigent
§ 608	Revocation of appointment of counsel when defendant is no longer determined to be indigent
	3. Compensation and Expenses of Appointed Counsel
§ 609	Generally
§ 610	Compensation for representation at trial and on appeal; statutory guidelines
§ 611	—Court's authority to depart from statutory fee guidelines
§ 612	Compensation for representation in executive clemency proceedings

- § 613 Compensation for representation in postconviction collateral proceedings in capital cases
- § 614 Compensation for representation in proceedings for writ of prohibition
- § 615 Procedure for recovering fees; application, evidence, and findings by court

IV. SUMMARY OR BENCH TRIAL

A. CONDUCT OF TRIAL

- § 616 Generally; when bench trial may be conducted
- § 617 Determination of voluntariness of confession and issue of guilt in single hearing
- § 618 Motion for judgment of acquittal
- § 619 Motion for new trial or arrest of judgment

B. APPELLATE REVIEW

1. In General

- § 620 Generally; allowance of oral argument
- § 621 Dismissal and reinstatement of appeal
- § 622 Issues reviewable upon appeal

2. Scope and Standards of Review; Findings of Fact

- § 623 Generally
- § 624 Admission and consideration of inadmissible evidence
- § 625 Sufficiency of evidence

V. PRELIMINARY INVESTIGATION AND COLLECTION OF EVIDENCE

A. SEARCH AND SEIZURE

1. Overview

a. Governing Law

- § 626 Generally; federal constitutional provisions
- § 627 Florida constitutional provisions
- § 628 —Amendment requiring conformity to Fourth Amendment; effect
- § 629 Purpose of constitutional protections against unreasonable searches and seizures

TABLE OF CONTENTS

§ 630	General rules of construction
§ 631	Determination and standards of reasonableness
§ 632	—Balance of interests
§ 633	Liability for wrongful search or seizure
b. What Constitutes Search or Seizure	
(1) General Considerations	
§ 634	What constitutes search
§ 635	—Canine sniff
§ 636	What constitutes seizure
(2) Requirement of Government Action	
§ 637	Government action
§ 638	Legitimacy of conduct exceeding jurisdiction
§ 639	Action by private parties
c. Probable Cause	
(1) Overview	
(a) General Considerations	
§ 640	Generally
§ 641	Level of certainty required
§ 642	Fellow officer rule
(b) Observation of Officer as Providing Probable Cause; Odors	
§ 643	General considerations
§ 644	Police drug dogs
§ 645	Containers
(2) Information from Informants	
(a) General Considerations	
§ 646	Generally; totality-of-circumstances test
§ 647	Anonymous informants
§ 648	Citizen-informants
(b) Confidential Informants	
§ 649	Generally

- § 650 Corroboration of tip
- § 651 Disclosure of identity

d. Exclusionary Rule

(1) Overview

- § 652 Generally; nature and purpose of exclusionary rule
- § 653 Applicability
- § 654 —Evidence obtained in reliance on unconstitutional statute
- § 655 —Violation of knock-and-announce statute
- § 656 Arrest relying on inaccurate information
- § 657 Motion to suppress; grounds

(2) “Fruit of the Poisonous Tree” Doctrine

(a) General Considerations

- § 658 Generally; exclusion of evidence derivative of or tainted by illegal or unlawful conduct
- § 659 Causation requirement; “but for” test

(b) Factors Allowing Admissibility of Alleged Illegally Obtained Evidence

- § 660 Generally; attenuation between taint and discovery or seizure of evidence
- § 661 Independent source
- § 662 Inevitable discovery

(3) Types of Evidence Suppressed

(a) Confessions

- § 663 Generally; effect of attenuation on admissibility
- § 664 Factors considered in determining admissibility
- § 665 Effect of illegal arrest in home on admissibility of subsequent statement or confession

(b) Tangible Evidence Seized During Illegal Arrest or Detention

- § 666 Generally

TABLE OF CONTENTS

§ 667	Abandoned property
	(c) Identification of Person
§ 668	Generally
	2. Nature and Extent of Constitutional Protections; Who Can Object to Search
	a. Scope of Personal Protection
§ 669	Generally; significance and determination of reasonable expectation in privacy
§ 670	Physical intrusions; searches beneath person's skin
§ 671	—Blood tests
§ 672	—Surgery
§ 673	Information conveyed to third party
	b. Reasonableness of Expectation of Privacy as to Particular Personal Effects
§ 674	Generally
§ 675	Containers; controlled deliveries
§ 676	Abandoned property
§ 677	—Garbage
§ 678	Books and papers; compulsory production
§ 679	Work office and computer
§ 679.50	Government issued property
	c. Reasonableness of Expectation of Privacy as to Particular Places
§ 680	Generally
§ 681	Residential premises
§ 682	—Hotels, motels, and other temporary accommodations
§ 683	—Adjacent areas; curtilage
§ 684	—Backyard
§ 685	Open fields
§ 686	Business premises
§ 687	Jails and custodial facilities
§ 688	Automobiles and other modes of transportation
§ 689	Hospitals and other health-care facilities

d. Plain View and Open View Doctrines

(1) Plain View Doctrine

(a) In General

§ 690 Plain view defined; observation during prior valid intrusion

(b) Application of Plain View Doctrine

§ 691 General requirements

§ 692 Probable cause to connect item with criminal activity

§ 693 Rejection of inadvertent discovery requirement

§ 694 Legality of officer's presence

§ 695 Scope of search permitted

(2) Open View Doctrine

(a) In General

§ 696 Generally; observation by nonintrusion

§ 697 Preintrusion observation or view from without before entry

§ 698 Probable cause to connect item observed with criminal activity

(b) Legitimacy of Enhanced Open View Observation

§ 699 Flashlights or other methods of illumination

§ 700 Binoculars, telescopes, and similar visual enhancement devices

§ 701 Aerial observations

§ 702 Electronic surveillance devices

e. Standing to Object to Search or Seizure

§ 703 Generally; test to determine standing

§ 704 Vicarious assertion of rights; automatic standing

§ 705 Relevance of ownership or possessory interests

§ 706 Disclaimer of knowledge or interest

§ 707 Residents of premises

§ 708 —Overnight guests and other visitors

§ 709 Owners and lessees of automobiles

TABLE OF CONTENTS

§ 710	—Occupants; car thieves
3. Search Warrants	
a. In General	
§ 711	Search warrant defined
§ 712	—Inspection warrants
§ 713	Necessity for search warrant
§ 714	—Exceptions to warrant requirement
§ 715	Construction of search warrant statutes
§ 716	Securing premises pending receipt of warrant
b. When and by Whom Issuable	
(1) In General	
§ 717	Generally
§ 718	Issuance of anticipatory search warrant
(2) Function of Issuing Officer	
§ 719	Generally
§ 720	Evaluation of specific facts of case
§ 721	Determination of probable cause
§ 722	Review of issuance
§ 723	Federal warrants
(3) Grounds for Issuance of Warrant	
§ 724	Generally
§ 725	Grounds to search private dwelling
§ 726	Narcotics laws being violated within dwelling
c. Application and Affidavit	
(1) In General	
(a) Generally	
§ 727	In general; necessity of application and sworn affidavit
(b) Showing of Probable Cause	
§ 728	Generally
§ 729	Level of proof required
§ 730	Factors considered
§ 731	“Fellow officer rule”
(c) Additional Proof	
§ 732	Generally

- § 733 Attachment of affidavit and other documents to warrant
 - (2) Sufficiency of Affidavit to Support Finding of Probable Cause for Warrant
 - (a) In General
- § 734 Generally
- § 735 Search-all-persons-present warrant
 - (b) Nature or Source of Information
- § 736 Hearsay
- § 737 Confidential informant
- § 738 Citizen informant
- § 739 “Controlled buy” of narcotics
 - (c) Time Between Offense and Application
- § 740 Generally
- § 741 Factors considered
- § 742 Case by case determination of staleness
 - (3) Particularity of Description
- § 743 Generally
- § 744 Description of place to be searched
- § 745 —Multi-unit buildings
- § 746 Description of property to be seized
- § 747 —Nature of property to be seized
- § 748 Description of suspected person
- d. Execution of Warrant
 - (1) In General
- § 749 Command to addressee to execute warrant
- § 750 Service of warrant
- § 751 Time of execution
- § 752 —Execution at night or on Sunday
- § 753 Obstruction of service or execution of warrant

TABLE OF CONTENTS

§ 754	Return and procedure thereon
	(2) Knock and Announce Requirement
	(a) In General
§ 755	Generally; justification for forced entry
§ 756	Time for opportunity to respond
§ 757	What constitutes break-in
§ 758	Excessive or unnecessary destruction
§ 759	Effect of consent
	(b) Exceptions to Knock and Announce Requirement
§ 760	Generally
§ 761	Peril to officers or others
§ 762	Likelihood of destruction of evidence
	(3) Scope of Search Under Warrant
§ 763	Generally
§ 764	Particularity of items to be searched or seized
§ 765	Place to be searched; curtilage
§ 766	—Vehicles near or on premises
§ 767	Detention and search of persons on premises
	e. Judicial Review of Warrant and Execution Thereof
§ 768	Generally; good faith exception to exclusionary rule
§ 769	—Inapplicability
§ 770	Probable cause determination
§ 771	False statements in affidavit; evidentiary (“Franks”) hearing
§ 772	—Analysis of affidavit containing false statements
§ 773	Affidavit including illegally obtained facts
§ 774	Omission of material fact from affidavit
§ 775	Substantial compliance with statutory requirements
	4. Warrantless Searches
	a. In General
§ 776	Generally

- § 777 Burden of proof
- § 778 Characterization of search by objective view of facts
- § 779 Entry based on arrest warrant

b. Exigent or Emergency Circumstances

- § 780 Generally
- § 781 Scope of search based on emergency
- § 782 Justification for investigation
- § 783 —Homicide scene
- § 784 —Destruction of evidence

c. Searches with Consent

(1) In General

- § 785 Generally
- § 785.50 Knock and talk encounters
- § 786 Determination of consent by trial court
- § 787 —Implied consent
- § 788 Burden of proof of voluntary consent
- § 789 —Presumption raised by illegal police conduct

(2) Determination of Voluntariness;
Factors Considered

- § 790 Generally
- § 791 Miranda warnings
- § 792 Coercive conduct by police
- § 793 Submission to apparent legal authority
- § 794 Consent of person in police custody
- § 795 Language difficulties
- § 796 Drug or alcohol impairment of defendant
- § 797 Withdrawal of consent

(3) Authority to Consent

(a) In General

- § 798 Third persons; common authority
- § 799 —Indicia of common authority
- § 800 Apparent authority

(b) Particular Persons with
Common Authority to
Consent to Search

- § 801 Joint occupants

TABLE OF CONTENTS

§ 802	—Minors
§ 803	—Objections of other party
§ 804	Landlords
§ 805	Owners and drivers of automobiles
§ 806	Other persons
(4) Scope or Extent of Search Pursuant to Consent	
§ 807	Generally
§ 808	Automobiles; containers in passenger compartment
§ 809	—Trunk
§ 810	Container within container
§ 811	Search of person
§ 812	—Genitals or crotch searches
d. Search of Automobile or Other Vehicles of Transportation	
§ 813	Generally; justification for search without warrant
§ 814	Vehicles excepted from warrant requirement
§ 815	Probable cause requirement
§ 816	Exigent circumstances requirement
§ 817	Scope of search of vehicle
§ 818	—Containers or packages in vehicle
§ 819	Incidence or immediacy of search following seizure
e. Search and Seizure Incident to Arrest	
(1) In General	
§ 820	Generally; justification
§ 821	Requirement of lawful arrest; probable cause
§ 822	—Issuance of notice to appear
§ 823	Relationship of time and place as between arrest and search
§ 824	—General exploratory search distinguished
(2) Permissible Extent of Search Incident to Arrest	
§ 825	Generally
§ 826	Luggage, purses, and other containers carried by arrestee
§ 827	Automobiles and containers within; Belton “bright-line rule”

- § 828 —Effect of recent occupancy
- § 829 Persons; protective sweep of premises

f. Inventory Searches

(1) In General; Search of Arrestee

- § 830 Generally; justification
- § 831 Scope of search; administrative procedures
- § 832 —Preincarceration search of possessions
- § 833 —Strip searches

(2) Impounded Vehicles

- § 834 Generally
- § 835 Requirement of custody of vehicle
- § 836 Grounds for impoundment of vehicle
- § 837 Alternatives to impoundment
- § 838 Search of containers in impounded vehicle

g. Regulatory, Administrative, and Other Searches

- § 839 Airport and boarding security searches
- § 840 Automobile checkpoints
- § 841 —Sobriety checkpoints
- § 842 —Agricultural vehicle inspections
- § 843 Motor vehicle or vessel dealers' lots, salvage yards, or repair shops
- § 844 Boat inspections and searches
- § 845 Border searches
- § 846 Fire scene searches
- § 847 Inspections of pervasively regulated businesses
- § 848 School searches
- § 849 —Applicable standard
- § 850 Prisons or detention facilities searches
- § 851 Residence or business premises

5. Stop and Frisk

a. In General; Seizure and Consensual Encounter Distinguished

(1) Varying Levels of Encounter in General

- § 852 General considerations

TABLE OF CONTENTS

§ 853	What constitutes seizure
§ 854	Determination
(2) Permissibility of General Police Inquiry	
§ 855	General considerations
§ 856	Reasonable suspicion of improper conduct not required
§ 857	Knock and talk
§ 858	Police demand distinguished
§ 859	Refusal to respond to police inquiry
(3) Test for Distinguishing Seizure From Consensual Encounter	
§ 860	General considerations
§ 861	Significance of place of encounter
b. Temporary Detentions or Stops	
(1) Overview	
§ 862	General considerations
§ 863	Florida Stop and Frisk Law
§ 864	Terry stops, generally
§ 865	Reasonable suspicion defined
§ 866	—Particular circumstances
§ 867	—Comparison with other standards
§ 868	Consideration of totality of circumstances
§ 869	—Specific factors
(2) Particular Circumstances; Observations and Knowledge of Officer	
§ 870	Presence in high-crime area
§ 871	Flight from approaching officer
§ 872	Presence in public street during late and unusual hours
§ 873	Appearance of drug transaction or usage
§ 874	—Use of drug courier profile
§ 875	Quick, furtive, or suspicious movements
§ 876	Location of vehicle
§ 877	Person's presence in area as unusual or incongruous

- § 878 Person's youth or youthful appearance
- § 879 Other circumstances or situations

(3) Stop Based on Information from
Third Parties

(a) General Considerations

- § 880 Overview
- § 881 Reliance on police flyers or bulletins
- § 882 —“Be on the look out” (BOLO) alerts
- § 883 Report of generalized, suspicious activity
- § 884 Amount of detail in description provided by tip

(b) Who Provides Information

- § 885 Generally; anonymous tipster
- § 886 Citizen informants
- § 887 Confidential or known informants
- § 888 Victims and witnesses

(4) Special Considerations with
Respect to Automobile Stops

- § 889 Generally
- § 890 Pretext stops
- § 891 Police roadblock
- § 892 Traffic violations or offenses
- § 893 Ordering occupants out of vehicle

(5) Scope and Duration of Detention

(a) General Considerations

- § 894 Scope and duration of detention in general
- § 895 Movement of suspect; station house detentions
- § 896 Fingerprinting
- § 897 Use of force in temporary detention
- § 898 Identification of suspect

(b) Permissible Duration of
Detention

- § 899 General considerations
- § 900 Factors considered; reasonableness
- § 901 Temporary detentions of personal property

TABLE OF CONTENTS

c. Frisks

(1) Justification for Frisk of Suspect

- § 902 Generally; belief that suspect is armed
- § 903 What constitutes dangerous weapon
- § 904 Tips
- § 905 Nature of suspected offense
- § 906 Suspicious movements or circumstances
- § 907 Suspicious bulges in clothing

(2) Scope of Frisk

- § 908 Generally
- § 909 Automobiles
- § 910 Seizure of object found during frisk
- § 911 —“Plain feel” doctrine

6. Disposition of Seized Property; Forfeiture of Contraband

a. Disposition of Seized Property

- § 912 Generally; inherent power of court to order return of property
- § 913 Statutory authority to order return of property seized under search warrant
- § 914 Court’s exercise of power to order return of property
- § 915 —Evidentiary hearing; disposition of property
- § 916 Special considerations with respect to certain types of property
- § 917 —Firearms
- § 918 —Unclaimed evidence

b. Forfeiture of Contraband; Florida Contraband Forfeiture Act

(1) In General

- § 919 Generally; purpose of law
- § 920 Nature of Act; construction
- § 921 Effect of seizure of property; divestiture of right, interest, and title
- § 922 Replevin or other proceedings to recover seized property
- § 923 Definition of claimant; bona fide lienholder

§ 924 —Determining standing to contest forfeiture proceeding

(2) Property Subject to Forfeiture

(a) In General

§ 925 Generally; contraband article used in unlawful conduct

§ 926 Definition of contraband article

§ 927 Currency as contraband

§ 928 —Factors indicative of connection between currency and drug felony

§ 929 Forfeiture of other property in lieu of inaccessible forfeitable property

(b) Forfeiture of Vessel, Vehicle, Aircraft, and Other Property Facilitating Felony Involving Contraband

§ 930 Generally

§ 931 Where forfeiture not justified

§ 932 Where vehicle or vessel is instrumentality of offense

§ 933 Presumption of criminal facilitation

(3) Property Interests Protected from Forfeiture; Innocent Owners

§ 934 Generally; interest of innocent property owner

§ 935 —Owner of leased vehicle

§ 936 Interest of record title holder; determination of ownership

§ 937 Interest of co-owner; husband and wife

§ 938 Interest of lienholder

(4) Adversarial Preliminary Hearing

§ 939 Generally

§ 940 Definitions

§ 941 Due process considerations

§ 942 Notice of right to adversarial preliminary hearing upon seizure of personal property

§ 943 —Method of requesting hearing; setting hearing

§ 944 Right to adversarial preliminary hearing prior to seizure of real property; lis pendens

TABLE OF CONTENTS

- § 945 Conduct of adversarial preliminary hearing;
finding of probable cause
- § 946 —Evidence used to establish probable cause

Volume 14B

(5) Forfeiture Proceeding

(a) In General

- § 947 Generally; applicable rules of procedure
- § 948 Complaint and responsive pleadings; filing and
service
- § 949 —Style and contents of complaint
- § 950 Notice of complaint
- § 951 Right to jury trial
- § 952 Settlement of forfeiture action
- § 953 Burden and degree of proof
- § 954 Probable cause determination and order of
forfeiture
- § 955 —Effect of order

(b) Disposition of Forfeited Property

- § 956 Generally
- § 957 Law enforcement trust funds
- § 958 —Uses of forfeiture trust funds

(c) Prevailing Claimant's Rights

- § 959 Generally
- § 960 Damages
- § 961 Attorney's fees; costs

B. INTERCEPTION OR ELECTRONIC SURVEILLANCE OF COMMUNICATIONS

1. Overview

a. In General; Governing Law

- § 962 Generally
- § 963 State constitutional right to privacy
- § 964 —Fourth Amendment ramifications
- § 965 Review of telecommunications records by National
Security Letters

§ 966 Interception with consent

b. Definitions

§ 967 “Wire communication”; “aural transfer”

§ 968 Cordless telephone communication

§ 969 “Oral communication”

§ 970 “Electronic communication”; “electronic communications system”; “remote computing service”

§ 971 “Electronic storage”

§ 972 “Intercept”; “contents”

c. Use of Intercepted Communication as Evidence

(1) Generally

§ 973 Prohibition of use as evidence of intercepted wire or oral communication

§ 974 Suppression of contents of communication

§ 975 —“Aggrieved person”; standing to object

(2) Authorization for Disclosure and Use of Intercepted Communications

§ 976 Generally

§ 977 In giving testimony in judicial or governmental proceedings

§ 978 Privileged communications

2. Authorization for Interception of Wire, Oral, or Electronic Communication

a. In General

§ 979 Generally; who may authorize application

§ 980 Offenses for which interception may be sought

§ 981 Form and contents of application

§ 982 —Circumstances in which place of interception need not be specified

b. Issuance of Order Authorizing Interception

§ 983 When order may issue

§ 984 —Exhaustion of other investigative techniques

TABLE OF CONTENTS

§ 985	—Determination of probable cause
§ 986	Contents of order
§ 987	—Direction of assistance of service provider and others
§ 988	Duration of order authorizing interception
c. Execution and Notice of Order	
§ 989	Generally; recording of intercepted communication
§ 990	Custody and sealing of recordings, orders, and applications
§ 991	Inventory of intercepted communications
§ 992	Notice of order and application
3. Governmental Access to Stored Wore or Electronic Communications	
a. In General	
§ 993	Disclosure of contents of stored electronic communication
§ 994	Disclosure of record or other information pertaining to subscriber or customer
§ 995	Issuance of court order
§ 996	Backup preservation
§ 997	Reimbursement of costs
b. Customer Notification	
§ 998	Generally
§ 999	Delay in notification
§ 1000	Court order forbidding notification by provider of existence of warrant, court order, or subpoena
c. Challenges by Customer	
§ 1001	Generally
§ 1002	Determination of customer's challenge
4. Authorization for Pen Registers, Trap and Trace Devices, and Mobile Tracking Devices	
a. Pen Registers and Trap and Trace Devices	
§ 1003	Application for court order; definitions
§ 1004	Issuance of order

- § 1005 Assistance in installation and use of pen register
or trap and trace device

b. Mobile Tracking Devices

- § 1006 Application for court order; definition
§ 1007 Issuance of court order

C. INTERROGATIONS AND CONFESSIONS

1. Constitutional Protections

a. In General

- § 1008 Constitutional guaranties
§ 1009 Right of counsel and privilege against self-
incrimination distinguished; confession by
accused without counsel
§ 1010 Retroactivity of new rules
§ 1011 —Rule as to voluntariness of confession

b. Effect of Miranda Doctrine

- § 1012 Generally; requisite warnings
§ 1013 Form and sufficiency of warnings
§ 1014 —Interpretation for deaf or non-English
speaking suspects
§ 1015 —Duration and repetition of warnings

c. Admissibility of Improperly Obtained
Statement or Confession

(1) In General

- § 1016 Miranda warnings as prerequisite to
admissibility
§ 1017 Burden of proof of compliance with Miranda
§ 1018 Effect of prior voluntary unwarned statement or
confession
§ 1019 Admissibility for impeachment and rebuttal
§ 1020 Plea of guilty as product of coerced confession

(2) Evidence or Comment on Pretrial
Silence of Accused

- § 1021 Generally
§ 1022 Comment upon voluntary statement
distinguished

TABLE OF CONTENTS

§ 1023	Purpose of inadmissibility
§ 1024	Standard of review
d. Custodial Interrogation	
(1) Inception of Duty to Warn	
§ 1025	Generally; significance of questions in custody
§ 1026	Necessity of arrest
§ 1027	Significance of offense under inquiry
§ 1028	Public safety exception to duty to warn
(2) What Constitutes Custodial Interrogation	
§ 1029	Generally
§ 1030	Significance of subjective belief of person making statement; Ramirez test
(3) Coerciveness or Compulsion Inherent in Setting of Interrogation	
§ 1031	Generally
§ 1032	Police station
§ 1033	Traffic stop
§ 1034	Prison
§ 1035	Home
§ 1036	Other locations
(4) Statements Not Requiring Miranda Warnings	
§ 1037	Generally
§ 1038	Gratuitous, voluntary, spontaneous statements
§ 1039	Statements during on-the-scene noncustodial questioning
§ 1040	Statements to persons other than law enforcement officers; informants
§ 1041	Statements made under deposition or subpoena
(5) Right to Counsel at Interrogation	
§ 1042	Generally; effect of invocation of right
§ 1043	—Equivocal request for counsel
§ 1044	Effect of denial of counsel

e. Waiver of Miranda Rights

(1) In General

- § 1045 Generally; requirements of effective waiver
- § 1046 Waiver of right to counsel at interrogation
- § 1047 —Requirement that investigator respond to suspect's questions about rights
- § 1048 —Waiver after assertion of right

(2) Form or Manner of Waiver

- § 1049 Generally
- § 1050 Express written or oral waiver
- § 1051 Waiver by conduct; effect of subsequent statement
- § 1052 —Effect of silence

(3) Burden and Sufficiency of Proof of Waiver

- § 1053 Burden of proof of waiver
- § 1054 —Proof of intelligent waiver by juvenile
- § 1055 Sufficiency of showing
- § 1056 Determination by trial court
- § 1057 —Standard of review

2. Voluntariness of Statement or Confession

a. Constitutional Aspects of Voluntariness

(1) Fifth Amendment Privilege Against Self-Incrimination

- § 1058 Generally; significance of free will and choice
- § 1059 Significance of Miranda warnings

(2) 14th Amendment Due Process

- § 1060 Generally; significance of coercive police activity
- § 1061 Validity of state procedures
- § 1062 Determination of voluntariness; province of court
- § 1063 —Requirement of record of finding
- § 1064 —Effect of improper procedure; new trial
- § 1065 Waiver or loss of right to raise issue of voluntariness

TABLE OF CONTENTS

b. Particular Factors Bearing on Question of Voluntariness

(1) In General; Totality of Circumstances

- § 1066 Generally
- § 1067 Attenuating or intervening acts; effect on prior involuntary confession
- § 1068 —Effect on confession given after illegal arrest
- § 1069 Physical abuse or threats of violence

(2) Psychological Coercion

- § 1070 Generally
- § 1071 Inducement by promises
- § 1072 —Leniency
- § 1073 Deception, fraud, or trickery
- § 1074 —Effect of trickery on otherwise voluntary confession
- § 1075 —Effect of silence or evasiveness

(3) Circumstances of Detention

- § 1076 Generally
- § 1077 Failure to advise defendant of rights
- § 1078 Absence of counsel, relatives, or disinterested persons
- § 1079 Duration of detention and questioning
- § 1080 —Delay in arraignment
- § 1081 Polygraph examination, voice stress analysis

(4) Subjective Factors

- § 1082 Generally
- § 1083 Mental capacity or condition of defendant
- § 1084 —Effect of drugs
- § 1085 —Effect of alcohol

D. IDENTIFICATION PROCEDURES AND TESTS

1. Constitutionality of Evidence Derived from Body of Defendant

- § 1086 Generally
- § 1087 Physical examinations or tests; taking of bodily fluid or substance

- § 1088 —Consent to physical examination or test
- § 1089 —Refusal to submit to physical examination or test
- § 1090 —Statutorily mandated HIV testing
- § 1091 Compelling exhibition of defendant; appearance in lineup
- § 1092 —Appearance in particular apparel
- § 1093 Fingerprinting, measuring, and photographing
- § 1094 Voice demonstrations
- § 1095 Handwriting exemplars

2. Right to Counsel at Pretrial Identification

- § 1096 Lineups
- § 1097 —Effect of absence of counsel
- § 1098 —Waiver of right to counsel
- § 1099 Physical examinations, fingerprints, measurements, photographs, and other tests

3. Reliability and Admissibility of Identification

a. Effect of Unnecessarily Suggestive Identification Procedure

(1) In General

- § 1100 Generally; significance of reliability
- § 1101 Admissibility of expert testimony as to reliability of procedure
- § 1102 Impermissibly suggestive procedure distinguished
- § 1103 —Procedure where defendant appears distinct from others

(2) Determination of Admissibility

- § 1104 Generally
- § 1105 Respective roles of court and jury
- § 1106 —Exposing identification weakness to jury
- § 1107 Applicable test
- § 1108 Indicia of reliability
- § 1109 —Reliability of hypnotically refreshed identification
- § 1110 Burden of proof; independent source
- § 1111 —Burden on appeal

TABLE OF CONTENTS

b. Reliability of Particular Identification Procedures

- § 1112 Live lineup
- § 1113 Photographic lineup
- § 1114 One-on-one showup
- § 1115 —Justification for use
- § 1116 —Reliability independent of showup

VI. COMMENCEMENT OF PROSECUTION AND DEFENSE

A. GENERAL CONSIDERATIONS

1. Status and Role of State Attorney in Criminal Prosecutions

- § 1117 Generally
- § 1118 Duties of state attorney as to criminal prosecutions
- § 1119 Investigative powers of state attorney
- § 1120 Authority of state attorney regarding institution and conduct of criminal prosecutions
- § 1121 Judicial review of prosecutorial determinations

2. Constitutional Rights of Accused

- § 1122 Generally
- § 1123 Rights under Declaration of Rights of Florida Constitution
- § 1124 Rights under Bill of Rights of United States Constitution
- § 1125 Rights under due process and equal protection clauses of Florida and United States Constitutions

3. Commencement of Criminal Prosecutions

- § 1126 Generally
- § 1127 Notification of defendants of filing of informations or indictments
- § 1128 Release of charged defendant to pretrial intervention program

B. INDICTMENTS, INFORMATIONS, AND OTHER ACCUSATORY PLEADINGS

1. Overview

- § 1129 Generally; definitions
- § 1130 Requirement of formal accusatory pleading
- § 1131 Right of accused to notice of nature of charges and potential penalties
- § 1132 Restrictions on uses of indictments and informations

2. Methods of Presentation of Charges

- § 1133 Capital felonies
- § 1134 Other felonies; misdemeanors and violations of ordinances
- § 1135 Criminal traffic offenses
- § 1136 Criminal conduct of juveniles

3. Preparation, Filing, and Return of Indictments and Informations

- § 1137 Generally; authority of grand jury and state attorney as to issuance of criminal charges, generally
- § 1138 Drafting of indictment; finding of indictment by grand jury
- § 1139 Filing of information by prosecuting attorney
- § 1140 Filing of information on failure or refusal of grand jury to return indictment; resubmission of charges to grand jury on its rejection
- § 1141 Conduct of preliminary examination or hearing as prerequisite to filing of information or return of indictment
- § 1142 Time for filing criminal charges
- § 1143 —Due process claims resulting from preaccusatory delay; prejudice
- § 1144 Proceedings on return of indictment for offense not triable in circuit court or on dismissal of prior convictions providing basis for felony jurisdiction
- § 1145 Maintenance of prosecution on copy of indictment or information
- § 1146 Custody, disposition, and inspection of indictments and informations

TABLE OF CONTENTS

§ 1147	Return of indictment to court by grand jury
§ 1148	Filing and recordation of indictment
§ 1149	Duties of clerk of court on receipt of information
4. Formal Requirements of Indictments and Informations	
§ 1150	Caption
§ 1151	Date, commencement, and personal statistics
§ 1152	Conclusion
§ 1153	Seal by notary
§ 1154	Endorsement and signing of indictments
§ 1155	Signature and verification of informations
§ 1156	—Certification as to receipt of testimony of material witnesses
§ 1157	Oath of state attorney
5. Contents and Sufficiency of Indictments and Informations	
a. General Considerations	
§ 1158	Generally
§ 1159	Purpose of indictment or information
§ 1160	Description of offenses
§ 1161	Allegation of elements of offenses
§ 1162	—Negation of defenses
§ 1163	Allegations relating to unknown facts
§ 1164	Use of foreign language and abbreviations
§ 1165	Use of legal terminology
§ 1166	Omissions, grammatical errors, and clerical errors
§ 1167	Surplusage
b. Charging of Statutory Offenses	
§ 1168	General requirements
§ 1169	Citations to particular provisions of law
§ 1170	Employment of language of statute
§ 1171	Allegation of offenses in alternative, disjunctive, or conjunctive
§ 1172	Negation of exceptions, excuses, or provisos
§ 1173	Allegation of aggravating circumstances

c. Allegations Relating to Particular Matters

(1) Descriptive Matters

- § 1174 Description of property
- § 1175 Description of written instruments and of words or pictures

(2) Time of Offense

(a) In General

- § 1176 Generally
- § 1177 Allegations as to time for continuing offenses

(b) Allegations As To Time When Date of Offense Is Unknown

- § 1178 Generally
- § 1179 Requirement of hearing to determine whether state has exhausted means of narrowing time frame

(3) Other Particular Matters

- § 1180 Jurisdiction of offense; prior judgment, determination, or proceeding
- § 1181 Commencement of prosecution within limitations period
- § 1182 Designation of offense
- § 1183 Classification of offense
- § 1184 Intent
- § 1185 Scierter
- § 1186 Manner and means of committing offense
- § 1187 Place of offense; venue
- § 1188 Ownership of property
- § 1189 Value of property
- § 1190 Attempt to commit criminal offense
- § 1191 Name and description of accused

6. Statements of Particulars

- § 1192 Nature and purpose; time for filing motion
- § 1193 Defendant's right to statement of particulars
- § 1194 Contents of statement of particulars; effect

TABLE OF CONTENTS

§ 1195	Grant or denial of motion as matter of discretion
§ 1196	Factors considered in granting or denying motion
§ 1197	Amendment of statement of particulars
§ 1198	Sanctions for noncompliance with order requiring statement of particulars
§ 1199	Appellate review of denial of motion
	7. Amendment of Indictments, Informations, and Other Pleadings
	a. In General
§ 1200	Generally; correction of formal defects
§ 1201	Amendment of date
§ 1202	Effect of unauthorized amendment
	b. Substantive Amendments
	(1) In General
§ 1203	Generally
§ 1204	Amendment of traffic citations
	(2) Indictments
§ 1205	Court's authority to permit amendment
§ 1206	Grand jury's authority to amend indictment
§ 1207	Effect of unauthorized amendments
	(3) Informations
§ 1208	Generally; effect of unauthorized amendment
§ 1209	Assessing prejudice to defendant's rights
§ 1210	Amendment of information after plea has been accepted or after mistrial
§ 1211	Effect of amendment
	8. Joinder of Offenses or Defendants; Consolidation of Related Offenses
	a. In General
§ 1212	Joinder of defendants
§ 1213	Joinder and consolidation of offenses
§ 1214	Authorization of joinder and consolidation of offenses
§ 1215	Requirement that offenses be based on same act or transaction or on two or more connected acts or transactions

- § 1216 Effect of inconsistent counts in indictments or informations
- § 1217 Appellate review; harmless error
 - b. Allegations Subject to Challenge on Ground of Duplicity
- § 1218 Generally
- § 1219 Allegation of felonies and misdemeanors in single count
- § 1220 Allegation of offenses in conjunctive and disjunctive
- § 1221 Inclusion in allegation of offense of factual matters relating to other offenses
 - c. Dismissal of Related Charges
- § 1222 Right to dismissal of related charges after trial
- § 1223 Right to dismissal of related charges pursuant to plea agreement
- 9. Severance of Multiple Offenses or Defendants Charged in Single Indictment or Information
 - a. In General
- § 1224 Generally
- § 1225 Time for severance motion; renewal of motion; waiver
- § 1226 Appellate review of ruling on motion for severance
 - b. Severance of Multiple Offenses
- § 1227 Generally
- § 1228 Purpose of severance
 - c. Severance of Defendants
- § 1229 Generally
- § 1230 Evidence insufficient to support joinder
- § 1231 Purpose of severance
- § 1232 Severance of defendants in prosecutions involving statements of codefendants
- § 1233 Standards for ruling on motion for severance

TABLE OF CONTENTS

10. Challenges to Defects and Irregularities
in Indictments and Informations

a. Overview

(1) In General

- § 1234 Generally
- § 1235 Methods for presentation of challenges to
indictments and informations
- § 1236 —Motion for arrest of judgment

(2) Time for Presentation of
Challenges to Indictments and
Informations; Waiver

(a) Overview

- § 1237 Generally
- § 1238 Fundamental defects in indictment or
information

(b) Waiver of Particular Defects
and Irregularities

- § 1239 Generally
- § 1240 Charging multiple offenses in single count
- § 1241 Failure to sign, endorse, verify, certify, or swear
to indictment or information

(3) Challenges Based on
Composition, Organization, and
Proceedings of Grand Jury
Returning Indictment

(a) Composition or Organization
of Grand Jury

- § 1242 Generally
- § 1243 Discriminatory composition of venire
- § 1244 Presence in panel of disqualified grand juror;
improper discharge of qualified grand juror

(b) Challenge to Grand Jury

- § 1245 Interest of grand juror
- § 1246 Misconduct of grand jurors; irregularities
occurring during deliberations

(c) Validity and Sufficiency of
Evidence before Grand Jury

- § 1247 Generally
- § 1248 Incriminating testimony or documents
 - b. Motion for Dismissal of Indictment or Information
 - (1) In General
 - § 1249 Generally
 - § 1250 Time for filing motion
 - § 1251 State's traverse or demurrer
 - § 1252 Grounds presented by motion for dismissal of indictment or information
 - (2) Failure to Establish Prima Facie Case When Material Facts are Undisputed as Ground for Motion to Dismiss
 - § 1253 Generally
 - § 1254 Purpose and nature of motion
 - § 1255 Requirement that facts in motion be specifically alleged and that motion be verified
 - § 1256 —State's traverse or demurrer
 - § 1257 Burden of persuasion
 - § 1258 —Resolution of inferences, factual issues, and evidentiary conflicts
 - § 1259 Grant or denial of motion
 - § 1260 —Effect of state's failure to file traverse or failure to file legally sufficient traverse
 - § 1261 Appellate review of order granting motion to dismiss
 - § 1262 Refiling of information, or resubmission of charges to grand jury, after dismissal by court
- 11. Variance Between Indictment or Information and Proof at Trial
 - a. In General
 - § 1263 Generally
 - § 1264 Necessity of conformity between allegations in indictment or information and proof at trial; material variances

TABLE OF CONTENTS

§ 1265 —Immaterial variances

b. Particular Allegations

§ 1266 Time of offense

§ 1267 Place of offense; name of persons

12. Validity of Verdict Returned on Indictment or Information

§ 1268 Generally

§ 1269 Conviction of offense divided into degrees

§ 1270 Conviction of lesser-included offense; Brown test

§ 1271 Conviction of attempt

C. RIGHT OF ACCUSED TO BE PRESENT

1. In General

§ 1272 Generally; constitutional bases of right

§ 1273 Purpose of presence requirement

§ 1274 Scope and extent of right to be present

§ 1275 When is defendant “present”

§ 1276 Effect of defendant’s absence

2. Particular Stages of Trial at Which Right to Be Present Applies

a. In General

§ 1277 Generally; first appearance, making of plea, and
arraignment

§ 1278 Hearing on motion to withdraw plea

§ 1279 Depositions

§ 1280 Competency hearing regarding witness

§ 1281 Bench conference or sidebar; status conference

§ 1282 Proceedings before court when jury is present

§ 1283 Defense counsel’s discussion with judge
regarding motion to withdraw

§ 1284 Laying foundation for introduction of evidence to
jury

§ 1285 View by jury

§ 1286 Jury request to review evidence or for additional
instructions

§ 1287 Charge conference; rendition of verdict

b. Pretrial Conference

§ 1288 Generally

- § 1289 Right to waive presence; denial of right by court
 - c. Qualification, Examination, Challenging, Impaneling, and Swearing of Jury
- § 1290 Generally; qualification of jury
- § 1291 Examination, challenging, impaneling, and swearing of jury
- § 1292 —Coney rule and its effect
 - d. Pronouncement of Judgment and Imposition of Sentence; Commitment Proceeding and Restitution Hearing
- § 1293 Pronouncement of judgment and imposition of sentence
- § 1294 —Use of audiovisual devices in defendant's absence
- § 1295 Resentencing or correction of sentence
- § 1296 Commitment proceeding; restitution hearing
- 3. Waiver or Loss of Right to Be Present
 - a. In General
 - § 1297 Generally; right to be tried in absentia for misdemeanor
 - § 1298 Waiver of presence in capital cases
 - § 1299 Waiver by counsel; defendant's ratification or acquiescence
 - § 1300 Necessity of record of waiver
 - § 1301 Necessity of timely objection to defendant's absence; effect of request for postconviction relief
 - b. Voluntarily Absenting Self from Courtroom without Leave of Court, Disrupting Proceedings, or Fleeing Jurisdiction as Waiver of Right to Be Present
 - § 1302 Generally
 - § 1303 Removal for disruptive conduct
 - c. Requirement of Knowing, Intelligent, and Voluntary Waiver
 - § 1304 Generally

TABLE OF CONTENTS

- § 1305 Where absence is due to illness
- § 1306 Burden of proof of voluntary waiver of presence

D. JURISDICTION

1. In General

- § 1307 Generally
- § 1308 Waiver or consent to subject matter jurisdiction
- § 1309 Effect of improper jurisdiction
- § 1310 Concurrent jurisdiction; as between federal and state courts

2. Factors Affecting Jurisdiction

- § 1311 Manner in which accused is brought before court
- § 1312 —Illegal arrest
- § 1313 —Extradition
- § 1314 Guilty plea
- § 1315 Double jeopardy or collateral estoppel

3. Jurisdiction of Particular Courts

a. Circuit Courts

- § 1316 Generally
- § 1317 Felonies and misdemeanors arising out of same circumstances
- § 1318 Lesser included offenses
- § 1319 Severance and joinder of claims and defendants
- § 1320 Appellate jurisdiction

b. County Courts

- § 1321 Generally
- § 1322 Misdemeanors

4. Jurisdiction as Affected by Place or Nature of Offense

- § 1323 Jurisdiction dependent on offense charged
- § 1324 State criminal jurisdiction
- § 1325 Offense committed within or outside of state
- § 1326 —Homicide
- § 1327 Offense based on omission to perform duty imposed by Florida law
- § 1328 Special maritime jurisdiction

§ 1329 Contempts

E. VENUE

1. In General

- § 1330 Definitions and distinctions
- § 1331 Constitutional considerations
- § 1332 Allegation and proof
- § 1333 Improper venue; effect
- § 1334 Procedure where venue is improper
- § 1335 Waiver

2. Factors Affecting Determination of Venue;
Place of Commission of Offense

a. Generally

- § 1336 Generally; venue unknown
- § 1337 Offense committed partly in Florida
- § 1338 Offense committed in more than one county

b. Particular Offenses

- § 1339 Trial of aider or accessory
- § 1340 Homicide
- § 1341 Stolen property brought into another county
- § 1342 Theft and fraudulent practices involving
communications systems
- § 1343 Offense committed in transit

3. Change of Venue

a. In General

- § 1344 Generally
- § 1345 Transfer for plea and sentence
- § 1346 Motion for change of venue
- § 1347 Hearing and determination on application for
change
- § 1348 Procedure when change granted
- § 1349 Second change of venue
- § 1350 Review of transfer order by receiving court

b. Grounds

- § 1351 In general
- § 1352 Determining impartiality

TABLE OF CONTENTS

§ 1353 Pretrial publicity

F. DISQUALIFICATION AND SUBSTITUTION OF JUDGE

1. In General

§ 1354 Necessity for impartial judge; recusal

§ 1355 Judges to whom rule applies; standing to move for disqualification

2. Grounds for Disqualification

§ 1356 Generally; governing law

§ 1357 Prejudice or bias of judge

§ 1358 Judge's relationship with, or opinion as to, defense attorney

§ 1359 Ex parte conversations

§ 1360 Conflict of interest

§ 1361 Contempt proceedings

3. Procedure

§ 1362 Requisites of motion to disqualify judge; accompanying certificate and affidavits

§ 1363 Time for motion; motion made during trial

§ 1364 Sufficiency of motion to disqualify

§ 1365 —Illustrative cases

§ 1366 Determination of motion to disqualify; initial motion

§ 1367 —Successive motions

§ 1368 Substitution of judge

G. FLORIDA DISTRICT COURT OF APPEALS ARRAIGNMENT

§ 1369 Generally

§ 1370 Person at liberty whose case has been transferred

§ 1371 Person in custody when indictment filed

§ 1372 Effect of plea of guilty or not guilty

§ 1373 Nature and purpose of arraignment; right to counsel generally

§ 1374 Defendant not represented by counsel

§ 1375 Reversal for deprivation of counsel at arraignment

- § 1376 Waiver of right to counsel
- § 1377 Sufficiency of record to show arraignment
- § 1378 Waiver of right to arraignment; irregular arraignment

H. PLEAS

1. In General

a. Pleas of Record in Open Court; Plea of Not Guilty

- § 1379 Generally; manner of pleading
- § 1380 Permissibility and effect of pleading to other charges
- § 1381 Effect of failing to plead or pleading evasively
- § 1382 Effect of not guilty plea

b. Plea of Guilty

(1) In General

- § 1383 Plea of guilty to misdemeanor
- § 1384 Plea of guilty to lesser included offense or to offense divided into degrees

(2) Effect of Guilty Plea

- § 1385 Generally; conviction and sentence
- § 1386 Waiver of nonjurisdictional defects
- § 1387 Waiver of constitutional questions
- § 1388 Limitation on right to direct appeal

c. Plea of Nolo Contendere

(1) In General

- § 1389 Nature and purpose of plea
- § 1390 Plea of no contest to lesser included offense

(2) Effect of Plea

- § 1391 Generally; conviction and sentence
- § 1392 Admissibility as evidence of guilt in subsequent proceeding
- § 1393 Admission of facts and waiver of nonjurisdictional defects
- § 1394 Limitation on right of direct appeal

TABLE OF CONTENTS

2. Plea Discussions and Agreements

a. In General

(1) Nature as Contract; Administrative Consequences

§ 1395 Contract between state and defendant

§ 1396 Plea agreement and its administrative
consequences

(2) Binding Effect of Offer or Negotiation; Rejection of Plea by Defendant

§ 1397 Generally

§ 1398 Packaged plea deals

§ 1399 Prosecutor's promise as to sentence
recommendation

§ 1400 Effect of counter-recommendations by state

§ 1401 Specific enforcement

§ 1402 Admissibility of defendants statements in later
proceedings

b. Discretion and Duty of Prosecutor in Plea Bargaining

§ 1403 Generally

§ 1404 Prosecutorial vindictiveness

c. Duty of Defense Counsel in Plea Bargaining

§ 1405 Duty to advise defendant

§ 1406 Constitutionally ineffective representation

d. Discretion and Duty of Trial Judge in Plea Bargaining

(1) In General

§ 1407 Participation of judge

§ 1408 Duty to apprise defendant of direct consequences
of plea

§ 1409 Rejection by court of plea bargain

(2) Duty to Apprise Defendant of Collateral Consequences of Plea

§ 1410 Generally

- § 1411 Deportation
- § 1412 DNA evidence
- 3. Acceptance of Guilty or Nolo Contendere Plea
 - a. In General
 - § 1413 Duty of court; formality of acceptance
 - § 1414 Failure of court to comply with formalities
 - § 1415 Discretion of court to reject or convert plea
 - § 1416 Conditional acceptance
 - b. Effect of Acceptance of Plea on Discretion to Sentence
 - (1) In General
 - § 1417 Judicial discretion; constraints upon judge
 - § 1418 Legality of sentence
 - § 1419 —Departure from statutory sentencing guidelines
 - (2) Judicial Vindictiveness
 - § 1420 Generally
 - § 1421 Burden of proof
 - § 1422 Remedy
 - c. Requirement that Plea be Voluntary and Understood
 - (1) In General
 - § 1423 Generally; significance of voluntariness
 - § 1424 Required understanding of charge and consequences of plea
 - (2) Factors Indicative that Plea is Voluntary and Understood
 - § 1425 Generally
 - § 1426 Inducement by false promise
 - § 1427 Coercion
 - d. Procedure for Ensuring that Plea is Voluntary and Understood
 - § 1428 Duty of trial judge to determine voluntariness; record of inquiry

TABLE OF CONTENTS

- § 1429 Evidentiary hearing on issue of voluntariness
- § 1430 —Capacity of defendant to make plea; burden of proof
 - e. Requirement of Factual Basis for Plea
- § 1431 Generally
- § 1432 Inquiry as to factual basis
- § 1433 —Sufficiency of record of inquiry
- § 1434 —Failure to ascertain factual basis

Volume 15

4. Withdrawal of Pleas

- a. In General; Rules Applicable to Pleas of Guilty and Nolo Contendere
 - (1) Withdrawal before Acceptance of Plea by Court

- § 1435 Generally; remedy
- § 1436 Discretion of court

- (2) Necessity of Motion for Purpose of Appeal

- § 1437 Generally
- § 1438 Effect of representation by counsel
- § 1439 Motion to withdraw plea after sentencing
- § 1440 Required showing on appeal
- § 1441 —Postsentence motion
- § 1442 Admissibility of offer or plea
- § 1443 Admissibility of statements: Robertson test

- b. Withdrawal of Guilty Plea

- (1) In General

- § 1444 Generally
- § 1445 Construing and deciding motion; rule of liberality
- § 1446 —Showing of good cause

- (2) Grounds for Withdrawal of Guilty Plea

- § 1447 Generally; involuntariness of plea

§ 1448 Plea induced by mistake, misapprehension, or misconception

§ 1449 —By official misrepresentation

§ 1450 —By failure of court or counsel to explain consequences of plea

c. Failure to Comply With Plea Bargain

(1) Noncompliance by Court

§ 1451 Generally

§ 1452 Imposition of sentence

(2) Noncompliance by Prosecutor

§ 1453 Generally

§ 1454 Plea conditioned on assistance of defendant to prosecution

(3) Noncompliance by Defendant

§ 1455 Generally

§ 1456 Vacation of plea on ground of defendant's noncompliance

d. Withdrawal of Nolo Contendere Plea

§ 1457 General grounds for motion

§ 1458 Specific grounds; involuntariness of plea

§ 1459 —Failure to comply with condition of plea bargain

§ 1460 —Plea induced by misunderstanding or misinformation

e. Withdrawal of Not Guilty Plea

§ 1461 Generally

I. PRETRIAL MOTIONS

1. Preliminary Considerations

§ 1462 Motion practice

§ 1463 Form and content of motion

§ 1464 Service of motion

2. Motion to Dismiss

a. In General

§ 1465 Overview

TABLE OF CONTENTS

§ 1466	Effect of sustaining motion
	b. Time for Motion
§ 1467	General rule
§ 1468	Exception; fundamental grounds
	c. Motion Asserting Lack of Prima Facie Case
§ 1469	Factual allegations
§ 1470	Defendant's oath
§ 1471	Nature of proceeding
	d. Traverse or Demurrer
§ 1472	Generally
§ 1473	Traverse to motion asserting lack of prima facie case
§ 1474	Time for filing
	3. Motion in Limine
	a. In General
§ 1475	Nature and purpose
	b. Motion to Suppress Evidence in Unlawful Search
§ 1476	Contents of motion
§ 1477	Time for filing
§ 1478	Hearing
§ 1479	—Reconsideration
§ 1480	—Privilege against self-incrimination
	c. Motion to Suppress a Confession or Admissions Illegally Obtained
§ 1481	Grounds
§ 1482	Time for filing
§ 1483	Hearing
	4. Speedy Trial Demand
§ 1484	Right to demand speedy trial
§ 1485	Filing and service of demand
§ 1486	Form of demand
§ 1487	Time for demand

- § 1488 Procedure following demand
- § 1489 Demand by prisoners outside jurisdiction
- § 1490 Binding effect of demand for speedy trial
- § 1491 —Withdrawal of demand for speedy trial
- § 1492 Waiver

5. Pretrial Notice of Alibi Defense

a. Defendant's Obligation

- § 1493 Condition precedent
- § 1494 Time for service and filing
- § 1495 Form and content
- § 1496 Continuing duty to disclose

b. Prosecutor's Reciprocal Obligation

- § 1497 Time for service and filing; content
- § 1498 Continuing duty to disclose

c. Enforcement

- § 1499 Sanction for failure to disclose
- § 1500 Waiver

6. Notice of Intention to Offer Similar Fact Evidence

- § 1501 Requirement of notice
- § 1502 Form and content

J. DISCOVERY AND DISCLOSURE

1. Preliminary Considerations

- § 1503 Generally; purpose of discovery rule
- § 1504 Constitutional considerations
- § 1505 Costs incurred by indigents
- § 1506 Defendant's notice of intent to participate in discovery; reciprocal discovery
- § 1507 Effect of request for public records

2. Matters Subject to Disclosure

a. Parties' Joint Discovery Obligations

- § 1508 Certification of discovery request, response or objection
- § 1509 Investigations not to be impeded

TABLE OF CONTENTS

§ 1510	Continuing duty to disclose
§ 1511	Work product
§ 1512	—What constitutes “work product”
b. Discovery Depositions Conducted by Defense	
(1) In General	
§ 1513	Generally; applicability of civil rules
§ 1514	Time and place of deposition
§ 1515	Notice of deposition
§ 1516	Use of deposition
§ 1517	Issuance of subpoenas
§ 1518	Depositions of sensitive witnesses
§ 1519	Defendant’s physical presence
§ 1520	Deposition of law enforcement officers; telephonic statements
§ 1521	—Witness coordinating office
§ 1522	Transcripts
(2) Limitations on Who May be Deposed; Multiple Depositions	
§ 1523	Generally
§ 1524	Deposition of state witnesses
§ 1525	Deposition of prosecutor
§ 1526	Cases involving misdemeanors and traffic offenses
c. Prosecutor’s Duty to Disclose	
(1) Preliminary Considerations	
§ 1527	Time for disclosure
§ 1528	State’s possession or control of discoverable material
§ 1529	Effect of nondisclosure
§ 1530	Defendant’s duty of diligence in preparation
§ 1531	Cooperation with defense counsel
(2) Particular Items Required to be Disclosed	
§ 1532	Names and addresses of witnesses
§ 1533	Statements of witnesses
§ 1534	—Police incident and investigative reports

- § 1535 Statements of accused
- § 1536 —Particular examples of violation of rule
- § 1537 Statements of a codefendant
- § 1538 Grand jury testimony of defendant
- § 1539 Grand jury testimony of witnesses
- § 1540 Tangible papers or objects of defendant
- § 1541 Tangible papers or objects not belonging to defendant
- § 1542 Existence of information from a confidential informant
- § 1543 Electronic surveillance
- § 1544 Search or seizure
- § 1545 Expert reports

(3) Evidence Favorable to Accused

(a) In General

- § 1546 Brady rule
- § 1547 Types of evidence covered under Brady rule
- § 1548 Where defendant is aware of evidence

(b) Requisite Elements

- § 1549 Generally
- § 1550 Suppression of evidence
- § 1551 Favorable character of evidence
- § 1552 Materiality of evidence
- § 1553 —Particular circumstances constituting material evidence

(c) Failure to Preserve Evidence

- § 1554 Generally
- § 1555 Requirement that unpreserved evidence be beneficial to accused
- § 1556 Destruction of evidence by failure to act
- § 1557 Destruction of evidence through testing
- § 1558 Duty to preserve evidence obtained through testing

(d) Review of Brady Ruling

- § 1559 Generally
- § 1560 Reversal of conviction

(4) Identity of Confidential Informant

- § 1561 Privilege of nondisclosure

TABLE OF CONTENTS

§ 1562	Circumstances justifying disclosure; Roviario exception
§ 1563	Disclosure where necessary to establish defense
§ 1564	—In camera hearing
§ 1565	Disclosure to preserve due process rights
§ 1566	—Relevant factors
§ 1567	Sanctions for violation of court order to disclose
d. Defendant's Duty to Disclose	
(1) Demonstrative Evidence	
§ 1568	Matters subject to disclosure
§ 1569	—Blood samples
§ 1570	Personal appearance of the accused
(2) Reciprocal Discovery Obligations	
(a) In General	
§ 1571	Generally
§ 1572	Names and addresses of witnesses
§ 1573	Effect of prosecutor's motion for protective order
(b) Defendant's Service of Discovery Exhibit	
§ 1574	Generally
§ 1575	Statements of witnesses
§ 1576	Expert reports or statements
§ 1577	Tangible evidence; investigative subpoenas
3. Judicial Supervision of Discovery	
§ 1578	Timeliness of disclosure
§ 1579	Additional discovery
§ 1580	Restricting disclosure
§ 1581	Protective orders
§ 1582	In camera and ex parte proceedings
§ 1583	Pretrial conference
4. Sanctions for Violation of Discovery Requirements	
a. In General	
§ 1584	Remedies available
§ 1585	—Continuance

- § 1586 —Mistrial
- § 1587 Willful violation of discovery rule by counsel or party appearing pro se
- § 1588 Violation of certification requirements

b. Determination of Prejudice;
Richardson Hearing

(1) In General

- § 1589 Generally
- § 1590 Applicability
- § 1591 Particular discovery violations
- § 1592 Scope of hearing
- § 1593 Burden of proof

(2) Procedural Requirements

- § 1594 Generally; record of hearing
- § 1595 Time for hearing
- § 1596 Objection or notice to trial court regarding discovery violation

(3) Determination as to Appropriate Remedy

- § 1597 Generally
- § 1598 Intermediate corrective measures
- § 1599 Dismissal of indictment or information
- § 1600 Exclusion of evidence
- § 1601 —As extreme sanction

(4) Review of *Richardson* Hearing Findings

- § 1602 Generally
- § 1603 Failure to conduct hearing

K. DEPOSITIONS TO PERPETUATE TESTIMONY

- § 1604 Generally
- § 1605 Time for motion
- § 1606 Form and contents of motion
- § 1607 Order issuing commission to take deposition
- § 1608 —Time for order and commission

TABLE OF CONTENTS

§ 1609	Deposition on application of state
§ 1610	Use of depositions
§ 1611	—Construction of term “attendance of witnesses”

VII. TRIAL

A. GENERAL ASPECTS

1. Right to Fair Trial

a. In General

§ 1612	Federal constitutional requirements
§ 1613	—Notice requirements
§ 1614	Florida constitutional requirements
§ 1615	—Scope and extent of constitutional guarantee
§ 1616	Impartiality of judge as element or requisite of fair trial
§ 1617	—Pecuniary interest of judge in outcome of case
§ 1618	Impartiality of jury as element or requisite of fair trial
§ 1619	—Ignorance of facts or issues involved not required
§ 1620	Conduct of trial

b. Particular Matters As Affecting, or As Constituting Violation of, Right to Fair Trial

(1) Publicity Concerning Case or Trial

(a) Pretrial Publicity

§ 1621	Generally
§ 1622	Duty to minimize effects of pretrial publicity
§ 1623	Burden of establishing unfairness or prejudice
§ 1624	Remedies of defendant against pretrial publicity; closure of pretrial proceedings
§ 1625	—Change of venue
§ 1626	—Continuance of trial

(b) Publicity During Trial

§ 1627	Generally
§ 1628	Photographing, broadcasting, or televising court proceedings

- § 1629 Right of publication; necessity of determining effect of published report of proceedings

(2) Preparation of Defense

- § 1630 Time to prepare; right to continuance or postponement
 § 1631 What constitutes reasonable preparation time

(3) Procedural and Evidentiary Matters

(a) In General

- § 1632 “Mug shots” or photographic police line-ups
 § 1633 Prejudicial exhibition of emotion

(b) Evidence Favorable to Defendant

- § 1634 Suppression or withholding of evidence favorable to defendant
 § 1635 —Materiality of evidence
 § 1636 Failure to preserve evidence

(c) Use of False or Perjured Testimony

- § 1637 Generally
 § 1638 Requirements of Giglio
 § 1639 —Materiality
 § 1640 —Requirement that prosecution know of perjury
 § 1641 Necessity of Giglio hearing

(4) Conduct and Comments of Prosecutor, Witnesses, and Other Persons

- § 1642 Attorney’s participation in both defense and prosecution
 § 1643 Arguments of prosecutor
 § 1644 Conduct and statements of witnesses and bystanders

(5) Attire or Appearance of Accused During Trial

- § 1645 Appearance in prison garb or uniform

TABLE OF CONTENTS

§ 1646	Appearance in manacles or under physical restraints
§ 1647	Appearance in custody of officers
§ 1648	Other appearance issues
(6) Custody and Deliberation of, and Instructions to, Jury	
§ 1649	Separation of jurors during deliberations
§ 1650	Time and length of jury deliberations
§ 1651	Instructions to jury
(7) Other Matters	
§ 1652	Courtroom security; presence of security personnel or uniformed officers
§ 1653	Mob atmosphere
2. Right to Public Trial	
a. Of Defendant	
§ 1654	Right under Federal Constitution
§ 1655	—Personal nature of right
§ 1656	Right under Florida Constitution
§ 1657	Proceedings to which right is applicable
§ 1658	—Pretrial suppression hearing
§ 1659	Scope and extent of right
§ 1660	—Sex offense cases
§ 1661	Need to show prejudice as result of denial of right to public trial
§ 1662	Waiver
b. Of Persons or Entities Other Than Defendant; News Media	
(1) In General	
§ 1663	Right as guaranteed under Federal Constitution
§ 1664	Scope and extent of right; limitations upon right
(2) Particular Proceedings to Which Right Is Applicable	
§ 1665	Pretrial discovery deposition proceeding
§ 1666	Preliminary hearing before magistrate
§ 1667	Pretrial suppression hearing
§ 1668	Voir dire examination of potential jurors

- § 1669 Conference between judge and counsel
- § 1670 Trial
- § 1671 Sentencing hearing

3. Determination of Competency to Stand Trial

a. In General

- § 1672 Generally; rule that defendant not be subjected to trial while incompetent
- § 1673 Under the Florida Rules of Criminal Procedure
- § 1674 Presumption of continuation of competency or incompetency

b. Test of Competency

- § 1675 Competency to proceed distinguished from sanity at time offense committed
- § 1676 Test of competency for mentally ill defendant
- § 1677 Test of competency for defendant suffering from retardation or autism
- § 1678 Effect of amnesia or inability to remember facts
- § 1679 Effect of use of drugs or medication

c. Proceedings to Determine Issue

(1) In General

- § 1680 Manner of raising issue of competency; motion for examination
- § 1681 Necessity of competency hearing when reasonable ground exists
- § 1682 —Illustrative cases
- § 1683 —Retroactive competency hearing
- § 1684 Posttrial hearing
- § 1685 Place of examination by experts
- § 1686 Scope of examination and report by experts
- § 1687 Limited use of information obtained from examination of defendant; waiver of privilege
- § 1688 Calling of experts appointed by court as witnesses
- § 1689 Determination of competency; weight of expert opinion

(2) Appointment of Experts to Examine Defendant

- § 1690 Generally

TABLE OF CONTENTS

§ 1691	Attendance of third parties during examination
§ 1692	Who may be appointed to examine defendant
§ 1693	Content of order appointing experts
§ 1694	Indigent defendant
§ 1695	—Payment of experts
d. Proceedings upon Determination of Issue by Court	
(1) Procedure upon Finding of Competency	
§ 1696	Generally
§ 1697	Effect of new evidence indicating incompetency
(2) Procedure upon Finding of Incompetency	
(a) Generally	
§ 1698	Treatment of defendant
§ 1699	Involuntary commitment of mentally ill defendant
§ 1700	Involuntary commitment of defendant suffering from retardation or autism
§ 1701	Order of commitment
§ 1702	Report by administrator of treatment facility of defendant's status; motion by counsel
§ 1703	Hearing upon filing of report
§ 1704	Release of incompetent defendant; outpatient treatment
§ 1705	Retention of jurisdiction by committing court; conditional release
§ 1706	—Retarded or autistic defendants
(b) Dismissal of Charges	
§ 1707	Adjudication of incompetency due to mental illness
§ 1708	Adjudication of incompetency due to retardation or autism
§ 1709	Continuing incompetency to proceed
e. Effects of Determination of Incompetency to Proceed	
§ 1710	Double jeopardy; consent to medical treatment

- § 1711 Applicability of statute of limitations to charges dismissed

B. TIME FOR TRIAL

1. In General

- § 1712 Due process right to adequate preparation time before trial; trial scheduling
 § 1713 Prejudicial delay in filing indictment
 § 1714 Term during which case may be tried

2. Right to Speedy Trial

a. Right to Speedy Trial under the Federal Constitution

(1) In General

- § 1715 Sixth Amendment right
 § 1716 Purpose and effect of Sixth Amendment right
 § 1717 —Attachment of Sixth Amendment right
 § 1718 Interaction with state speedy trial rule
 (2) Factors Considered in Determining Violation of Sixth Amendment Right; Barker Hearing

- § 1719 Generally
 § 1720 Effect of delay by prosecution
 § 1721 Effect of length of delay
 § 1722 Waiver or loss of right
 § 1723 —Delay by defendant
 § 1724 Prejudice

b. Right to Speedy Trial under the Florida Constitution

- § 1725 Generally
 § 1726 Statutes and rules; interaction with state constitution

C. JURY AND TRIAL BY JURY

1. Right to Trial by Jury

a. In General

- § 1727 Overview

TABLE OF CONTENTS

§ 1728	Number of jurors
§ 1729	—Effect of renunciation of death penalty by prosecution or judge
§ 1730	Prohibition on increasing punishment of defendant who demands jury
§ 1731	Transfer to obtain jury trial for violation of ordinance
§ 1732	—Procedure after order of transfer
b. Limitations on Right	
§ 1733	Serious offenses
§ 1734	Statutory extension of right to jury trial for nonserious offenses; contempt
§ 1735	Effect of judge’s announced intention to limit punishment
c. Waiver of Right to Jury Trial	
(1) In General	
§ 1736	Defendant’s ability to waive right
§ 1737	Consent to trial by fewer than the required number of jurors
§ 1738	State’s consent to waiver
§ 1739	Written statement by defendant
(2) Requirement that Waiver be Voluntary, Knowing, and Intelligent	
§ 1740	Generally
§ 1741	Waiver form stamped on information
§ 1742	Oral colloquy with court
§ 1743	—Constitutional requirement
§ 1744	—Effect of written waiver on colloquy
(3) Withdrawal of Waiver	
§ 1745	Discretion of trial court
§ 1746	Time for withdrawal
(4) Capital Cases	
§ 1747	Generally
§ 1748	Waiver of advisory jury for sentencing phase

2. Exposure of Jury to Outside Influence

a. In General

- § 1749 Requirements of due process
- § 1750 Phone calls
- § 1751 News reports
- § 1752 Juror's remarks or actions in connection with
victim or accused
- § 1753 —Expression of opinion

b. Ex Parte Communications

- § 1754 Judge
- § 1755 Prosecutor
- § 1756 Arresting officer
- § 1757 Bailiff
- § 1758 Member of public

D. COMPELLING ATTENDANCE OF WITNESSES

1. Basis, Nature, and Extent of Right

- § 1759 Federal constitutional right to compulsory
process
- § 1760 —Applicability to Florida
- § 1761 State constitutional right
- § 1762 Nature and extent of right
- § 1763 Legislative delineation of right
- § 1764 Subpoenas
- § 1765 Exclusion of testimony as denial of right
- § 1766 Conduct of state causing unavailability of
witness
- § 1767 Application of right to particular proceedings
- § 1768 Compelling testimony of codefendant
- § 1769 Waiver of right
- § 1770 Witness's claim of privilege

2. Indigent Accused

- § 1771 Generally
- § 1772 Application for procurement of witnesses

E. RIGHT TO CONFRONT WITNESSES

1. In General

- § 1773 Constitutional basis of right

TABLE OF CONTENTS

§ 1774	Nature and purpose of right
§ 1775	—Cross-examination
§ 1776	—Right of face-to-face confrontation
§ 1777	Waiver or loss of right
2. Application of Right of Confrontation	
a. In General	
§ 1778	Proceedings to which right applies
§ 1779	Proceedings to which right does not apply
§ 1780	Application to sentencing proceedings
b. Denial of Right of Confrontation	
§ 1781	Generally
§ 1782	Right of defendant to be present at deposition
§ 1783	Prejudicial effect of denial of right; harmless error
§ 1784	Limitation upon cross-examination
c. Admissibility of Evidence	
(1) In General	
§ 1785	Physical or documentary evidence
§ 1786	Out-of-court statements, generally
§ 1787	Hearsay, generally
(2) Testimonial Hearsay; the Crawford Rule	
§ 1788	Generally
§ 1789	Proceedings from which testimonial hearsay excluded
§ 1790	What constitutes a testimonial statement
§ 1791	—Documentary evidence
§ 1792	—Statements made to persons other than law enforcement personnel
§ 1793	—Statements to 911 Operator
(3) Particular Statements	
§ 1794	Statement or confession by codefendant; Bruton rule
§ 1795	—Effect of curative instruction
§ 1796	Videotaped or televised testimony; satellite transmissions

- § 1797 Prior testimony; preliminary hearing or other pretrial proceeding
- § 1798 —Former trial

F. PRIVILEGE AGAINST SELF-INCRIMINATION

1. Source and Nature of Privilege

- § 1799 Bases of privilege
- § 1800 Nature and purpose of privilege

2. Application of Privilege

a. In General

- § 1801 Proceedings to which privilege applies
- § 1802 —Particular proceedings
- § 1803 Who may assert privilege
- § 1804 —Corporations

b. Scope of Privilege

(1) In General

- § 1805 Testimonial communications
- § 1806 —Nontestimonial communications distinguished
- § 1807 Production of evidence
- § 1808 —Documents
- § 1809 —Corporate records

(2) Role of Court

- § 1810 Determination of incriminating nature of testimony
- § 1811 —Sustaining privilege

3. Limitation or Denial of Privilege

a. Limitations on Exercise of Privilege

- § 1812 Generally
- § 1813 Effect of refusal to testify
- § 1814 Papers and documents in possession of third party

b. Denial of Privilege

- § 1815 Acts constituting improper denial of privilege

TABLE OF CONTENTS

- § 1816 Comment on accused's failure to testify
- § 1817 —Harmless error analysis
- § 1818 —Particular comments by prosecutor
- 4. Waiver or Loss of Privilege
- § 1819 Knowing and voluntary waiver
- § 1820 Voluntary statements by defendant
- § 1821 —Effect of accused offering self as witness
- § 1822 —Use of testimony at subsequent proceeding
- § 1823 Plea of guilty as waiver; withdrawn plea

G. CONDUCT OF TRIAL

1. Regulation of Trial by Court

a. In General

- § 1824 Generally; inherent power of court to control proceedings
- § 1825 Discretion of the court
- § 1826 Conformance with procedural rules
- § 1827 —Violations
- § 1828 Presence of trial judge
- § 1829 Conduct of simultaneous separate trials
- § 1830 Testimony by means of communication equipment

b. Interpreters and Translators

- § 1831 Generally
- § 1832 Qualifications and oath of interpreter
- § 1833 Discretion of the court
- § 1834 Assisting the jury

c. Sequestration of Witnesses

- § 1835 Generally
- § 1836 Exceptions to sequestration rule
- § 1837 Effect of violation of rule; *Atkinson* requirements

d. Victims' Rights

- § 1838 Generally
- § 1839 Federal law

2. Severance

a. Severance of Offenses

- § 1840 Generally

- § 1841 Relation between offenses
- § 1842 Severance required where one charge requires proof of prior conviction

b. Severance of Defendants

(1) In General

- § 1843 Generally
- § 1844 Interlocking confessions

(2) Grounds For Severance

- § 1845 Generally
- § 1846 Antagonistic defenses
- § 1847 Where codefendant’s testimony is exculpatory
- § 1848 Where codefendant’s statement is inadmissible against defendant

c. Motion for Severance

- § 1849 Ruling on motion; discretion of court
- § 1850 Timeliness of motion
- § 1851 Untimeliness or absence of motion as waiver of right to severance
- § 1852 Appellate review

3. Consolidation

- § 1853 Generally
- § 1854 Joinder distinguished
- § 1855 Requirement of “related offenses” or “connected acts or transactions”
- § 1856 Consolidation ordered, sua sponte, by court
- § 1857 Dismissal of related charges

4. Evidentiary Matters

a. Presumptions

- § 1858 Presumption of innocence and burden of proof
- § 1859 —Federal constitutional aspects
- § 1860 Other presumptions

b. Offers of Proof, Order of Proof, and Other Matters

- § 1861 Offers of proof
- § 1862 —Purpose

TABLE OF CONTENTS

§ 1863	Order of proof
§ 1864	—Corpus delicti
§ 1865	Reopening of proof
§ 1866	Conviction without evidence or on charge other than that made
§ 1867	Evidence of similar, crimes, wrongs, or acts
§ 1868	—Collateral crime evidence
§ 1869	Use of interlocking confessions at joint trial
	5. View of Crime Scene by Jury
§ 1870	Generally
	6. Conduct and Remarks of Judge
	a. In General
§ 1871	Generally; impartiality of judge
§ 1872	Ex parte communications
	b. Regarding Jury, Parties, Witnesses, or Counsel
§ 1873	Remarks during voir dire
§ 1874	Remarks to jury; weight or credibility of evidence
§ 1875	Remarks to jury; propriety of particular comments or conduct
§ 1876	Remarks or conduct regarding parties
§ 1877	—Comments on defendant's right to remain silent
§ 1878	Conduct toward witnesses
§ 1879	—Reluctant witnesses
§ 1880	Remarks to or concerning counsel
§ 1881	—Effect of derogatory comments
	7. Province of Court and Jury
	a. In General
§ 1882	Issues of law and fact
§ 1883	—Circumstantial evidence
§ 1884	Admissibility, credibility, weight, and sufficiency of evidence
§ 1885	Expert and nonexpert opinion testimony; qualifications and privilege of witness
§ 1886	Identity of defendant
§ 1887	Pardon power of jury; conviction of lesser offenses

- § 1888 Confessions and admissions
- § 1889 Intent or state of mind; knowledge
- § 1890 Factors increasing sentence beyond prescribed maximum; *Apprendi*

b. Defenses

- § 1891 Self-defense
- § 1892 Necessity
- § 1893 Alibi
- § 1894 Governmental misconduct; entrapment
- § 1895 Intoxication
- § 1896 Insanity

8. Conduct of Counsel During Presentation of Evidence

a. In General

- § 1897 Control and discipline of counsel
- § 1898 Duty of prosecutor
- § 1899 —Assistance by other counsel
- § 1900 Improper interjection of facts

b. Conduct or Remarks Concerning Parties, Victim, Witnesses, or Other Counsel

- § 1901 Defendant
- § 1902 —Failure of accused to testify
- § 1903 —Invited comment
- § 1904 Codefendants
- § 1905 Victim
- § 1906 Defense witnesses
- § 1907 State witnesses
- § 1908 Insinuation of impeaching or prejudicial facts without proof
- § 1909 Inappropriate remarks between counsel

9. Opening and Closing Statements

a. In General

- § 1910 Opening statement
- § 1911 Closing argument
- § 1912 Denial of closing argument to defense

TABLE OF CONTENTS

§ 1913	Time allowed for argument
§ 1914	—Particular time periods
b. Order of Argument	
§ 1915	Generally
§ 1916	Sentencing hearing for capital cases
§ 1917	Waiver by prosecution
§ 1918	Where defendant presents no evidence
10. Propriety and Scope of Argument	
a. In General	
§ 1919	Generally; wide latitude permitted
§ 1920	—Retaliatory comments
§ 1921	“Golden rule” argument
§ 1922	Fallacious argument
§ 1923	Request that jury consider prosecutor as “13th juror”
§ 1924	Use of statistics
b. Comments on Duties and Responsibilities of Jury	
§ 1925	Generally
§ 1926	“Message to the community” or “conscience of the community” arguments
§ 1927	Sentencing in capital cases
c. Comments on Defendant, Witnesses, or Evidence	
§ 1928	Defendant’s demeanor or character
§ 1929	—Accused as witness
§ 1930	Credibility, character and demeanor of witnesses
§ 1931	—Vouching for or bolstering testimony of State witnesses
§ 1932	Failure of defense to call witness or present evidence
§ 1933	—Assertion of defenses of alibi, self-defense, or defense of others
§ 1934	—Invited response
§ 1935	Failure of prosecution to call witness

d. Comments on Defendant's Failure to Testify

(1) In General

- § 1936 General rule that comment is improper
- § 1937 —As applied to comment regarding or on behalf of codefendant
- § 1938 Necessity of invoking the privilege against self-incrimination
- § 1939 "Fairly susceptible" test
- § 1940 Invited response
- § 1941 Accidental misstatements
- § 1942 Effect of violation of prohibition; harmless error rule
- § 1943 Necessity for objection; waiver of issue

(2) Specific Comments

- § 1944 Referring to the defense or defense counsel
- § 1945 —Particular defenses
- § 1946 Relating to evidence; absence of evidence or lack of contradiction
- § 1947 Relating to evidence; defendant's failure to offer exculpatory statement
- § 1948 Regarding codefendants or witnesses
- § 1949 Regarding defendant's demeanor
- § 1950 On or regarding defendant's tape-recorded statement
- § 1951 Regarding hypothetical situations

e. Opinions and Personal Beliefs

- § 1952 Generally
- § 1953 Personal opinion as to guilt of accused
- § 1954 Statement of opinion of police or other state officials

f. Comments on the Law

(1) In General

- § 1955 Law applicable to case
- § 1956 Misstatements of law

(2) Comments on Validity of Defense

- § 1957 Generally

TABLE OF CONTENTS

§ 1958	Insanity defense
§ 1959	Intoxication or other defenses
	g. Inflammatory or Abusive Language
	(1) In General
§ 1960	Generally
§ 1961	Effect
	(2) Particular Words or Statements
§ 1962	Generally
§ 1963	Comments about witnesses
§ 1964	Capital cases
§ 1965	—Statements during penalty phase
§ 1966	About opposing counsel
§ 1967	—Particular words or statements
	h. Appeals to Passion, Sympathy, and Prejudice of Jury
§ 1968	Generally
§ 1969	When mistrial warranted
§ 1970	Improper subjects of argument
	i. Scope of Argument Restricted to Issues and Evidence
	(1) In General
§ 1971	Generally; restriction to issues
§ 1972	Drawing conclusions and inferences from the evidence
	(2) Matters Outside the Evidence
§ 1973	Generally
§ 1974	Evidence known but not produced

Volume 15A

11. Objections and Cure of Errors

a. In General

(1) Necessity for Objection

§ 1975	Generally
--------	-----------

- § 1976 Fundamental or prejudicial error
- § 1977 —Harmless error exception
- § 1978 Waiver
- § 1979 Necessity of prompt motion for mistrial
 - (2) Withdrawal or correction of comment by counsel
- § 1980 Generally
 - b. Cure of Error by Court
- § 1981 Generally
- § 1982 Need for curative instruction
- § 1983 Improprieties incurable by trial court

H. MOTION FOR JUDGMENT OF ACQUITTAL

1. In General

- § 1984 Generally
- § 1985 Effect of motion; admission of facts
- § 1986 Proof relating to elements of offense

2. Grounds

- § 1987 Insufficient evidence
- § 1988 —Necessity of stating grounds
- § 1989 —Relevance of grounds
- § 1990 Circumstantial evidence

3. Renewal of Motion

- § 1991 After adducing evidence
- § 1992 —After adverse judgment

4. Appellate Review

- § 1993 Generally

I. INSTRUCTIONS TO JURY

1. In General

- § 1994 Generally
- § 1995 Place and time of giving instructions
- § 1996 Necessity and scope of instructions; law of the case
- § 1997 Manner of giving and recording instructions

TABLE OF CONTENTS

§ 1998	Direction of verdict
	2. Requests for Instructions
§ 1999	Generally
§ 2000	Written requests
§ 2001	Jury's request for additional instructions
	3. Standard Jury Instructions
§ 2002	Generally
§ 2003	Departure from standard instruction
	4. Subject Matter in General
§ 2004	Identity of accused
§ 2005	Character of accused
§ 2006	Jurisdiction of offense
§ 2007	Jury deadlock; the <i>Allen</i> charge
	5. The Offense
	a. Definition of Offense
§ 2008	Generally
	b. Elements of Offense
§ 2009	Generally
§ 2010	Knowledge
§ 2011	Intent
§ 2012	Omission in instruction
	c. Elements of Underlying Felony
§ 2013	Generally
	6. Instructions as to Evidence
	a. Presumptions and Inferences
§ 2014	Due process; mandatory or conclusive presumptions
§ 2015	—Permissive presumptions
§ 2016	Innocence
§ 2017	Failure to testify
§ 2018	—Multiple defendants
§ 2019	Consciousness of guilt
§ 2020	Intent
§ 2021	Flight

b. Reasonable Doubt

- § 2022 Generally
- § 2023 Definition or explanation of “reasonable doubt”
- § 2024 —Reference to “moral certainty”
- § 2025 Standard jury instruction
- § 2026 Doubt arising from evidence or want thereof
- § 2027 Doubt of individual jurors

c. Circumstantial Evidence

- § 2028 Generally
- § 2029 When instruction may be given

d. Testimony of Accused and Other Witnesses

(1) Testimony of Accused

- § 2030 Generally
- § 2031 Interest of accused

(2) Testimony of Witnesses Other Than the Accused

- § 2032 Generally
- § 2033 Prior statements
- § 2034 Testimony of expert witnesses

e. Instructions Related to Other Types of Evidence

(1) In General

- § 2035 Independent acts of cofelon
- § 2036 Victim’s out-of-court statements
- § 2037 Evidence of similar crimes
- § 2038 Statement of particulars

(2) Uncharged Offense or Theory

- § 2039 Generally
- § 2040 Conspiracy

f. Cautionary Instructions

(1) In General

- § 2041 Admissions and confessions

TABLE OF CONTENTS

- § 2042 Prior inconsistent statements of accused
- § 2043 Prosecution of sexual offense
- § 2044 Curative instructions

(2) Accomplice Testimony

- § 2045 Generally
- § 2046 Basis for instruction
- § 2047 Joint trial

7. Defenses

- § 2048 Generally
- § 2049 Alibi
- § 2050 —Requisites and sufficiency
- § 2051 Coercion or duress
- § 2052 Entrapment
- § 2053 Insanity
- § 2054 —Psychotropic medication
- § 2055 Intoxication
- § 2056 —Use of intoxicants resulting in insanity
- § 2057 Necessity
- § 2058 Self-defense
- § 2059 Other specific defenses

8. Degrees of Offense or Lesser-Included Offenses

a. In General

- § 2060 Generally; degrees of offense
- § 2061 Permissive lesser-included offenses
- § 2062 Necessity for request; Category 1 offenses
- § 2063 —Category 2 offenses
- § 2064 Lack of evidence of lesser offense
- § 2065 Capital offenses
- § 2066 Harmless error in light of verdict
- § 2067 Waiver of instructions

b. Attempt

- § 2068 Generally
- § 2069 Request for instruction

9. Punishment

- § 2070 Generally

10. Instructions as Basis for Appeal

§ 2071 Requirement of objection at trial

J. CUSTODY, CONDUCT, AND DELIBERATIONS OF JURY

1. In General

§ 2072 Generally; juror misconduct

§ 2073 Entitlement to juror interview; matters that inhere in verdict

§ 2074 Entitlement to juror interview; matters that do not inhere in verdict

§ 2075 Establishment of prejudice

§ 2076 Note taking by jurors

§ 2077 Foreperson

2. Separation or Sequestration of Jury

a. In General

§ 2078 Generally

§ 2079 Custody of sequestered jury

§ 2080 Recesses

b. During Deliberations

§ 2081 Generally

§ 2082 Exceptional or emergency circumstances; juror illness

§ 2083 Where defendant consents

§ 2084 What is required to preserve objection

§ 2085 Effect of prejudice to defendant

3. Deliberations

a. In General

§ 2086 Generally

§ 2087 Taking materials to jury room

§ 2088 —Instructions

§ 2089 —Unauthorized material

§ 2090 Length of deliberations

§ 2091 Instruction that no testimony or instructions will be available during deliberations

§ 2092 Alternate juror deliberating with jury

TABLE OF CONTENTS

§ 2093	Seating alternate juror after deliberations have begun
	b. Communication Between Jury and Others
	(1) In General
§ 2094	Generally; communication with court officers
§ 2095	Communication with court; requirement for communication in open court
	(2) Requirement for Notice to and Presence of Counsel and Defendant
§ 2096	Generally
§ 2097	Communications to which requirement applies
§ 2098	Burden of proving compliance
§ 2099	Application of harmless error rule to jury requests
§ 2100	Waiver of counsel's right to be present
§ 2101	Waiver of defendant's right to be present
	(3) Recall or Request by Jury for Addition or Repetition of Evidence
§ 2102	Generally
§ 2103	Trial court's discretion
§ 2104	Where fulfilling request is difficult or impossible
§ 2105	Where jury asks for excluded evidence
§ 2106	Where jury asks court to draw conclusion from evidence
	(4) Addition, Correction, or Repetition of Instructions, in General
	(a) Recall of Jury for Additional or Corrective Instructions at Court's Behest
§ 2107	Generally
	(b) Reinstruction at Request of Jury
§ 2108	Generally

- § 2109 Scope of reinstruction; completeness
- § 2110 Reinstruction may be limited to question asked
- § 2111 —Reinstruction on elements of offense need not include defenses
- § 2112 —Manslaughter; reinstruction must include justifiable and excusable homicide

(5) Urging Agreement; Coercion of Jury

(a) In General; *Allen* Charge

- § 2113 Generally
- § 2114 Preservation or waiver of error
- § 2115 Use of variations on standard Florida deadlock charge
- § 2116 *Allen* charge in penalty phase

(b) Coercion of Jury

- § 2117 Generally
- § 2118 Particular circumstances
- § 2119 Indicating or implying that a verdict is required
- § 2120 —Remarks about necessity of unanimity
- § 2121 Indicating a time limit

K. VERDICT

1. In General

- § 2122 Requirement of unanimity
- § 2123 Rendition, reception, and recordation
- § 2124 —Sealed verdict
- § 2125 —Polling jury

2. Form and Sufficiency

a. In General

- § 2126 Generally
- § 2127 Two or more counts
- § 2128 Specifying degree of offense
- § 2129 Conviction of attempt
- § 2130 Conviction of lesser-included offense
- § 2131 —Conviction of greater offense
- § 2132 Designating parties

b. Consistency of Verdicts

- § 2133 Generally

TABLE OF CONTENTS

§ 2134	Verdict on one count as vitiating verdict on another; interlocking charges
§ 2135	—Seeming inconsistency explained by instructions
§ 2136	Logical inconsistency as exercise of the jury's power of leniency
§ 2137	Joint defendants
	c. Reconsideration or Impeachment of Verdict
§ 2138	Reconsideration of defective or ambiguous verdict
§ 2139	Impeachment of verdict
	3. Discharge of Jurors; Disposition of Defendant Found Guilty
§ 2140	Discharge of jurors; judicial comment on verdict
§ 2141	Disposition of defendant after verdict of guilty
	L. DISMISSAL AND DISCHARGE
	1. In General
	a. Grounds for Discharge
§ 2142	Generally
§ 2143	Failure to prosecute
§ 2144	Right to speedy trial distinguished from failure to prosecute
§ 2145	Effect of filing charges subsequent to speedy trial period
§ 2146	Conviction for nonexistent crime
	b. Nolle Prosequi
§ 2147	Generally
§ 2148	Distinguished from no action and no information
§ 2149	Time when nolle prosequi may be taken
§ 2150	Prosecution or conviction on nolle prossed charge
§ 2151	Effect of nolle prosequi on speedy trial rights
§ 2152	Diversion or intervention distinguished
	2. Delay in Bringing Accused to Trial
	a. In General; Right to Speedy Trial
§ 2153	Source and nature of right

- § 2154 Particular prosecutions and proceedings
 - b. Speedy Trial Without Demand
 - (1) Who and When Entitled
 - § 2155 Generally
 - § 2156 Prisoners
 - § 2157 Prisoners outside jurisdiction
 - (2) Commencement of Time Period
 - (a) Generally
 - § 2158 What constitutes arrest
 - § 2159 What constitutes same criminal episode
 - § 2160 What constitutes commencement of trial
 - (b) Significance and Definition of Custody
 - § 2161 Generally; arrest or notice to appear
 - § 2162 Temporary investigative detention
 - § 2163 Custody on other charge
 - § 2164 Arrest under writ of *capias*
 - (3) Commencement of Time Period as to Prisoners Outside Jurisdiction
 - § 2165 Generally
 - § 2166 Effect of detainer
 - § 2167 —Applicability of rule to detainees
 - c. Extension of Time Period
 - (1) In General
 - § 2168 Generally; grounds, manner, and effect of extension
 - § 2169 Effect of appeal; necessity of extension order
 - § 2170 —Petition for *certiorari*
 - (2) Exceptional Circumstances
 - (a) Motion and Order of Court
 - § 2171 Generally
 - § 2172 Order *nunc pro tunc*

TABLE OF CONTENTS

§ 2173	Indefinite extension
	(b) Grounds Constituting Exceptional Circumstances
§ 2174	Generally; unexpected illness, incapacity, or absence
§ 2175	Complexity of case, investigation, or preparation
§ 2176	Unavailability of material evidence or witness
§ 2177	Necessary delay; unanticipated and material developments
§ 2178	Necessary delay; accommodation of codefendant in unseverable case
§ 2179	Delay or disruption of proceedings by defendant
§ 2180	Defendant's waiver of rule
§ 2181	Other circumstances
	3. Motion for Discharge on Speedy Trial Grounds
	a. In General; Availability of Remedy
§ 2182	Generally; grounds for denial of discharge
§ 2183	Effect of mistrial, arrest of judgment, or order of new trial
	b. Availability of Defendant for Trial
§ 2184	Generally; unavailability as defined by rule
§ 2185	Failure to appear for arraignment; requirement of notice
§ 2186	Failure to appear for arraignment; nonappearance attributable to incarceration
§ 2187	Failure to appear at scheduling conference
§ 2188	Defense request for discovery or continuance
§ 2189	—Continuance for ongoing plea negotiation
	c. Procedural Aspects of Discharge on Speedy Trial Grounds
	(1) In General
§ 2190	Generally
	(2) Inquiry on Motion for Discharge
§ 2191	Generally; recapture period
§ 2192	Effect of failure to hold timely hearing

§ 2193 Effect of denial of motion upon proper inquiry

(3) Effect of Continuance

§ 2194 Generally; chargeable to defense

§ 2195 Continuance chargeable to State

§ 2196 Reactivation of speedy trial rule by defendant

(4) Effect of Discharge

§ 2197 Generally

VIII. POST-TRIAL MOTIONS

A. NEW TRIAL

1. In General

§ 2198 Generally

2. Grounds for New Trial

a. In General

§ 2199 Overview of grounds

b. Matters Directly Affecting Verdict

(1) Verdict Contrary to Weight of the Evidence

§ 2200 Generally

§ 2201 Standard to be applied

§ 2202 Trial court's discretion

§ 2203 Effect of evidence which sustains only conviction of lesser offense

(2) Other Matters Directly Affecting Verdict

§ 2204 Conformity of verdict to law

§ 2205 Deciding verdict by lot

c. Newly Discovered Evidence

(1) In General

§ 2206 Generally

§ 2207 Materiality requirement

§ 2208 Admissibility and credibility requirements

§ 2209 Probability of different result

TABLE OF CONTENTS

§ 2210	Due diligence requirement
(2) Particular Types of Evidence	
§ 2211	Recantation testimony
§ 2212	Impeachment evidence
§ 2213	New interpretation of facts
§ 2214	Newly discovered case law
§ 2215	Further testimony of witness
d. Defendant's Absence	
§ 2216	Generally
e. Misconduct of Jury	
§ 2217	Generally
§ 2218	False answers on voir dire
§ 2219	Failure to disclose facts on voir dire
§ 2220	Reception of evidence out of court
§ 2221	Juror separation; during deliberations
§ 2222	Juror separation; Prior to deliberations
§ 2223	Juror's renunciation of verdict
f. Misconduct of Prosecuting Attorney	
§ 2224	Generally
§ 2225	Necessity for objection
§ 2226	Referring to inadmissible evidence or testimony
§ 2227	Personal attacks on defendant or defense counsel
§ 2228	Denigrating insanity defense
g. Misconduct or Errors by Judge	
§ 2229	Improper or unjudicial conduct
§ 2230	Errors of law
§ 2231	Erroneous jury instructions; failure to give proper instruction
3. Conduct of New Trial	
§ 2232	Generally; prohibition against prosecution for higher offense
§ 2233	Use of former testimony at new trial; effect of unavailability of witness
B. ARREST OF JUDGMENT	
§ 2234	Generally

- § 2235 Defective indictment or information; omission of element of offense
- § 2236 —Imprecise or vague indictment or information
- § 2237 Incongruity between conviction and charge

C. PROCEDURE FOR NEW TRIAL OR ARREST OF JUDGMENT

- § 2238 Generally; form and method of making motion
- § 2239 Contents of motion
- § 2240 Time limit for making motion
- § 2241 —Commencement of time limit
- § 2242 Amendment of motion
- § 2243 Service and notice requirements
- § 2244 Defendant to be held in custody or released on bail pending hearing
- § 2245 Time of hearing and ruling on motion
- § 2246 Consideration of evidence

D. POST-TRIAL BAIL

1. In General

- § 2247 Bail after verdict or after affirmance of conviction by Supreme Court; effect of mistrial

2. Bail Pending Review by Post-Trial Motion

- § 2248 Review by motion for new trial or in arrest of judgment
- § 2249 Review by motion to vacate

IX. JUDGMENT, SENTENCE, AND PUNISHMENT

A. GENERAL ASPECTS

1. Overview

a. In General

- § 2250 Generally; definitions
- § 2251 Presence of defendant
- § 2252 Rendition of judgment; notification of right of appeal
- § 2253 —Felony judgments; fingerprints and Social Security number

TABLE OF CONTENTS

§ 2254	Adjudication of guilt
§ 2255	Resentencing
	b. Criminal History Records; Expungement
§ 2256	Generally
§ 2257	Review and correction
§ 2258	Sealing
	2. Authorized Sentences
	a. In General; Validity of Sentence
§ 2259	Generally; significance of statute
§ 2260	Judicial discretion
§ 2261	Excessive sentence
§ 2262	—Offenses punishable by life imprisonment; effect of defendant's life expectancy
§ 2263	—“Vindictive” sentence
§ 2264	Sentence imposing fine or below minimum prescribed by law
§ 2264.50	Diversion from prison sentence
	b. Statutory Penalties by Class and Degree of Crime
	(1) In General
§ 2265	Generally; powers of court
§ 2266	Capital felony
§ 2267	Noncapital felony
§ 2268	—Indeterminate sentence
§ 2269	—Determination of period of imprisonment by Parole Commission
§ 2270	Misdemeanor
§ 2271	Noncriminal violation
	(2) Felonies Committed by Prison Releasee Reoffenders
§ 2272	Generally; intent and effect of statutory determination
§ 2273	Constitutionality of statute
§ 2274	Burden of proof
	c. Mandatory Minimum Sentence
§ 2275	Offenses involving possession, use, or discharge

- of firearm or destructive device; 10-20-life sentences
- § 2276 Offenses involving possession, use, or discharge of firearm or destructive device—Semiautomatic firearms or machine guns
- § 2277 —Possession of firearm; proof
- § 2278 Offenses against law enforcement or correctional officers, state or assistant state attorneys, or judges
- § 2279 Effect of mandatory minimum sentencing; eligibility for parole or gain-time
- § 2280 Sentencing terms as affected by other sentencing provisions

d. Alternatives for Disposition

(1) In General

- § 2281 Generally; available alternatives
- § 2282 Imprisonment in county jail
- § 2283 Public service
- § 2284 Alternatives as to certain sex offenders; quarantine; castration

(2) Combining Sentencing Alternatives; Split Sentences

- § 2285 Incarceration followed by probation or community control; true split sentences and probationary split sentences
- § 2286 —Commencement of probation or community control immediately after incarceration
- § 2287 Community supervision followed by incarceration in county jail or work camp
- § 2288 Probation followed by incarceration or community control
- § 2289 Split probation

3. Sentencing for Multiple Offenses

a. Sentencing for Offenses Committed During Single Episode

- § 2290 Generally; double jeopardy protections
- § 2291 —Determining legislative intent; ambiguity
- § 2292 Separate sentencing for separate offenses

TABLE OF CONTENTS

§ 2293	Propriety of single or general sentence for multiple offenses
b. Sentences as Concurrent or Consecutive	
(1) In General	
§ 2294	Generally; significance of same or separate indictment or information
§ 2295	Propriety of fragmented sentences
§ 2296	—Multiple split sentences; intermittent sentence
§ 2297	Sentences by different courts
(2) Consecutive or Concurrent Mandatory Minimum Sentences	
§ 2298	Generally; stacking sentences
§ 2299	Offense arising from single episode resulting in multiple injuries or injury to multiple victims
§ 2300	Sentences involving capital felonies
§ 2301	Enhancement sentences
4. Probation and Community Control	
a. In General	
§ 2302	Generally; definitions and distinctions
§ 2303	Administrative probation
§ 2304	Community control
§ 2305	Effect on imposition of fine
§ 2306	Drug offender probation
§ 2307	—Applicability to appropriate offenses
§ 2308	Sex offender probation or community control
b. Placement on Probation or into Community Control	
§ 2309	Generally
§ 2310	Adjudication of guilt or stay of adjudication of guilt
§ 2311	Nonfelony
§ 2312	Placement into community control
c. Custody and Supervision of Defendant	
§ 2313	Generally
§ 2314	Electronic monitoring of offender in community control

§ 2315 Out-of-state probationers

d. Terms and Conditions of Probation or
Community Control

(1) In General

§ 2316 Generally; discretion of court

§ 2317 Delegation of judicial authority

§ 2318 Prohibition against vague conditions

§ 2319 When objection to condition must be raised;
sufficiency of objection

(2) Rescission, Modification, or
Addition of Terms and Conditions

§ 2320 Generally

§ 2321 Double jeopardy

§ 2322 Notice and hearing

(3) Terms and Conditions Required
by Statute or Rule; Standard or
General Conditions

(a) In General

§ 2323 Generally

§ 2324 Reporting to probation and parole supervisors

§ 2325 Permission for visits by probation and parole
supervisors

§ 2326 Requirement that defendant remain within
specified place

§ 2327 Payment of reparation or restitution for
damage or loss caused

§ 2328 Support of dependents; paternity testing

§ 2329 Payment of debt to state or detention facility

§ 2330 Restriction on association with persons
engaged in criminal activities

§ 2331 Criminal gang probation and community
control

§ 2332 Random drug testing

§ 2333 Public service

§ 2334 Education

§ 2335 Possession of firearms

§ 2336 Use of intoxicants to excess or possession
certain drugs or narcotics

TABLE OF CONTENTS

§ 2337	Blood or other biological specimen testing for DNA analysis
§ 2338	Batterers' intervention program
§ 2338.50	Military servicemembers and veterans suffering from military service-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem
(b) Conditions for Sex Offenders	
§ 2339	Generally
§ 2340	Time of offense
§ 2341	Sex offender treatment program
§ 2342	Requirements of law enforcement agency upon arrest of persons for certain sex offenses
(c) Intensive Supervision and Surveillance of Persons Placed in Community Control or Criminal Quarantine Community Control	
§ 2343	Generally
§ 2344	Intensive supervision for postprison release of violent offenders, habitual offenders, or sexual predators
(d) Employment	
§ 2345	Generally
§ 2346	Maintaining full-time employment
(e) Incarceration, Treatment, or Counseling; Conditions for Drug Offenses	
§ 2347	Generally
§ 2348	Incarceration or residential treatment as condition of probation or community control—Assessment and recommendations; placement
§ 2349	Community residential drug punishment centers
§ 2349.50	Drug court

- § 2350 Misdemeanor drug offenses
 - (4) Conditions not Enumerated by Statute or Rule; Special Conditions
- § 2351 Generally; nonexclusivity of statutory conditions
- § 2352 Requirement of reasonable relationship with crime committed, rehabilitation, or unlawful conduct
- § 2353 Announcement of special conditions at sentencing hearing; due process considerations
 - e. Duration; Discharge of Defendant
 - (1) Length of Probation or Community Control
- § 2354 Generally; effect of statutory maximum sentences
- § 2355 Limitation as to supervision; felony offender
- § 2356 Limitation as to supervision; misdemeanor offender
- § 2357 Tolling of period
 - (2) Termination
- § 2358 Generally
- § 2359 Early termination
- § 2360 Completion of placement in residential or nonresidential facility
- § 2361 Completion of community control sanctions
- § 2362 Completion of education program
 - f. Violations and Revocation of Probation or Community Control and Enforcement of Sentence
 - (1) Power and Jurisdiction of Trial Court
- § 2363 Generally
- § 2364 Divestment, or lack, of jurisdiction
 - (2) Issuance and Execution of Arrest Warrant
- § 2365 Generally

TABLE OF CONTENTS

§ 2366	Arrest without warrant
	(3) Notice; Affidavit
§ 2367	Generally
§ 2368	Verification and swearing
§ 2369	Fundamental or harmless error
§ 2370	Amendment of correction of affidavit
	(4) Preliminary Hearing; Advising Probation or Offender in Community Control of Charge
§ 2371	Generally
§ 2372	Felony probationer or offender arrested for violating probation or community control
	(5) Revocation Proceeding
	(a) Right to Hearing; Conduct Thereof
§ 2373	Generally
§ 2374	Impartiality of court
§ 2375	Waiver
	(b) Evidence and Proof
	(i) Burden of proof
§ 2376	Burden of proof
§ 2377	Inability to pay restitution or cost of supervision
	(ii) Admissibility
§ 2378	Generally
§ 2379	Right of confrontation
§ 2380	Hearsay
	(iii) Weight and Sufficiency
§ 2381	Generally
§ 2382	Willful and substantial violation of condition of probation or community control
	(c) Order
§ 2383	Generally
§ 2384	Form of revocation order
§ 2385	Appellate review of revocation order

§ 2386 —Remand or reversal

(6) Grounds for Revocation

(a) Generally

- § 2387 Necessity of willful and substantial violation
- § 2388 Mental or physical illness
- § 2389 Misconduct before or after probation commences
- § 2390 Conditions imposed by probation officers, not court

(b) Particular Grounds

- § 2391 Conviction or commission of crime during probation
- § 2392 Failure to file reports
- § 2393 Failure to pay restitution or costs
- § 2394 —Reasons for failure to pay; ability to pay
- § 2395 Failure to make good-faith effort or to achieve specific education or learning skills
- § 2396 Failure to attend or complete treatment program or counseling
- § 2397 Alcohol or drug use
- § 2398 —Treatment programs and counseling
- § 2399 Sex offenses
- § 2400 Other matters

(7) Sentencing After Revocation

(a) In General

- § 2401 Generally
- § 2402 Downward sentence departure
- § 2403 Youthful offenders
- § 2404 Habitual offender
- § 2405 Double jeopardy considerations
- § 2406 Violation of true split sentence or probationary split sentence
- § 2407 Effect of bona fide inability to meet financial conditions
- § 2408 Effect of revocation on gain time

(b) Credit for Times Served

- § 2409 Generally
- § 2410 *Tripp* credit

TABLE OF CONTENTS

§ 2411	Time served under probation or community control
5. Sentencing Procedures	
a. Presentence Investigation, Recommendations, and Reports	
§ 2412	Request for presentence investigation, recommendation, or report
§ 2413	Mandatory presentence investigation and report for first felony and minor offenders
§ 2414	Time for commencement of investigation
§ 2415	Mental or physical examination of defendant
§ 2416	Reports; recommendation for disposition; disclosure of investigation
§ 2417	—Factual presentation and verification of information; corroboration
b. Sentencing Hearing	
(1) In General	
§ 2418	Generally; requirement of hearing
§ 2419	Notice to defendant; allocution
§ 2420	Record of proceeding
§ 2421	Cause for not pronouncing sentence
(2) Considerations in Sentencing	
§ 2422	Generally
§ 2423	Plea discussions and agreements; decisions by accused related thereto
§ 2424	Statement by victim of crime, parent, guardian, or next of kin
§ 2425	Restitution
(3) Pronouncement and Entry of Sentence	
§ 2426	Generally; pronouncement in open court
§ 2427	Presence of defendant
§ 2428	—Defendant's viewing of proceedings by closed-circuit television
§ 2429	Sentence by judge not presiding at trial or plea
§ 2430	Retention of jurisdiction
§ 2431	Form and content of judgment and sentence; conforming written to oral sentence

§ 2432 Oral pronouncement of probation conditions

c. Suspension of Sentence and Stay of Execution

§ 2433 Generally

§ 2434 Delay in imposition of sentence

§ 2435 Limitation on withheld sentence

§ 2436 Stay of execution of sentence upon appeal or by Governor

6. Correction of Sentence; Change, and Reduction or Increase, of Sentence

a. Correction of Illegal Sentence

§ 2437 Generally

§ 2438 What constitutes “illegal sentence”

§ 2439 Evidentiary hearing not required

§ 2440 Successive motions

§ 2441 Challenges to jail credit computations

§ 2442 Challenges to convictions

§ 2443 Motion to vacate, set aside, or correct sentence distinguished

§ 2444 Application of *Apprendi* to resentencing

§ 2445 Procedure for filing motion to correct sentencing error; response thereto

b. Modification of Legal Sentence

§ 2446 Generally; decrease of sentence

§ 2447 Increase of sentence

§ 2448 Increase upon resentencing after attacking sentence

§ 2449 —Presumption of vindictiveness

c. Correction of Clerical or Ministerial Errors

§ 2450 Generally; nunc pro tunc entry

B. SENTENCING IN FLORIDA

1. In General

§ 2451 Overview of criminal sentencing

TABLE OF CONTENTS

- § 2452 Effect of *Apprendi* and its progeny on sentencing in Florida

2. The Criminal Punishment Code

a. In General

- § 2453 Generally
§ 2454 Effect of caselaw construing sentencing guidelines
§ 2455 Retroactivity of amendments to sentencing laws
§ 2456 Comparison with sentencing guidelines
§ 2457 Sentencing procedure in brief
§ 2458 Offense severity ranking chart
§ 2459 Lowest permissible sentence; permissible range for sentencing
§ 2460 Worksheets and scoresheets
§ 2461 Sentencing points; increase in offense severity level
§ 2462 —Legal status points
§ 2463 —Prior record points
§ 2464 —Community sanction violation points
§ 2465 Application of sentencing multipliers to subtotal sentencing points
b. Departure Below Lowest Permissible Sentence; Mitigation of Sentence

- § 2466 Generally
§ 2467 Illustrations
§ 2468 Explanation in writing; notation on scoresheet
§ 2469 Particular mitigating circumstances
§ 2470 Standard of proof
§ 2471 Appellate review

3. Sentencing Guidelines

a. In General

- § 2472 Generally
§ 2473 The *Heggs* case
§ 2474 Federal Sentencing Guidelines; *Booker* decision

b. 1994 Guidelines

(1) Generally

- § 2475 Nature and purpose

- § 2476 Applicability; implementing rules
- § 2477 Repeal and continued applicability; resentencing
- § 2478 Continuing and multiple felonies
 - (2) Guideline Offense Categories; Offense Level Severity Ranking Chart; Sentencing Ranges
- § 2479 Generally
- § 2480 Felony offenses not listed
 - (3) Generally; Guideline Worksheet and Worksheet Key
 - (a) In General
- § 2481 Guideline worksheet and worksheet key under 1994 guidelines
- § 2482 Definitions
- § 2483 Scoresheet under 1994 guidelines
- § 2484 Errors in use or use of erroneous scoresheet
 - (b) Scoring and Assessment of Points Under 1994 Guidelines
- § 2485 Generally
- § 2486 Victim injury points
- § 2487 Sexual contact points
- § 2488 Prior record; prior serious or capital felonies
- § 2489 Legal status points
- § 2490 Possession of firearm or destructive device
- 4. Sentencing Options and Ranges; Presumptive and Recommended Sentence
- § 2491 Generally
- § 2492 Presumptive sentence
- § 2493 Recommended sentence
- § 2494 Effect of statutory limitations on sentencing under Sentencing Guidelines
- § 2495 Sentencing Guidelines inapplicable to negotiated plea agreement
- 5. Departure from Guidelines
 - a. In General
- § 2496 Generally

TABLE OF CONTENTS

§ 2497	Effect of maximum sentence limitations
§ 2498	Evidence and proof; review
§ 2499	Necessity of scoresheet
§ 2500	Oral articulation and written statement of reasons for departure
§ 2501	—Nature and sufficiency of written statement
§ 2502	Downward departure
b. Factors or Circumstances Affecting Departure	
(1) In General	
§ 2503	Factors inherent in crime for which defendant is convicted
§ 2504	Factors scored on guidelines scoresheet
(2) Particular Factors or Circumstances	
§ 2505	Aggravating factors
§ 2506	Mitigating factors
§ 2507	Escalating pattern of criminal conduct
§ 2508	Prior arrests without conviction or charged offenses for which convictions have not been obtained
§ 2509	Professional manner in which crime was committed
§ 2510	Violation of probation or community control
§ 2511	Violation of trust or confidence
§ 2512	—Sex crimes against children
§ 2513	Consent of victim; prior consensual acts
§ 2514	Premeditation of defendant
§ 2515	Convictions for crimes committed subsequent to offense to be sentenced on
§ 2516	Perjury at trial
§ 2517	Failure to appear
§ 2518	Lack of remorse by defendant
§ 2519	Physical or psychological injury to victim; excessive suffering
§ 2520	Other particular factors or circumstances

Volume 15B

6. Correction of Sentence

- § 2521 Sentence based on miscalculated scoresheet total
- § 2522 Sentence based on miscalculated score sheet total—When computational error may be raised by defendant
- § 2523 Sentence based on score sheet omitting applicable factor
- § 2523.50 Other grounds

7. Appeal and Review of Sentence

a. In General

- § 2524 Generally
- § 2525 Effect of failure to raise issue or move to correct error or sentence at trial court level
- § 2526 Scope of review on appeal of departure sentence
- § 2527 Effect of multiple reasons cited in support of departure
- § 2528 Prohibition on review of extent of departure
- § 2529 Prohibition on review of sentences not exceeding 22 months

b. Resentencing or Other Action After Reversal of Departure Sentence or Remand

- § 2530 Reversal due to invalid departure criteria
- § 2531 Reversal or other action upon lack of written reasons for departure
- § 2532 —Effect of inadvertent departure due to miscalculated scoresheet
- § 2533 —Revocation sentences

C. SENTENCE OF DEATH OR LIFE IMPRISONMENT FOR CAPITAL FELONIES; SEPARATE PENALTY PROCEEDINGS

1. In General

a. General Principles

- § 2534 Generally; constitutional considerations

TABLE OF CONTENTS

§ 2535	Federal death penalty
	b. Governing Law
§ 2536	Statute imposing sentence for capital felonies
§ 2537	—Statute imposing sentence for capital drug trafficking felonies
§ 2538	Distinction between capital felonies
§ 2539	Requirement of separate sentencing proceeding for capital felonies
	c. Determination of Applicability of Death Penalty
§ 2540	Generally
§ 2541	Weighing of aggravating and mitigating circumstances
	d. Limitations on Imposition of Death Penalty
§ 2542	Generally
§ 2543	Felony-murder; sexual assault
§ 2544	Defendant under 18 years old
§ 2545	Mental retardation
§ 2546	Sole decision of prosecutor
	2. Aggravating Circumstances
	a. In General
	(1) General Principles
§ 2547	Generally; exclusivity of statutory aggravating circumstances
§ 2548	Effect of <i>Ring</i> ; determination of aggravating circumstances by jury
§ 2549	Standard of proof
	(2) Doubling of Aggravating Circumstances
§ 2550	Generally
§ 2551	Combining murder for pecuniary gain with other circumstances

b. Specific Aggravating Circumstances

(1) Capital Felonies

(a) Prior Violent Felony
Conviction

- § 2552 Generally; requirement of conviction
- § 2553 Particular felonies deemed violent
- § 2554 What constitutes prior felony; effect of contemporaneously committed crime
- § 2555 —Effect of appeal of prior violent felony conviction
- § 2556 Admission of evidence concerning prior violent felony

(b) Heinous, Atrocious, or Cruel

- § 2557 Generally
- § 2558 Factors considered; pain and suffering
- § 2559 —Means and duration of killing

(c) Cold, Calculated, and
Premeditated

(i) General Principles

- § 2560 Generally; heightened premeditation
- § 2561 Lack of pretense of moral or legal justification
- § 2562 Murder that occurs during commission of another crime

(ii) Calculation;
Development of Plan to
Kill

- § 2563 Generally
- § 2564 Execution, contract, or witness-elimination killings
- § 2565 Effect of time to reflect
- § 2566 Crime of rage or passion distinguished

(d) Other Aggravating
Circumstances

- § 2567 Commission by person under sentence of imprisonment or in community control
- § 2568 Creation of great risk of death to many persons

TABLE OF CONTENTS

§ 2569	Commission of capital felony during commission of other crime
§ 2570	Purpose to avoid arrest or effect escape
§ 2571	—Victim other than law enforcement official; elimination of witness
§ 2572	Pecuniary gain
§ 2573	Disruption of governmental function or law enforcement
§ 2574	—Law enforcement officer or public agent as victim of capital felony
§ 2575	Victim under 12 years of age
§ 2576	Capital felony by street gang member
§ 2577	Particularly vulnerable victim
§ 2578	Lack of remorse
§ 2579	Capital felony by designated sexual predator
(2) Capital Drug Trafficking Felonies	
§ 2580	Person under sentence of imprisonment
§ 2581	Prior convictions for capital felony or offense involving distribution of controlled substances
§ 2582	Creation of grave risk of death
§ 2583	Use of firearm
§ 2584	Distribution of controlled substances to minors
§ 2585	Distribution of controlled substances containing lethal adulterant
§ 2586	Intentional killing, infliction of injury, or engaging in conduct intending that victim be killed
§ 2587	Pecuniary value
§ 2588	Premeditation
§ 2589	Heinous, cruel, or depraved manner
3. Mitigating Circumstances	
a. In General	
§ 2590	Generally
§ 2591	Matters that are deemed not to be mitigating circumstances
§ 2592	—Residual or lingering doubt as to guilt
§ 2593	Waiver of presentation of mitigation; <i>Koon</i> requirements
§ 2594	Access to mental health examinations and tests

b. Statutory Mitigating Circumstances

(1) Capital Felonies

(a) Absence of Significant Prior Criminal Activity

- § 2595 Generally
- § 2596 Effect of contemporaneous crimes
- § 2597 Effect of defendant's waiver; introduction of defendant's nonviolent nature

(b) Defendant's Mental Condition

(i) In General

- § 2598 Generally
- § 2599 Effect of finding of sanity
- § 2600 Effect of alcohol or drug abuse

(ii) Particular Mental Conditions

- § 2601 Extreme mental or emotional disturbance
- § 2602 Impaired capacity
- § 2603 Extreme duress; substantial domination of another

(c) Other Statutory Mitigating Circumstances

- § 2604 Defendant's minor participation as accomplice
- § 2605 Defendant's age
- § 2606 Victim's participation; existence of other factors in defendant's background

(2) Capital Drug Trafficking Felonies

- § 2607 Generally

TABLE OF CONTENTS

c. Nonstatutory Mitigating
Circumstances

(1) In General

§ 2608 Generally

(2) Particular Nonstatutory
Mitigating Circumstances

(a) Defendant's Family
Background, Relationships,
and Personal History

§ 2609 Generally

§ 2610 Abused or deprived childhood

§ 2611 Employment history

§ 2612 Contribution to community or society and
charitable or humanitarian deeds; religious
devotion

(b) Other Particular
Nonstatutory Mitigating
Circumstances

§ 2613 Defendant's remorse, admission of guilt, and
potential for rehabilitation

§ 2614 Defendant's good prison record and pretrial and
trial conduct

§ 2615 Disparate treatment of codefendant, accomplice,
or other principal

§ 2616 Other actual or potential sentences; parole
ineligibility

§ 2617 Voluntary intoxication; defendant's impaired
capacity or neurological impairment

§ 2618 Defendant's ability to perform well in society;
defendant's antisocial personality disorder

§ 2619 Codefendant's domination over defendant;
codefendant was actual killer

§ 2620 Defendant's artistic ability and other skills

§ 2621 Circumstances of offense

4. Imposition of Sentence

a. In General

(1) Sentencing Jury

- § 2622 Generally; *Spencer* hearing before trial or special jury
- § 2623 Waiver of trial jury or jury trial
- § 2624 Resentencing

(2) Evidence Considered; Procedure

(a) General Considerations

- § 2625 Generally; test of relevancy and admissibility
- § 2626 Victim impact evidence

(b) Mitigating Circumstances

- § 2627 Generally; consideration of all mitigating evidence in record
- § 2628 Notice of intent to present mental mitigating circumstances
- § 2629 Rebuttal
- § 2630 Refusal to present mitigating evidence

(c) Extrajudicial Factual Basis for Sentence

- § 2631 Generally; disclosure
- § 2632 Presentence investigation report

(d) Procedure

- § 2633 Presentation and order of proof
- § 2634 Closing arguments
- § 2635 Instructions to jury

b. Determination of Sentence

(1) Respective Roles of Jury and Court

(a) Recommendation of Sentence by Jury

- § 2636 Generally
- § 2637 Unanimity of recommendation

TABLE OF CONTENTS

(b) Imposition of Sentence by Trial Court

- § 2638 General considerations
- § 2639 Evaluation of weight and sufficiency of
mitigating circumstances
- § 2640 —Discretion of trial court
- § 2641 Weight of expert testimony

(2) Override of Jury Recommendation of Life Imprisonment

- § 2642 Generally; *Tedder* inquiry
- § 2643 Effect of *Ring* on jury override provision
- § 2644 Sufficiency and weight of mitigating evidence
- § 2645 —Override of recommendation based on lenient
treatment of equally culpable accomplice

(3) Written Findings Supporting Death Sentence

- § 2646 Generally; purpose
- § 2647 Form of written findings; requirement of clarity
- § 2648 Requirement that written findings be prepared
prior to or contemporaneously with oral
pronouncement of sentence
- § 2649 Specific finding required in felony-murder case

5. Review of Judgment and Sentence

a. In General

- § 2650 Generally; right to review
- § 2651 Purpose of review

b. Review of Trial Court's Findings of Aggravating and Mitigating Circumstances

(1) General Considerations

- § 2652 Generally; consideration of evidence presented to
trial court
- § 2653 Discretion of trial court

(2) Harmless Error Analysis

- § 2654 Generally; remand or reweighing of aggravating
and mitigating circumstances

- § 2655 Error in finding aggravating circumstance
- § 2656 Error in failing to find or consider mitigating circumstances

c. Proportionality Review

- § 2657 Generally; comparison with other cases imposing death sentence
- § 2658 Effect of presence or absence of mitigating factors
- § 2659 Felony murder; disparate treatment of accomplice
- § 2660 Domestic quarrels

6. Procedures on Remand

- § 2661 Generally; impaneling of new jury
- § 2662 Consideration of evidence and findings from prior sentencing hearing
- § 2663 Resentencing following trial court's consideration of information not disclosed to defendant

D. EXECUTION OF SENTENCE

1. In General

- § 2664 Commitment of defendant to sheriff's custody
- § 2665 Transfer of defendant from sheriff to executing official
- § 2666 Effect of delay in executing sentence of imprisonment
- § 2667 Execution on affirmance of judgment or sentence
- § 2668 Terminal date of sentence

2. Sentence Imposing Fine

- § 2669 Generally
- § 2670 Effect of indigency
- § 2671 Effect of payment of fine

3. Sentence of Death

- § 2672 Preexecution procedure; issuance and effect of death warrant
- § 2673 Transfer of defendant to state prison pending issuance of death warrant
- § 2674 Time of, and prior to, execution of death sentence
- § 2675 Designation of executioner; reading of death warrant

TABLE OF CONTENTS

§ 2676	—Protecting identity of executioner or person involved in preparation of lethal injection
§ 2677	Persons present at execution
§ 2678	Manner of execution; electrocution or lethal injection
§ 2679	—Unconstitutionality of present methods; provisions for alternate method of execution
§ 2680	Postexecution procedure
§ 2681	Procedure upon unjustified failure to execute death sentence
4. Insanity or Pregnancy of Prisoner as Affecting Execution of Death Sentence	
a. Insanity at Time of Execution	
§ 2682	Generally
§ 2683	Executive determination of insanity; psychiatric examination
§ 2684	—Procedure upon determination as to sanity; commitment and reexamination of insane prisoner
b. Judicial Determination of Insanity	
§ 2685	Motion for stay of execution on ground of insanity
§ 2686	—Copies of psychiatric reports; additional submissions
§ 2687	Preliminary stay of execution
§ 2688	Hearing
§ 2689	Determination as to prisoner's sanity; continuing or dissolving stay of execution
c. Pregnancy at Time of Execution	
§ 2690	Generally
E. PUNISHMENT	
1. In General	
§ 2691	Authority to prescribe punishment
§ 2692	Requirement that punishment for same offense be equal
2. Postsentencing DNA Testing	
§ 2693	Petition for postsentencing DNA testing

- § 2694 —Defendants entering pleas
- § 2695 Requirements of petition
- § 2696 Court review of petition
- § 2697 Court order for DNA testing
- § 2698 Rehearing and right to appeal
- § 2699 Preservation of evidence

3. Determining Length of Incarceration

a. In General

- § 2700 Maximum sentence expiration date
- § 2701 Tentative release date
- § 2702 Credit for time served under erroneous sentence
- § 2703 Effect of interruption of incarceration

b. Gain-time

(1) In General

- § 2704 Generally
- § 2705 Effect of gain-time
- § 2706 Ineligibility and restrictions
- § 2707 Vested rights; violation of Ex Post Facto Clause
- § 2708 Award, denial, or waiver

(2) Forfeiture of Gain-time

- § 2709 Generally
- § 2710 As sanction for frivolous suit or appeal
- § 2711 As sanction for false information or evidence
- § 2712 Method of declaring forfeiture

c. Credit for Jail Time

(1) In General

- § 2713 Generally
- § 2714 Requirement that credit be specified in sentence
- § 2715 After sentencing
- § 2716 After revocation of probation or community control
- § 2717 After escape and recapture
- § 2718 Waiver

(2) What Constitutes “Jail” for Credit Purposes

- § 2719 Generally

TABLE OF CONTENTS

§ 2720	Hospitals or other health-related facilities
§ 2721	Halfway houses and drug treatment or rehabilitative centers
§ 2722	Probation or community control
§ 2723	Incarceration in another jurisdiction
§ 2724	Incarceration in other county within Florida

(3) To What Sentences Credit is Applied

§ 2725	Generally
§ 2726	Concurrent sentences on multiple charges
§ 2727	Sentence on different, unrelated, charges
§ 2728	Sentence to community control
§ 2729	Life sentence

(4) Correction of Error in Credit

§ 2730	Generally
§ 2731	Hearing and record
§ 2732	Relief against Department of Corrections

4. Cruel and Unusual Punishment

a. Penalties Other than Death

§ 2733	Generally
§ 2734	Proscribed punishments
§ 2735	Statutory penalties for particular crimes
§ 2736	Sentences in particular cases
§ 2737	Other official action in particular cases

b. Death Penalty

§ 2738	Generally
§ 2739	Extended stay on death row
§ 2740	Juvenile defendants
§ 2741	Other particular defendants

5. Indefinite Imprisonment

§ 2742	Generally
--------	-----------

6. Fines, Costs, and Surcharges

§ 2743	Fines
§ 2744	Excessive fines prohibited
§ 2745	Court costs

- § 2746 Mandatory costs and fines
- § 2747 Surcharges
- § 2748 Imposition of civil fines in connection with criminal penalties

F. LIABILITY FOR COURT COSTS AND DEFENSE ATTORNEY'S FEES

1. Defendant's Liability for Costs, in General

a. Costs Taxable Against Defendant

(1) In General; Mandatory Costs in All Cases

- § 2749 Generally
- § 2750 Retroactive application of statute
- § 2751 Particular costs
- § 2752 Felony, misdemeanor, and traffic offense cases
- § 2753 Indigent or insolvent defendant and costs on appeal

(2) Mandatory Costs in Specific Types of Cases

- § 2754 Driving under the influence
- § 2755 Misdemeanor convictions involving drugs or alcohol
- § 2756 Offenses against children

(3) Mandatory Costs Authorized by Local Governmental Entities

- § 2757 Generally; specified expenditures
- § 2758 Juvenile alternative programs; teen court

(4) Discretionary Costs in Specific Types of Cases

- § 2759 Generally; alcohol and drug abuse programs
- § 2760 Costs of prosecution; investigative costs
- § 2761 —Ability of defendant to pay

(5) Costs of Supervision and Rehabilitation of Persons on Probation, Community Control, or Other Release

- § 2762 Generally

TABLE OF CONTENTS

§ 2763	Exemptions from payment
	b. Requirements and Procedures for Assessing Costs
§ 2764	Final judgment of conviction; effect of withholding adjudication
§ 2765	Notice that costs will be assessed
§ 2766	Opportunity for hearing and objection
§ 2767	Burdens and standard of proof
§ 2768	Judgment or order for costs
§ 2769	Terms of payment
	c. Enforcement and Recovery of Cost Assessments
§ 2770	Generally
§ 2771	Execution in capital and noncapital cases; capias
§ 2772	Application of cash deposit to costs
	d. Nonliability of Acquitted or Discharged Defendant
§ 2773	Generally; effect of acquittal or discharge on liability for costs or fees
§ 2774	Particular costs
	2. Defendant's Liability for Fees and Costs of Public Defender or Appointed Counsel
	a. In General
§ 2775	Generally; liability upon conviction or violation of probation or community control
§ 2776	Liability of minor or adult tax-dependent defendant's parents or guardian
§ 2777	Determination of attorney's fees and costs; adequate factual basis
§ 2778	Determination of attorney's fees and costs— Notice, hearing, and rights of defendant or parent
§ 2779	Order assessing fees and costs; payment terms
§ 2780	Petition for deferral of payment of fees or costs
§ 2781	Default in payment; contempt
	b. Judgment and Lien for Fees and Costs
§ 2782	Generally; creation and recording

§ 2783 Notice of lien and hearing to contest amount

§ 2784 Enforcement or other disposition

3. Liability of County or State for Costs

a. County's Liability

§ 2785 Costs of commitment where no information filed or indictment returned

§ 2786 Statutory fixed costs in misdemeanor cases involving drugs or alcohol

b. State's Liability

§ 2787 Costs for discovery, depositions, transcripts, and witnesses

§ 2788 —Expert witnesses

§ 2789 Cost sharing of court services

§ 2790 Charge for confining prisoner

c. Procedure for Obtaining Payment of Costs Against State

§ 2791 In Supreme Court; payment by state

§ 2792 Power of Chief Financial Officer

d. Recovery of Costs Paid by Acquitted or Discharged Defendant; Procedure for Obtaining Payment from State

§ 2793 Generally

§ 2794 Costs for witnesses, depositions, and transcripts

§ 2795 Attorney's fees, investigation expenses, and other costs

§ 2796 Procedure for obtaining payment

§ 2797 —Nature and effect of certification

§ 2798 Submission of request for refund to Justice Administrative Commission; limitation to actual and necessary charges

G. HABITUAL OR SUBSEQUENT OFFENDERS

1. In General

§ 2799 Generally; career criminals

§ 2800 Purpose of habitual offender statute

§ 2801 Nature of habitual offender statute

§ 2802 Inapplicability of habitual offender statute to certain felonies

TABLE OF CONTENTS

§ 2803	Permissibility of plea bargain agreement by habitual offender; stipulation
2. Validity of Habitual Offender Statute	
§ 2804	Generally
§ 2805	Ex post facto and double jeopardy
§ 2806	Equal protection and due process
§ 2807	—Racial discrimination
§ 2808	Vagueness
3. Who Qualifies as a Habitual Offender	
a. In General	
§ 2809	Generally
§ 2810	What is a qualified offense
§ 2811	—Out-of-state convictions
§ 2812	Habitual misdemeanor offenders
§ 2813	Habitual violent felony offenders
§ 2814	—Particular violent offenses
§ 2815	Three-time violent felony offenders
§ 2816	Violent career criminals
§ 2817	—What constitutes a qualifying forcible felony
§ 2818	Adoption of eligibility criteria
b. Necessity for Prior Conviction	
§ 2819	Generally
§ 2820	Juvenile delinquency adjudications
§ 2821	Five-year requirement
§ 2822	Requirements as to separate sentencing
§ 2823	Corroboration of prior conviction
§ 2824	Effect of pardon after conviction
§ 2825	Uncounseled prior convictions
§ 2826	—When defendant could have been, but was not, incarcerated for more than six months
4. Proceedings to Determine Habitual Offender Status	
§ 2827	Generally
§ 2828	Presentence investigation
§ 2829	Notice of proceeding
§ 2830	—Effect of plea of guilty or nolo contendere; informing defendant of consequences of habitualization; <i>Ashley</i> rule

- § 2831 Standard and burden of proof
- § 2832 Identification of defendant as prior offender;
fingerprinting
- § 2833 Trial court findings
- § 2834 —Particular findings
- § 2835 Defendant's waiver of procedural rights

5. Sentencing of Habitual Offenders

- § 2836 Generally
- § 2837 Unauthorized sentences
- § 2838 Habitual felony offenders
- § 2839 Habitual violent felony offenders
- § 2840 Three-time violent felony offenders
- § 2841 Violent career criminals
- § 2842 Inapplicability of sentencing guidelines
- § 2843 Eligibility for gain time, early release, or parole
- § 2844 Consecutive sentences; *Hale* rule
- § 2845 Court's discretion to decline to impose enhanced
sentence; protection of the public
- § 2846 Resentencing of habitual offender
- § 2847 Appeal of sentences by violent career criminals

H. REGISTRATION OF FELONS

1. In General; Registration of Convicted Felons

- § 2848 Generally
- § 2849 Required submission of blood or biological
specimen
- § 2850 Exemptions from registration requirements

2. Registration of Career Offenders

- § 2851 Florida Career Offender Registration Act;
requirements of career offenders upon release
- § 2852 —Penalties; immunity
- § 2853 Requirements of Department of Corrections prior
to release of career offender
- § 2854 Notification as to unincarcerated career offenders
in custody or control of Department of
Corrections

TABLE OF CONTENTS

3. Registration of Sexual Predators and Sexual Offenders

a. Sexual Predators

- § 2855 Generally; Sexual Predators Act
- § 2856 Community and public notification
- § 2857 Constitutionality of Sexual Predators Act
- § 2858 Penalties under Sexual Predators Act; immunity

b. Sexual Offenders

- § 2859 Generally; Florida Sexual Offender Registration Act
- § 2860 —Constitutionality of registration requirements
- § 2860.50 —Romeo and Juliet exception
- § 2861 —Penalties; immunity
- § 2862 Notification of public
- § 2863 Notification upon release
- § 2864 Notification as to unincarcerated sexual offenders in custody or control of Department of Corrections

I. VICTIM ASSISTANCE; COMPENSATION, RESTITUTION, AND OTHER SERVICES

1. In General; Services to Victims and Witnesses

- § 2865 Generally; guidelines for fair treatment
- § 2866 Advisement of victims
- § 2867 HIV testing and disclosure
- § 2868 Protective services for certain victims and witnesses
- § 2869 Civil action to restrain harassment of victim or witness

2. Compensation by State

a. In General

- § 2870 Generally; purpose of victim compensation
- § 2871 Compensable crimes

b. Claims for Compensation

- § 2872 Persons eligible for compensation

- § 2873 Persons ineligible for compensation
- § 2874 Filing and processing of claims
- § 2875 Determination of claim
- § 2876 —Grounds for denial

c. Awards of Compensation

- § 2877 Generally; funding and reimbursement
- § 2878 Basis of award; actual need and financial hardship
- § 2879 Amount of award; reduction and limits
- § 2880 Emergency awards
- § 2881 Awards to elderly persons or disabled adults for property loss
- § 2882 Assistance to victims of online sexual exploitation and child pornography
- § 2883 Relocation assistance for victims of domestic violence
- § 2884 Fraud in procuring award
- § 2885 Manner of payment of award; execution and attachment

3. Restitution by Defendant

a. In General

- § 2886 Generally; purpose
- § 2887 Persons entitled
- § 2888 —“Victim” defined
- § 2889 —Persons ineligible for restitution
- § 2890 Expenses recoverable for bodily injury or death
- § 2891 Expenses recoverable for property loss or damage; salvage value
- § 2892 Award of interest
- § 2893 Operation and effect; double jeopardy
- § 2894 —Collateral estoppel

b. Duty of Court; Order of Restitution

- § 2895 Generally
- § 2896 Time for entry of order
- § 2897 —Restitution as condition of probation
- § 2898 —Effect of plea agreement
- § 2899 Time and manner of payment
- § 2900 Income deduction orders
- § 2901 Apportionment among multiple offenders

TABLE OF CONTENTS

§ 2902	Appeal and remand as to restitution orders
	c. Determination of Amount of Restitution
	(1) In General; Factors Considered
§ 2903	Generally
§ 2904	Ability of defendant to pay; financial resources
§ 2905	Exceeding maximum dollar value defining offense
§ 2906	Valuation of lost, stolen, or damaged property
§ 2907	—Testimony as to valuation
	(2) Causal Relation of Loss or Damage to Offense
§ 2908	Generally
§ 2909	Requirement of foreseeability
§ 2910	Requirement of significant relationship
§ 2911	Particular examples of loss or damage resulting from offense
	(3) Procedural Aspects
§ 2912	Notice and hearing
§ 2913	—Right to counsel
§ 2914	Degree and burden of proof
§ 2915	—Waiver
§ 2916	Admissibility of hearsay evidence
§ 2917	—Business records exception
	d. Enforcement; Civil Restitution Liens
§ 2918	Generally
§ 2919	Revocation of probation or parole
§ 2920	Civil restitution liens

X. PROCEEDINGS FOR POSTCONVICTION RELIEF

A. POSTCONVICTION RIGHTS

1. In General

§ 2921	State's duty to furnish effective postconviction procedures
§ 2922	Due process rights on sentencing

§ 2923 —Resentencing

2. Rights of Indigents

§ 2924 Generally

§ 2925 Right to counsel

B. MANDAMUS AND PROHIBITION

1. Mandamus

§ 2926 Generally

§ 2927 Petition for writ of mandamus

§ 2928 Requirement that petitioner have clear right to performance of duty

§ 2929 Requirement that duty sought to be enforced be ministerial

§ 2930 Use of mandamus to compel action on conviction and sentence

2. Prohibition

a. In General

§ 2931 Generally

§ 2932 Petition for writ of prohibition

§ 2933 Requirement of lack of jurisdiction

§ 2934 Requirement that other adequate remedy be unavailable

b. Particular Circumstances in Which Prohibition may be Invoked

(1) In General

§ 2935 Generally; regarding judicial authority

§ 2936 Prosecution under defective accusatory pleading

§ 2937 Decision as to whether to prosecute

(2) Violation of Certain Rights

§ 2938 Statutory immunity

§ 2939 Right against double jeopardy

§ 2940 Right to speedy trial

C. PARDON AND REPRIEVE; RESTORATION OF CIVIL RIGHTS

1. In General

§ 2941 Governor's power

TABLE OF CONTENTS

§ 2942	—Clemency power vested solely in executive
§ 2943	Cases of treason or impeachment resulting in conviction
§ 2944	Commutation of punishment
§ 2945	Application requirement
§ 2946	Judicial review of pardon and commutation decisions
2. Pardon	
a. In General	
§ 2947	Generally
§ 2948	Definitions and distinctions
§ 2949	Requirement that pardon be accepted
§ 2950	Construction of pardon
§ 2951	Revocation of pardon
b. Operation and Effect of Pardon	
(1) In General	
§ 2952	Generally
(2) Restoration of Rights of Citizenship and Property Rights	
§ 2953	Generally
§ 2954	Eligibility for public office or law enforcement
§ 2955	Eligibility for license
c. Conditional Pardons	
(1) In General	
§ 2956	Generally
§ 2957	Nature and validity of conditions
§ 2958	Construction and effect of conditional pardon
§ 2959	Effect of breach of condition
(2) Revocation of Conditional Pardon; Rearrest and Recommitment	
§ 2960	Generally
§ 2961	Rearrest
§ 2962	Nature of proceedings; notice and hearing
§ 2963	—Demonstrating justification for nonperformance of condition

- § 2964 —Right to jury trial
- § 2965 Suspension of sentence upon recommitment
- 3. Reprieve
- § 2966 Generally
- § 2967 Cases of treason
- § 2968 Sixty-day time limit for reprieve
- 4. Restoration of Civil Rights
- § 2969 Generally
- § 2970 Governor's discretion as to restoration of civil rights
- § 2971 Necessity for request where restoration is based upon completion of sentence

D. PAROLE

1. General Considerations

a. Generally

- § 2972 In general
- § 2973 Construction of parole law
- § 2974 What is parole
- § 2975 Distinction between pardon and probation
- § 2976 Effect of grant of parole
- § 2977 Authorized length of parole

b. Power to Grant Parole

- § 2978 Generally
- § 2979 Factors that may be considered in granting or denying parole; invalid factors

c. Interstate Parole Compact

- § 2980 Generally

2. The Parole Commission

- § 2981 Generally
- § 2982 Powers and functions of Commission
- § 2983 Applicability of the Administrative Procedure Act

3. Eligibility for Parole

- § 2984 Generally; effect of sentencing guidelines
- § 2985 Persons subject to minimum mandatory sentences

TABLE OF CONTENTS

§ 2986	Persons subject to consecutive sentences
§ 2987	Persons subject to concurrent sentences
§ 2988	Persons serving parole-eligible and parole-ineligible sentences
	4. Retention of Jurisdiction Over Certain Eligible Offenders
§ 2989	Generally
§ 2990	Limited jurisdiction
§ 2991	Necessity for statement justifying retention of jurisdiction
§ 2992	Time for entry of order of retention of jurisdiction
§ 2993	Effect of court's retention of jurisdiction
	5. The Presumptive Parole Release Date
	a. In General
	(1) In General
§ 2994	Generally
§ 2995	Types of evidence that may be relied on in setting date
	(2) Notification of Particular Persons as to Release of Inmate
§ 2996	Generally
§ 2997	Release of sex offender information to the public without request
	(3) When Does Presumptive Date Become Effective Date
§ 2998	Generally
§ 2999	Effect of sentencing court's objection to date
	b. Factors Considered in Setting Date
§ 3000	Generally
§ 3001	Proper aggravating factors
§ 3002	—Objection by judge
§ 3003	Improper aggravating factors
§ 3004	—Elements of the offense for which the defendant was convicted

§ 3005 Necessity to explain consideration of aggravating circumstances

c. Review of Presumptive Parole Release Date

(1) In General

§ 3006 Inmate's request for review by Parole Commission

§ 3007 Subsequent interviews

§ 3008 Review at discretion of Parole Commission

(2) Judicial Review

§ 3009 Generally

§ 3010 Issues and documents considered on appeal

6. Terms and Conditions of Parole

§ 3011 Generally

§ 3012 Particular terms and conditions

§ 3013 —Reparation or restitution

§ 3014 Modification of terms and conditions

7. Violations of Parole; Revocation

a. In General

§ 3015 Generally

§ 3016 Requirement that violation be knowing and willful

§ 3017 Arrest of parolee

§ 3018 Credit for time served or gain time

§ 3019 Effective date of revocation

b. Revocation Proceedings

§ 3020 Generally

§ 3021 Preliminary hearing

§ 3022 Final revocation hearing

§ 3023 —Findings of fact and order for revocation

§ 3024 Evidence that may be considered; hearsay

§ 3025 Right to counsel

§ 3026 Waiver of revocation proceedings

§ 3027 Judicial review of parole revocation order

TABLE OF CONTENTS

E. CONDITIONAL AND CONTROL RELEASE

1. Conditional Release

a. In General

- § 3028 Generally
- § 3029 Eligibility
- § 3030 Duties of Parole Commission in regard to aggrieved party
- § 3031 Process of establishing conditional release

b. Conditions of Conditional Release

- § 3032 Payment of debt due to county or municipal detention facility
- § 3033 Random substance abuse testing
- § 3034 Special conditions
- § 3035 —Additional special conditions for releasees whose crime was committed on or after October 1, 1997

2. Conditional Medical Release

- § 3036 Generally
- § 3037 Eligibility

3. Control Release

a. In General

- § 3038 Generally
- § 3039 Credit for time spent under control release
- § 3040 Establishing control release dates

b. Powers and Duties of Control Release Authority and Department of Corrections

- § 3041 Generally
- § 3042 Basic support services
- § 3043 Examination of records

c. Eligibility for Control Release

- § 3044 Generally
- § 3045 Concurrent and consecutive sentences
- § 3046 Inmates ineligible for control release

d. Conditions of Control Release

- § 3047 Generally

- § 3048 Payment of debt due to county or municipal detention facility
- § 3049 Inmate placed on control release supervision also subject to probation or community control
 - e. Vacating or Voiding Control Release
- § 3050 Vacating control release
- § 3051 Voiding of control release dates
- 4. Violations of Conditional or Control Release; Revocation
 - a. In General
 - § 3052 Generally
 - § 3053 Arrest of releasee
 - § 3054 —Detention of offender
 - § 3055 Effect of revocation
 - b. Revocation Proceedings
 - § 3056 Hearing
 - § 3057 Order of commissioners
 - § 3058 —Placement in local detention facility
 - § 3059 Judicial review of revocation order

XI. APPELLATE REVIEW

A. IN GENERAL

1. Applicable Law

- § 3060 Generally; statutory right of appeal
- § 3061 —Duty of trial court to inform defendant of right to appeal
- § 3062 —Joinder
- § 3063 Effect of Rules of Appellate Procedure
- § 3064 —Rights of indigents
- § 3065 Applicability of writ of certiorari
- § 3066 —Scope of review
- § 3067 —Preliminary or interlocutory orders

2. Appellate Jurisdiction

a. In General

- § 3068 Generally

TABLE OF CONTENTS

b. Supreme Court

- § 3069 Generally; questions on validity and construction of laws
- § 3070 Questions of great public importance
- § 3071 Questions of conflict of law

c. District Courts of Appeal

- § 3072 Generally
- § 3073 Certiorari jurisdiction

d. Circuit Courts

- § 3074 Generally

3. Appeal by Defendant

a. Appealable Orders and Rulings

- § 3075 Generally; probation orders
- § 3076 What constitutes final judgment adjudicating guilt
- § 3077 —Verdict distinguished
- § 3078 Rendition of order; effect of oral order or judgment
- § 3079 Appeal of judgment on plea; limitation on appeal grounds
- § 3080 Appeal of judgment on plea; appeal of validity of plea
- § 3081 Cross-appeal by defendant

b. Sentences Appealable by Defendant

- § 3082 Generally; illegal sentence
- § 3083 Sentence failing to credit time served
- § 3084 Departure sentence
- § 3085 Sentence upon plea

c. Estoppel or Waiver

- § 3086 Generally
- § 3087 Errors committed or invited by defendant

d. Bail Pending Review by Appeal

(1) In General

- § 3088 Generally
- § 3089 Nature and extent of court's discretion

- § 3090 Prohibition of bail pending review of certain
felony convictions
- § 3091 Bail pending appeal of order discharging
prisoner on habeas corpus
- § 3092 Basic conditions for granting bail on appeal
- § 3093 Matters to be considered by court
- § 3094 Amount of bail
- § 3095 Conditions of release
- § 3096 Order denying bail
- § 3097 Review of order denying or granting bail
- § 3098 Revocation of bail

(2) Prohibition of Bail in Particular
Situations

- § 3099 Pending review of conviction of capital offense
- § 3100 Where defendant has prior felony conviction
- § 3101 —Constitutionality
- § 3102 Where there are other felony charges pending
against defendant
- § 3103 Pending review of particular felony convictions

Volume 15C

4. Appeal by State

a. In General

- § 3104 Necessity of statutory authority
- § 3105 Double jeopardy prohibition of appeal

b. Orders, Rulings, and Sentences Appealable by State

- § 3106 Orders and rulings
- § 3107 Pretrial orders
- § 3108 Sentences appealable by State
- § 3109 —Habitual offender sentence
- § 3110 Cross-appeal by state

TABLE OF CONTENTS

B. MANNER OF RAISING AND PRESERVING
QUESTIONS BELOW

1. Objection

a. In General

§ 3111 Generally; purpose and necessity of trial
objections

§ 3112 Necessity of court ruling

b. Requirement of Specificity

§ 3113 Generally

§ 3114 Effect of general objection

c. Requirement of Contemporaneous
Objection

(1) In General

§ 3115 Generally

(2) Objection to Evidence

§ 3116 Generally

§ 3117 Exceptions to rule

§ 3118 Necessity of offer of proof

(3) Objection to Instruction

§ 3119 Generally

§ 3120 Necessity of request for instruction

(4) Objection to Sentence

§ 3121 Generally

§ 3122 Probation and restitution orders

§ 3123 Imposition of costs

(5) Improper Argument

§ 3124 Generally

d. Failure to Object; Effect of
Fundamental Error

(1) In General

§ 3125 Generally; discretion of court in interest of
justice

(2) Doctrine of Fundamental Error

§ 3126 Generally

§ 3127 Fundamental error in instruction

§ 3128 Fundamental error in sentence

(3) Waiver

§ 3129 Generally

§ 3130 Particular issues subject to waiver

2. Motion

§ 3131 Motion for mistrial, new trial, or judgment of acquittal

§ 3132 Motions to correct or vacate sentence, or to strike

§ 3133 Motion to dismiss or for post-conviction relief; adequacy of counsel

C. SCOPE OF REVIEW

1. In General

§ 3134 Generally

§ 3135 Standards of review; questions of law

§ 3136 Standards of review; Constitutional rights issues

§ 3137 Standards of review; Statutory interpretation or construction

§ 3138 Standards of review; Mixed question of law and fact

§ 3139 Presumptions on review; Regularity of proceedings

§ 3140 Presumptions on review; Suppression hearings

§ 3141 Presumptions on review; Proper arraignment; benefit of counsel

§ 3142 Errors committed or invited by appellant; Invited error doctrine

2. Review of Trial Court Discretion

§ 3143 Generally

§ 3144 Particular issues subject to trial court's discretion

3. Review of Sufficiency of Evidence

§ 3145 Generally

§ 3146 Effect of legal insufficiency

§ 3147 —Sufficiency as to lesser included offense

§ 3148 Inquiry and determination as to sufficiency

TABLE OF CONTENTS

- § 3149 —What constitutes competent evidence
- § 3150 —Consideration of trial court findings
- § 3151 —Review of conflicting evidence

4. Review of Sentence

- § 3152 Generally
- § 3153 Legality of sentence
- § 3154 Ambiguity in sentence
- § 3155 Remand of sentence; other relief
- § 3156 —Correction of sentence without remand

D. HARMLESS ERROR

- § 3157 Generally; analysis of error
- § 3158 Application of analysis
- § 3159 —Review of overall record
- § 3160 —Constitutional violation
- § 3161 Burden of proof
- § 3162 Particular errors subject to harmless error analysis
- § 3163 —Discovery errors

E. PROCEDURE TO OBTAIN REVIEW; NOTICE, RECORD, AND BRIEFS

1. In General

- § 3164 Applicable law
- § 3165 Effect of procedural irregularities
- § 3166 —Clerical errors

2. Notice of Appeal

- § 3167 Notice of appeal by defendant
- § 3168 Notice of appeal by State
- § 3169 Failure to file timely notice
- § 3170 —Belated appeals
- § 3171 —Premature notice of appeal

3. Record on Appeal

a. In General

- § 3172 Effect of appellate rules
- § 3173 Preparation of record
- § 3174 Supplementation of incomplete record

§ 3175 —Lost or destroyed records

b. Briefs

§ 3176 Generally

§ 3177 Time for service of briefs; capital appeals

§ 3178 Effect of failure to file brief; supplemental briefs

§ 3179 Brief in support of withdrawal of counsel

F. EFFECT OF APPEAL; STAY PENDING REVIEW

§ 3180 Generally; jurisdiction of lower court

§ 3181 Stay pending appellate review

§ 3182 —Necessity of court order

§ 3183 Conditions of stay; bail and bond

§ 3184 —Liability of principal and surety on bond

G. DISMISSAL OF APPEAL

1. In General

§ 3185 Dismissal by motion of court

§ 3186 Voluntary dismissal by appellant

§ 3187 —Effect on cross-appeal by opposing party not otherwise authorized

§ 3188 Dismissal and abatement distinguished

2. Grounds

§ 3189 Generally

§ 3190 Mootness

§ 3191 Conviction on plea; failure to reserve appeal on plea of nolo contendere

§ 3192 Failure to prosecute appeal

§ 3193 —Flight from jurisdiction by appellant

§ 3194 Failure to follow prescribed appellate procedure

§ 3195 —Unnecessary delay in submission of brief, record, or other required papers

§ 3196 —Untimely notice of appeal

§ 3197 Frivolous appeal

H. AFFIRMANCE, REVERSAL, OR REMAND

1. Affirmance

§ 3198 Effect of appellant's failure to argue

TABLE OF CONTENTS

§ 3199	Conviction on guilty or nolo contendere plea
§ 3200	Effect of affirmance on judgment
2. Reversal	
§ 3201	Grounds for reversal
§ 3202	Necessity of argument by appellant
§ 3203	Effect of reversal
§ 3204	—Reversal where State is appellant
3. Remand; Subsequent Appeal or Rehearing	
§ 3205	New trial
§ 3206	Questions reviewable on subsequent appeal
§ 3207	Rehearing or clarification of appellate order

XII. YOUTHFUL OFFENDERS

A. IN GENERAL

§ 3208	Youthful Offender Act
§ 3209	Classification by DOC; relation to sentencing
§ 3210	Participation in, and income from, certain activities
§ 3211	Extension of confinement limits
§ 3212	—Failure to remain within limits; disciplinary reports and fines

B. JUDICIAL DISPOSITION OF YOUTHFUL OFFENDERS

1. In General

§ 3213	Qualifications for sentence as youthful offender
§ 3214	—Persons found guilty of capital or life felony
§ 3215	Presentencing and sentencing procedure
§ 3216	Exclusivity of disposition; mandatory minimum sentences
§ 3217	Probation or community control; conditions imposed
§ 3218	Split sentence of incarceration and probation or community control
§ 3219	DOC custody; suspension of sentence and community control
§ 3220	Sentencing on multiple counts
§ 3221	Consecutive sentences

- § 3222 Application of sentence guidelines; reasons for departure
- § 3223 —Appeal of sentence outside guidelines
- § 3224 Sealing, expunction, and control of records; access by offender
- 2. Resentencing on Violation of Probation or Community Control
- § 3225 Generally
- § 3226 On successful completion of boot camp
- § 3227 Forfeiture of gain-time or commutation of time for good conduct
- § 3228 Substantive or technical violations

C. INSTITUTIONS AND PROGRAMS FOR YOUTHFUL OFFENDERS

1. In General

- § 3229 Designation of and assignment to institutions and programs
- § 3230 Assignment to non-designated facilities
- § 3231 Continuous screening
- § 3232 Challenge to assignment

2. Basic Training Program (Boot Camp)

- § 3233 Generally
- § 3234 Screening and placement in program
- § 3235 Discipline and incentives; removal from program
- § 3236 Completion of program
- § 3237 —Community residential program
- § 3238 —Modification or early termination of youthful offender sentence

TABLE OF CONTENTS

Volume 16

**CRIMINAL LAW—SUBSTANTIVE
PRINCIPLES AND
OFFENSES.....**

I. GENERAL ASPECTS

A. IN GENERAL

- § 1 Applicability of common law
- § 2 Effect of statute on common law
- § 3 Purpose of criminal legislation
- § 4 Crime and penal law defined; public offense and tort distinguished
- § 5 Crimes mala in se and mala prohibita distinguished
- § 6 Crimes involving moral turpitude

B. LEGISLATION AS TO CRIMES

1. Power and Authority of Legislature

- § 7 Generally
- § 8 Power to legislate judicial practice and procedure

**2. Constitutional Requirements of and
Limitations on Criminal Legislation**

a. Express Constitutional Limitations

- § 9 Prohibition against special or local laws;
classification of subjects
- § 10 Prohibition against plurality of subjects in single
legislative act
- § 11 —Requirement of expression of subject in title
- § 12 Prohibition against ex post facto laws
- § 13 —Applicability to judicial decisions
- § 14 —Applicability to remedy or mode of procedure
- § 15 Prohibition against bills of attainder

**b. Limitations Effected by Fundamental
Rights and Liberties**

- § 16 Necessity of rational relationship between statute
and legitimate state purpose

- § 17 —Overbreadth
- § 18 Requirement of certainty
- § 19 —Void-for-vagueness doctrine
- § 20 —Obsolete language
- § 21 Equal protection; legislative classification
- § 22 —Alternate statutes
- § 23 —Selective enforcement or prosecution

3. Construction and Interpretation

- § 24 Generally; legislative intent
- § 25 Limitation on court's power to construe law
- § 26 Significance of statutory classification
- § 27 Construction in favor of accused; rule of lenity
- § 28 Construction in favor of constitutionality

4. Repeal or Amendment of Criminal Statutes

- § 29 Generally
- § 30 Effect of repeal or amendment
- § 31 —Exception for remedy or procedure

C. CLASSIFICATION AND DEGREES OF OFFENSES

1. In General

- § 32 Degrees of offense
- § 33 Felony defined
- § 34 —Classification of felony
- § 35 Misdemeanor defined
- § 36 Noncriminal violation distinguished

2. Reclassification of Felony

- § 37 Felony reclassification for aggravated battery or possession or use of weapon
- § 38 —Requirement of jury finding of fact
- § 39 —Actual use or possession of weapon during commission of felony
- § 40 Reclassification for unlawful use of law enforcement officer's firearm
- § 41 Reclassification of felony or misdemeanor for furthering terrorism

TABLE OF CONTENTS

II. CULPABILITY

A. CAPACITY TO COMMIT CRIME

- § 42 Persons criminally responsible
- § 43 Corporations
- § 44 Infants

B. INSANITY

1. Insanity at Time of Offense

- § 45 Generally; incapacity to form criminal intent
- § 46 Determination as to insanity
- § 47 “Right and wrong” or *M’Naghten* (*M’Naughton*) test
- § 48 —Meeting test despite mental condition or illness
- § 49 Insanity caused by intoxication

2. Raising Issue of Insanity

a. Notice Requirements for Insanity Defense

- § 50 Generally
- § 51 Where defendant fails to file notice

b. Court Appointment of Expert

- § 52 Generally
- § 53 Qualifications of expert; payment
- § 54 Place and time of examination
- § 55 Persons who may be present at examination
- § 56 Appointment of experts to assist indigent defendant’s insanity defense
- § 57 —State’s right to notice
- § 58 Additional experts at request of prosecution or defense
- § 59 Report of experts to court

3. Proof of Insanity

a. In General

- § 60 Admissibility of expert testimony
- § 61 Admissibility of nonexpert testimony
- § 62 Sanity as question of fact; conflicting evidence
- § 63 —Particular cases

- § 64 Necessity of instructions pertaining to insanity
- § 65 Effect of failure to overcome reasonable doubt as to sanity

b. Burden of Proof; Presumption of Sanity

- § 66 Generally
- § 67 State's burden
- § 68 Presumption of continuation of insanity

4. Commitment or Other Disposition of Defendant Adjudicated Not Guilty by Reason of Insanity

- § 69 Generally
- § 70 Standard for commitment of acquittee; manifestly dangerous
- § 71 Commitment hearing
- § 72 Disposition of acquittee
- § 73 Continuing jurisdiction over involuntarily committed defendant
- § 74 Continued commitment or release
- § 75 —Hearing
- § 76 Order of commitment
- § 77 Order of release
- § 78 —Modification of order

C. MENTAL DISORDER NOT AMOUNTING TO INSANITY

1. Types of Mental Disorders

- § 79 Diminished capacity
- § 80 —Exceptions to rule of inadmissibility
- § 81 Subnormal mentality
- § 82 Irresistible impulse
- § 83 Emotional or moral insanity
- § 84 Insane delusion
- § 85 Automatism or unconsciousness

2. Raising Issue of Mental Disorder

- § 86 Notice requirements for mental health defense
- § 87 Court appointment of experts
- § 88 Report of experts

TABLE OF CONTENTS

D. MENTAL ELEMENT OF CRIME

1. In General

- § 89 Knowledge or mens rea requirement
- § 90 Legislative power to determine intent or knowledge requirement for statutory crime
- § 91 —Constitutional limitations
- § 92 Determining legislative intent regarding intent or knowledge requirement
- § 93 Liability for unintended consequences of act punishable under statute regardless of intent

2. Particular Mental Elements of Knowledge or Intent

- § 94 Specific intent
- § 95 Knowledge and “willful blindness”
- § 96 Malice; willfulness

E. ATTEMPT AND SOLICITATION

1. Attempt to Commit an Offense

a. In General

- § 97 Common-law and statutory offense of criminal attempt
- § 98 Where definition of offense includes attempt
- § 99 Effect of abandonment

b. Elements of Attempt

- § 100 Generally
- § 101 Intent required
- § 102 Overt act required
- § 103 —Preparation distinguished

2. Solicitation

- § 104 Generally
- § 105 Elements of solicitation
- § 106 —Intent
- § 107 Effect of renunciation or abandonment

F. PARTICIPATION IN CRIME

1. Principals in First Degree; Aiders and Abettors

a. In General

§ 108 Generally

§ 109 Intent and act required

b. Independent Act Doctrine

§ 110 Generally

§ 111 Jury instructions

§ 112 —Particular cases

c. Proof of Offense

§ 113 Generally

§ 114 Requisite intent and knowledge distinguished

§ 115 Presence at or flight from crime scene

§ 116 Principal's acquittal or conviction

§ 117 Proof in particular cases held sufficient

§ 118 Proof in particular cases held insufficient

2. Accessory After Fact

§ 119 Generally

§ 120 Person not having relationship of consanguinity or affinity to an offender

§ 121 Persons exempt from prosecution

§ 122 Proof of accessory after fact

§ 123 —Particular cases

§ 124 Liability as both principal and accessory after fact

3. Liability of Persons for Criminal Conduct of Others

§ 125 Generally

§ 126 Principal and agent

§ 127 Partners and corporate personnel

III. DEFENSES

A. IN GENERAL

§ 128 Purpose of defense

§ 129 Affirmative defense defined

TABLE OF CONTENTS

- § 130 Statutory exception as defense or element of offense

B. ALIBI

- § 131 Generally; affirmative defense distinguished
- § 132 Proof of alibi
- § 133 —Rebuttal

C. ENTRAPMENT

1. Purpose and Nature of Entrapment Defense

- § 134 Generally
- § 135 Limitation on entrapment activity by law enforcement officials

2. Availability of Entrapment Defense

a. Applicable Standards for Entrapment

(1) In General

- § 136 Generally
- § 137 Application of objective or subjective standard for entrapment

(2) Subjective Statutory Standard

- § 138 Generally
- § 139 Questions to be addressed under subjective test
- § 140 Whether agent of government induced accused to commit offense
- § 141 Whether defendant was predisposed to commit offense
- § 142 —Burden of proof
- § 143 Whether entrapment evaluation should be submitted to jury

(3) Objective Due Process Standard

- § 144 Generally; due process protections
- § 145 Use of informants
- § 146 Agreement giving informants financial stake in prosecution
- § 147 Agreement for reduced sentence
- § 148 Use of decoys

- § 149 Sting operations
- § 150 —Reverse-sting operations
 - b. Particular Factors Relevant to Determination of Availability of Defense
- § 151 Denial of commission of offense
- § 152 —Participation in conspiracy
- § 153 Inducement by nongovernmental actor or agent
- § 154 Defendant previously arrested for similar crime

D. IMMUNITY FROM PROSECUTION

1. In General

- § 155 Generally; immunity by agreement
- § 156 Equitable immunity
- § 157 Judicial and statutory immunity distinguished

2. Statutory Immunity

- § 158 Generally; purpose of immunity
- § 159 Applicability and effect of statute
- § 160 —Effect of perjury
- § 161 Nature of immunity; self-executing protection against self-incrimination
- § 162 Scope and effect of statute
- § 163 —Subpoenaed records or documents
- § 164 Waiver of immunity

3. Use and Derivative Use Immunity

- § 165 Generally; use immunity
- § 166 Derivative use immunity
- § 167 When immunized testimony may be used for subsequent prosecution; independent source rule

E. INTOXICATION

- § 168 Generally; voluntary intoxication not a defense
- § 169 Involuntary intoxication
- § 170 —As defense to negate intent

F. STATUTE OF LIMITATIONS

1. In General

- § 171 Generally

TABLE OF CONTENTS

§ 172	Retroactive effect of new statutory limitations
§ 173	Purpose and nature of statute of limitations
§ 174	Construction of limitations statutes
§ 175	Remedies where limitation period has run
§ 176	Which statute of limitations applies
§ 177	—Effect of reclassification of offense
§ 178	Waiver of statute of limitations defense; motion to dismiss
	2. Applicable Limitation to Lesser-Included and Underlying Offenses
§ 179	Generally
§ 180	Conspiracy
	3. Particular Statutes of Limitation
§ 181	Generally; capital and life felonies
§ 182	Periods of limitation for felonies and misdemeanors
§ 183	Exceptions to statute
§ 184	—Effect of defendant's absence from state; no reasonably ascertainable abode or place of work
	4. Commencement and Tolling of Period of Limitation
	a. In General
§ 185	Generally; when offense committed
§ 186	When prosecution commenced for purpose of statute of limitations
§ 187	—Effect of inability to locate defendant or defendant's absence from state
§ 188	—When summons, capias, or other process "executed"
§ 189	Crimes committed upon minors
§ 190	Allegation and proof
	b. Filing Amended or New Indictment or Information
§ 191	Generally
§ 192	Significance of linkage between original and amended accusatory instrument
§ 193	Effect of State's abandonment of first information or indictment

G. FORMER JEOPARDY, COLLATERAL
ESTOPPEL, AND RES JUDICATA

1. Former Jeopardy

a. In General

- § 194 Generally; constitutional and statutory sources of
ban on double jeopardy
- § 195 Double Jeopardy Clause as enforceable against
the states
- § 196 Nature of former proceeding
- § 197 —Prior criminal proceeding barring civil remedy,
or vice versa
- § 198 Prosecution in one court as bar to prosecution in
another

b. Attachment of Jeopardy in Former
Proceeding

(1) In General

- § 199 Generally; what constitutes jeopardy
- § 200 When jeopardy attaches
- § 201 —Acceptance of plea of guilty or nolo contendere
constituting attachment
- § 202 —Acceptance of plea of guilty or nolo contendere
not constituting attachment of jeopardy
- § 203 Effect of void judgment
- § 204 —Where court lacks jurisdiction
- § 205 —Failure to allege offense within jurisdiction of
court
- § 206 Hearing on revocation of probation
- § 207 Nonsummary criminal contempt prosecutions

(2) Proceedings Before Trial or
Before Jury Sworn

- § 208 Generally
- § 209 Nolle prosequi
- § 210 Termination of jury trial before jury is sworn

c. Effect of Events Occurring After
Attachment of Jeopardy

(1) In General

- § 211 Generally; continuance

TABLE OF CONTENTS

§ 212 Events occurring during trial

(2) Acquittal

§ 213 Generally

§ 214 What constitutes acquittal

§ 215 —Where jury is not charged with offense

§ 216 Effect of defective indictment or information

§ 217 Attempt to vacate or retract acquittal

(3) Mistrial

(a) In General

§ 218 Generally; effect of mistrial on double jeopardy

§ 219 —Considerations in declaring mistrial over objection of accused

§ 220 Defendant's consent to mistrial

§ 221 —Implied consent

(b) Discretion of Trial Court to Effect Mistrial

§ 222 Generally; discretion of court

§ 223 What constitutes manifest necessity for mistrial

§ 224 —Hung jury

§ 225 —Particular examples of manifest necessity

§ 226 Effect of mistrial without manifest necessity

§ 227 —Particular examples of mistrial barring retrial

(c) Effect of Mistrial on Defendant's Motion

(i) In General

§ 228 Generally

§ 229 Defendant's motion for mistrial as waiver of double jeopardy rights

(ii) Motion Provoked by Prosecution

§ 230 Generally

§ 231 Conduct constituting provocation

§ 232 Prosecutorial error distinguished

(4) New Trial

§ 233 Generally

- § 234 Reversal for insufficient evidence
- § 235 —Verdict against weight of evidence distinguished
- § 236 —Revocation of probation on hearsay distinguished
- § 237 Retrial for greater offense after reversal of conviction for lesser offense

(5) Waiver of, or Estoppel to Assert,
Former Jeopardy Defense

- § 238 Waiver
- § 239 —By failure to condition plea on dismissal or nonfiling of other charges
- § 240 Estoppel to assert defense

d. Identity of Offenses

(1) In General

- § 241 Generally; requisite showing to bar subsequent prosecution
- § 242 Determination of bar to subsequent prosecution; “*Blockburger* test”
- § 243 Where facts now alleged would have convicted defendant in former prosecution
- § 244 Former jeopardy as to lesser offense as bar to prosecution for greater
- § 245 Former jeopardy as to greater offense as bar to prosecution for lesser
- § 246 Same act as offense against different governments
- § 247 —Limitation on State’s power to prosecute after federal prosecution for same act
- § 248 Where offense is committed in more than one county

(2) Offense Distinct from Offense
Previously Charged

- § 249 Generally
- § 250 New charge arising from same transaction or otherwise linked to former prosecution
- § 251 —Possession of weapon by convicted felon apprehended in commission of another offense

e. Relief Against Double Jeopardy

- § 252 Generally

TABLE OF CONTENTS

§ 253	Requisites of motion
	2. Collateral Estoppel
§ 254	Generally
§ 255	Collateral estoppel and former jeopardy distinguished
§ 256	Collateral estoppel and res judicata distinguished
§ 257	Requisites for application of collateral estoppel; previous prosecution
§ 258	—Attachment of jeopardy in prior proceeding
§ 259	—Identity of issues
	3. Res Judicata
§ 260	Generally
§ 261	Res judicata and former jeopardy distinguished
§ 262	Res judicata and collateral estoppel distinguished
§ 263	Applicability to pretrial dismissal

H. JUSTIFIABLE USE OF FORCE

1. In General

§ 264	Defense of property; “castle doctrine”
§ 265	—Presumptions
§ 266	Deadly force
§ 267	Use of force in making arrest or preventing escape

2. Defense of Person

§ 268	Generally
§ 269	Admissibility of evidence as to character or apparent intentions of victim
§ 270	—Proof of overt act
§ 271	Right to jury instruction on self-defense
§ 272	Where jury instruction on self-defense will not be given
§ 273	Where undisputed facts establish self-defense

3. Circumstances in Which Defense of Self-defense is Not Available

§ 274	Generally; “forcible felony” defined
§ 275	Instruction as to forcible-felony exception
§ 276	Where defendant initially provoked use of force
§ 277	Qualifications to duty to retreat

I. SELECTIVE PROSECUTION

- § 278 Generally
- § 279 Factors for establishing selective prosecution
- § 280 —Showing that defendant was prosecuted while others similarly situated were not
- § 281 —Showing that the discriminatory selection of the defendant for prosecution has been invidious or in bad faith

J. OTHER DEFENSES

- § 282 Coercion or duress; order of superior
- § 283 —Necessity
- § 284 Recantation
- § 285 Abandonment of criminal activity
- § 286 Consent of victim
- § 287 Ignorance or mistake of the law; impossibility or illiteracy
- § 288 Guilt of another person; sufficiency of exculpatory evidence
- § 289 Failure to provide consular notification

IV. CRIMES AGAINST PERSON AND PUBLIC DECENCY

A. ABORTION

1. In General

a. Constitutional Considerations

- § 290 Generally
- § 291 Standard of review as affected by burden on right

b. Regulation of Abortion Right

(1) In General

- § 292 Generally
- § 293 Partial-birth abortion
- § 294 Spousal notification
- § 295 Period of gestation; trimester analysis

TABLE OF CONTENTS

§ 296	Significance of viability of fetus
	(2) Informed Consent to Abortion
§ 297	Generally
	(3) Parental Notification Requirements for Minor's Abortion
	(a) In General
§ 298	Generally
§ 299	Parental notification requirements; exceptions to notification
	(b) Judicial Waiver or Bypass of Notification
§ 300	Generally
§ 301	Remand
§ 302	Out-of-state minors; applicability
§ 303	Constitutionality
§ 304	Factors considered
	2. Other Abortion Restrictions
	a. In General
§ 305	Obstruction of entrance to abortion clinic
§ 306	Abortion referral and counseling
§ 307	Advertising of drugs to procure miscarriage
§ 308	Indigency
	b. On Physicians and Medical Personnel
§ 309	Generally; criminal liability
§ 310	Persons authorized to terminate pregnancy
§ 311	Required standard of medical care
§ 312	Termination in third trimester
§ 313	Refusal to participate in abortion
§ 314	Experimentation on and disposal of fetal remains
§ 315	Reporting requirements
	B. ADULTERY
§ 316	Generally; criminal liability
§ 317	Elements of offense; proof

- § 318 Form and sufficiency of indictment
- § 319 Evidence; admissibility
- § 320 —Weight and sufficiency
- § 321 —What constitutes living in open adultery

C. ASSAULT AND BATTERY; CULPABLE NEGLIGENCE

1. Assault and Battery

a. In General

- § 322 Generally
- § 323 Criminal prosecution with regard to injunction against repeat violence

b. Assault

(1) Overview

- § 324 Generally
- § 325 Necessity for physical contact or injury

(2) Elements of Assault

(a) In General

- § 326 Intent to do violence
- § 327 Apparent ability to carry out threat
- § 328 Doing of some act creating fear in victim
- § 328.50 Physical act directed toward victim

(b) Threat by Word or Act

- § 329 Generally
- § 330 Effect of conditional threat

(c) Victim's Well-Founded Fear of Imminent Violence

- § 331 Generally
- § 332 Victim's testimony as to his or her state of mind
- § 333 Effect of victim being taken by surprise

c. Battery

(1) Overview

- § 334 Generally
- § 335 Felony battery

TABLE OF CONTENTS

§ 336	Domestic battery by strangulation
§ 337	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials
§ 338	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials
§ 339	Battery on detention or commitment facility staff or juvenile probation officer
§ 340	Battery on health services personnel
	(2) Requirement of Contact or Harm with Regard to Simple Battery
§ 341	Generally; degree of injury
§ 342	Requirement that contact or harm be intentional
§ 343	Requirement that contact be against person's will
§ 344	What must be touched, struck, or harmed
§ 345	—Vehicles
	d. Aggravated Assault or Battery
	(1) Aggravated Assault
	(a) Overview
§ 346	Generally
§ 347	Assault with deadly weapon
	(b) Intent to Commit Felony
§ 348	Generally
§ 349	Intent to commit murder
§ 350	Intent to commit rape
	(2) Aggravated Battery
§ 351	Generally
§ 352	Aggravated battery by great bodily harm, permanent disability, or disfigurement
§ 353	Aggravated battery by use of deadly weapon
§ 354	Aggravated battery upon pregnant woman
§ 355	Application of transferred-intent doctrine
	(3) What Constitutes Deadly Weapon
	(a) In General
§ 356	Generally
§ 357	Proof of deadly nature of weapon

(b) Particular Objects or
Instruments as Deadly
Weapons

- § 358 Firearms
- § 359 —Unloaded or inoperable guns
- § 360 Shoes or boots
- § 361 Automobiles and bicycles
- § 362 Knives
- § 363 Other particular objects or instruments found to
be deadly weapons
- § 364 Other particular objects or instruments found not
to be deadly weapons

e. Reclassification of Offense to Higher
Degree

(1) Offenses Involving Possession or
Use of Weapon

- § 365 Generally
- § 366 Reclassification where information, instructions,
or verdict are unclear

(2) Assault or Battery of Law
Enforcement Officers,
Firefighters, Emergency Medical
Care Providers, Public Transit
Employees or Agents, and Other
Specified Officers

(a) Overview

- § 367 Generally
- § 368 Definitions of particular types of officers,
employees, or agents
- § 369 Purpose of reclassification provision; prosecutor's
discretion to charge defendant with offense of
higher degree
- § 370 Validity of reclassification provision
- § 371 Knowledge of victim's status
- § 372 Sufficiency of information; effect of jury
instructions
- § 373 Effect of resisting arrest charge
- § 374 Particular punishments

TABLE OF CONTENTS

(b) Requirement That Victim Be Engaged in Lawful Performance of Official Duties

- § 375 Generally
- § 376 Nonarrest situations
- § 377 Situations involving off-duty officers

(3) Other Offenses Warranting Reclassification

- § 378 Assault or battery on specified officials or employees
- § 379 Assault or battery on code inspectors
- § 380 Assault or battery on person who is on property of religious institution for purpose of participating in or attending religious service
- § 381 Assault or battery on persons 65 years of age or older
- § 382 Assault or battery by person detained in prison, jail, or other detention facility upon visitor or other detainee
- § 383 Assault or battery on member of staff working at sexually violent predators detention or commitment facility

f. Defenses

(1) Self-defense

(a) Overview

- § 384 Generally
- § 385 Requirement of present danger to defendant
- § 386 Where battery is on police officer
- § 387 Burden of proof

(b) Admissibility of Evidence

- § 388 Generally; evidence of victim's character or reputation
- § 389 Evidence of previous altercations

(c) Jury Instructions

- § 390 Generally
- § 391 Justifiable use of deadly or nondeadly force

- § 392 “Forcible felony” instruction
- § 393 Castle doctrine
- § 394 Burden of proof
- § 395 Battery on police officer

(2) Other Defenses

- § 396 Consent
- § 397 Intoxication
- § 398 Provocation
- § 399 Defense of others or property

g. Lesser-Included Offenses of Assault and Battery

(1) Lesser-Included Offenses of Aggravated Assault

- § 400 Generally; assault or battery
- § 401 Discharging firearm in public; improper exhibition of firearm
- § 402 Display or use of firearm in commission of felony
- § 403 Culpable negligence; reckless driving

(2) Lesser-Included Offenses of Battery

- § 404 Generally
- § 405 Lesser-included offenses of battery on law enforcement officer or similar public officer

(3) Lesser-Included Offenses of Aggravated Battery

(a) In General

- § 406 Aggravated assault
- § 407 Simple battery; felony battery
- § 408 Attempted aggravated battery; culpable negligence

(b) Firearms Offenses

- § 409 Improper exhibition of firearm
- § 410 Display or use of weapon or firearm while engaged in felony
- § 411 Discharging firearm in public

TABLE OF CONTENTS

h. Assault and Battery as Included Offenses of Other Crimes

(1) Robbery

- § 412 Generally
- § 413 Aggravated assault as lesser-included offense of
armed robbery
- § 414 Aggravated battery as lesser-included offense of
armed robbery

(2) Manslaughter and First-Degree Premeditated Murder

- § 415 Manslaughter
- § 416 First-degree premeditated murder

(3) Attempted Murder

- § 417 Battery or aggravated battery as lesser-included
offense
- § 418 Aggravated assault as lesser-included offense
- § 419 Attempted aggravated battery as lesser-included
offense

(4) Other Crimes

- § 420 Kidnapping
- § 421 False imprisonment
- § 422 Sexual battery, lewd and lascivious battery on
child, indecent assault on child

2. Culpable Negligence

a. In General

- § 423 Generally
- § 424 What is culpable negligence
- § 425 Necessity of showing likelihood of death or great
bodily harm, or actual personal injury

b. Storing or Leaving Loaded Firearm Within Reach or Easy Access of Minor

- § 426 Generally
- § 427 Waiting period for arrest when minor child is shot
by family member

D. BIGAMY

- § 428 Generally

- § 429 Indictment or information charging bigamy
- § 430 Proof of bigamy

E. HOMICIDE

1. Types and Degrees of Homicide

a. Definition and Classification

- § 431 What constitutes homicide
- § 432 Killing of fetus
- § 433 —Partial-birth abortion
- § 434 Classification of homicides for purposes of punishment

b. Murder and Attempted Murder

(1) First-Degree Premeditated Murder

- § 435 Generally
- § 436 Lesser-included offenses of first-degree premeditated murder
- § 437 Attempted first-degree premeditated murder

(2) First-Degree Murder as Result of Distribution of Controlled Substance

- § 438 Generally
- § 439 Causation

(3) Second-Degree Depraved-Mind Murder

- § 440 Generally
- § 441 Lesser-included offenses of second-degree depraved-mind murder
- § 442 Attempted second-degree murder

(4) Third-Degree Murder

- § 443 Generally; attempt
- § 444 Relationship between murder and underlying felony in prosecution for third-degree murder

c. Felony Murder

(1) In General

- § 445 General principles

TABLE OF CONTENTS

§ 446	Relationship between underlying felony and murder in prosecution for felony murder
§ 447	Double jeopardy considerations in felony-murder cases
(2) First-Degree Felony Murder	
§ 448	Generally
§ 449	Statutorily enumerated felonies
§ 450	Lesser-included offenses of first-degree felony murder
(3) Second-Degree Felony Murder	
§ 451	Generally
(4) Attempted Felony Murder	
§ 452	Generally
d. Manslaughter	
(1) In General	
§ 453	Generally; depraved-mind distinguished
§ 454	Elements of manslaughter
§ 455	—Attempted manslaughter
(2) What Constitutes Culpable Negligence for Purposes of Manslaughter	
§ 456	Generally
§ 457	Evaluation of conduct on case-by-case basis
§ 458	Failure to seek medical assistance; incompetent medical care
§ 459	Use of deadly weapon
(3) Particular Statutory Crimes of Manslaughter	
§ 460	Aggravated manslaughter of elderly person or disabled adult
§ 461	Aggravated manslaughter of child under 18 years of age
§ 462	Aggravated manslaughter of officer, firefighter, emergency medical technician, or paramedic
§ 463	Assisting self-murder
§ 464	Unnecessary killing to prevent unlawful act

§ 465 —Necessity of unlawful act; type of unlawful act contemplated by the statute

2. Elements of Culpable Homicide

a. Intent

(1) In General

§ 466 Requisite intent as affected by degree of crime charged

§ 467 Significance of use of weapon as element

§ 468 Doctrine of transferred intent

(2) Premeditation

(a) In General

§ 469 Generally; definition

§ 470 Required duration

(b) Provocation or Passion Negating Premeditation

§ 471 Generally

§ 472 Significance of amount of time elapsed between provocation and killing

§ 473 Anger and verbal abuse as provocation

§ 474 Adultery or illicit sexual intercourse with relative as provocation

(3) Depraved Mind

§ 475 Generally; imminently dangerous conduct defined

§ 476 Firing gun at or near victim

(4) Intent to Commit Other Felony

§ 477 Generally

§ 478 Murder committed to accomplish purpose of underlying felony

b. Causal Connection Between Act and Death

§ 479 Generally

§ 480 Prosecutions for felony murder

§ 481 Intervening and superseding cause of death

§ 482 —Negligence and medical malpractice

§ 483 —Physical condition of victim

TABLE OF CONTENTS

§ 484	Abolition of year-and-a-day rule
3. Participants in Offense	
a. In General	
§ 485	Generally; liability of principal for acts of coparticipants
§ 486	Liability of defendant for act of third party
§ 487	Effect of conviction or acquittal of principal
b. Participants in Felony-Murder Prosecution	
(1) In General	
§ 488	Generally
§ 489	Intent to kill not a factor in holding cofelons liable
§ 490	First-degree and second-degree felony murder distinguished; killing performed by nonparticipant
§ 491	—Responsibility for act of companion while escaping from scene of crime
(2) Application of Felony-Murder Doctrine Where Person Killed is Cofelon	
§ 492	Generally
§ 493	Where cofelon is killed by police officer
§ 494	Where cofelon kills him- or herself
4. Defenses to Homicide	
a. In General	
(1) In General	
§ 495	Generally
§ 496	Defense of habitation or person therein
§ 497	Resisting arrest
§ 498	Withdrawal from criminal enterprise
§ 499	Double jeopardy
(2) Excusable Homicide	
§ 500	Generally
§ 501	Accident or misfortune

§ 502 Sudden combat

(3) Justifiable Homicide; Use of
Deadly Force

§ 503 Generally; presumption of fear of death or great
bodily harm

§ 504 Aggression or provocation by accused

§ 505 Defendant's belief or appreciation as to use of
deadly force

(4) Intoxication

§ 506 Generally; statutory elimination of voluntary
intoxication defense

§ 507 Involuntary intoxication

b. Self-Defense

(1) In General

(a) General Considerations

§ 508 Generally; nature and foundation of defense

§ 509 Threats by person killed or fear of harm, generally

§ 510 Unintentional killing of third person

(b) Provocation of Conflict by
Slayer

§ 511 Generally

§ 512 What constitutes provocation of conflict

§ 513 Withdrawal of slayer after having provoked
conflict

(c) Assertion and Proof or
Disproof of Claim

§ 514 Generally

§ 515 Felony murder; commission of underlying felony

§ 516 Instruction on forcible-felony exception

(2) Necessity to Take Life

(a) Existence of Necessity for
Killing

§ 517 Generally

§ 518 After danger has passed

TABLE OF CONTENTS

(b) Perception of Necessity for Killing

- § 519 Necessity as apparent to reasonably prudent person
- § 520 Defendant's belief in necessity for killing, generally
- § 521 Past conduct of decedent
- § 522 —“Battered woman” syndrome

(c) Avoidance of Necessity for Killing; Duty to Retreat

- § 523 Generally; statutory abolishment of common-law duty to retreat

c. Matters Not Generally Sufficient as Defenses

- § 524 Duress or provocation
- § 525 Euthanasia or mercy killing; substituted-judgment doctrine
- § 526 Infancy
- § 527 Negligence or actions of others

5. Indictment or Information

a. In General

(1) General Considerations

- § 528 Generally; necessity for indictment
- § 529 Statutory form of indictment or information

(2) Manner of Charging Offense; Essential Facts

- § 530 Generally
- § 531 Sufficiency of allegations
- § 532 Joinder of offenses in one count; duplicity
- § 533 Alternative counts

(3) Variance Between Accusation and Proof

- § 534 Generally
- § 535 Conviction for aiding and abetting

b. Particular Allegations

(1) In General

- § 536 Name of victim
- § 537 Manner of producing death
- § 538 Time of homicidal act
- § 539 Place of homicidal act; place of death distinguished
- § 540 Aggravating circumstances in death penalty case

(2) Degree of Murder

- § 541 Generally
- § 542 Premeditation
- § 543 Felony murder
- § 544 Indictment charging premeditated murder as permitting prosecution under both premeditated and felony-murder theories

6. Trial

a. In General

- § 545 Generally
- § 546 Severance of trial; codefendants
- § 547 —Two or more offenses

b. Province of Court and Jury

- § 548 Generally
- § 549 Excuse or justification for killing
- § 550 Self-defense
- § 551 Voluntary intoxication
- § 552 Other particular matters for jury

c. Jury Instructions

(1) In General

- § 553 Generally
- § 554 General requisites and sufficiency
- § 555 Necessity to confine instructions to the evidence
- § 556 Use of standard jury instructions
- § 557 —As to circumstantial evidence
- § 558 Use of statutory language
- § 559 Request for instructions

TABLE OF CONTENTS

§ 560	Reinstructing the jury
	(2) Instructions as to Defenses and Matters of Justification or Excuse
	(a) In General
§ 561	Generally
§ 562	Inconsistent defenses
	(b) Excuse or Justification
§ 563	Generally
§ 564	Sudden combat
§ 565	Use of standard jury instructions
§ 566	Reinstructing the jury
§ 567	Defendant's waiver of omission or error by failure to make objection or request
	(c) Self-Defense
§ 568	Generally
§ 569	Forcible felony
§ 570	Right to nonretreat in the home
§ 571	Previous acts of violence by victim
§ 572	Effect of incomplete or misleading instruction
§ 573	Reinstructing the jury
§ 574	Felony-murder cases
	(d) Other Defenses
§ 575	Insanity
§ 576	Intoxication
§ 577	—Felony-murder cases
	(3) Instructions as to Degrees of Homicide
§ 578	Generally
§ 579	Necessity that lesser degree of homicide be supported by evidence
	(4) Instructions as to Included Offenses
	(a) In General
§ 580	Category 1 offenses; necessarily included offenses
§ 581	Category 2 offenses; offenses which may or may not be included

- § 582 Harmless error in light of verdict
- § 583 Effect of expiration of applicable limitations period
- § 584 Waiver of instructions

(b) Particular Offenses

- § 585 Accessory after the fact
- § 586 Assault and battery
- § 587 Attempted homicide
- § 588 Felony murder

(5) Instructions as to Other Matters

- § 589 Intent or premeditation
- § 590 —Transferred intent
- § 591 Underlying felony in felony-murder prosecution
- § 592 Manslaughter
- § 593 —Excuse or justification
- § 594 —Culpable negligence
- § 595 Principals, aiders, and abettors
- § 596 —Independent act

(6) Punishment

- § 597 Generally; noncapital cases
- § 598 Capital cases
- § 599 —Jury's advisory role
- § 600 Aggravating and mitigating circumstances in capital cases
- § 601 —Particular circumstances
- § 602 —Nonstatutory mitigating circumstances; *Hitchcock* error

(7) Appellate Review Based on Erroneous Instruction

- § 603 Generally; necessity for objection
- § 604 Effect of erroneous instruction being favorable to the defendant
- § 605 Effect of request for, or approval of, erroneous or inapplicable instruction
- § 606 Consideration of erroneous instruction in light of other instructions or verdict

d. Verdict

- § 607 Generally; necessity for clear and unambiguous verdict

TABLE OF CONTENTS

- § 608 Effect of verdict of guilty of offense of lesser degree than charged
- § 609 Reducing verdict to lesser degree

Volume 16A

7. Evidence

a. In General; Burden of Proof

(1) In General

- § 610 Generally

(2) Burden of Proof

- § 611 Generally

- § 612 Felony-murder; premeditation

- § 613 Defenses; self-defense, alibi

b. Presumptions and Inferences

(1) In General

- § 614 Presumption of innocence; presumptions as to malice, intent, and opportunity

(2) Premeditation

- § 615 Generally

- § 616 Circumstances justifying inference of premeditation

- § 617 Mode or manner of killing

c. Admissibility; Relevance and Materiality

(1) Overview

(a) In General

(i) General Principles

- § 618 Generally

- § 619 Circumstantial evidence

- § 620 Defenses

- § 621 Corpus delicti

- § 622 Identity of accused; presence at scene of homicide

(ii) Conduct, Appearance,
and Demeanor of
Accused

§ 623 Generally

§ 624 Concealment of crime or attempt to avoid
prosecution; flight

(iii) Collateral or Remote
Facts

§ 625 Generally

§ 626 Evidence of collateral crimes

(iv) Identification of
Deceased by Family
Member

§ 627 Generally

§ 628 Property belonging to deceased

(v) Appellate Review of
Admission or Exclusion
of Evidence

§ 629 Generally

(b) Motive or Other Mental
State

(i) Motive

§ 630 Generally

§ 631 Collateral crimes evidence

§ 632 Murder of police officer

§ 633 Previous relations of parties

§ 634 Relations with spouses

(ii) Other Mental State or
Condition

§ 635 Generally

TABLE OF CONTENTS

	(c) Character, Reputation, and Specific Acts
	(i) Character, Reputation, and Credibility of Accused
§ 636	Generally
	(ii) Prior Bad Acts of Accused
§ 637	Generally
§ 638	Of codefendant
	(iii) Proof of Other Crimes Committed by Accused
§ 639	Generally
§ 640	Similar fact evidence; <i>Williams</i> rule
	(iv) Character or Reputation of Deceased
§ 641	Generally
§ 642	Specific acts of violence
§ 643	Reputation in the community
§ 644	Foundation required
	(d) Threats Made by Accused or Victim
	(i) Threats Made by Accused
§ 645	Generally
§ 646	To or concerning witnesses
	(ii) Threats Made by Victim
§ 647	Generally
§ 648	Necessity of proper foundation
	(2) Hearsay, in General; Res Gestae
§ 649	Hearsay; exceptions
§ 650	State of mind
§ 651	—Of victim
§ 652	Res gestae
§ 653	—Statements of third persons

- § 654 —Spontaneous statement; excited utterance
- § 655 —Time of utterance

(3) Admissions and Confessions

(a) Admissions

- § 656 Generally
- § 657 Tacit admissions; silence of accused
- § 658 Self-serving declarations
- § 659 Declarations of coconspirators

(b) Confessions

- § 660 Generally
- § 661 Proof of corpus delicti
- § 662 Codefendant's confession in joint trial

(4) Dying Declarations

- § 663 Generally
- § 664 Determination of admissibility
- § 665 —Predicate or foundation for admission into evidence
- § 666 Competency of declarant
- § 667 Consciousness or apprehension of impending death
- § 668 —Effect of elapsed time
- § 669 Subject matter of declaration
- § 670 Form and number of statements
- § 671 Credible effect; refuting declaration

(5) Opinion and Expert Evidence

(a) Testimony of Lay Witnesses

- § 672 Generally
- § 673 Issue of self-defense
- § 674 Identity of footprints
- § 675 Other subjects

(b) Opinion Testimony of Expert Witnesses

- § 676 Generally
- § 677 Manner and cause of death; wounds
- § 678 —Blood spatters and bloodstains
- § 679 "Diminished capacity" defense

TABLE OF CONTENTS

§ 680	Mental illness or disease
§ 681	Battered-woman syndrome
§ 682	DNA evidence
§ 683	Nature of weapon or instrumentality causing death
§ 684	Identity of fingerprints, hair, or bite marks
(6) Real and Demonstrative Evidence	
(a) In General	
§ 685	Generally
§ 686	Clothing of deceased
§ 687	Instrument or implement of death
§ 688	Models, maps, and other representations
§ 689	Tests and experiments
§ 690	—DNA evidence
(b) Photographs, Motion Pictures, and Videotapes	
§ 691	Generally
§ 692	Reenactment of crime
§ 693	Photographs of location of homicide
§ 694	Photographs of body of victim
§ 695	—Autopsy or morgue photographs
d. Weight and Sufficiency	
§ 696	Generally
§ 697	Circumstantial evidence
§ 698	Corpus delicti
§ 699	—Proof sufficient for jury to consider defendant's confession
§ 700	Credibility of witnesses
§ 701	—Testimony of an accomplice
§ 702	Criminal intent
§ 703	—Principals, aiders, and abettors
§ 704	Premeditation
§ 705	Self-defense
§ 706	Appellate review

F. HOMICIDE BY OPERATION OF MOTOR VEHICLE

1. Types and Nature of Offenses

a. In General

§ 707 Generally

§ 708 Vessel homicide

b. Culpable Negligence

§ 709 Generally; manslaughter resulting from culpable negligence

§ 710 What constitutes culpable negligence

§ 711 —Speeding as culpable negligence

§ 712 —Intoxication as culpable negligence

§ 713 —Falling asleep at the wheel; other particular acts as culpable negligence

c. Vehicular Homicide

§ 714 Generally

§ 715 Relationship of vehicular homicide to manslaughter

§ 716 Particular instances of vehicular homicide

§ 717 Vehicular homicide and leaving the scene of accident

d. Driving Under the Influence—Manslaughter

§ 718 Generally

§ 719 Relationship of DUI manslaughter to manslaughter by culpable negligence

§ 720 Relationship of DUI manslaughter to vehicular homicide

2. Defenses to Criminal Charges

§ 721 Negligence or misconduct of victim or third party

§ 722 Lack of medical treatment

§ 723 Lack of criminal intent

§ 724 Insanity defense in DUI manslaughter cases

§ 725 Defense of voluntary intoxication in DUI manslaughter cases

§ 726 Double jeopardy

TABLE OF CONTENTS

3. Procedural Matters in Prosecution of Alleged Offenses

a. Indictment and Information

§ 727 Charges of manslaughter by culpable negligence

§ 728 Charges of vehicular homicide

b. Evidentiary Matters

(1) In General

§ 729 Admissibility of evidence

§ 730 Use of circumstantial evidence

§ 731 Oral testimony

§ 732 Expert testimony

(2) Physical Tests for Alcohol and Drugs

§ 733 Required submission to blood test when death or
serious injury occurs

§ 734 How required tests are performed when death or
serious bodily injury occurs

§ 735 General implied consent to test for alcohol or
drugs

§ 736 What constitutes probable cause to administer
tests

§ 737 Admissibility of test results

§ 738 Challenges to admissibility based on test
procedures

§ 739 Admissibility of affidavit showing test results

§ 740 Admissibility of refusal to give consent

c. Matters of Proof and Presumptions

§ 741 Burden of proving manslaughter

§ 742 Proving vehicular homicide

§ 743 Proving DUI manslaughter

§ 744 Presumptions and inferences

§ 745 —Presumptions created by chemical testing

§ 746 — —When testing requirements are not followed

G. INCEST

1. In General

§ 747 Generally; definition and nature

- § 748 Related offenses
- § 749 Policies underlying making incest a crime

2. Elements of Offense

- § 750 Sexual intercourse
- § 751 Knowledge
- § 752 Consanguinity
- § 753 Force and consent

3. Proving Incest

- § 754 Generally; standard of proof
- § 755 Testimony of accomplice or victim
- § 756 Credibility issues

4. Procedural Matters

- § 757 Form and sufficiency of indictment
- § 758 Jury instructions
- § 759 Appellate review; new trial

H. KIDNAPPING, FALSE IMPRISONMENT, AND RELATED OFFENSES

1. Kidnapping

a. In General

- § 760 Kidnapping defined
- § 761 Kidnapping of child
- § 762 Intent to hold the victim for ransom or reward
- § 763 Intent to inflict bodily harm or terrorize
- § 764 Intent to commit or facilitate a felony; *Faison* test
- § 765 —Application of confinement
- § 766 Reclassification of offense; kidnapping of child under 13 years of age
- § 767 Lesser-included offenses
- § 768 Civil liability for damages
- § 769 Defenses

b. Procedural Matters

- § 770 Sufficiency of charging instrument
- § 771 Venue
- § 772 Evidence
- § 773 Jury instructions

TABLE OF CONTENTS

§ 774	—As to intent
§ 775	—As to lesser-included offenses
2. False Imprisonment	
a. In General	
§ 776	Generally
§ 777	Requisite intent
§ 778	Sufficiency of confinement or restraint
§ 779	Reclassification of offense where victim is child under 13 years of age
§ 780	Lesser-included offenses; false imprisonment as lesser-included offense
§ 781	Defenses
b. Procedural Matters	
§ 782	Sufficiency of charging instrument
§ 783	Venue
§ 784	Evidence
§ 785	Jury instructions
3. Custody Offenses	
a. Interference with Custody	
§ 786	Generally
§ 787	Presumption of knowledge of age
§ 788	Defenses
b. Removal of Minor from State; Concealment of Minor	
§ 789	Generally
§ 790	Defenses
4. Human Trafficking	
§ 791	Legislative findings; training
§ 792	Human trafficking
I. LEWD AND LASCIVIOUS CONDUCT; OBSCENITY	
1. Lewd and Lascivious Conduct	
a. In General	
§ 793	Generally

- § 793.50 Lewd or lascivious exhibition by a prisoner in the presence of a correctional facility employee
- § 794 Association or cohabitation
- § 795 —Elements and proof of offense
- § 796 Unnatural acts
- § 797 Indecent exposure
- § 798 —Nudity
- § 799 Sufficiency of charging instrument

b. Lewd and Lascivious Conduct Involving Children

- § 800 Offenses
- § 801 —Effect of more than one person being present during act
- § 802 Validity of statutory prohibition
- § 803 Evidence of offense; sufficiency
- § 804 Evidence of offense; insufficiency
- § 805 Evidence of offense; hearsay
- § 806 Lesser-included and related offenses
- § 807 Defenses

2. Obscenity

a. In General

- § 808 State's right to regulate obscene material; constitutionality
- § 809 Limitation on regulation of private possession; child pornography
- § 810 Municipal and county ordinances; constitutionality
- § 811 What is obscene material
- § 812 —Contemporary community standards test
- § 813 —Particular materials that may be obscene

b. Offenses Involving Obscene Material

(1) In General

- § 814 Generally
- § 815 Providing obscene telephone or television service
- § 816 Making obscene telephone calls
- § 817 Requisite element of knowledge
- § 818 Validity of statutory prohibitions
- § 819 Civil liability for damages

TABLE OF CONTENTS

§ 820 Injunctive relief

(2) Offenses Involving Children

§ 821 Selling, loaning, or otherwise transmitting obscene material to minors

§ 822 Showing or exhibiting obscene material to minors

§ 823 Sale or transfer of custody of minor for purposes of producing obscene material

§ 824 Possession of child pornography; sexual performance of a child

§ 825 Possession of child pornography—Possession of child pornography with intent to promote

§ 826 Computer pornography

§ 827 —Use of online services

§ 828 —Transmitting, penalties

§ 829 Victim's civil remedy

§ 830 Federal law

§ 831 Defenses

c. Search, Seizure, and Disposal of Obscene Matter

§ 832 Generally

§ 833 Disposal or destruction of obscene material

§ 834 Return of property seized

d. Procedural Matters

§ 835 Sufficiency of charging instrument

§ 836 Conduct of trial

J. DEFAMATION; LIBEL AND SLANDER

1. In General

a. Common-Law Libel

§ 837 Generally; constitutionality of criminal sanction

§ 838 Elements of libel; public effect

§ 839 —Malice and falsity

b. Statutory Offenses

§ 840 Publication of libel

§ 841 Communication of libelous matter for publication

§ 842 Defamation of women

- § 843 Derogatory statements as to banks and building
and loan associations

c. Defenses

- § 844 Privilege
§ 845 Truth and good motives

2. Prosecution

- § 846 Notice
§ 847 Venue
§ 848 Sufficiency of accusatory instrument; libel and
defamation
§ 849 —Slander
§ 850 Evidence; presumptions and burden of proof
§ 851 —Admissibility
§ 852 Trial; instructions

K. PROSTITUTION

1. In General

- § 853 Generally; constitutionality of statutes prohibiting
prostitution and assignation
§ 854 Statutory definitions
§ 855 Offense of prostitution
§ 856 —Testing for sexually transmissible diseases
§ 857 —Prostitution by or procurement of person known
to be infected with sexually transmissible
disease; HIV
§ 858 Trial; admissibility of evidence

2. Related Offenses

- § 859 Places of lewdness, assignation, and prostitution
§ 860 Aiding, abetting, participating in, coercing, or
soliciting prostitution
§ 861 Procurement of persons under the age of 18
§ 862 Living off earnings of prostitute

TABLE OF CONTENTS

L. SEXUAL BATTERY AND RELATED OFFENSES

1. In General

a. Effect of Statute

(1) In General

- § 863 Generally; definition of “sexual battery”
- § 864 Sexual battery by one who is in a familial relationship with the victim
- § 865 Significance of age of victim and offender
- § 866 Reclassification of offenses for multiple perpetrators
- § 867 Administration of medroxyprogesterone acetate (MPA) to persons convicted of sexual battery

(2) Requirement of Penetration or Union

- § 868 Generally
- § 869 Oral penetration
- § 870 Digital penetration
- § 871 Offenders; criminal liability of spouse

b. Particular Elements of Sexual Battery

(1) Sexual Battery on Persons Under 12 Years of Age

- § 872 Generally; elements of sexual battery as capital or life felony; attempt

(2) Sexual Battery on Nonconsenting Persons 12 Years Old or Older

(a) Elements of Sexual Battery as a Life Felony

- § 873 Generally; deadly weapon or physical force
- § 874 Deadly weapon or physical force; lack of consent

(b) Elements of Sexual Battery as First-Degree Felony

- § 875 Generally; physically helpless or physically incapacitated victim
- § 876 Mentally defective or mentally incapacitated victim

- § 877 Coercion of victim
- § 878 Offender as law enforcement officer, correctional officer, or correctional probation officer

c. Lesser-Included Offenses of Sexual Battery

(1) Simple Battery

- § 879 Generally
- § 880 Assault offenses
- § 881 Lewd, lascivious, or indecent acts
- § 882 As between specific sexual battery offenses

(2) Sexual Battery as Included in Other Crime

- § 883 Generally; first-degree murder and felony murder
- § 884 Burglary with intent to commit an assault

d. Related Offenses

- § 885 Sexual activity with person under 18 by person with familial or custodial authority
- § 886 —Factors considered in determining existence of familial or custodial relationship
- § 887 Sexual misconduct by Juvenile Justice Department employee
- § 888 Unlawful sexual activity with certain minors
- § 889 —Effect of victim's prior sexual conduct
- § 890 Duty to report sexual battery
- § 891 Unlawful disclosure, publication, or broadcast of information identifying sexual offense victim
- § 892 Female genital mutilation

2. Defenses

- § 893 Generally; lack of intent
- § 894 Acts committed upon corpse
- § 895 Age; mistake or misrepresentation
- § 896 —Youth of offender
- § 897 Consent
- § 898 Unchastity
- § 899 Abandonment of crime

3. Indictments and Informations

- § 900 Generally

TABLE OF CONTENTS

§ 901	Multiple counts of sexual battery
§ 902	Attempted sexual battery
§ 903	Sufficiency of allegations
§ 904	Variance between allegations and proof
4. Evidence	
a. In General; Burden of Proof	
§ 905	Generally; use of circumstantial evidence
§ 906	Presumptions
b. Admissibility of Evidence	
(1) Evidence of Victim's Prior Consensual Sexual Activity	
§ 907	Generally; effect of "rape shield law"
§ 908	Admissibility to exculpate defendant
§ 909	Admissibility to establish pattern of conduct relevant to consent
§ 910	Admissibility to establish victim's motive to fabricate charge; right of confrontation
(2) Evidence of Other Acts and Crimes	
§ 911	Generally; relevance of other acts or crimes
§ 912	Proof of identity, bias, prejudice, intent, motive, or a common plan or scheme
§ 913	Evidence of defendant's bad character distinguished
§ 914	Similar fact evidence in familial or custodial context
§ 915	—Requisites for admissibility of evidence
(3) Out-of-Court Statements; Hearsay	
(a) In General	
§ 916	Victim's out-of-court statements to rebut alleged consent; first complaint rule
(b) Hearsay Statements of Child Victims	
§ 917	Generally

- § 918 Child “unavailable” as witness
- § 919 Other corroborative evidence
- § 920 Factors considered in evaluating reliability of
child victim’s hearsay statement
- § 921 Findings by court on record
- § 922 Testimony of experts or other adult witnesses as
to statements of child victim
- § 923 Videotape or closed-circuit televised testimony of
child
- § 924 —Effect on Confrontation Clause

(4) Other Evidence

- § 925 Corroborative evidence
- § 926 Confessions
- § 927 Prior inconsistent or consistent statements
- § 928 Competency of child victim to testify
- § 929 Reputation of victim
- § 930 —Victim’s reputation as prostitute
- § 931 Evidence of victim’s manner of dress
- § 932 Evidence as to identity of defendant; genetic
fingerprinting (DNA evidence)
- § 933 Evidence of defendant’s knowledge of pregnancy;
assistance in attempting to procure abortion
- § 934 Expert testimony as to symptoms or behavior of
child victim

5. Trial and Sentence

a. Right to Fair and Impartial Trial

- § 935 Generally
- § 936 Exclusion of public from the courtroom
- § 937 Improper prosecutorial comments
- § 938 Validity of plea to related lesser offense

b. Jury Instruction on Sexual Battery and Related Offenses

(1) In General

- § 939 Generally; permissible scope of instruction
- § 940 Lesser-included offenses of sexual battery
- § 941 —Attempt

(2) Particular Elements

- § 942 Consent; mental capacity of victim

TABLE OF CONTENTS

§ 943	Penetration or union
§ 944	Other particular elements of sexual battery
c. Sentence on Conviction of Sexual Battery and Related Offenses	
(1) In General	
§ 945	Generally
§ 946	Victim injury under the 1995 Sentencing Guidelines
§ 947	Victim injury under the Criminal Punishment Code
§ 948	Multiple punishments; conviction on multiple counts of sexual battery
§ 949	—Conviction of sexual battery and other offense
§ 950	Attempted sexual battery
§ 951	Restrictions on place of residence for persons convicted of certain sex offenses
(2) Sentence upon Conviction of Sexual Battery as Capital Felony; Death Penalty	
§ 952	Generally
§ 953	Aggravating circumstances
§ 954	Conviction of attempted capital battery
(3) Departure from Sentencing Guidelines and Criminal Punishment Code in Sexual Battery Prosecutions	
§ 955	Generally
§ 956	Emotional trauma of victim
§ 957	Improper use of position of familial authority over victim
§ 958	Defendant as habitual or violent felony offender
§ 959	Defendant as repeat sexual batterer
6. Sexual Predators and Sexual Offenders	
§ 960	Generally
§ 961	Sexual predator designation
§ 962	Constitutional considerations
§ 963	Duty of court; plea agreements

- § 964 Prosecutions for acts or omissions
- § 965 Civil Commitment of Sexual Predators

M. ROBBERY

1. In General

- § 966 Generally; robbery defined
- § 967 Validity of statutes; double jeopardy
- § 968 Attempted robbery
- § 969 Other crimes distinguished
- § 970 Persons criminally liable; aiders and abettors
- § 971 —Accessory after the fact

2. Types of Robbery

a. In General

- § 972 Robbery by sudden snatching
- § 973 Carjacking
- § 974 Home-invasion robbery

b. Armed Robbery

- § 975 Generally
- § 976 What constitutes a weapon
- § 977 What constitutes a deadly weapon
- § 978 What constitutes a firearm
- § 979 Significance of threat to use weapon

3. Elements of Offense

a. In General; Taking of Property from Person or Custody of Another

- § 980 Generally; what constitutes taking
- § 981 What constitutes property
- § 982 Nonconsent of owner or person in possession
- § 983 —Taking from agent or representative of owner
- § 984 —Taking from persons with joint custody

b. Intent to Steal

- § 985 Generally

c. Force, Violence, or Intimidation

- § 986 Generally
- § 987 Actual and constructive violence distinguished

TABLE OF CONTENTS

§ 988	—Threat of accusation, arrest, or prosecution
§ 989	—Obtaining property under pretense or color of legal authority
§ 990	Time of force or violence; continuous series of acts or events
§ 991	Significance of degree of force
§ 992	Putting victim in fear
4. Indictment or Information	
§ 993	Generally
§ 994	Joinder of offenses
§ 995	Sufficiency of particular allegations
§ 996	—Description and value of property
§ 997	—Ownership of property
5. Admissibility and Sufficiency of Evidence	
a. In General	
§ 998	Generally
§ 999	Circumstantial evidence
§ 1000	Proof of intent, motive, or premeditation
§ 1001	—Prior or subsequent acts; other crimes
§ 1002	Proof of robbery with weapon
§ 1003	Admission or confession of defendant
§ 1004	Testimony of accomplices
§ 1005	—Confession of codefendant, accomplice, or coconspirator; <i>Bruton</i> rule
b. Proof of Identity	
§ 1006	Generally
§ 1007	Fingerprints, ballistics, or DNA evidence
§ 1008	Photographic and voice identification
§ 1009	Field confrontation
§ 1010	Lineup
6. Trial, Instructions, Verdict, and Sentence	
a. In General	
§ 1011	Generally; applicable rules
§ 1012	Determination of factual issues
b. Instructions to Jury	
§ 1013	Generally; applicable rules

- § 1014 Identity of defendant
- § 1015 Specific elements of robbery
- § 1016 Lesser-included offenses

c. Verdict and Conviction

- § 1017 Generally

d. Sentence

- § 1018 Generally
- § 1019 Habitualized sentence
- § 1020 Departure from sentencing guidelines
- § 1021 —Exceeding statutory maximum
- § 1022 Departure sentence under the Criminal Punishment Code
- § 1023 Multiple counts of robbery; concurrent or consecutive sentences
- § 1024 Robbery and other offense in single transaction
- § 1025 Life imprisonment

V. CRIMES OR OFFENSES AGAINST PROPERTY

A. ARSON AND RELATED OFFENSES

1. Arson

- § 1026 Generally
- § 1027 Definitions
- § 1028 What constitutes damage to a structure
- § 1029 Intent required for arson
- § 1030 —Burning one's own property
- § 1031 Second-degree arson as lesser-included offense of first degree
- § 1032 Arson resulting in bodily harm

2. Related Offenses

- § 1033 Burning to defraud insurer
- § 1034 Preventing or obstructing extinguishment of fire; interference with firefighter
- § 1035 False fire alarm
- § 1036 Firebombs
- § 1037 Burning forest, grass, wildlands, or marshes

TABLE OF CONTENTS

3. Indictment or Information

§ 1038 Generally

4. Evidence

§ 1039 Generally

§ 1040 Corpus delicti

§ 1041 Existence of insurance on property

§ 1042 Circumstantial evidence

B. BURGLARY

1. In General

§ 1043 Generally

§ 1044 “Structure,” “dwelling,” and “curtilage” defined

§ 1045 —Enclosure requirement

§ 1046 What constitutes entering or remaining

§ 1047 Intent

§ 1048 Degrees of the offense

§ 1049 Burglary of an occupied or unoccupied dwelling

§ 1050 Armed burglary

§ 1051 —Pocketknife

§ 1052 Lesser-included offenses

§ 1053 Facilitating burglary by impairing power or
phone service to dwelling

2. Burglary of a Conveyance

§ 1054 Generally

§ 1055 What constitutes entry

3. Possession of Burglary Tools

§ 1056 Generally

§ 1057 What kind of trespass will support conviction

4. Indictment or Information

§ 1058 Generally

§ 1059 Using the statutory language to charge the
offense; variance between charge and proof

§ 1060 Intent

§ 1061 Ownership or possession of structure or
conveyance

5. Defenses

§ 1062 Consent to enter or remain

- § 1063 —Premises of estranged spouse or cohabitor
- § 1064 —Premises open to the public
- § 1065 Intoxication
- § 1066 Double jeopardy

6. Evidence

a. In General

- § 1067 Unauthorized entering or remaining
- § 1068 Intent to commit an offense
- § 1069 Evidence of stealthy entry without consent of owner or occupant
- § 1070 Ownership of structure or conveyance entered
- § 1071 Evidence of intent to use burglary tools possessed by defendant
- § 1072 Evidence establishing armed burglary

b. Circumstantial Evidence

(1) In General

- § 1073 Generally
- § 1074 Fingerprint evidence
- § 1075 Defendant's presence at or near crime scene
- § 1076 Prior offenses

(2) Possession of Stolen Property

- § 1077 Generally
- § 1078 Necessity that possession be exclusive
- § 1079 Necessity that burglary be recent
- § 1080 Defendant's explanation for possession

7. Instructions

- § 1081 Generally
- § 1082 Harmless errors
- § 1083 Remaining in
- § 1084 Possession of recently stolen property
- § 1085 Instructions as to lesser-included offenses

8. Judgment and Sentence

- § 1086 Generally
- § 1087 Multiple convictions arising from a single episode
- § 1088 —Burglary and possession of burglary tools

TABLE OF CONTENTS

C. EXTORTION, BLACKMAIL, AND THREATS

1. In General

§ 1089 Generally

§ 1090 Making and sending threatening communication

2. Extortion by Public Officers

§ 1091 Generally

§ 1092 Who may commit the offense

§ 1093 Elements of the offense

§ 1094 Requirements for indictment

3. Blackmail or Extortion by Private Persons

§ 1095 Generally

§ 1096 Constitutionality of statute

§ 1097 Necessity of intent and ability to carry out threat

§ 1098 Necessity that there be a malicious threat

§ 1099 Evidence

§ 1100 Attempted extortion

4. Corruption by Threat Against Public Servant

§ 1101 Generally

§ 1102 Constitutionality

D. THEFT; DEALING IN STOLEN PROPERTY

1. In General; Particular Offenses

a. Florida Anti-Fencing Act

(1) In General

§ 1103 Purpose of Act; constitutionality

§ 1104 Property and services within purview of statute

§ 1105 —Stolen property defined

§ 1106 Provision for civil remedies

(2) Theft

(a) Elements of Theft

§ 1107 Generally; requirement of specific criminal intent

§ 1108 Obtains or uses defined

§ 1109 Property of another defined

- § 1110 Attempt to commit theft
 - (b) Grades and Degrees of Theft Offenses
- § 1111 Grand theft
- § 1112 —Definition of motor vehicle
- § 1113 Petit theft; prior theft convictions
- § 1114 Retail and farm theft, transit fare evasion
 - (c) Definition of Value for Purpose of Grading Offense
- § 1115 Generally
- § 1116 Written instrument
- § 1117 Property whose value cannot be ascertained
- § 1118 Aggregation of value of separate properties
 - (3) Dealing or Trafficking in Stolen Property
- § 1119 Generally; definitions
- § 1120 Traffic in stolen property by common thief
- § 1121 Traffic in stolen property; Distinguishing traffic in stolen property from personal use
- § 1122 Traffic in stolen property; Medicaid program
- § 1123 Attempt to traffic in stolen property
- § 1124 Organization of theft and traffic in stolen property
- b. Other Statutory Offenses
 - (1) Offenses Involving Larceny or Theft
- § 1125 Theft and related crimes involving intellectual property; trade secrets
- § 1126 Larceny in relation to utility or cable television fixtures
- § 1127 Failure to return leased property
- § 1128 Theft of funds received in connection with home or service warranty contracts
- § 1129 Theft of property belonging to public lodging or food service establishment or to guest
- § 1130 Aggravated white collar crime

TABLE OF CONTENTS

§ 1131	Miscellaneous other offenses
	(2) Offenses Involving Stolen Property
§ 1132	Possession of property with altered or removed identifying features
§ 1133	Possession or receipt of property with registered marks
§ 1134	Operation of chop shop
	2. Defenses
§ 1135	Generally; defenses precluded
§ 1136	Bona fide belief of right to property
§ 1137	Consent
§ 1138	Intoxication
§ 1139	Payment for or loss of property stolen
§ 1140	Statute of limitations
§ 1141	Double jeopardy
	3. Prosecution for Theft
	a. Generally
§ 1142	Jurisdiction
§ 1143	Venue
§ 1144	Single or separate offenses
	b. Indictment or Information
	(1) Generally
§ 1145	Requirement that all elements of offense be alleged
§ 1146	Charge of theft and dealing in stolen property
	(2) Charging Offense of Theft
§ 1147	Intent
§ 1148	Description of stolen property
§ 1149	Value of stolen property
§ 1150	Ownership of property stolen
	(3) Charging Offense Involving Stolen Property
§ 1151	Description of property involved

c. Evidence

(1) Burden and Degree of Proof

- § 1152 Generally; proof of intent
- § 1153 Identification and ownership of property stolen
- § 1154 Value of property stolen

(2) Presumptions and Inferences

- § 1155 Possession of recently stolen property
- § 1156 —What suffices for “recently” stolen
- § 1157 —Exclusive sole or joint possession
- § 1158 —Rebuttal; explanation of possession
- § 1159 Purchase or sale of stolen property at price substantially below market value
- § 1160 Purchase or sale of stolen property out of regular course of business
- § 1161 Possession of device or alteration that diverts utility or cable television services

(3) Admissibility; Competency and Relevancy

- § 1162 Generally
- § 1163 Connection of accused with crime
- § 1164 Proof of intent; negation
- § 1165 Ownership and identity of property stolen
- § 1166 —Photographs of stolen property
- § 1167 —Money or motor vehicle returned to owner
- § 1168 Admissions and declarations; confession
- § 1169 Proof of other offenses or similar transactions
- § 1170 —Prior convictions in petit theft prosecutions
- § 1171 Proof of value

(4) Weight and Sufficiency

- § 1172 Generally
- § 1173 Circumstantial evidence
- § 1174 Proof of corpus delicti
- § 1175 Proof of intent
- § 1176 —Open or clandestine nature of taking
- § 1177 —Specific intent at time of taking
- § 1178 —Disposal of stolen property
- § 1179 Identification and ownership of property stolen

TABLE OF CONTENTS

§ 1180	Guilty knowledge or belief that property dealt in was stolen
§ 1181	Proof of value
	(5) Variance Between Allegations and Proof
§ 1182	Prosecution for theft
§ 1183	Prosecution for dealing in stolen property

Volume 16B

d. Trial and Sentence

(1) In General

§ 1184	Generally; judgment of acquittal
§ 1185	Petit theft; prior convictions

(2) Questions of Law or Fact

§ 1186	Generally
§ 1187	Intent
§ 1188	Explanation of possession of recently stolen property

(3) Instructions to jury

§ 1189	Generally; elements of offense
§ 1190	On defenses
§ 1191	On lesser-included offenses or lesser degrees

(4) Verdict

§ 1192	Generally
§ 1193	Where defendant charged with both theft and dealing in stolen property

(5) Judgment and Sentence

§ 1194	Generally
§ 1195	On charge of petit theft; affixation of fingerprints

4. Return of Property to Owner

a. Notification of Recovery of Stolen Motor Vehicle

§ 1196	Generally
--------	-----------

b. Procedure to Seek Return of Money or Motor Vehicle

- § 1197 Generally
- § 1198 Objections
- § 1199 Order, inventory, and description

E. WIRETAPPING AND RELATED CRIMES

1. In General

- § 1200 Governing law
- § 1201 Criminal disclosure of subpoena, order, or authorization
- § 1202 Alternative penalty for fine

2. Particular Crimes

a. Interception and Disclosure of Wire, Oral, or Electronic Communications

(1) In General

- § 1203 Conduct prohibited
- § 1204 Punishment
- § 1205 Defenses
- § 1206 Civil remedies
- § 1207 Exclusivity of statutory remedies

(2) Exceptions to Prohibition Against Interception and Disclosure

- § 1208 Generally
- § 1209 Interception by communication service; activity incident to rendition of service
- § 1210 —Tracing obscene, harassing, or threatening communication
- § 1211 Persons assisting in interception authorized by court order
- § 1212 Interception of emergency calls
- § 1213 Interception with consent of parties
- § 1214 Interception of communications causing harmful interference
- § 1215 Interception of communications of a computer trespasser

TABLE OF CONTENTS

- § 1216 Use of pen register or trap and trace device
pursuant to court order

(3) Related Offenses

- § 1217 Divulging contents of communication by provider
of electronic communication service
- § 1218 Manufacture, distribution, or possession of
communication intercepting devices; forfeiture
- § 1219 Cutting, rerouting, or diverting of telephone lines
- b. Access to and Disclosure of Stored
Communications
- § 1220 Unlawful access
- § 1221 Disclosure of contents
- § 1222 Civil remedies
- § 1223 Exclusivity of statutory remedies
- c. Pen Registers and Trap and Trace
Devices
- § 1224 Generally

VI. CRIMES OR OFFENSES AGAINST ADMINISTRATION OF JUSTICE

A. OBSTRUCTING JUSTICE

1. Resisting or Obstructing Officer
- a. Resistance or Obstruction by Offering
or Doing Violence

- § 1225 Generally
- § 1226 As lesser-included offense of battery of police
officer; double jeopardy
- § 1227 Use of force; to resist unlawful arrest
- § 1228 —To resist excessive force
- § 1229 Nonarrest situations
- § 1230 Resistance within defendant's home
- § 1231 Resistance after arrest or while defendant
incapable of doing violence
- § 1232 Where officer is aggressor
- § 1233 Attempted resistance with violence
- § 1234 Voluntary intoxication as defense

b. Resistance or Obstruction Without
Offering or Doing Violence

(1) In General

- § 1235 Generally
- § 1236 Necessity of notice of identity of police officer or
of arrest
- § 1237 As lesser-included offense of resisting with
violence
- § 1238 Meaning of “obstruct” and “oppose”
- § 1239 Lawful execution of duty
- § 1240 —Lawful performance of legal duty as jury
question
- § 1241 Attempted resistance or obstruction without
violence

(2) Particular Actions as
Constituting Offense

(a) Flight from Officer

- § 1242 Generally
- § 1243 Where officer has right to detain

(b) Giving False Name to Officer

- § 1244 Generally
- § 1245 Effect of correcting false information

(c) Other Actions as Constituting
Offense

- § 1246 Failure to leave scene of crime on request
- § 1247 Acting as lookout
- § 1248 Profanity, obscenity, insults, and fighting words

c. Other Forms of Resistance or
Obstruction

- § 1249 Neglect or refusal to aid officer
- § 1250 Depriving officer of means to defend self or
summon assistance
- § 1251 Impersonating officer
- § 1252 —Use of uniforms or identification
- § 1253 Publishing officer’s address or phone number
- § 1254 Installing radio equipment using law
enforcement frequency

TABLE OF CONTENTS

§ 1255	Unlawful use of police communications
§ 1256	Obstruction by disguised person
§ 1257	Obstructing timber agent
§ 1258	Failure of boat operator to stop as directed
§ 1259	Compounding felony
§ 1260	Simulating legal process
§ 1261	Influencing, intimidating, or hindering officer falsely under color of law
	2. Tampering with or Retaliating Against Witnesses or Similar Persons; Tampering with or Fabricating Evidence
	a. Tampering with Witness, Victim, or Informant
§ 1262	Generally
§ 1263	What constitutes threat
	b. Retaliating Against Witness or Informant
§ 1264	Generally
	c. Tampering with or Fabricating Physical Evidence
§ 1265	Generally
§ 1266	Chewing or swallowing physical evidence
§ 1267	Discarding evidence in presence of arresting officer
	B. PERJURY AND SIMILAR OFFENSES
	1. Perjury
	a. In General
§ 1268	Perjury in official proceedings
§ 1269	—By contradictory statements
§ 1270	Perjury not in official proceeding
§ 1271	Perjury by false written declaration
§ 1272	Attempted perjury
§ 1273	Commitment for perjury
	b. Elements of the Offenses
	(1) In General
§ 1274	Generally

- § 1275 Jurisdiction
- § 1276 Oath, generally
- § 1277 —Necessity that oath be required or authorized by law

(2) Willful Falsity and Intent;
Mutual Exclusivity

- § 1278 Willful falsity and intent
- § 1279 Mutual exclusivity of contradictory statements
- § 1280 Effect of mistake
- § 1281 Effect of lack of knowledge as to truth or falsity of statement

(3) Materiality

- § 1282 Generally
- § 1283 Materiality as question of law
- § 1284 Effect of defendant's lack of knowledge of statement's materiality
- § 1285 Statements tending to bolster or weaken credibility

(4) Official Proceeding

(a) In General

- § 1286 Generally
- § 1287 Investigation by grand jury
- § 1288 Investigation by State Attorney

(b) Matters That Are Not Official
Proceedings

- § 1289 Generally
- § 1290 Police interrogation

c. Defenses

- § 1291 Recantation of false testimony
- § 1292 Immunity
- § 1293 Duress
- § 1294 Acquittal in proceeding in which perjury was committed
- § 1295 Double jeopardy

TABLE OF CONTENTS

d. Prosecutions

(1) Indictments and Informations

(a) In General

- § 1296 Generally
- § 1297 Counts; joinder
- § 1298 Time and place offense was committed
- § 1299 Description and jurisdiction of court
- § 1300 Description of testimony and proceeding in which offense was committed
- § 1301 Administration of oath
- § 1302 Concluding averment

(b) False Statement as to Material Matter

- § 1303 Falsity
- § 1304 —Perjury by contradictory statements
- § 1305 Materiality
- § 1306 —Immateriality apparent on face of pleading

(2) Evidence

(a) In General

- § 1307 Burden and standard of proof
- § 1308 —Perjury by contradictory statements
- § 1309 Nature of former proceeding
- § 1310 Administration of oath

(b) Admissibility

- § 1311 Generally
- § 1312 Parol evidence of false statement
- § 1313 Evidence as to circumstances attending commission of prior offense
- § 1314 Evidence of defendant's mental and physical condition

(c) Corroboration

- § 1315 Generally
- § 1316 Perjury by contradictory statements

(3) Trial

- § 1317 Instructions to jury

- § 1318 Effect of pendency of action in which perjury was committed

2. Other Similar Offenses

- § 1319 False report to law enforcement officer
 § 1320 —Attempted false report
 § 1321 Providing false information to law enforcement officer during investigation
 § 1322 False written statement intended to mislead public servant

C. ESCAPE AND RELATED OFFENSES; AIDING OR ALLOWING ESCAPE

1. Escape

a. In General

- § 1323 Generally
 § 1324 Elements of offense
 § 1325 Attempted escape
 § 1326 Juvenile escape
 § 1327 Involuntarily committed person
 § 1328 Evidence
 § 1329 Particular acts as escape
 § 1330 Recapture
 § 1331 Sentence
 § 1332 —Requirement that sentence be consecutive

b. Defenses

- § 1333 Unlawfulness of custody
 § 1334 —As affected by merits of charge on which prisoner is held
 § 1335 Necessity to escape
 § 1336 Voluntary intoxication

c. Related Offenses

- § 1337 Possession of concealed handcuff key

2. Aiding or Allowing Escape

a. Aiding Escape

- § 1338 Generally
 § 1339 Elements of offense; knowledge or intent

TABLE OF CONTENTS

- § 1340 —Lawful custody
- § 1341 Commission of offense by supplying means to escape

b. Allowing Escape

- § 1342 Generally
- § 1343 Allowing escape by nonexecution of process

VII. CRIMES OR OFFENSES AGAINST PUBLIC ORDER AND TRANQUILITY

A. NARCOTICS AND OTHER CONTROLLED SUBSTANCES

1. Drug Abuse Prevention and Control

a. In General

- § 1344 Generally
- § 1345 Authorization of, and cooperation with, law enforcement
- § 1346 “Rachel’s Law”

b. General Definitions

- § 1347 Generally; controlled substance
- § 1348 Persons involved in manufacture or transfer of drugs
- § 1349 Activities involving manufacture or transfer of drugs
- § 1350 —Prescription

c. Classification of Controlled Substances

- § 1351 Generally
- § 1352 As determined by potential for abuse
- § 1353 Schedule I drugs
- § 1354 Schedule II drugs
- § 1355 Schedule III drugs
- § 1356 Schedule IV drugs
- § 1357 Schedule V drugs
- § 1358 Administrative reclassification or deletion of statutorily scheduled substances
- § 1359 Administrative classification of new substances; “designer” drugs
- § 1360 Controlled substance analogs

§ 1361 Listed chemicals

d. Authorized Possession and Transfer of
Controlled Substances

§ 1362 Generally

§ 1363 Dispensing or other transfer by pharmacist

§ 1364 Preparation, prescription, or transfer by
practitioner

§ 1365 Distribution by manufacturers, distributors, and
wholesalers

§ 1366 Records

e. Prohibited Acts, Prosecutions, and
Penalties

(1) In General

§ 1367 Generally

§ 1368 Identification of substance involved

§ 1369 —Admission of substance in evidence; loss or
destruction of substance

§ 1370 Burden of proof as to statutory exemptions or
exceptions

§ 1371 Medical necessity defense

§ 1372 Willful blindness doctrine

§ 1373 Postconviction suspension, revocation, and
reinstatement of business or professional license

§ 1374 Probation for certain felony offenses; fine or
alternative community service

§ 1375 Second-degree felonies

§ 1376 Third-degree felonies

§ 1377 Unavailability of bail pending review

(2) Possession of Controlled
Substances

(a) In General

§ 1378 Generally; degrees of offense

§ 1379 Uncompleted delivery; temporary control of
substance

§ 1380 Bringing controlled substance into state

TABLE OF CONTENTS

	(b) Elements
	(i) In General; Knowledge
§ 1381	Generally
	(ii) Possession
	a. Actual Possession or Control
§ 1382	Generally
	b. Constructive Possession
§ 1383	Generally; substance in exclusively possessed area
§ 1384	Substance in jointly possessed area
§ 1385	Substance in plain view in jointly possessed area
	c. Possession with Intent to Sell, Manufacture, Deliver, or Purchase
§ 1386	Generally
§ 1387	Proof of intent
	(3) Sale, Purchase, Manufacture, or Delivery of Controlled Substance
§ 1388	Generally; degrees of offenses
§ 1389	What constitutes sale or delivery
§ 1390	Delivery to minor
§ 1391	Sale, delivery, or distribution by practitioner
§ 1392	Distribution in unlabeled commercial container; alteration or removal of label
	(4) Location of Sale, Manufacture, Delivery, or Possession of Controlled Substance
§ 1393	Schools and child care facilities
§ 1394	Colleges or parks
§ 1395	Churches and other places of worship
§ 1396	Churches and other places of worship; convenience businesses—Constitutional challenges
§ 1397	Public housing facility; assisted living facility

§ 1398 Correctional or detention facilities

§ 1399 Federal law

(5) Trafficking in Controlled
Substances

(a) In General

§ 1400 Generally; nature, scope of offense

§ 1401 Elements and proof of trafficking

(b) Particular Controlled
Substances

§ 1402 Cannabis

§ 1403 Cocaine

§ 1404 Morphine, opium, heroin, or certain other drugs

§ 1405 Phencyclidine

§ 1406 Methaqualone

§ 1407 Amphetamines or methamphetamines

§ 1408 Flunitrazepam and certain other drugs

(c) Punishment

§ 1409 Capital offenses

§ 1410 Conspiracy

§ 1411 Suspension, withholding, or deferral of
adjudication or sentence; parole eligibility

§ 1412 —Suspension or reduction of sentence for
substantial assistance to prosecution

(6) Deceptive Acts Involving Drugs

§ 1413 Generally; misrepresentation, fraud, forgery, or
nondisclosure

§ 1414 Sale of other substance in lieu of controlled
substance

§ 1415 Counterfeit controlled substances

§ 1416 Imitation controlled substances

(7) Conduct Involving Drug
Paraphernalia

§ 1417 Prohibited acts

§ 1418 What constitutes drug paraphernalia

§ 1419 Proof as to possession of drug paraphernalia

(8) Other Prohibited Acts

§ 1420 Possession or distribution of listed chemical

TABLE OF CONTENTS

§ 1421	Use or hiring of minor in drug transaction
§ 1422	Maintenance, lease, or rent of place or conveyance used for unlawful drug activity
§ 1423	Failure to keep records or furnish information
§ 1424	Interference, misrepresentation, or misuse of information in connection with drug enforcement
§ 1425	Continuing criminal enterprise
	f. Temporary Detention; Arrest; Search and Seizure of Evidence; Testing of Seized Substance
§ 1426	Temporary detention or investigatory stop
§ 1427	Warrantless arrest
§ 1428	Warrantless search
§ 1429	—Plain view or plain smell
§ 1430	—Exigent circumstances
§ 1431	—Consent to search
§ 1432	—Inventory searches
§ 1433	Validity of search warrant
§ 1434	—Good-faith exception
§ 1435	Testing and destruction of substance seized as evidence
	g. Double Jeopardy Considerations
§ 1436	Conviction and sentence for multiple offenses
§ 1437	—Particular offenses
	2. Seizure, Confiscation, and Forfeiture of Contraband and Related Property
	a. In General
§ 1438	Generally; statutory authority
§ 1439	Contraband subject to seizure, confiscation, and disposal; controlled substances and listed chemicals
§ 1440	Drug-related property subject to seizure and forfeiture
§ 1441	Constitutionality of property forfeiture provisions; proportionality
§ 1442	Nexus between property and drug offense
§ 1443	Currency

b. Parties and Interests Protected from
Forfeiture

§ 1444 Innocent owners

§ 1445 Innocent lienholders

3. Substance Abuse Treatment Services

a. In General

§ 1446 Generally; legislative intent

§ 1447 Administration and regulation of substance
abuse services

b. Referral and Treatment of Criminal
Offenders

(1) In General

§ 1448 Generally; authority to require treatment

§ 1449 Procedure for referral; order

§ 1450 Discharge after referral; completion of treatment

§ 1451 Pretrial intervention program

§ 1452 Sentencing options; probation

(2) Juvenile Offenders

§ 1453 Generally; policies and procedures

§ 1454 Delinquency pretrial intervention

§ 1455 Delinquency dispositions

c. Inmate Substance Abuse Programs

§ 1456 Generally

§ 1457 Duties and responsibilities of Department of
Corrections

B. AUTOMOBILES AND OTHER VEHICLES

1. In General

§ 1458 Generally

§ 1459 Decriminalization of traffic offenses; exceptions

§ 1460 Stop of vehicle on suspicion of traffic violation

§ 1461 Roadblocks

§ 1462 Juvenile offenders

2. Conduct Following Automobile Crashes or
Accidents

§ 1463 Leaving scene of crash involving injury or death

TABLE OF CONTENTS

- § 1464 —Double jeopardy
- § 1465 Leaving scene of accident involving property damage
- § 1466 Statutory duties to provide information and assistance
- § 1467 Filing of accident report
- § 1468 —Obtaining, disclosing, or misusing confidential information contained in report

3. Driving Under the Influence

a. In General

- § 1469 Generally; driving with unlawful blood-alcohol level
- § 1470 Evidence of impairment
- § 1471 What constitutes physical control of vehicle
- § 1472 —When person is asleep or unconscious in vehicle
- § 1473 Applicability to private property
- § 1474 Limits on release from custody
- § 1475 Arrest or stop
- § 1476 —Probable cause
- § 1477 Applicability of offense to particular types of vehicles; persons liable

b. Prosecution and Punishment of Offense

(1) Prosecution of Offenses

- § 1478 Generally
- § 1479 Establishment of corpus delicti; evidence
- § 1480 Jury trial
- § 1481 Instructions

(2) Punishment

(a) In General

- § 1482 Mandatory adjudication and imposition of sentence; certain guilty pleas prohibited
- § 1483 Propriety of multiple convictions or sentences
- § 1484 —DUI manslaughter
- § 1485 Effect of conviction on driving privileges and civil liability

(b) Particular Offenses

- § 1486 First conviction

- § 1487 Second conviction
- § 1488 Third conviction
- § 1489 Fourth or subsequent conviction
- § 1490 Where DUI causes property damage or personal injury
- § 1491 Where DUI causes death (DUI manslaughter)
- § 1492 —Causation requirement
- § 1493 Where defendant has 0.15% blood- or breath-alcohol level or is accompanied by minor
- (c) Particular Punishments Other Than Fine or Imprisonment
- (i) Completion of Substance Abuse Course or Treatment
- § 1494 Generally
- § 1495 Waiver of referral to treatment
- § 1496 Cancellation of driving privilege for failure to report for or complete course or treatment
- (ii) Impoundment or Immobilization of Vehicle
- § 1497 Generally
- § 1498 Definitions
- § 1499 Order for impoundment or immobilization; costs and fees
- § 1500 Immobilization by agency; conditions and requirements
- § 1501 Complaint for wrongful taking or withholding of vehicle from owner or lienholder
- (iii) Youthful Drunk Driver Visitation Program
- § 1502 Generally
- § 1503 Personnel and facilities to be visited
- § 1504 Previsitation counseling; postvisitation conference or report
- (iv) Other Particular Punishments
- § 1505 Probation

TABLE OF CONTENTS

§ 1506	Ignition interlock device
§ 1507	Service of period of imprisonment in residential treatment program
§ 1508	Participation in public service or community work project in lieu of fine
	(d) Prior Convictions Used to Enhance Punishment or Offense

§ 1509	Generally
§ 1510	What convictions may be used
§ 1511	—Validity requirement
§ 1512	Notice of prior convictions; pleading
§ 1513	Proof of prior convictions
§ 1514	Determination as to existence of prior convictions; bifurcated trial

c. Breath, Blood, and Urine Tests

(1) Implied Consent

§ 1515	Generally; implied consent to testing
§ 1516	Refusal to submit to breath or urine test
§ 1517	As conditioned on impracticability or impossibility of breath or urine test
§ 1518	Voluntary consent to blood test
§ 1519	Refusal to submit to blood test
§ 1520	—Persons incapable of refusal
§ 1521	Consultation with counsel or presence at testing

(2) Request for Independent Test

§ 1522	Additional or alternate tests; right to private test
§ 1523	Request for test by driver where officer does not request physical or chemical test

(3) Test Methods and Administrative Regulations

(a) Generally

§ 1524	Administration of tests
§ 1525	Preservation of breath and blood sample
§ 1526	Relation of test results to time of offense
§ 1527	Evidence of trace amounts of controlled substances

- § 1528 Release of test results; admissibility of results for other purposes

(b) Breath and Urine Tests

- § 1529 Breath test
 § 1530 Requisites for validity of breath test
 § 1531 Responsibility for breath-test instruments
 § 1532 Urine test
 § 1533 Refusal to submit to test; admissibility in evidence

(c) Blood Tests

- § 1534 Who may withdraw blood
 § 1535 Notice by health care provider
 § 1536 Liability of blood withdrawer
 § 1537 Admission of test results where blood is withdrawn for medical purpose
 § 1538 Proof of chain of custody of blood samples
 § 1539 Chemical analysis of blood
 § 1540 Who may perform analysis
 § 1541 Admissibility of blood-test results where motorist gives actual consent to blood test

(4) Blood Tests Ordered in Cases of Death or Serious Bodily Injury

- § 1542 Generally
 § 1543 Determination of probable cause
 § 1544 Admissibility of blood test results for other purposes
 § 1545 Order for trying of criminal charge; admissibility of refusal to take test
 § 1546 Release of test results

(5) Presumption of Impairment

- § 1547 When impairment presumed
 § 1548 Admissibility of affidavit to establish test results

(6) Field or Roadside Sobriety Tests

- § 1549 Generally

d. Ignition Interlock Devices

- § 1550 Generally

TABLE OF CONTENTS

§ 1551	Prohibited acts
§ 1552	Exemption for employer-owned vehicle
4. Other Particular Offenses	
§ 1553	Reckless driving
§ 1554	Evidence of reckless driving
§ 1555	Relationship to other crimes
§ 1556	Obstructing traffic for purposes of soliciting
§ 1557	Failure to comply with order of police or fire officer
§ 1558	—Obstructing officer in enforcement of vehicle weight limit
§ 1559	Flight from officer
§ 1560	—High-speed vehicle chase
§ 1561	Offenses involving vehicle identification numbers, certificates, applications, and papers
§ 1562	Offenses involving license plates or stickers
§ 1563	Offenses involving odometers
§ 1564	Offenses involving air bags

C. GAMBLING

1. In General

§ 1565	“Gambling” defined
§ 1566	—Purse, prize, or premium distinguished from bet, stake, or wager
§ 1567	State’s power to regulate or prohibit gambling
§ 1568	—Constitutional aspects
§ 1569	Construction of gambling legislation
§ 1570	Municipal regulation
§ 1571	Licensing and taxation as legalizing gambling
§ 1572	Gambling, and gambling places or devices, as nuisance
§ 1573	Injunctions

2. Conduct Prohibited or Permitted

a. In General

§ 1574	Generally
§ 1575	Games of chance; penny-ante games
§ 1576	Betting, staking, or wagering
§ 1577	Pari-mutuel wagering on races or jai alai games

- § 1578 —Transmission of racing or jai alai information
- § 1579 Bookmaking
- § 1580 —Relation to pari-mutuel wagering

b. Lotteries

- § 1581 Constitutional and statutory provisions
- § 1582 Elements and characteristics of a lottery
- § 1583 Conduct prohibited under general antilottery statute
- § 1584 —Exceptions
- § 1585 Printing lottery tickets or literature
- § 1586 State lottery
- § 1587 Chain letters, pyramid clubs, and the like as lotteries
- § 1588 Referral selling
- § 1589 Game promotion connected with sale of consumer products or services
- § 1590 Drawings by chance conducted by charitable or nonprofit organizations
- § 1591 Bingo games

c. Gambling Places and Devices

- § 1592 Generally
- § 1593 Requirement of habitual use for gambling
- § 1594 Presumption of gambling place from presence of gambling device
- § 1595 Criminal liability of principals, agents, employees, and lessors
- § 1596 —Federal law
- § 1597 Pool or billiard licensees; permitting play or gambling by minors or incompetents
- § 1598 Manufacture, sale, or possession of gambling devices
- § 1599 Slot machines and like coin-operated devices
- § 1600 Antique slot machines
- § 1601 Amusement centers, games, and machines
- § 1602 Reverse vending machines
- § 1603 Transportation of gambling devices prohibited

3. Procedure

- § 1604 Arrest, search and seizure of evidence
- § 1605 Indictment and information

TABLE OF CONTENTS

§ 1606	—Duplicity
§ 1607	Trial
§ 1608	Evidence
§ 1609	—Admissibility
§ 1610	—Sufficiency
§ 1611	Punishment
4. Seizures and Forfeitures	
§ 1612	Generally; definitions
§ 1613	Property used in violation of lottery and gambling laws
§ 1614	Forfeiture proceedings
§ 1615	—Disposition of property and proceeds
§ 1616	Gambling stakes, prizes, and the like; forfeiture
§ 1617	Gambling devices; confiscation and disposal

D. BREACH OF PEACE AND RELATED OFFENSES

1. Breach of Peace and Disorderly Conduct

a. In General

§ 1618	Generally
§ 1619	Validity of laws prohibiting breach of peace; statute
§ 1620	—Ordinances
§ 1621	Detention or arrest without warrant at public lodgings

b. Particular Conduct

§ 1622	Generally
§ 1623	Use of words
§ 1624	—Offensive, profane, or fighting words directed to police
§ 1625	Affrays
§ 1626	Disruption of lawful assembly
§ 1627	Disruption of educational institutions
§ 1627.50	Protest at funeral or burial site

2. Loitering or Prowling

§ 1628	Generally; proscribed conduct
§ 1629	Validity of laws prohibiting loitering; statute

- § 1630 —Ordinances
- § 1631 Arrest without warrant of loiterer or prowler
- § 1632 —Duty of officer prior to arrest
- § 1633 Requirement of probable cause to make arrest
- § 1634 —What constitutes probable cause
- § 1635 Particular conduct not justifying arrest;
suspicious behavior
- § 1636 —Unexplained gathering of persons
- § 1637 —Other circumstances

3. Hate Crimes; Ethnic Intimidation

- § 1638 Generally
- § 1639 Concealment of identity by mask, hood, or other
device
- § 1640 —Validity and application of law
- § 1641 Placement of exhibits to intimidate; cross
burning

4. Other Offenses Against Public Order

- § 1642 Disorderly intoxication
- § 1643 —Validity of statute
- § 1644 —What constitutes intoxication endangering
public safety
- § 1645 Open house parties
- § 1646 Peddling at camp meeting
- § 1647 Public mutilation of flag

E. CRIMINAL MISCHIEF, NUISANCE, AND TRESPASS

1. Criminal Mischief

- § 1648 Generally
- § 1649 Malicious intent
- § 1650 Proof of property damage
- § 1651 Value of property damage
- § 1652 Other offenses of property damage or destruction

2. Criminal Nuisance

- § 1653 Generally

3. Criminal Trespass

- § 1654 Generally

TABLE OF CONTENTS

- § 1655 Trespass in structure or conveyance
- § 1656 School safety zones
- § 1657 Trespass on property other than structure or conveyance
- § 1658 Proof of trespass
- 4. Voyeurism and Unlawful Surveillance
- § 1659 Voyeurism, video voyeurism
- § 1660 Direct observation, videotaping, or visual surveillance in merchant's fitting room, rest room, etc.

F. RIOTS AND UNLAWFUL ASSEMBLIES

- § 1661 Riot or inciting a riot; validity of statute
- § 1662 —Sufficiency of indictment or information
- § 1663 Unlawful assembly
- § 1664 —Dispersal of unlawful or riotous assembly
- § 1665 —Death or injury resulting from dispersal of riotous assembly
- § 1666 Street Gang Prevention Act
- § 1667 Unlawful demolition or destruction of property
- § 1668 Mutiny, riot, or strike in state correctional institutions
- § 1669 Public drill or parade by unauthorized military organization

G. SUBVERSIVE ACTIVITIES; TERRORISM

- § 1670 Generally; prohibited acts
- § 1671 Subversive organizations; existence and membership
- § 1672 —Penalties for subversive activities
- § 1673 Sabotage
- § 1674 Treason; misprision of treason
- § 1675 Inciting insurrection or sedition; unlawful combinations
- § 1676 Terrorism

VIII. OTHER PARTICULAR CRIMES OR OFFENSES

A. BRIBERY

1. Crimes of Bribery Involving Public Official

a. In General

- § 1677 Generally; bribery involving public official defined
- § 1678 —Bribery distinguished from extortion and payola
- § 1679 Unlawful compensation or reward for official behavior
- § 1680 Attempt to commit bribery
- § 1681 White Collar Crime Victim Protection Act

b. Elements of Bribery Involving Public Official

- § 1682 Generally
- § 1683 Authority or ability of public official to act
- § 1684 Value or benefit offered
- § 1685 —Recipient of benefit
- § 1686 Intent to influence
- § 1687 Performance of act or omission
- § 1688 Complicity of another actor with public official; proof of agreement not required

c. Indictment or Information

- § 1689 Generally; sufficiency of allegations
- § 1690 Election between charges not required

d. Evidentiary Issues

- § 1691 Generally
- § 1692 Circumstantial evidence

e. Sentencing

- § 1693 Generally; departure from sentencing guidelines
- § 1694 —Bribery crimes involving judges
- § 1695 Restitution
- § 1696 Civil cause of action for injury sustained for violation of Florida's Racketeer Influenced and Corrupt Organizations Act

TABLE OF CONTENTS

- § 1697 Forfeiture of retirement benefits
- 2. Other Crimes of Bribery
- § 1698 Bribery in athletic contests
- § 1699 Commercial bribery
- § 1700 —Receipt of commercial bribe
- § 1701 Bribery involving nursing home residents

B. CONSPIRACY

1. In General

- § 1702 Generally; definition
- § 1703 Conspiracy to commit several crimes; continuing conspiracy
- § 1704 —Change in participants
- § 1705 Conspiracy distinguished from solicitation, attempt, or aiding and abetting; attempted conspiracy
- § 1706 Relation between conspiracy and object crime; separate offenses
- § 1707 —Identity of offenses when object crime requires concert of action

2. Elements of Crime of Conspiracy

- § 1708 Generally
- § 1709 Significance of underlying offense
- § 1710 Overt act
- § 1711 Requirement of two or more conspirators; shared intent
- § 1712 —When a party is a police agent

3. Scope and Extent of Liability for Conspiracy

- § 1713 Liability for acts of co-conspirators
- § 1714 Liability of person joining or leaving existing conspiracy

4. Defenses

- § 1715 Renunciation
- § 1716 Entrapment

5. Prosecution

a. In General

- § 1717 Jurisdiction

§ 1718 Limitations statute for a felony resulting in death

§ 1719 Class and degree of conspiracy

§ 1720 —Conspiracy to traffic in illegal drugs

b. Indictment or Information

§ 1721 Generally

§ 1722 Charging element of intent

§ 1723 Charging object offense

§ 1724 Charging co-conspirators

§ 1725 Alternative allegations of object offense or participants

c. Evidence

§ 1726 Generally; burden of proof and weight of the evidence

§ 1727 Sufficiency of circumstantial evidence

§ 1728 Defendant's presence at the scene

§ 1729 Crime of aiding and abetting as evidence

§ 1730 Corpus delicti; confession

§ 1731 —Sexual abuse cases

d. Admissibility of Acts and Declarations of Co-conspirators

(1) In General

§ 1732 Generally

(2) Statutory Co-conspirator Exception to Hearsay Rule

§ 1733 Generally

§ 1734 Acts during or in furtherance of the conspiracy

§ 1735 Proof of the existence of the conspiracy by independent evidence

§ 1736 Requirement of preliminary finding by court

§ 1737 Preliminary jury instruction

e. Jury Instructions

§ 1738 Generally

f. Sentence

§ 1739 Generally

TABLE OF CONTENTS

§ 1740 Effect of acquittal of all other co-conspirators

C. FORGERY AND COUNTERFEITING

1. Forgery and Related Offenses

a. Forgery

(1) In General

§ 1741 Generally; effect of statute

§ 1742 Classification of forgery and related crimes

§ 1743 Punishment and sentence; maximum penalties

(2) Elements of Forgery

§ 1744 Generally; identity of defendant as perpetrator

§ 1745 Requirement of false writing

§ 1746 Legal significance of forged instrument

§ 1747 Intent to defraud or injure

§ 1748 —Use of fictitious name in false writing

§ 1749 —Nonfraudulent use of assumed name
distinguished

(3) Instruments Subject to Forgery

§ 1750 Generally

§ 1751 Motor vehicle records

§ 1752 Bank notes and other forms of money

b. Uttering Forged Instruments

§ 1753 Generally; attempt

§ 1754 Relationship between the crimes of forgery and
uttering forged instrument

§ 1755 —Separate convictions for both crimes

§ 1756 Elements of uttering forged instrument;
knowledge and intent

§ 1757 —Forged or false instrument

c. Forgery by Creating, Selling, or Possessing Merchandise with Forged or Counterfeit Label

§ 1758 Forgery or counterfeit of private labels

§ 1759 Sale, manufacture, delivery, or possession of
counterfeit controlled substances

d. Other Forgery Offenses and Related Crimes

- § 1760 Fraudulent connection of bank notes or instruments
- § 1761 Fraudulent alteration or entry of land title instruments or records
- § 1762 Affixing fictitious signature of corporate officer or agent
- § 1763 Falsifying medical certificates or prescriptions
- § 1764 Making or possessing materials to counterfeit motor vehicle licenses or identification cards

e. Indictments and Informations

(1) Proper Method of Pleading

- § 1765 Sufficiency of allegations of forgery
- § 1766 Sufficiency of allegations of uttering forged instrument
- § 1767 —Name of person to whom instrument was passed
- § 1768 Sufficiency of particular allegations; false instrument
- § 1769 —Checks and notes

(2) Variance Between Allegations and Proof

- § 1770 Generally
- § 1771 Variance as to date and place of forgery
- § 1772 Variance as to form or substance of forged instrument

f. Defenses

- § 1773 Generally
- § 1774 Abandonment of criminal purpose
- § 1775 Authorization to sign another's name

g. Evidence

- § 1776 Generally
- § 1777 Proof of forged instrument; effect of nonproduction
- § 1778 Testimony to authenticate photographic evidence; exception

TABLE OF CONTENTS

§ 1779	Admissibility of other acts of forgery or uttering to prove intent
§ 1780	Identification of handwriting; methods of proof
§ 1781	—Expert and lay testimony as to signature of defendant
§ 1782	Inference from possession of forged instrument
2. Counterfeiting and Related Offenses	
a. Crimes Involving Bank Bills or Notes	
§ 1783	Generally; making, altering, forging, or counterfeiting bank bills, checks, drafts, or promissory notes
§ 1784	Possessing false, altered, forged, or counterfeit bank bills, notes, checks, or drafts
§ 1785	Bringing false, forged, or counterfeit bank bills, checks, drafts, or notes into state
§ 1786	Uttering false, altered, forged, or counterfeit note bank bill, checks, drafts, or promissory notes
§ 1787	Uttering false, altered, forged, or counterfeit note bank bill or promissory note—Effect of multiple convictions
b. Crimes Involving Substitute Currency	
§ 1788	Issuing or bringing into state shop bills, advertisements, or private bills similar to bank bills
§ 1789	Circulating substitutes for regular currency
c. Crimes Involving Uncurrent Bills	
§ 1790	Possessing uncurrent bills
§ 1791	—Uttering uncurrent bills
d. Crimes Involving Counterfeit Coin	
§ 1792	Making or possessing counterfeit coin
§ 1793	—Effect of multiple convictions
e. Making or Possessing Instruments for Forging Bills or Counterfeiting Coin	
§ 1794	Instruments for forging bills
§ 1795	Instruments for forging coin
§ 1796	—Seizure of instruments used to counterfeit bills or coins

f. Cellular telephone counterfeiting offenses

§ 1797 Generally

D. FRAUDULENT AND RELATED PRACTICES

1. Offenses Consisting of General Fraudulent Practices or False Pretenses

a. Acts of False Pretenses and Personation to Obtain or Gain Access to Property

§ 1798 Generally; obtaining property by false personation

§ 1799 Organized fraud

§ 1800 —Classification of offense

§ 1801 —Communications fraud

§ 1802 Fraud by or relating to corporations

b. Fraud or Misrepresentation Involving Government Office or Entity

§ 1803 Generally

§ 1804 False Claims Act

§ 1805 Fraudulent claims for per diem and travel expenses of public officers, employees, and authorized persons

c. Advertising-Related Practices

§ 1806 Misleading or deceptive advertising

§ 1807 Other prohibited practices

d. Insurance-Related Fraud

§ 1808 Burning to defraud the insurer

§ 1809 False and fraudulent motor vehicle insurance applications and claims

§ 1810 False or fraudulent proof of motor vehicle insurance

e. Other Offenses Regarding False Pretenses or Fraudulent Practices

§ 1811 Generally

§ 1812 Fraudulent practices regarding debt instruments and real estate sales

TABLE OF CONTENTS

§ 1813	Fraudulent academic practices
§ 1814	Gambling and related fraud
§ 1815	Fraudulent practices regarding coin-operated devices
§ 1816	Fraudulent practices regarding telecommunications services
§ 1817	Fraudulent practices regarding motor vehicles
§ 1818	Use of personal identification information
§ 1819	—Federal law
2. Offenses Relating to Bad Checks and Worthless Checks	
a. Generally	
§ 1820	Stopping payments on checks
§ 1821	Worthless checks given to fulfill tax, license, or fee obligations
b. Making or Depositing Worthless Checks or Other Instruments to Obtain Money or Other Things of Value	
§ 1822	Worthless or bad check statute
§ 1823	Fraudulently cashing or depositing instruments and other items
§ 1824	Obtaining things of value with bad checks
§ 1825	—Effect of payment of dishonored instrument
§ 1826	Duty of drawee to indicate reason for dishonoring check
c. Evidentiary and Other Procedural Matters	
(1) In General	
§ 1827	Evidence of intent to defraud or knowledge of insufficient funds
§ 1828	—Notice to maker or drawer; form
§ 1829	Evidence of identity
(2) Matters Particular to Making or Depositing Worthless Checks or Other Instruments to Obtain Money or Other Things of Value	
§ 1830	Fund withdrawal as evidence of knowledge of insufficient funds

- § 1831 Information for obtaining things of value with
bad checks
- § 1832 Cost awards

d. Other Matters

- § 1833 Requiring credit card information for check or
draft acceptance
- § 1834 Bad check diversion program
- § 1835 Suspension of driver license for failure to appear
in court after warrant or capias is issued

3. Computer Fraud Crimes

- § 1836 Generally
- § 1837 Definitions
- § 1838 Offenses against intellectual property
- § 1839 Offenses against computer users
- § 1840 —Civil action; forfeiture

Volume 16C

E. NEGLIGENCE, ABUSE, OR EXPLOITATION OF ELDERLY PERSONS OR DISABLED ADULTS

- § 1841 Generally
- § 1842 Abuse of an elderly person or disabled adult
- § 1843 Neglect of an elderly person or disabled adult
- § 1844 Exploitation of an elderly person or disabled
adult
- § 1845 —Punishments
- § 1846 Lewd or lascivious offenses committed against an
elderly person or disabled person
- § 1847 Defenses

F. RACKETEERING

1. Florida RICO Act Offenses

a. Nature and Types of Florida RICO Act Offenses

(1) Generally

- § 1848 Generally; validity of Florida RICO Act

TABLE OF CONTENTS

§ 1849	Using proceeds to invest in real estate or start a business
§ 1850	Acquisition of business interest or real property through pattern of racketeering or collection of unlawful debt
§ 1851	Conspiracy to engage in racketeering
	(2) Predicate Acts Constituting Racketeering Activity
§ 1852	Generally
§ 1853	Illustrations
	(3) What Is a “Pattern of Racketeering Activity”
§ 1854	Generally
§ 1855	Continuity of criminal activity
	(4) Racketeering in Association With “Enterprise”
§ 1856	Generally
§ 1857	Common purpose
§ 1858	Continuity element
§ 1859	Distinctness requirement
	(5) Punishment for Racketeering Offenses
§ 1860	Generally
	b. Procedural Aspects to Criminal Prosecution under Florida RICO Act
§ 1861	Prosecution by statewide prosecutor
§ 1862	Statute of limitations
§ 1863	Civil remedy
§ 1864	Information
§ 1865	Presenting evidence of acts outside Florida and uncharged acts
§ 1866	Double jeopardy protection
	2. Money Laundering Control Act Offenses
§ 1867	Generally; definitions
§ 1868	Conducting financial transactions involving proceeds of specified unlawful activity

- § 1869 Transporting monetary instruments to promote racketeering
- § 1870 Conducting financial transactions that law enforcement officers deem to promote racketeering
- § 1871 Violation of reporting requirements regarding currency received in trade or business
- § 1872 Each transaction as constituting separate offense
- § 1873 Defenses
- § 1874 Trial and evidentiary matters
- § 1875 Penalties
- § 1876 Civil remedies; injunctions; seizure warrants

G. STALKING

- § 1877 Generally
- § 1878 Classifications
- § 1879 Definitions
- § 1880 Violation of domestic violence injunction
- § 1881 Constitutional issues
- § 1882 —Double jeopardy
- § 1883 Trial and evidentiary matters
- § 1884 —Illustrations
- § 1885 Sentencing

H. WEAPONS AND FIREARMS

1. In General

- § 1886 Generally
- § 1887 Construction of state regulations
- § 1888 Preemption by state regulation
- § 1889 General exemption for law enforcement officers
- § 1890 Criminal defendant's civil liability for damages

2. Definitions and Distinctions

a. Weapons

- § 1891 Generally
- § 1892 Common pocketknife exception
- § 1893 Deadly weapons

b. Firearms

- § 1894 Generally

TABLE OF CONTENTS

§ 1895	Effect of instrument's inoperability
§ 1896	Antique firearms
3. Particular Actions or Conduct as Offense	
a. Possession	
(1) Possession by Convicted Felon or Delinquent	
§ 1897	Generally
§ 1898	Requisite elements; prior felony conviction
§ 1899	—Possession
§ 1900	Defenses
§ 1901	—Double jeopardy
§ 1902	Effect of restoration of convict's civil rights
(2) Possession by Violent Career Criminal	
§ 1903	Generally
(3) Possession While Engaged in a Felony or Under Indictment	
§ 1904	Possession while engaged in a felony
§ 1905	—Assessment of points under 1994 guidelines
§ 1906	Possession while under indictment
§ 1907	—Necessity for actual or constructive possession
§ 1908	Double jeopardy issues
§ 1909	Effect of acquittal on one charge
§ 1910	Lesser-included offenses
§ 1911	Sufficiency of charging instrument
§ 1912	Seizure and forfeiture of weapons
(4) Other Offenses	
§ 1913	Possession while subject to injunction against domestic violence
§ 1914	Wearing bulletproof vest while committing certain felonies
b. Carrying Weapons or Firearms	
(1) Open Carrying of Weapons or Firearms	
§ 1915	Generally

§ 1916 Exception for possession in home or place of business

(2) Carrying of Concealed Weapons or Firearms

(a) In General

§ 1917 Generally

§ 1918 Intent or knowledge as element of offense; actual or constructive possession

§ 1919 Arrest and accusatory pleading; lesser-included offense

(b) Concealment Requirement

§ 1920 Generally

§ 1921 What constitutes “on or about the person” and “ordinary sight of another person”

§ 1922 “Concealed weapon” and “concealed firearm” defined

§ 1923 —Jury question and charge

§ 1924 Considerations in determining whether weapon or firearm is concealed

(c) Exemptions or Exceptions

§ 1925 License to carry concealed weapon or firearm

§ 1926 —Judges and justices; nonresidents

§ 1927 —Possession in home or place of business

§ 1928 Off-duty, inactive, and retired law enforcement officers

§ 1929 Possession in private conveyance

§ 1930 —“Securely encased” and “readily accessible for immediate use” defined

c. Exhibition and Discharging of Weapon or Firearm

§ 1931 Improper exhibition of dangerous weapon or firearm

§ 1932 Discharging firearm in public

§ 1933 Using firearm while under influence of alcoholic beverages, chemical substances, or controlled substances

§ 1934 Use of self-defense weapon or device against law enforcement officer

TABLE OF CONTENTS

d. Actions or Conduct Involving Minors

- § 1935 Generally
- § 1936 Use of BB guns, air or gas-operated guns, or electric weapons or devices by minor; possession of firearms by minor
- § 1937 Exhibition, possession, or discharge of weapons or firearms at school-sponsored event or on school property

e. Other Particular Actions or Conduct as Offense

- § 1938 Alteration or removal of firearm serial number; possession, sale, or delivery of firearm with serial number altered or removed
- § 1939 Miscellaneous actions or conduct

4. Offenses Involving Particular Instruments or Objects

a. Missiles, Stones, and Other Hard Substances

- § 1940 Generally
- § 1941 Intent requirement
- § 1942 Requirement that object is capable of producing death or great bodily harm; effect of mere presence at scene

b. Short-barreled Rifles or Shotguns; Machine Guns

- § 1943 Generally
- § 1944 “Short-barreled shotgun,” “short-barreled rifle,” and “may readily be made operable” defined

c. Destructive Devices, Bombs, Explosives, and Weapons of Mass Destruction

- § 1945 Destructive devices and bombs
- § 1946 Weapons of mass destruction
- § 1947 Threats and false reports
- § 1948 Planting of hoax bomb

d. Other Particular Instruments or
Objects

- § 1949 Generally
- 5. Requirements Relating to Sale, Transfer,
and Delivery of Weapons and Firearms
- § 1950 Generally; criminal history check
- § 1951 False information or false or fraudulent
identification provided by buyer or transferee
- § 1952 Mandatory waiting period between purchase and
delivery of handgun
- § 1953 Purchase of rifles and shotguns in contiguous
states; warnings required upon transfer or sale
of firearms

Index