Table of Contents

CHAPTER 1. INTRODUCTION

- § 1:1 Scope and purpose
- § 1:2 Sources of law—Constitutional and statutory
- § 1:3 Court system in Virginia

CHAPTER 2. ARRESTS

- § 2:1 Arrest—General considerations
- § 2:2 Arrest warrants
- § 2:3 Summons in lieu of arrest
- § 2:4 Arrests in public places
- § 2:5 Arrests in a dwelling
- § 2:6 Consequences of an illegal arrest
- § 2:7 Extradition
- § 2:8 Detainers

CHAPTER 3. TEMPORARY DETENTIONS (STOP AND FRISK)

- § 3:1 General
- § 3:2 Seizures of the person generally, and detentions specifically
- § 3:3 Grounds for a detention (stop)
- § 3:4 Grounds for a patdown (frisk)
- § 3:5 Scope of Stop & Frisk

CHAPTER 4. SEARCHES

- § 4:1 General
- § 4:2 Definition of a search—Traditional requirements
- § 4:3 —The *Katz* expectation of privacy approach
- § 4:4 —The *Jones* property rights approach
- § 4:5 Judicial officers who may issue search warrants
- § 4:6 Probable cause—General
- § 4:7 —Search warrants
- § 4:8 —The nature and location of seizable items
- § 4:9 —The required degree of probability that seizable items will be found
- § 4:10 —The traditional two prongs of *Aguilar*
- § 4:11 —The totality of the circumstances
- § 4:12 —The time factor and "stale" probable cause
- § 4:13 Issuance of search warrant
- § 4:14 Execution of search warrant—Scope of the search

§ 4:15	—Time factor
§ 4:16	—Forcible entry
§ 4:17	—Detention and search of persons on the premise
§ 4:18	—Seizures of items and Returns by officer
§ 4:19	Warrantless searches—General
§ 4:20	—Search of person incident to arrest and intrusive
	body searches
§ 4:21	—Search of area under control of person arrested
§ 4:22	—Hot pursuit
§ 4:23	—Temporary detentions (stop and frisk)
§ 4:24	—Exigent circumstances
§ 4:25	Warrantless entry—Freezing the status quo
§ 4:26	Warrantless searches—Plain view
§ 4:27	—Search of vehicles incident to arrest
§ 4:28	—Search of vehicles based upon probable cause
§ 4:29	—Consent by the defendant
§ 4:30	—Consent by a third party
§ 4:31	—Open view/open fields
§ 4:32	—Airport searches
§ 4:33	—Border searches
§ 4:34	—Inventory of vehicle based on a diminished
	expectation of privacy
§ 4:35	—Inmates, probationers, parolees
§ 4:36	Administrative searches—General
§ 4:37	—Probable cause for administrative warrants
§ 4:38	—Exceptions to the administrative warrant
	requirement

CHAPTER 5. VERBAL COMMUNICATIONS AND ELECTRONIC EAVESDROPPING

- § 5:1 General
- $\S~5:2$ Warrantless eavesdropping without the use of electronic devices
- § 5:3 Warrantless eavesdropping with the aid of electronic devices
- § 5:4 Electronic eavesdropping pursuant to a warrant— Constitutional considerations
- § 5:5 —Federal statutory requirements
- § 5:6 —Virginia statutory requirements

CHAPTER 6. THE FOURTH AMENDMENT EXCLUSIONARY RULE

- § 6:1 General
- § 6:2 Government participation in the illegal search

Table of Contents

- § 6:3 "Standing" to invoke the exclusionary rule
- § 6:4 Evidence tainted by illegal search and seizure—The fruit of the poisonous tree
- § 6:5 Collateral use of illegally seized evidence
- § 6:6 Good faith exception
- § 6:7 Disposition of seized property/property subject to forfeiture

CHAPTER 7. CONFESSIONS AND SELF-INCRIMINATION

- § 7:1 General
- § 7:2 Confessions—Voluntariness
- § 7:3 Miranda—General
- § 7:4 —Custody
- § 7:5 —Interrogation
- § 7:6 —Warnings
- § 7:7 —Waiver
- § 7:8 —Invocation
- § 7:9 Sixth Amendment right to counsel
- § 7:10 Corroboration
- § 7:11 Suppression of illegally obtained confessions
- § 7:12 Privilege against self-incrimination—Scope
- § 7:13 —Invoking the privilege
- § 7:14 —Proceedings in which the privilege may be asserted
- § 7:15 —Waiver and grants of immunity
- § 7:16 —Consequences of assertion

CHAPTER 8. LINEUPS AND IDENTIFICATION PROCEDURES

- § 8:1 General
- § 8:2 Due process—Impermissible suggestiveness
- § 8:3 Right to counsel—Lineups
- § 8:4 Exclusionary rule
- § 8:5 Fingerprint identification
- § 8:6 DNA identification

CHAPTER 9. RIGHT TO COUNSEL

- § 9:1 General
- § 9:2 Right to counsel—Critical stages of the prosecution
- § 9:3 —Indigents
- § 9:4 Right to ancillary defense services—Indigents
- $\S~9.5~$ Right to counsel—Waiver and the right to proceed pro

§ 9:6 Withdrawal of counsel
§ 9:7 Effective assistance of counsel
§ 9:8 Representation of two or more defendants
§ 9:9 The initial interview with the client
§ 9:10 Contract of employment

CHAPTER 10. PRETRIAL RELEASE/BAIL

- § 10:1 General considerations
- § 10:2 Bail hearing
- § 10:3 Factors bearing upon pretrial release
- § 10:4 Conditions of pretrial release
- § 10:5 Appeal and motions to alter, increase, or revoke bail

CHAPTER 11. THE PRELIMINARY HEARING

- § 11:1 General considerations
- § 11:2 Right to a preliminary hearing
- § 11:3 Procedures at the preliminary hearing
- § 11:4 Standard of proof and rules of evidence

CHAPTER 12. GRAND JURIES

- § 12:1 General
- § 12:2 Composition of regular grand juries
- § 12:3 Challenges to the composition of the regular grand jury
- § 12:4 Proceedings before the grand jury
- § 12:5 Rights of witnesses before a regular grand jury
- § 12:6 Special grand juries
- § 12:7 Multi-jurisdiction grand juries

CHAPTER 13. INDICTMENTS AND CHARGES

- § 13:1 General
- § 13:2 Naming the accused
- § 13:3 Describing the offense charged
- § 13:4 Identifying the site of the offense
- § 13:5 Time of the offense
- § 13:6 Duplicity, joinder and charging in the alternative
- § 13:7 Amending the indictment
- § 13:8 Bill of particulars

CHAPTER 14. PRETRIAL MOTIONS

§ 14:1 General considerations—Form and timing

Table of Contents

§ 14:2	Discovery—General
§ 14:3	Discovery by the defense under Rule 3A:11
§ 14:4	Discovery by the defense of exculpatory evidence—
	Constitutional considerations
14:5	Discovery of an informant's identity
§ 14:6	Discovery by the prosecution under Rule 3A:11
§ 14:7	Motion for psychiatric evaluation of sanity at the
	time of the offense
§ 14:8	Motion for psychiatric evaluation of defendant's
	competency to stand trial
§ 14:9	Statute of limitations
§ 14:10	Speedy trial—General
§ 14:11	—Constitutional considerations
§ 14:12	—Statutory provisions
§ 14:13	Double jeopardy—General
§ 14:14	—When jeopardy attaches
§ 14:15	—Defining the same offense
§ 14:16	—Mistrials
14:17	—Retrial after appeal
§ 14:18	—Collateral estoppel and res judicata
§ 14:19	Motion to sever—Parties
§ 14:20	—Offenses
§ 14:21	Motion to change venue

CHAPTER 15. ARRAIGNMENT, PLEAS, AND PLEA BARGAINING

- § 15:1 Arraignment
- § 15:2 Entry of the plea
- § 15:3 Entering a guilty plea
- § 15:4 Plea bargaining
- § 15:5 Withdrawal of pleas

CHAPTER 16. RIGHT TO FAIR TRIAL, PUBLIC TRIAL, JURY TRIAL

- § 16:1 Right to a fair trial
- § 16:2 Right to a public trial
- § 16:3 Right to trial by jury
- § 16:4 Selection of the jury panel
- § 16:5 Challenges for cause
- § 16:6 Peremptory challenges
- § 16:7 Sequestration of the jury

CHAPTER 17. TRIAL

§ 17:1 General

§ 17:2 Entering a nolle prosequi Continuances § 17:3 § 17:4 Trial in absentia § 17:5 Opening statements § 17:6 Jurisdiction and venue Burden of proof § 17:7 § 17:8 Presumptions and stipulations § 17:9 Variance between the proof and the charge Witnesses—Summoning § 17:10 § 17:11 —Exclusion and sequestration of witnesses § 17:12 —Competency -Experts and lay opinions § 17:13 —Impeachment and credibility § 17:14 § 17:15 —Impeachment—Reputation for truth and veracity § 17:16 —Impeachment by prior convictions § 17:17 —Impeachment—Inconsistent statements § 17:18 ——Bias § 17:19 Hearsay and the right of confrontation § 17:20 Evidence—Hearsay—Statements of conspirators § 17:21 — — Third party confessions § 17:22 — — Dying declarations § 17:23 ——Prior testimony § 17:24 Tangible (Real) and scientific evidence § 17:25 Objections/offers of proof § 17:26 Motion for mistrial § 17:27 Motion to strike the evidence § 17:28 Defenses—General § 17:29 -Insanity and Competency to Stand Trial § 17:30 —Mental condition negating intent § 17:31 -Entrapment —Alibi § 17:32 § 17:33 —Duress and necessity § 17:34 —Defendant's character

CHAPTER 18. SUBMITTING THE CASE TO THE JURY

§ 18:1 General § 18:2

§ 17:35

- Required instructions
- § 18:3 Submission of proposed instructions

Evidence of other crimes

- § 18:4 The Allen charge—Deadlocked juries
- § 18:5 Summation
- § 18:6 Verdicts
- § 18:7 Polling the jury; Impeaching the verdict

CHAPTER 19. SENTENCING

- § 19:1 General
- § 19:2 Jury sentencing
- § 19:3 Constitutional limits on punishment
- § 19:4 Pronouncement and modification of sentence
- § 19:5 Presentence reports and mental evaluations
- § 19:6 Deferred dispositions
- § 19:7 Expungement
- § 19:8 Sealing of criminal history record
- § 19:9 Probation or suspension of sentence
- § 19:10 Revocation of probation
- § 19:11 Resentencing

CHAPTER 20. CONTEMPT OF COURT

- § 20:1 General
- § 20:2 Summary punishment
- § 20:3 Trial by jury—Maximum punishment
- § 20:4 Appeals

CHAPTER 21. JUDICIAL REVIEW

- § 21:1 General
- § 21:2 Motions to set aside the verdict and enter a judgment of acquittal
- § 21:3 Motions to set aside the verdict and grant a new trial
- § 21:4 Defendant's Appeal of Right to the Court of Appeals
- § 21:5 Appeal by Commonwealth to the Court of Appeals
- § 21:6 Appeal to the Virginia Supreme Court
- § 21:7 Appeal from the district court to the circuit court— Trial de novo
- § 21:8 State habeas corpus
- § 21:9 Federal habeas corpus
- § 21:10 Petitions for a writ of actual innocence; motions for scientific analysis of newly discovered or previously untested scientific evidence

Table of Laws and Rules

Table of Cases

Index