

Table of Contents

Volume 1

PART I. STATE CRIMES

CHAPTER 1. VALIDITY OF CRIMINAL STATUTES *[REVISED CHAPTER]*

- § 1:1 Statute held not void for vagueness
- § 1:2 Statute held void for vagueness
- § 1:3 State Crimes
- § 1:4 Statute held void for overbreadth
- § 1:5 Severability of statutes
- § 1:6 Desuetude
- § 1:7 Statute held preempted by federal law
- § 1:8 Effect of repeal *[New]*

CHAPTER 2. CONSTRUCTION AND OPERATION OF CRIMINAL STATUTES *[REVISED CHAPTER]*

- § 2:1 Legislative intention as controlling
- § 2:2 Plain meaning of statute
- § 2:3 Statute broadly construed
- § 2:4 Statute narrowly construed
- § 2:5 Lenity
- § 2:6 More specific statute governs when statutes conflict

CHAPTER 3. NATURE AND ELEMENTS OF SPECIFIC CRIMES *[REVISED CHAPTER]*

I. HOMICIDE

A. MURDER

- § 3:1 Murder—In general
- § 3:2 Murder—First-degree
- § 3:3 Murder—Second-degree
- § 3:4 Felony murder—In general
- § 3:5 Felony murder—Proximate cause

- § 3:6 Felony murder—Merger doctrine
- § 3:7 “Attempted felony murder”
- § 3:8 Depraved indifference murder
- § 3:9 Attempted murder

B. MANSLAUGHTER

- § 3:10 Manslaughter—Voluntary
- § 3:11 Manslaughter—Involuntary
- § 3:12 Felony manslaughter

C. HOMICIDE—IN GENERAL

- § 3:13 Vehicular homicide
- § 3:14 Reckless homicide
- § 3:15 Demise of year-and-a-day rule
- § 3:16 Pregnant victim
- § 3:17 Solicitation of murder
- § 3:18 Assisted suicide

II. ASSAULT, RAPE, AND KIDNAPPING

A. ASSAULT AND BATTERY

- § 3:19 Assault—In general
- § 3:20 Aggravated assault
- § 3:21 Assault with dangerous weapon
- § 3:22 Assault with intent to murder
- § 3:23 Battery

B. SEXUAL ASSAULT

- § 3:24 Rape—In general
- § 3:25 Rape—Attempted
- § 3:26 Rape—Consent
- § 3:27 Sexual abuse
- § 3:28 Sodomy

C. KIDNAPPING AND FALSE IMPRISONMENT

- § 3:29 Kidnapping—First-degree
- § 3:29.50 Kidnapping in general *[New]*
- § 3:30 Kidnapping—Restraint
- § 3:31 Kidnapping—Forcible removal
- § 3:32 False imprisonment

**III. CRIMES AGAINST CHILDREN AND
RELATIONSHIP CRIMES**

- § 3:33 Child abuse
- § 3:34 Child neglect
- § 3:35 Child sexual abuse
- § 3:36 Criminal sexual conduct with minor
- § 3:37 Rape of child; statutory rape
- § 3:38 Incest
- § 3:39 Child selling
- § 3:40 Domestic violence

TABLE OF CONTENTS

- § 3:41 Violation of protection order
- § 3:41.50 Bigamy *[New]*

IV. EXTORTION, HATE CRIMES, AND HARASSMENT

- § 3:42 Extortion
- § 3:43 Hate crimes
- § 3:44 Stalking
- § 3:45 Harassment—In general

V. THEFT AND FRAUD

A. THEFT

- § 3:46 Theft—In general
- § 3:47 Theft—Exercise of unauthorized control
- § 3:48 Consolidated theft statutes
- § 3:49 Larceny by bailee
- § 3:50 Larceny from the person
- § 3:51 Shoplifting
- § 3:52 Embezzlement

B. FALSE PRETENSES

- § 3:53 Obtaining property by false pretenses

C. ROBBERY

- § 3:54 Robbery—In general
- § 3:55 Robbery—Armed
- § 3:56 Aggravated robbery
- § 3:57 Attempted robbery
- § 3:58 Robbery—Aiding and abetting
- § 3:59 Carjacking

D. POSSESSION OF STOLEN GOODS

- § 3:60 Felonious possession of stolen goods

E. FRAUD

- § 3:61 Fraud—In general
- § 3:62 Fraud—Credit card fraud
- § 3:63 Forgery
- § 3:64 Uttering and publishing negotiable instruments
- § 3:65 Identity theft

VI. INTRUSION ON OR DAMAGE TO PROPERTY

A. BURGLARY

- § 3:66 Burglary—In general
- § 3:67 Burglary of a dwelling
- § 3:68 Burglary—Necessity for criminal intent
- § 3:69 Burglary—Necessity for breaking and entering
- § 3:70 Burglary—Single count vs. multiple counts
- § 3:71 Burglary—Defendant's alleged right to enter
- § 3:72 Home invasion

§ 3:73 Trespass

B. DAMAGE TO PROPERTY

§ 3:74 Arson

§ 3:75 Malicious mischief

VII. POSSESSION, USE AND SALE OF DRUGS AND WEAPONS

A. DRUGS

§ 3:76 Drugs—In general

§ 3:77 Drugs—Blood or urine test as evidence of possession

§ 3:78 Drugs—Possession in school zone

§ 3:79 Drugs—Intent to distribute

B. WEAPONS

§ 3:80 Weapons—Deadly weapon

§ 3:81 Weapons—Possession

§ 3:82 Weapons—Possession in school zone

§ 3:82.50 Weapons—Carrying *[New]*

§ 3:83 Discharge of firearm

§ 3:84 Firearms—Wanton endangerment

§ 3:85 Possession of firearm during a crime of violence

§ 3:86 Felon in possession of a firearm

§ 3:86.50 Fugitive from justice *[New]*

§ 3:87 Firearms—Lack of permit

§ 3:88 Was defendant “armed”?

§ 3:88.50 Straw purchaser *[New]*

VIII. NONVIOLENT SEX CRIMES

§ 3:89 Prostitution

§ 3:90 Indecent exposure

§ 3:91 Child pornography

§ 3:92 Solicitation of minor

§ 3:93 Lewdness with minor

§ 3:94 Indecent liberties with minor

§ 3:95 Failure to comply with sex offender registration requirements

IX. OBSTRUCTION OF JUSTICE, DISORDERLY CONDUCT, PERJURY, ESCAPE, AND BRIBERY

§ 3:96 Obstruction of justice—In general

§ 3:97 Obstruction of justice—Threats

§ 3:98 Breach of peace

§ 3:99 Disorderly conduct

§ 3:100 Bribery

§ 3:101 Witness tampering

§ 3:101.50 Evidence tampering *[New]*

§ 3:102 Resisting an officer

§ 3:103 Resisting arrest

TABLE OF CONTENTS

- § 3:104 Escape
- § 3:105 Perjury
- § 3:106 Criminal contempt
- § 3:106.50 Initiating false alarm or report *[New]*

X. CONSPIRACY, GANGS, AND CRIMINAL ENTERPRISES

- § 3:107 Conspiracy
- § 3:108 Participating in a criminal street gang
- § 3:109 Street gang terrorism
- § 3:110 Racketeering
- § 3:111 Joint conduct

XI. VEHICLE-RELATED CRIMES

- § 3:112 Driving under the influence
- § 3:113 Driving under the influence—Measuring intoxication
- § 3:114 Leaving scene of accident
- § 3:115 Driving while an habitual offender
- § 3:116 Using vehicle to commit felony
- § 3:117 Other vehicle-related crimes *[New]*

CHAPTER 4. CAPACITY

- § 4:0 Alcoholism and drug addiction
- § 4:1 Involuntary intoxication
- § 4:7 Diminished capacity
- § 4:10 Insanity—Substantive tests
- § 4:12 Insanity—Vietnam syndrome
- § 4:15 Insanity—Competency to stand trial
- § 4:20 Insanity—Burden of proof
- § 4:30 Insanity—Expert testimony
- § 4:40 Insanity—Committal and recommittal proceedings
- § 4:45 Mental retardation

CHAPTER 5. PARTIES *[REVISED CHAPTER]*

- § 5:1 Distinguishing among different liability theories for verdict unanimity purposes
- § 5:2 Principals
- § 5:3 Principals in second degree
- § 5:4 Accomplices
- § 5:5 Aiders and abettors
- § 5:6 Accessorial liability
- § 5:7 Accessories before the fact
- § 5:8 Accessories after the fact
- § 5:9 Facilitators

CHAPTER 6. DEFENSES [*REVISED* *CHAPTER*]

I. IN GENERAL

- § 6:1 In general
- § 6:2 Failure to give notice of or timely assert defense

II. DISPROVING DEFENDANT COMMITTED CHARGED CONDUCT

- § 6:3 Alibi
- § 6:4 Third party culpability
- § 6:5 Inadequacy of state's investigation
- § 6:6 Consent
- § 6:7 Abandonment, withdrawal, and renunciation

III. EXONERATING CIRCUMSTANCES

- § 6:8 Necessity
- § 6:9 Justification
- § 6:10 Duress
- § 6:11 Entrapment
- § 6:12 Sentencing entrapment
- § 6:13 Insanity
- § 6:14 Extreme emotional distress
- § 6:15 Accident
- § 6:16 Mistake
- § 6:17 Intoxication
- § 6:18 Automatism and involuntary behavior generally
- § 6:19 Self-defense
- § 6:20 Self-defense—Crimes for which self-defense is available
- § 6:21 Self-defense—castle doctrine, make-my-day laws, and erosion of duty to retreat
- § 6:22 Defense of others
- § 6:23 Imperfect self-defense
- § 6:24 Procuring agent defense

IV. BARS TO PROSECUTION

- § 6:25 Abatement or desuetude
- § 6:26 Discriminatory enforcement
- § 6:27 Statute of limitations generally
- § 6:28 Statute of limitations—Continuing offense
- § 6:29 Statute of limitations—Tolling
- § 6:30 Collateral estoppel and *res judicata*
- § 6:31 Collateral estoppel—Mutuality of parties
- § 6:32 Statutory immunity; carve-outs
- § 6:33 Personal grant of immunity

TABLE OF CONTENTS

§ 6:34 Outrageous government misconduct *[New]*

PART II. STATE CRIMINAL PROCEDURES

CHAPTER 7. JURISDICTION AND VENUE ***[REVISED CHAPTER]***

§ 7:1 Jurisdiction in general
§ 7:2 Territorial jurisdiction
§ 7:3 Venue in general
§ 7:4 Motion for change of venue

CHAPTER 8. PRELIMINARY PROCEEDINGS

§ 8:0 Grand jury proceedings
§ 8:5 Grand jury proceedings—Subpoena
§ 8:10 Grand jury proceedings—Immunity
§ 8:12 Grand jury proceedings—Secrecy *[New]*
§ 8:14 Preliminary hearing *[New]*
§ 8:15 Arrest
§ 8:25 Bail
§ 8:32 Arraignment *[New]*
§ 8:35 Pretrial proceedings
§ 8:50 Prosecutor's discretion to prosecute
§ 8:60 Right to counsel *[New]*
§ 8:65 Right to interpreter *[New]*

CHAPTER 9. INDICTMENT, INFORMATION, AND FUNCTIONAL EQUIVALENTS ***[REVISED CHAPTER]***

§ 9:1 Alleged right to indictment, preliminary hearing, or bill of particulars
§ 9:2 Pre-verdict challenge successful
§ 9:3 Pre-verdict challenge unsuccessful
§ 9:4 Post-verdict challenge successful
§ 9:5 Post-verdict challenge unsuccessful
§ 9:6 Amended and/or subsequent indictment or information
§ 9:7 Probable cause
§ 9:8 Waiver

CHAPTER 10. PRETRIAL MOTIONS

§ 10:5 Motions addressed to sufficiency of indictment—Indictment held
sufficient
§ 10:15 Motions addressed to sufficiency of indictment—Severance
§ 10:20 Motions by indigent defendant

- § 10:30 Motion to suppress
- § 10:35 Motion to dismiss for lack of speedy trial
- § 10:40 Motion for a physical or psychological examination *[New]*
- § 10:45 Motion for a gag order *[New]*
- § 10:50 Pretrial witness interviews *[New]*
- § 10:55 Motion to dismiss due to insufficient evidence *[New]*
- § 10:60 Motion to disclose informant's identity *[New]*

CHAPTER 11. DISCOVERY, DISCLOSURE, AND INFORMATION GATHERING *[REVISED CHAPTER]*

- § 11:1 Motion to compel discovery
- § 11:2 Availability and materiality of requested information
- § 11:3 Motions seeking discovery of potentially sensitive information
- § 11:4 *Brady* violations
- § 11:5 Access to physical evidence
- § 11:6 Access to crime scene
- § 11:7 Defendant's discovery obligations
- § 11:8 Timeliness and adequacy of compliance with discovery obligations
- § 11:9 Remedies for state's failure to meet discovery obligations
- § 11:10 Remedies for defendant's failure to meet discovery obligations
- § 11:11 Disclosure before guilty plea
- § 11:12 Disclosure before detention hearing
- § 11:13 Post-trial discovery and information-gathering
- § 11:14 Defendant's subpoena power

CHAPTER 12. GUILTY PLEAS *[REVISED CHAPTER]*

I. PLEA BARGAINING

- § 12:1 Plea bargaining in general
- § 12:2 Right to enforce plea bargain
- § 12:3 Ambiguous plea agreement
- § 12:4 State's breach of plea agreement
- § 12:5 Defendant's breach of plea agreement
- § 12:6 Plea agreement as indivisible package
- § 12:7 Use of admissions made in plea agreement or in negotiations
- § 12:8 State's ability to withdraw from plea agreement

II. ACCEPTING (OR REJECTING) PLEA

- § 12:9 Accepting plea
- § 12:10 Requirement that plea be knowing and voluntary
- § 12:11 Duty to inquire as to factual basis of plea
- § 12:12 Duty to advise defendant of consequences of plea
- § 12:13 Effect of failure to advise defendant of consequences

TABLE OF CONTENTS

- § 12:14 Duty to explain elements of offense
- § 12:15 Duty to advise defendant of his or her rights
- § 12:16 Competency of defendant
- § 12:16.50 Court's rejection of plea *[New]*
- § 12:17 Court's conditional or partial acceptance of plea

III. NOLO PLEAS AND MODIFIED GUILTY PLEAS

- § 12:18 *Nolo contendere* and *non vult* pleas
- § 12:19 *Alford* pleas
- § 12:20 Conditional guilty pleas

IV. MOTION TO WITHDRAW GUILTY PLEA

- § 12:21 Grounds for withdrawing plea in general
- § 12:22 Plea involuntary due to misunderstanding
- § 12:23 Withdrawal due to inaccuracies
- § 12:24 Withdrawal due to ineffective assistance of counsel
- § 12:25 Withdrawal due to actual innocence

V. APPEAL AND WAIVER

- § 12:26 Waiver of appeal rights
- § 12:27 Guilty plea as waiver of prior defects
- § 12:28 Appeal or postconviction petition brought after filing deadline passes
- § 12:29 Remedies

CHAPTER 13. EVIDENCE *[REVISED CHAPTER]*

I. IN GENERAL

- § 13:1 Corpus delicti
- § 13:2 Judicial notice
- § 13:3 Stipulations as evidence
- § 13:4 Objecting to admission of evidence or to improper questioning

II. RELEVANCE AND POTENTIAL PREJUDICE

- § 13:5 Relevance generally
- § 13:5.50 Evidence of defendant's suicide attempt *[New]*
- § 13:6 Necessity of laying foundation
- § 13:7 Balancing test for prejudicial evidence
- § 13:8 Defendant's character and reputation evidence in general
- § 13:9 Gang membership and other evidence of association
- § 13:10 Defendant's commission of crimes and other bad acts in general
- § 13:11 Crimes and other bad acts as evidence of motive or intent
- § 13:12 Crimes and other bad acts as evidence of opportunity, plan, and other matters

- § 13:13 Admissibility of evidence of crimes and other bad acts for rebuttal purposes
- § 13:14 Flight
- § 13:15 Evidence from plea-related discussions
- § 13:16 Offers to settle civil suits
- § 13:17 Admissibility of similar crimes evidence in sexual-assault cases
- § 13:18 Admissibility of similar crimes and uncharged acts evidence in child-molestation cases
- § 13:19 Character, reputation, and bad acts of victim or third party
- § 13:20 Rape shield laws
- § 13:21 Using exercise of legal rights or compliance with legal obligations as evidence

III. PRIVILEGED COMMUNICATIONS

- § 13:22 In general
- § 13:23 Spousal privilege
- § 13:24 Attorney-client privilege
- § 13:25 Physician-patient privilege
- § 13:26 Mental-health-counselor-patient privilege
- § 13:27 Clergy-penitent privilege

IV. WITNESSES

- § 13:28 Competency of witness
- § 13:29 Competency of previously hypnotized witness
- § 13:30 Allegation that witness was improperly coerced
- § 13:31 Bolstering witness's credibility
- § 13:32 Constancy-of-accusation evidence
- § 13:33 Refreshing witness's recollection
- § 13:34 Impeachment of witness
- § 13:35 Impeachment by prior conviction or bad act
- § 13:36 Impeachment by prior inconsistent statement
- § 13:37 Impeachment for bias or motive
- § 13:38 Witness's assertion of privilege against self-incrimination
- § 13:39 Granting witness immunity from prosecution

V. OPINIONS AND EXPERT WITNESSES

- § 13:40 Laypersons
- § 13:41 Law enforcement officers
- § 13:42 Psychiatrists and other mental health professionals
- § 13:43 Expert qualifications in general
- § 13:44 Testimony on reliability of eyewitnesses
- § 13:45 Testimony regarding syndromes
- § 13:46 Characteristics of victims of child abuse or sexual abuse
- § 13:47 Offender profiles
- § 13:48 Inappropriate testimony by expert witness

VI. HEARSAY RULE AND EXCEPTIONS

- § 13:49 Hearsay in general

TABLE OF CONTENTS

§ 13:50	Agency exception
§ 13:51	Adoptive admissions exception
§ 13:52	Exception for coconspirators' statements
§ 13:53	Admissible hearsay: Present sense impressions
§ 13:54	Admissible hearsay: Excited utterances
§ 13:55	Admissible hearsay: Then-existing mental, emotional, or physical condition
§ 13:56	Admissible hearsay: Statement made for medical diagnosis or treatment.
§ 13:57	Admissible hearsay: Past recollection recorded
§ 13:58	Admissible hearsay: Records-related exceptions
§ 13:59	Admissible hearsay: Prior testimony of unavailable witness
§ 13:59.50	Admissible hearsay: Prior consistent statement <i>[New]</i>
§ 13:60	Admissible hearsay: Dying declarations
§ 13:61	Admissible hearsay: Statements against declarant's interest
§ 13:62	Admissible hearsay: Forfeiture-by-wrongdoing exception
§ 13:63	Admissible hearsay: <i>Res gestae</i> exception
§ 13:64	Admissible hearsay: Residual exception
§ 13:65	Admission of hearsay to balance other hearsay testimony admitted

VII. AUTHENTICATION, RELIABILITY, AND CORROBORATION

§ 13:66	Reliability in general
§ 13:66.50	Errors in applying reliable technology <i>[New]</i>
§ 13:67	Authentication of videotaped testimony
§ 13:68	Authentication of electronic communications
§ 13:69	Chain of custody
§ 13:70	Preservation of evidence
§ 13:71	Corroboration of accomplice testimony
§ 13:71.50	Corroboration of confessions <i>[New]</i>

VIII. ISSUES RELATED TO SPECIFIC TYPES OF EVIDENCE

§ 13:72	Forensic evidence generally
§ 13:73	DNA evidence
§ 13:74	Fingerprints
§ 13:75	Eyewitness identification testimony
§ 13:76	Audio recordings
§ 13:77	Video recordings or photographs <i>[Retitled]</i>
§ 13:78	Drawings and sketches
§ 13:79	Animations, simulations, and reconstructions
§ 13:80	Intoxication measurement
§ 13:81	Drug weight and other measurements
§ 13:82	Price tags and value evidence generally
§ 13:83	Artistic expression by defendant
§ 13:84	Evidence from criminal confederates' trials
§ 13:85	Fresh complaint/first complaint of sexual assault <i>[New]</i>

CHAPTER 14. TRIAL

§ 14:0	Trial
§ 14:5	Trial—Presence and conduct of bystanders
§ 14:10	Qualifications of trial judge
§ 14:15	Qualifications of trial judge—Disqualification of trial judge
§ 14:20	Qualifications of prosecutor
§ 14:25	Qualifications of prosecutor—Disqualification of prosecutor
§ 14:27	Courtroom <i>[New]</i>
§ 14:28	Sequestration of witnesses <i>[Moved]</i>
§ 14:30	Defendant’s right to continuance
§ 14:33	Prosecutor’s right to a continuance <i>[New]</i>
§ 14:35	Right to public trial
§ 14:37	Bifurcated trial <i>[New]</i>
§ 14:41	Defendant’s right to testify <i>[New]</i>
§ 14:45	Physically restraining defendant
§ 14:46	Defendant’s appearing in prison attire <i>[New]</i>
§ 14:50	Absence of defendant or counsel
§ 14:51	Defendant’s presence via remote technology <i>[New]</i>
§ 14:70	Right to waive jury trial
§ 14:76	Defendant’s right to make opening statement <i>[New]</i>
§ 14:80	Conduct of trial judge
§ 14:81	Conduct of trial judge—Recusal <i>[New]</i>
§ 14:85	Conduct of trial judge—Examination of witnesses
§ 14:90	Conduct of trial judge—Prejudicial comments
§ 14:105	Conduct of trial judge—Exclusion of evidence
§ 14:120	Conduct of trial judge—Granting severance
§ 14:140	Conduct of trial—Influencing jurors
§ 14:150	Conduct of prosecutor
§ 14:155	Conduct of prosecutor—Improper questioning of witnesses
§ 14:160	Conduct of prosecutor—Comments made during opening statement
§ 14:165	Conduct of prosecutor—Comments made during summation
§ 14:170	Conduct of prosecutor—Comment on defendant’s failure to testify
§ 14:180	Conduct of prosecutor—Comment on failure of defense to call certain witnesses
§ 14:190	Conduct of prosecutor—Reference to matter not in evidence
§ 14:195	Conduct of prosecutor—Defense counsel’s “opening the door”
§ 14:205	Conduct of prosecutor—Suppression of evidence
§ 14:210	Conduct of prosecutor—Failure to call witness <i>[New]</i>
§ 14:215	Dual jury trial procedure <i>[New]</i>
§ 14:220	Visit to crime scene <i>[New]</i>
§ 14:225	Recess to confer with recanting witness <i>[Moved]</i>
§ 14:230	Burden of proof <i>[Moved]</i>
§ 14:231	Sufficiency of evidence: “incredible dubiosity” rule <i>[New]</i>
§ 14:235	Sufficiency of evidence <i>[Moved]</i>
§ 14:240	Sufficiency of evidence—Circumstantial evidence <i>[Moved]</i>
§ 14:245	Effect of variance between pleading and proof <i>[Moved]</i>
§ 14:245.50	Motion to reopen evidence <i>[New]</i>

TABLE OF CONTENTS

- § 14:246 Granting unusual requests *[New]*
- § 14:247 Accommodations for witnesses *[New]*

CHAPTER 15. JURY

I. SELECTION

- § 15:0 Selection of veniremen
- § 15:5 Selection of veniremen—Qualifications
- § 15:8 Anonymous jury *[New]*
- § 15:15 Systematic exclusion of blacks, etc
- § 15:20 Capital cases
- § 15:25 Conduct of voir dire
- § 15:30 Conduct of voir dire—Waiver of irregularities
- § 15:35 Conduct of voir dire—Peremptory challenges
- § 15:36 Conduct of voir dire—Challenges for cause *[New]*
- § 15:40 Conduct of voir dire—Prejudice on part of individual jurors
- § 15:45 Exposure of jurors to prejudicial publicity
- § 15:50 Sequestering the jury
- § 15:51 Investigating prospective jurors *[New]*
- § 15:56 Excusing juror during trial *[New]*

II. INSTRUCTIONS

- § 15:60 “Allen” dynamite charge
- § 15:70 Accomplice testimony
- § 15:80 Burden of proof
- § 15:85 Burglary
- § 15:110 Credibility of witnesses
- § 15:115 Credibility of witnesses—Defendant’s failure to testify
- § 15:120 Duty to charge on defendant’s theory of defense
- § 15:130 Duty to charge on essential elements of crime
- § 15:135 Duty to charge on insanity
- § 15:145 Intent and willfulness
- § 15:146 Knowledge and awareness *[New]*
- § 15:155 Lesser included offenses
- § 15:160 Limiting and cautionary instructions
- § 15:165 “Missing witness” instructions
- § 15:177 Parole eligibility *[New]*
- § 15:180 Presumptions and inferences
- § 15:190.50 Concealment, flight, and consciousness-of-guilt evidence generally *[New]*
- § 15:195 Punishment (or disposition following insanity acquittal) of no concern to jury
- § 15:200 Prior convictions
- § 15:210 Removal of element of crime on proof from consideration by jury
- § 15:215 Prejudicial comments by trial judge during charge
- § 15:220 Self-defense
- § 15:225 Charge on issues of law

- § 15:235 Supplemental instructions
- § 15:236 Juror questioning of witnesses *[New]*

III. DELIBERATION

- § 15:240 Failure to keep jury sequestered
- § 15:245 Juror not impartial—Substitution of alternate
- § 15:247 Presence of alternate juror
- § 15:255 Time element as error
- § 15:265 Extrajudicial communications
- § 15:267 Jury access to improper materials *[New]*
- § 15:270 Right to have exhibits or replay recordings *[Retitled]*
- § 15:275 Other unauthorized or improper conduct
- § 15:280 Right to rehear testimony
- § 15:285 Supplemental instructions
- § 15:286 Excusal of deliberating juror *[New]*

IV. VERDICT

- § 15:290 General verdicts
- § 15:295 Inconsistent verdicts *[Retitled]*
- § 15:305 Duty of trial judge to poll jury or conduct inquiry into juror misconduct
- § 15:307 Recall of jury *[New]*
- § 15:310 Duty of trial judge to grant mistrial
- § 15:315 Juror's impeachment of verdict
- § 15:320 Requirement of unanimity *[New]*
- § 15:325 Guilty but mentally ill *[New]*
- § 15:330 Directed verdict *[New]*

CHAPTER 16. POSTCONVICTION PETITIONS AND POST-TRIAL MOTIONS *[RETITLED AND REVISED CHAPTER]*

I. HABEAS/POSTCONVICTION RELIEF PETITIONS

- § 16:1 Grounds generally
- § 16:2 Grounds—Barred claims
- § 16:3 Eligibility generally
- § 16:4 Effect of guilty plea, confession, or waiver
- § 16:5 Right to hearing
- § 16:6 Timeliness generally
- § 16:7 Timeliness—Tolling
- § 16:8 Burden of proof
- § 16:9 Procedure
- § 16:10 Subsequent and amended petitions
- § 16:11 Mootness

II. OTHER POST-VERDICT MOTIONS AND PETITIONS

- § 16:12 Motion to dismiss due to mistrial

TABLE OF CONTENTS

- § 16:13 Other pre-appeal, post-verdict motions
- § 16:14 Postconviction DNA testing
- § 16:15 DNA testing eligibility—Effect of guilty plea, confession, or waiver
- § 16:16 DNA testing—Post-testing litigation
- § 16:17 Alternatives to habeas/postconviction relief petitions

III. “NEWLY DISCOVERED EVIDENCE”

- § 16:18 “Newness” of evidence
- § 16:19 Scientific evidence
- § 16:20 Dishonesty and recantation
- § 16:21 Failings of prosecutor, court, or police
- § 16:22 Other types of new evidence

CHAPTER 17. SENTENCING AND PUNISHMENT *[REVISED CHAPTER]*

I. SENTENCING PROCEEDINGS

A. IN GENERAL

- § 17:1 Generally
- § 17:2 Right to hearing
- § 17:3 Notice to defendant
- § 17:4 Continuance
- § 17:5 Presentence report
- § 17:6 Presence of defendant
- § 17:7 Right to remain silent
- § 17:8 Allocution
- § 17:9 Victims’ rights & victim impact
- § 17:10 Oral pronouncement of sentence

B. EVIDENCE AND BURDEN OF PROOF

- § 17:11 Applicability of rules of evidence
- § 17:12 Polygraph evidence
- § 17:13 Burden of proof
- § 17:13.50 Basing sentence on acquitted conduct *[New]*

C. SENTENCING ON TWO OR MORE CHARGES IN SAME PROCEEDING

- § 17:14 Merger
- § 17:15 Multiple counts of same offense
- § 17:16 Consecutive or concurrent sentences
- § 17:17 Sentencing on multiple counts: restrictions on total sentence
- § 17:18 Resentencing on multiple counts; correcting “package”
- § 17:19 Identical offense sentencing doctrine

II. STATUTORY REQUIREMENTS AND GUIDELINES

- § 17:20 Sentencing guidelines generally
- § 17:21 Aggravating circumstances

- § 17:22 Weapons enhancements
- § 17:23 Mandatory minimum
- § 17:24 Statutory maximum
- § 17:24.50 Safety valve relief *[New]*

III. HABITUAL AND CAREER OFFENDERS

- § 17:25 Generally
- § 17:26 Predicate conviction as too old or too recent
- § 17:27 Claim that predicate conviction was improperly obtained or is no longer in force
- § 17:28 Predicate conviction obtained without counsel
- § 17:29 Juvenile adjudications

IV. JUDICIAL DISCRETION

- § 17:30 Abuse of judicial discretion
- § 17:31 Judge's disagreement with jury verdict
- § 17:32 Enhancement for failure to appear at sentencing hearing
- § 17:33 Disproportionate sentence
- § 17:34 Jury as exclusive factfinder
- § 17:34.50 Sentencing factors *[New]*

V. CREDITS AGAINST SENTENCE

- § 17:35 Credit for time served
- § 17:36 Credit for time spent in custody prior to sentencing
- § 17:37 Credit for time spent in custody prior to resentencing or prior to imposition of suspended sentence
- § 17:38 Credit for time spent in electronic monitoring program
- § 17:39 Effect of erroneous release

VI. NONINCARCERATIVE PENALTIES

- § 17:40 Availability of alternative sentencing
- § 17:41 Conditions of probation/supervision
- § 17:42 Restitution
- § 17:43 Restitution—Calculation of amount
- § 17:44 Fines
- § 17:45 Imposition of fines on indigent defendants
- § 17:46 Jury costs

VII. MODIFICATION OF SENTENCE

- § 17:47 Right to appeal
- § 17:48 Sentence not contemplated by plea
- § 17:49 Sentence not contemplated at jury waiver colloquy
- § 17:50 Jurisdiction to review sentence
- § 17:51 Jurisdiction to impose sentence following probation or deferral
- § 17:52 Reconsideration period
- § 17:53 Motion for reduction of sentence

TABLE OF CONTENTS

§ 17:53.50	Motion to correct sentence <i>[New]</i>
§ 17:54	Increasing sentence on appeal or at retrial
§ 17:55	Resentencing proceedings
§ 17:56	Presumption of judicial vindictiveness at resentencing
§ 17:57	Sentence increased after appeal
§ 17:58	Commutation
§ 17:59	Imposition of deferred sentence
§ 17:60	Early release <i>[New]</i>

CHAPTER 18. APPEAL AND ERROR

§ 18:0	Right to appeal
§ 18:1	Right to appeal—Timeliness <i>[New]</i>
§ 18:20	Waiver of right to appeal
§ 18:21	Waiver of right to appeal—Fugitive dismissal rule <i>[New]</i>
§ 18:30	Right to counsel—Ineffective assistance of appellate counsel
§ 18:35	Right to counsel—Withdrawal of counsel
§ 18:40	Right to transcribed minutes
§ 18:45	Right to appeal on full record
§ 18:55	Right to control scope of appeal
§ 18:60	Jurisdiction
§ 18:61	Jurisdiction—Appeal while in custody out-of-state <i>[New]</i>
§ 18:65	Jurisdiction—Failure to file timely notice of appeal
§ 18:66	Jurisdiction—Belated appeals <i>[New]</i>
§ 18:68	Mootness <i>[New]</i>
§ 18:90	Scope of appellate review
§ 18:105	Scope of appellate review—Power to modify judgment
§ 18:110	Scope of appellate review—Failure to object or file bill of exceptions as precluding appellate review
§ 18:115	Scope of appellate review—Serious error recognized in the absence of objection below
§ 18:120	Harmless error test
§ 18:123	Fundamental error <i>[New]</i>
§ 18:125	Harmless error test—Constitutional errors
§ 18:127	Invited error doctrine <i>[New]</i>
§ 18:135	Wrongful conviction <i>[New]</i>
§ 18:137	Effect of appellant’s death during appeal <i>[New]</i>
§ 18:140	Effect of exceptional delay in hearing appeal <i>[New]</i>
§ 18:145	Standard of review <i>[New]</i>
§ 18:150	Retrial—Jury instructions <i>[New]</i>

CHAPTER 19. PROBATION, SUPERVISION, PAROLE, AND PARDON *[REVISED CHAPTER]*

I. CHALLENGES TO CONDITIONS IMPOSED

§ 19:1	In general
--------	------------

- § 19:2 Travel restrictions and reporting requirements
- § 19:3 Monetary obligations
- § 19:4 Participation in counseling or programs
- § 19:5 Intermittent incarceration

II. DECISION TO GRANT PAROLE

- § 19:6 Parole in general
- § 19:7 Parole eligibility in general
- § 19:8 Parole eligibility—youthful offenders
- § 19:9 Medical parole *[Retitled]*
- § 19:10 Limited constitutional rights where parole expectations created by state law
- § 19:11 Parole procedures generally
- § 19:12 Ex post facto issues

III. REVOCATION OF PROBATION, SUPERVISION OR PAROLE

- § 19:13 Differences attributable to type of alternate/diversionary sentence or release revoked
- § 19:14 Violations relating to pre-probation misconduct
- § 19:15 Timeliness of revocation proceedings
- § 19:16 Revocation procedures
- § 19:17 Rights of offender at revocation hearing—in general
- § 19:18 Representation by counsel
- § 19:19 Confrontation rights
- § 19:20 Standard of proof at revocation hearing
- § 19:21 Evidence admissible at revocation hearing
- § 19:22 Revocation sentence

IV. EARLY RELEASE

- § 19:23 Credits accrued
- § 19:24 Petition for early release from probation or supervision *[Retitled]*
- § 19:24.50 Compassionate Release *[New]*

V. PARDON AND EXPUNGEMENT

- § 19:25 Pardon
- § 19:26 Post-pardon rights and disabilities
- § 19:27 Expungement of records

CHAPTER 20. PRISONER PROCEEDINGS

[REVISED CHAPTER]

I. ACCESS TO COURTS: RIGHTS AND ROADBLOCKS

- § 20:1 In general
- § 20:2 Court's jurisdiction to hear case

TABLE OF CONTENTS

- § 20:3 Obligation to pay court costs
- § 20:4 Governmental immunity from suit
- § 20:5 Other defendants' immunity claims
- § 20:6 Exhaustion of administrative remedies
- § 20:7 Access to resources needed to bring claims

II. MINIMAL DUE PROCESS RIGHTS

- § 20:8 Due process in court
- § 20:9 Due process rights during in-prison hearings
- § 20:10 Due process for prison disciplinary actions
- § 20:11 Prisoners' funds and financial obligations

III. CONDITIONS OF CONFINEMENT

- § 20:12 In general
- § 20:13 Abuse by guards
- § 20:14 Inadequate medical care
- § 20:15 Medical treatment against prisoner's wishes
- § 20:16 Restrictions and deprivations generally
- § 20:17 Failure to protect generally
- § 20:18 Failure to protect from other prisoners
- § 20:19 "Unnecessary rigor" clause violations
- § 20:20 Good time credits and other credits affecting release date *[New]*

CHAPTER 21. ANCILLARY PROCEEDINGS

[REVISED CHAPTER]

I. CONTEMPT

- § 21:1 Civil and criminal contempt distinguished
- § 21:2 Direct and indirect contempt distinguished
- § 21:3 Grounds for contempt finding and sufficiency of evidence
- § 21:4 Contempt—Rights under state constitutions

II. EXTRADITION

- § 21:5 Challenge to extradition
- § 21:6 Extradition—Due process requirements
- § 21:7 IAD dismissal of charges—In general
- § 21:8 IAD dismissal of charges: Calculating elapsed time

III. FORFEITURE PROCEEDINGS

- § 21:9 Forfeiture—In general
- § 21:10 Forfeiture—Burden of proof
- § 21:11 Forfeiture—"Relation back" doctrine
- § 21:12 Forfeiture—Constitutional issues

IV. JUVENILE PROCEEDINGS

- § 21:13 Juveniles—Notice and procedure

- § 21:13.50 Juveniles—Juvenile’s right to be present *[New]*
- § 21:14 Juveniles—Admissibility of evidence
- § 21:15 Juveniles—Admissions and confessions
- § 21:16 Juveniles—Burden of proof
- § 21:17 Juveniles—Mental competency
- § 21:18 Juveniles—Right to counsel
- § 21:19 Juveniles—Jury trial
- § 21:20 Juveniles—Speedy trial rights
- § 21:21 Juveniles—Sentencing and punishment
- § 21:22 Juveniles—Probation
- § 21:23 Juveniles—Use of records
- § 21:24 Transfer to adult court

V. COMMITMENT PROCEEDINGS

- § 21:25 Commitment—Dangerousness
- § 21:26 Commitment—Due process
- § 21:27 Commitment—Standard of proof
- § 21:28 Commitment—Insanity acquittees
- § 21:29 Commitment: Sexually violent predators

VI. SEX OFFENDERS: CIVIL STATUTES

- § 21:30 Sex offenders—Registration requirement
- § 21:31 Sex offenders—Restrictions imposed under sex offender statutes

VII. SEALING OR ERASURE OF RECORDS

- § 21:32 Sealing of records
- § 21:33 Erasure of records

VIII. MANDAMUS

- § 21:34 Mandamus—In general

IX. FALSE ARREST AND OTHER STATE TORTS

- § 21:35 False arrest suits

X. RIGHTS OF WRONGFULLY CONVICTED PERSONS

- § 21:36 Compensation for wrongful conviction/incarceration *[New]*

PART III. FEDERAL CRIMES

CHAPTER 22. VALIDITY OF CRIMINAL STATUTES *[REVISED CHAPTER]*

- § 22:1 Statute held not void for vagueness
- § 22:2 Statute held void for vagueness
- § 22:3 Statute held not void for facial overbreadth

TABLE OF CONTENTS

- § 22:4 Statute held void for facial overbreadth
- § 22:5 Statute held not to exceed Congressional authority
- § 22:6 Statute salvageable when given limiting construction
- § 22:7 Statute salvageable if unconstitutional portion is severed
- § 22:8 Regulatory enforcement action held void for vagueness
- § 22:9 Congress exceeded its power

CHAPTER 23. CONSTRUCTION AND OPERATION OF CRIMINAL STATUTES [REVISED CHAPTER]

- § 23:1 Legislative intention as controlling
- § 23:2 Plain meaning of statute
- § 23:3 Statute broadly construed
- § 23:4 Statute narrowly construed
- § 23:5 Lenity

CHAPTER 24. NATURE AND ELEMENTS OF SPECIFIC CRIMES [REVISED CHAPTER]

I. CRIMES GENERALLY, INTERSTATE COMMERCE, AND ASSIMILATED CRIMES

- § 24:1 Federal crimes generally
- § 24:2 “Affecting interstate commerce”
- § 24:3 Interstate transportation of forged securities
- § 24:3.50 Crimes involving aircraft or ships *[New]*
- § 24:4 Assimilative Crimes Act

II. CRIMES OF VIOLENCE

- § 24:5 Murder
- § 24:5.50 Involuntary manslaughter *[New]*
- § 24:6 Kidnapping
- § 24:7 Carjacking
- § 24:8 Assault
- § 24:9 Assault with a dangerous weapon
- § 24:10 Arson
- § 24:11 Forced labor

III. ROBBERY, EXTORTION AND THREATS

- § 24:12 Bank robbery
- § 24:13 Hobbs Act
- § 24:14 Extortion
- § 24:15 Threats
- § 24:16 Stalking

IV. THEFT

- § 24:17 Theft of federal funds
- § 24:18 Defalcation
- § 24:19 Theft/conversion of employee benefit funds
- § 24:20 Misapplication of funds

V. FRAUD

- § 24:21 Fraud—In general
- § 24:22 Fraud—Credit cards
- § 24:23 Mail fraud
- § 24:24 Wire fraud
- § 24:25 Deprivation of services fraud
- § 24:26 Bank fraud
- § 24:27 Forgery
- § 24:28 Computer fraud and related crimes
- § 24:29 Identity theft

VI. COUNTERFEITING AND MONEY LAUNDERING

- § 24:30 Counterfeiting
- § 24:31 Money laundering
- § 24:31.50 Smuggling *[New]*

VII. POSSESSION, USE AND SALE OF DRUGS, WEAPONS AND OTHER CONTRABAND

- § 24:32 Drugs—In general
- § 24:33 Drugs—Distribution
- § 24:34 Weapons—In general
- § 24:35 Firearms violations related to drug trafficking or crimes of violence
- § 24:36 Possession of firearm by felon
- § 24:37 Possession of firearm by person convicted of domestic violence
- § 24:37.50 Possession of firearm by illegal alien *[New]*
- § 24:38 Possession of firearm by person who was committed to mental institution
- § 24:39 Possession of specific types of firearms *[Retitled]*
- § 24:40 Firearms—Constructive possession
- § 24:41 Explosives
- § 24:41.50 Prisoner's possession of prohibited item *[New]*

VIII. SEX CRIMES

- § 24:42 In general
- § 24:43 Child pornography

IX. OBSTRUCTION OF JUSTICE, PERJURY, ESCAPE, AND BRIBERY

- § 24:44 Obstruction of justice

TABLE OF CONTENTS

§ 24:45	Bribery <i>[Retitled]</i>
§ 24:46	Witness tampering
§ 24:47	Perjury
§ 24:48	False statement to federal department or agency
§ 24:49	False statement to financial institution
§ 24:50	Escape
§ 24:51	Failure to appear for service of sentence
§ 24:51.50	Miscellaneous crimes <i>[New]</i>

X. CONSPIRACIES, GANGS, AND CRIMINAL ENTERPRISES

§ 24:52	Conspiracy
§ 24:53	Engaging in continuing criminal enterprise (CCE)
§ 24:54	Racketeer Influenced and Corrupt Organizations Act (RICO)
§ 24:55	RICO—Civil suits
§ 24:56	Violence in aid of a racketeering enterprise (VICAR)

XI. TAX EVASION AND OTHER CRIMINAL NONCOMPLIANCE

§ 24:57	Noncompliance in general
§ 24:58	Failure to pay child support
§ 24:59	Tax evasion
§ 24:59.50	Other tax crimes <i>[New]</i>
§ 24:60	Gambling
§ 24:61	Environmental violations
§ 24:62	Securities regulation violations
§ 24:63	Sex offender registration violations

XII. CIVIL RIGHTS

§ 24:64	Civil rights violations
§ 24:65	Civil rights violations—Under color of law

XIII. IMMIGRATION AND CUSTOMS

§ 24:66	Immigration—In general
§ 24:67	Harboring or shielding illegal aliens

CHAPTER 25. CAPACITY

§ 25:5	Amnesia
§ 25:10	Insanity
§ 25:15	Insanity—Burden of proof
§ 25:20	Insanity—Expert testimony

CHAPTER 26. PARTIES *[REVISED CHAPTER]*

§ 26:1	Aiders and abettors
--------	---------------------

- § 26:2 Accessories after the fact
- § 26:3 Conspirators

CHAPTER 27. DEFENSES

I. IN GENERAL

- § 27:1 In general
- § 27:2 Failure to give notice of or timely assert defense

II. BARS TO PROSECUTION

- § 27:3 Abatement
- § 27:4 Statute of limitations
- § 27:5 Statute of limitations—continuing offense
- § 27:6 Statute of limitations—adequacy of indictment to toll statute
- § 27:7 Collateral estoppel
- § 27:8 Personal grant of immunity

III. SPECIFIC DEFENSES

- § 27:9 Abandonment, withdrawal, and renunciation
- § 27:10 Advice of counsel or other expert
- § 27:11 Alibi
- § 27:12 Diminished capacity generally
- § 27:13 Duress
- § 27:14 Entrapment
- § 27:15 Insanity
- § 27:16 Justification/necessity
- § 27:17 Mistake-of-fact defense
- § 27:18 Outrageous government misconduct
- § 27:19 Public authority defense
- § 27:20 Self-defense
- § 27:21 Sentencing entrapment

PART IV. FEDERAL PROCEDURES

CHAPTER 28. JURISDICTION AND VENUE

[REVISED CHAPTER]

- § 28:1 Jurisdiction of district court
- § 28:2 Propriety of federal as opposed to state or Native American jurisdiction
- § 28:3 Jurisdiction over post-trial motions
- § 28:4 Venue in general
- § 28:5 Motion for change of venue
- § 28:6 Extraterritorial application *[New]*

TABLE OF CONTENTS

**CHAPTER 29. PRELIMINARY
PROCEEDINGS**

I. GRAND JURY

- § 29:1 In general *[New]*
- § 29:2 Subpoenas *[New]*
- § 29:3 Immunity *[New]*
- § 29:4 Disclosure *[New]*
- § 29:5 Remedy for improprieties *[New]*

**II. POST-ARREST APPEARANCE, BAIL, AND PRETRIAL
RELEASE**

- § 29:6 Initial post-arrest appearance *[New]*
- § 29:7 Bail *[New]*
- § 29:8 Pretrial release conditions *[New]*
- § 29:9 Remedy for violation of bail/pretrial release conditions *[New]*

III. OTHER PRELIMINARY PROCEEDINGS

- § 29:10 Pretrial competency determination *[New]*

**CHAPTER 30. INDICTMENT AND
INFORMATION**

- § 30:0 In general
- § 30:5 Combining two or more separate offenses in a single count *[New]*
- § 30:10 Challenging indictment *[New]*

CHAPTER 31. PRETRIAL MOTIONS

- § 31:0 Sufficiency of indictment
- § 31:5 Sufficiency of indictment—Procedure for dismissing indictment
- § 31:10 Sufficiency of indictment—Severance
- § 31:20 Motions by indigent defendant—Court-appointed psychologist
- § 31:25 Motion to dismiss *[New]*

**CHAPTER 32. DISCOVERY, DISCLOSURE,
AND INFORMATION-GATHERING
*[REVISED CHAPTER]***

- § 32:1 Motion to compel discovery
- § 32:2 Scope of discovery under Rule 16
- § 32:2.90 Obligation to provide reasoning for sentence *[New]*
- § 32:3 Government obligation to provide statements of defendant and coconspirators
- § 32:4 Remedy for government's violation of Rule 16
- § 32:5 Remedy for defendant's violation of Rule 16

- § 32:6 Jencks Act
- § 32:7 General applicability of *Brady*
- § 32:8 Evidence held material under *Brady*
- § 32:9 Evidence not material under *Brady*
- § 32:10 Government failure to preserve evidence
- § 32:11 Freedom of Information Act
- § 32:12 Issuance of subpoenas *[New]*
- § 32:13 IRS summonses *[New]*

CHAPTER 33. GUILTY PLEAS *[REVISED CHAPTER]*

I. PLEA BARGAINING

- § 33:1 Plea bargaining in general
- § 33:2 Right to enforce plea bargain
- § 33:3 Plea agreement not breached by government
- § 33:4 Plea agreement breached by government
- § 33:5 Plea agreement breach cured
- § 33:6 Use of admissions made in plea agreement or in negotiations

II. ACCEPTING PLEA

- § 33:7 Accepting plea
- § 33:8 Requirement that plea be knowing and voluntary
- § 33:9 Duty to inquire as to factual basis of plea
- § 33:10 Duty to advise defendant of consequences of plea
- § 33:11 Effect of failure to advise defendant of consequences
- § 33:12 Duty to explain nature of charges
- § 33:13 Duty to advise defendant of his or her rights
- § 33:14 Competency of defendant
- § 33:15 Court's refusal to accept plea
- § 33:16 Court's partial acceptance of plea

III. NOLO PLEAS AND MODIFIED GUILTY PLEAS

- § 33:17 *Nolo contendere, non vult* and *Alford* pleas
- § 33:18 Conditional guilty plea

IV. MOTION TO WITHDRAW GUILTY PLEA

- § 33:19 Motion to withdraw guilty plea
- § 33:20 Right to withdraw plea before court accepts it
- § 33:21 Right to hearing
- § 33:22 Grounds for withdrawing plea in general
- § 33:23 Withdrawal due to inaccuracies
- § 33:24 Withdrawal due to ineffective assistance of counsel
- § 33:25 Withdrawal due to actual innocence

TABLE OF CONTENTS

V. APPEAL AND WAIVER

- § 33:26 Effect of waiver of appeal rights
- § 33:27 Effect of waiver of other rights
- § 33:28 Guilty plea as waiver of prior defects
- § 33:29 Plain error rule
- § 33:30 Standard of review
- § 33:31 Rule 11(c)(1)(C) agreements *[New]*

CHAPTER 34. EVIDENCE

- § 34:0 Judicial notice

I. ADMISSIBILITY AND WITNESSES

- § 34:15 Relevancy and prejudice
- § 34:20 Variance between pleading and proof
- § 34:25 Best evidence rule
- § 34:35 Evidence received subject to connection
- § 34:40 Character and reputation evidence
- § 34:45 Proof of other crimes to show motive, intent, etc.
- § 34:50 Proof of other bad acts
- § 34:55 Chain of possession
- § 34:65 Circumstantial evidence—Intent
- § 34:80 Circumstantial evidence—Flight
- § 34:85 Opinion evidence
- § 34:88 Evidence obtained under hypnosis *[New]*
- § 34:94 Stipulations as to evidence *[New]*
- § 34:95 Identification evidence
- § 34:100 Identification evidence—Prior identification
- § 34:105 Identification evidence—Handwriting
- § 34:110 Identification evidence—Lie detector test
- § 34:120 Competency of witness
- § 34:122 Former co-defendant as witness *[New]*
- § 34:135 Privileged communications
- § 34:140 Witness's assertion of privilege against self-incrimination
- § 34:150 Expert witness
- § 34:160 Disclosure of identity of informants
- § 34:165 Immunity of witness from prosecution
- § 34:170 Cross-examination procedure
- § 34:174 Cross-examination procedure—Witness's overview of case *[New]*
- § 34:180 Cross-examination procedure—Impeachment by prior conviction
- § 34:185 Cross-examination procedure—Nature of conviction
- § 34:190 Cross-examination procedure—Impeachment by prior inconsistent statement
- § 34:200 Cross-examination procedure—Impeachment for prior illegal or immoral acts
- § 34:207 Cross-examination procedure—Impeachment by showing bias of witness *[New]*

- § 34:212 Cross-examination procedure—Impeachment using privileged information *[New]*
- § 34:220 Hearsay evidence
- § 34:225 Hearsay evidence—Admissions and confessions
- § 34:227 Hearsay evidence—Agency exception *[New]*
- § 34:230 Hearsay evidence—Business records exception
- § 34:233 Hearsay evidence—Declarations against penal interest *[New]*
- § 34:235 Hearsay evidence—Declarations of co-conspirators
- § 34:240 Hearsay evidence—Documentary evidence
- § 34:245 Hearsay evidence—Photographs
- § 34:246 GPS and cell tower evidence *[New]*
- § 34:250 Hearsay evidence—Prior consistent statements
- § 34:255 Hearsay evidence—Prior inconsistent statements as substantive evidence
- § 34:260 Hearsay evidence—Use of prior testimony
- § 34:261 Hearsay evidence—Recorded statements *[New]*
- § 34:263 Videotaped evidence *[New]*

II. WEIGHT AND SUFFICIENCY

- § 34:265 Sufficiency of evidence
- § 34:270 Sufficiency of evidence—Drug violations

CHAPTER 35. THE TRIAL

- § 35:0 Disqualification of trial judge
- § 35:03 Disqualification of prosecutor *[New]*
- § 35:5 Defendant's right to continuance
- § 35:20 Absence of defendant or counsel
- § 35:25 Decisions of defense counsel as binding upon defendant
- § 35:30 Duty of trial court to order competency hearing
- § 35:42 Hearings and exceptions outside presence of jury—Ex parte conferences *[New]*
- § 35:50 Conduct of trial judge
- § 35:51 Conduct of trial judge—Reversal of magistrate ruling *[New]*
- § 35:55 Conduct of trial judge—Examination of witnesses
- § 35:60 Conduct of trial judge—Prejudicial comments
- § 35:65 Conduct of trial judge—Comment on defendant's failure to testify
- § 35:70 Conduct of trial judge—Exclusion of evidence
- § 35:80 Conduct of trial judge—Granting severance
- § 35:85 Restrictions on right of cross-examination
- § 35:90 Motions for judgment of acquittal *[Retitled]*
- § 35:95 Conduct of prosecutor
- § 35:100 Conduct of prosecutor—Discretion to prosecute
- § 35:105 Conduct of prosecutor—Improper questioning of witnesses
- § 35:110 Conduct of prosecutor—Comments made during summation
- § 35:115 Conduct of prosecutor—Comment on defendant's failure to testify
- § 35:120 Conduct of prosecutor—Comment on defendant's silence while in custody
- § 35:125 Conduct of prosecutor—Improper expression of opinion

TABLE OF CONTENTS

- § 35:135 Conduct of prosecutor—Suppression of evidence
- § 35:140 Conduct of prosecutor—Comment on an accused’s exercise of his right to counsel
- § 35:145 Motion to reopen evidence *[New]*
- § 35:147 Right to public trial *[New]*
- § 35:148 Defendant’s right to testify *[New]*
- § 35:150 Other procedural matters *[New]*
- § 35:155 Arguments by defense counsel *[New]*

CHAPTER 36. THE JURY

I. SELECTION

- § 36:0 Requirement of an impartial jury
- § 36:5 Qualification of individual jurors
- § 36:7 Jury venire representative of community *[New]*
- § 36:8 Anonymous jury *[New]*
- § 36:10 Systematic exclusion of minority group members
- § 36:20 Exclusion of jurors in capital cases
- § 36:25 Conduct of voir dire
- § 36:30 Peremptory challenges
- § 36:40 Exposure of jurors to prejudicial publicity
- § 36:45 Substitution of jurors

II. INSTRUCTIONS

- § 36:47 In general *[New]*
- § 36:50 “Allen” dynamite charge
- § 36:55 Accomplice testimony
- § 36:65 Burden of proof
- § 36:70 Character evidence
- § 36:72 “Conscious avoidance” charge *[New]*
- § 36:75 Credibility of witnesses
- § 36:80 Credibility of witnesses—Defendant’s failure to testify
- § 36:82 Deliberate ignorance instruction *[New]*
- § 36:85 Duty to charge on defendant’s theory of defense
- § 36:95 Duty to charge on essential elements of crime
- § 36:105 Duty to charge on voluntariness of confession
- § 36:110 Intent and willfulness
- § 36:115 Lesser included offenses
- § 36:120 Limiting and cautionary instructions
- § 36:123 “Malice” instruction *[New]*
- § 36:125 “Missing witness” instruction
- § 36:126 Offense not charged in indictment *[New]*
- § 36:127 “Not guilty by reason of insanity” charge *[New]*
- § 36:130 Parole eligibility
- § 36:135 Guilt based on recent and exclusive possession
- § 36:150 Prejudicial comments by trial judge during charge
- § 36:155 Charge on issues of law

§ 36:165 Reasonable doubt

III. DELIBERATION

- § 36:185 Extrajudicial communications
- § 36:187 Reviewing exhibits and replaying recordings *[New]*
- § 36:190 Extrajudicial communications—Consideration of evidence not in the record
- § 36:195 Other unauthorized or improper conduct
- § 36:200 Supplemental instructions

IV. VERDICTS

- § 36:205 Special verdicts
- § 36:210 Requirement of unanimity
- § 36:218 Announcement of verdict *[New]*
- § 36:220 Inconsistent verdicts
- § 36:230 Duty of trial judge to grant mistrial
- § 36:235 Juror's impeachment of verdict
- § 36:240 Post-verdict inquiry into juror's competency

CHAPTER 37. POSTCONVICTION PETITIONS *[RETITLED AND REVISED CHAPTER]*

I. IN GENERAL

- § 37:1 Postconviction access to evidence
- § 37:2 Applicability and constitutionality of AEDPA
- § 37:3 Error coram nobis
- § 37:3.50 Post-conviction DNA testing *[New]*

II. MOTION FOR A NEW TRIAL

- § 37:4 In general
- § 37:5 Grounds

III. § 2255 POSTCONVICTION RELIEF PETITIONS

- § 37:6 Waiver of right to bring § 2255 petition
- § 37:7 Timeliness—When limitations period begins
- § 37:8 Timeliness—Tolling of limitations period
- § 37:9 Entitlement to hearing
- § 37:10 Grounds for bringing motion
- § 37:11 Procedural requirements
- § 37:12 Appealing denial of motion
- § 37:12.50 Certificate of appealability *[New]*
- § 37:13 Second or successive petitions
- § 37:14 Burden of proof

TABLE OF CONTENTS

- § 37:15 Burden of proof—Sentencing errors
- § 37:16 Section 2241 claims—“The savings clause”

IV. FEDERAL HABEAS PETITIONS BY STATE PRISONERS

A. PROCEDURAL REQUIREMENTS

- § 37:17 Jurisdiction
- § 37:18 Custody requirement
- § 37:19 Exhaustion of state remedies
- § 37:20 Noncompliance with state procedural rules
- § 37:21 Timeliness—When limitations period begins
- § 37:22 Timeliness—Tolling of limitations period
- § 37:23 Entitlement to hearing
- § 37:24 Requirement that claim was raised on direct appeal
- § 37:25 Federal procedural default
- § 37:26 Appealing denial of motion
- § 37:27 Second or successive petitions
- § 37:28 Grounds for stay of habeas proceeding

B. GROUNDS FOR RELIEF

- § 37:29 Generally
- § 37:30 Fundamental or constitutional error
- § 37:31 Innocence

C. BURDEN OF PROOF

- § 37:32 Harmless error
- § 37:33 Deference to state courts

CHAPTER 38. SENTENCING AND PUNISHMENT *[REVISED CHAPTER]*

I. JUDICIAL DISCRETION

- § 38:1 Judicial discretion: Role of Guidelines
- § 38:2 Abuse of judicial discretion
- § 38:2.50 Court bound by jury’s findings of fact *[New]*
- § 38:2.70 Polling jurors for sentencing recommendation *[New]*
- § 38:2.80 Sentencing factors *[New]*

II. SENTENCING PROCEEDINGS

- § 38:3 Sentencing proceedings in general
- § 38:4 Notice to defendant
- § 38:5 Continuance
- § 38:6 Presentence report
- § 38:7 Presence of defendant
- § 38:8 Allocution
- § 38:9 Victims’ rights
- § 38:10 Credit for time spent in custody prior to sentencing

III. EVIDENCE AND BURDEN OF PROOF

- § 38:11 Applicability of rules of evidence
- § 38:11.50 Relevant conduct generally *[New]*
- § 38:12 Consideration of conduct underlying acquitted charges
- § 38:13 Burden of proof
- § 38:14 Proof of prior convictions

IV. EFFECT OF PLEA BARGAIN

- § 38:15 Sentence not contemplated by plea

V. SENTENCING ON TWO OR MORE CHARGES IN SAME PROCEEDING

- § 38:16 Multiple counts of same offense
- § 38:17 Consecutive vs. concurrent sentences

VI. SENTENCING GUIDELINES

- § 38:18 Sentencing guidelines generally
- § 38:19 Choice of guideline—Base offense level
- § 38:20 Mandatory minimum sentence
- § 38:21 Statutory maximum sentence
- § 38:21.50 Definitions and terminology *[New]*

VII. SENTENCING GUIDELINES: ENHANCEMENT AND UPWARD DEPARTURE

- § 38:22 Enhancement and upward departure generally
- § 38:23 Activity in concert with others
- § 38:23.50 Role in the offense *[New]*
- § 38:24 Death or bodily injury
- § 38:25 Risk or threat of death or bodily injury; Use of force or restraint
- § 38:26 Dangerous weapons
- § 38:27 Sophisticated means, regular business or organized scheme
- § 38:28 Amount of money involved; actual or intended loss calculation
- § 38:29 Quantity of drugs
- § 38:30 Involvement of minor in commission of crime
- § 38:31 Obstruction of justice
- § 38:32 Abuse of trust
- § 38:33 Number of victims
- § 38:34 Criminal history
- § 38:35 Pornography

VIII. SENTENCING GUIDELINES: DECREASE IN OFFENSE LEVEL AND DOWNWARD DEPARTURE

- § 38:36 Decrease in offense level and downward departures generally
- § 38:37 Safety valve relief
- § 38:38 Acceptance of responsibility

TABLE OF CONTENTS

§ 38:39 Substantial assistance

IX. HABITUAL AND CAREER OFFENDERS

- § 38:40 In general
- § 38:41 Predicate offense as too old or too recent
- § 38:42 Claim that predicate conviction was improperly obtained or is no longer in force
- § 38:43 Felony or misdemeanor
- § 38:43.50 Determining whether offense is “violent felony” under ACCA elements clause *[New]*
- § 38:44 Determining whether state crime is broader than ACCA “generic” offense *[Retitled]*
- § 38:44.50 *Johnson* and its progeny *[New]*
- § 38:45 Juvenile adjudications

X. NON-INCARCERATIVE PENALTIES

- § 38:46 In general
- § 38:47 Restitution in general
- § 38:48 Calculation of restitution amount
- § 38:49 Fines and assessments *[Retitled]*

XI. MODIFICATION OF SENTENCE

- § 38:50 In general
- § 38:50.50 First Step Act *[New]*
- § 38:51 Correction of error
- § 38:52 Modification following appeal
- § 38:53 Resentencing hearing procedure
- § 38:54 Increasing sentence upon retrial
- § 38:55 Waiver of right to appeal
- § 38:56 Government appeals
- § 38:57 Commutation
- § 38:58 Motion for early termination of supervised release

Volume 2

CHAPTER 39. THE APPEAL *[REVISED CHAPTER]*

I. DEFENDANT’S RIGHTS

- § 39:1 Right to appeal
- § 39:2 Right to counsel on direct appeal
- § 39:3 Right to transcript of record
- § 39:4 Guilty or *nolo contendere* plea as waiver
- § 39:5 Waiver of appeal rights in plea agreement

- § 39:6 Failure to preserve arguments or objections
- § 39:7 Forfeiture/waiver of specific arguments
- § 39:8 Fugitive disentitlement rule

II. GOVERNMENT'S RIGHTS

- § 39:9 Appeal by government
- § 39:10 Forfeiture/waiver of specific arguments by government

III. GROUNDS FOR DISMISSAL

- § 39:11 Grounds for dismissal generally
- § 39:12 Timeliness—Failure to file timely notice of appeal
- § 39:13 Timeliness—Untimely filing excused
- § 39:14 Procedural defects
- § 39:15 Mootness
- § 39:16 Denial of review based on concurrent sentence doctrine

IV. INTERLOCUTORY APPEALS

- § 39:17 General rule barring appellate review of nonfinal orders
- § 39:18 Government's right to interlocutory appeal of rulings that exclude material evidence
- § 39:19 Other situations where interlocutory appeals may be permissible
- § 39:20 Divestiture of district court's jurisdiction during interlocutory appeal

V. SCOPE OF APPELLATE REVIEW AND APPLICABLE STANDARDS

- § 39:21 Scope of appellate review
- § 39:22 Plain error review
- § 39:23 Harmless error test
- § 39:24 Structural error
- § 39:25 Invited error doctrine
- § 39:26 Deference to trial court's factual findings
- § 39:27 *De novo* review of legal issues

CHAPTER 40. PROBATION AND SUPERVISED RELEASE *[REVISED CHAPTER]*

I. PROBATION

- § 40:1 Conditions of probation
- § 40:2 Revocation of probation

II. SUPERVISED RELEASE

- § 40:3 Conditions of supervised release

TABLE OF CONTENTS

- § 40:4 Duration of, and time counted toward, supervised release
- § 40:5 Modification of supervised release
- § 40:5.50 Motion for early termination of supervised release *[New]*
- § 40:6 Revocation of supervised release—In general
- § 40:7 Supervisee’s rights at revocation hearing
- § 40:8 Sentence imposed at revocation hearing

III. EARLY RELEASE

- § 40:9 Good time credits
- § 40:9.50 Compassionate release *[New]*

IV. EXPUNGEMENT OF RECORDS/RESTORATION OF RIGHTS

- § 40:10 Expungement of records

V. CERTIFICATE OF INNOCENCE

- § 40:11 Certificate of innocence *[New]*

CHAPTER 41. PRISONER AND DETAINEE PROCEEDINGS *[REVISED CHAPTER]*

I. ACCESS TO FEDERAL COURTS: RIGHTS AND ROADBLOCKS GENERALLY

- § 41:1 In general
- § 41:2 Civil rights suits under Section 1983
- § 41:3 Section 1983 immunity
- § 41:4 Section 1983 limitations period
- § 41:5 *Bivens* actions
- § 41:6 Federal Tort Claims Act (FTCA)
- § 41:7 FTCA: Procedure
- § 41:8 Habeas petitions
- § 41:9 Inmate Accident Compensation Act
- § 41:9.50 Errors in *pro se* suits *[New]*

II. PRISON LITIGATION REFORM ACT (PLRA)

- § 41:10 PLRA in general
- § 41:11 Obligation to exhaust administrative remedies: Applicability
- § 41:12 Exhaustion of administrative remedies: Adequacy
- § 41:13 Payment of filing fees: in general
- § 41:14 Payment of filing fees: What is a “strike”?
- § 41:14.50 Determination of frivolousness of prisoner complaints *[New]*
- § 41:15 “Imminent danger” exception to three-strikes rule
- § 41:15.50 Limits on compensatory damages *[New]*
- § 41:16 Cap on attorney’s fees

III. MINIMAL DUE PROCESS RIGHTS

- § 41:17 Due process rights during in-prison hearings
- § 41:18 Due process for prison disciplinary actions
- § 41:19 Due process for non-disciplinary actions
- § 41:20 Access to legal resources
- § 41:21 Prisoners' funds and financial obligations

IV. CONDITIONS OF CONFINEMENT

- § 41:22 Conditions of confinement generally
- § 41:23 Separation from general prison population
- § 41:24 Abuse by prison employees
- § 41:25 Deliberate indifference to medical needs
- § 41:26 Restrictions and deprivations generally
- § 41:27 Unsafe conditions
- § 41:28 Failure to protect from other prisoners
- § 41:29 Religious accommodation
- § 41:30 Retaliation for exercise of rights
- § 41:31 Credits affecting length of sentence
- § 41:32 Detainee rights

CHAPTER 42. ANCILLARY PROCEEDINGS *[REVISED CHAPTER]*

I. CONTEMPT

- § 42:1 Civil and criminal contempt distinguished
- § 42:2 Civil contempt
- § 42:3 Criminal contempt
- § 42:4 Summary contempt

II. DEPORTATION

- § 42:5 In general
- § 42:6 Deportation due to aggravated felony
- § 42:7 Deportation due to crime involving moral turpitude
- § 42:8 Deportation due to controlled substance offense
- § 42:9 Applicability of constitutional protections to deportation procedures

III. DEPRIVATION OF CIVIL RIGHTS

- § 42:10 In general
- § 42:11 Retaliatory prosecution
- § 42:11.50 Retaliatory arrest *[New]*
- § 42:12 Failure to protect and theory of state-created danger
- § 42:13 Scope of governmental liability
- § 42:14 Judicial immunity
- § 42:15 Prosecutorial immunity
- § 42:16 Witness immunity

TABLE OF CONTENTS

- § 42:17 Statute of limitations and procedural bars generally
- § 42:18 Waiver and estoppel
- § 42:19 Attorney fees

IV. EXTRADITION

- § 42:20 Transfer to or from federal custody
- § 42:21 Foreign sovereigns
- § 42:21.50 Interstate Agreement on Detainers Act *[New]*

V. REMOVAL OF STATE PROSECUTION TO FEDERAL COURT

- § 42:22 Federal officer removal statute
- § 42:23 Civil rights removal statute

VI. FORFEITURE

- § 42:24 Forfeiture in general
- § 42:25 Excessive Fines Clause
- § 42:26 Civil forfeiture: Rights that do apply
- § 42:27 Civil forfeiture: Rights that do not apply
- § 42:28 Property subject to civil forfeiture
- § 42:29 Criminal forfeiture in general
- § 42:30 Property subject to criminal forfeiture
- § 42:31 Money judgments in criminal forfeiture proceedings
- § 42:32 Motion for return of seized property

VII. JUVENILE DELINQUENTS AND YOUTHFUL OFFENDERS

- § 42:33 Juvenile delinquents—In general
- § 42:34 Juvenile delinquents—Constitutional rights
- § 42:35 Juvenile delinquents—Transfer to adult court
- § 42:36 Consequences of offense and/or prosecution spanning 18th birthday

VIII. COMMITMENT TO MENTAL INSTITUTION

- § 42:37 In general
- § 42:38 Commitment of sexually dangerous predators
- § 42:39 Pretrial commitment
- § 42:40 Commitment of insanity acquittee

IX. SEX OFFENDER REGISTRATION AND RESTRICTIONS ON REGISTRANTS

- § 42:41 Sex offender registration laws
- § 42:42 Restrictions on registered sex offenders

X. MANDAMUS

- § 42:43 In general

PART V. CONSTITUTIONAL GUARANTEES

CHAPTER 43. ADMISSIONS AND CONFESSIONS [REVISED CHAPTER]

I. DUE PROCESS VIOLATIONS: INVOLUNTARINESS AND COERCION

- § 43:1 Involuntariness and coercion generally
- § 43:2 Threats
- § 43:3 Promises of leniency
- § 43:4 Mental incapacity
- § 43:5 Intoxication
- § 43:6 Trickery

II. NEED FOR AND ADEQUACY OF *MIRANDA* WARNINGS

- § 43:7 General construction and operation of *Miranda*
- § 43:8 Requirement that defendant be “in custody”
- § 43:9 Prerequisite of interrogation
- § 43:10 Public safety exception
- § 43:10.50 Routine booking exception [*New*]
- § 43:11 Adequacy of warnings
- § 43:12 Delayed warning

III. ASSERTION OR WAIVER OF *MIRANDA* RIGHTS

- § 43:13 Waiver of *Miranda* rights
- § 43:14 Waiver of *Miranda* rights—Voluntary and intelligent requirement
- § 43:15 Effect of refusal to sign written waiver
- § 43:16 Waiver of *Miranda* rights: Burden of proof
- § 43:17 Invocation of right to counsel
- § 43:18 Invocation of right to remain silent

IV. INTERROGATION IN ABSENCE OF COUNSEL

- § 43:19 Absence of counsel in general
- § 43:20 Interrogation resumed despite request for counsel
- § 43:21 Break in custody after invocation of right to counsel
- § 43:22 Absence of appointed counsel
- § 43:23 Absence of counsel retained or appointed in unrelated matter

V. CONTEXT IN WHICH ADMISSION OCCURS

- § 43:24 Prison
- § 43:25 Courtroom

TABLE OF CONTENTS

- § 43:26 Court-ordered psychiatric examination
- § 43:27 Recording of conversation with third party
- § 43:28 Plea bargaining
- § 43:29 Promise of confidentiality
- § 43:30 Defendant's home
- § 43:31 Supervised release, parole, probation, or non-prison detention

VI. USE OF TAINTED ADMISSIONS AND THEIR FRUITS

- § 43:32 Admissibility of voluntary statement that follows *Miranda* violations
- § 43:33 Fruit of an illegal arrest
- § 43:34 Fruit of an illegal search
- § 43:35 Physical fruits of tainted interrogation
- § 43:36 Use for impeachment purposes
- § 43:37 Defendant's right to inform jury about how admissible confession was obtained
- § 43:38 Use of illegally obtained statements at sentencing

VII. STATUTORY REQUIREMENTS AND STATE CONSTITUTIONAL REQUIREMENTS

- § 43:39 Delayed arraignment
- § 43:40 Recordation
- § 43:41 Right to have family member or other supportive party present depends on state law
- § 43:42 Requirements of state constitutions

CHAPTER 44. CONFRONTATION OF WITNESSES *[REVISED CHAPTER]*

I. OVERVIEW

- § 44:1 In general
- § 44:2 Forensic evidence
- § 44:3 Proceedings where right applies
- § 44:4 Joint trials
- § 44:4.50 Confrontation rights under state constitutions
- § 44:4.60 Constitutional right to confront translator *[New]*

II. EXCEPTIONS

- § 44:5 Statements made when seeking medical treatment
- § 44:6 Records and reports
- § 44:7 Emergency
- § 44:8 Evidence introduced for nontestimonial purpose
- § 44:9 Statements by co-conspirators
- § 44:10 Forfeiture by wrongdoing
- § 44:11 Expert opinions and testimony

III. OPPORTUNITY TO CROSS-EXAMINE

- § 44:12 Adequacy of confrontation during trial *[Retitled]*
- § 44:13 Restrictions on cross-examination
- § 44:14 Adequacy of opportunity to cross-examine: Outside courtroom
- § 44:15 Use of witness' prior testimony
- § 44:15.50 Unavailability of witness *[New]*

IV. WAIVER AND HARMLESS ERROR

- § 44:16 Waiver
- § 44:17 Harmless error

CHAPTER 45. RIGHT TO COUNSEL *[REVISED CHAPTER]*

I. SCOPE AND EXTENT OF RIGHT GENERALLY

- § 45:1 When right attaches generally
- § 45:2 Questioning defendant outside presence of defense counsel
- § 45:3 Right to privacy when consulting counsel
- § 45:4 Extent of defendant's right to consult counsel during proceeding
- § 45:4.50 Right to confer with counsel—Effect of absence of interpreter *[New]*
- § 45:5 Remedy for violation of right to counsel
- § 45:5.50 Driving while under the influence *[New]*

II. NATURE OF OFFENSE CHARGED

- § 45:6 Misdemeanor
- § 45:7 Capital offense
- § 45:8 Traffic or ordinance violation

III. RIGHT TO COUNSEL AT SPECIFIC TYPE OR STAGE OF PROCEEDING

- § 45:9 Pre-arraignment generally
- § 45:10 Grand jury
- § 45:11 Lineup
- § 45:12 Arraignment or preliminary hearing
- § 45:13 Court-ordered psychiatric examination
- § 45:14 Competency hearing and other pretrial hearings
- § 45:15 Sentencing, pre-sentence interviews, and assessment of restitution
- § 45:16 Sentence review and post-trial motions to correct sentences
- § 45:17 Motion to withdraw guilty plea
- § 45:18 Appellate proceedings generally
- § 45:19 Habeas corpus or other post-conviction collateral proceeding
- § 45:20 Motion to reduce sentence
- § 45:21 Probation, parole, or supervised release revocation hearing
- § 45:22 Civil proceeding initiated by government against offender

TABLE OF CONTENTS

IV. DEFENDANTS' RIGHT TO CHOOSE WHO REPRESENTS THEM

- § 45:23 Right to counsel of one's own choosing
- § 45:24 Access to frozen or impounded assets to hire counsel
- § 45:25 Right to continuance of trial to obtain new counsel
- § 45:26 Right to defend *pro se*
- § 45:27 Appellate self-representation
- § 45:28 Knowing and intelligent waiver of right to counsel
- § 45:29 Adequacy of warnings to defendant waiving trial counsel
- § 45:30 Competency to defend *pro se*
- § 45:31 Waiver by inaction
- § 45:32 Waiver of right to self-representation by misconduct
- § 45:33 Forfeiture
- § 45:34 Hybrid representation

V. RIGHT OF INDIGENT DEFENDANT

- § 45:35 Indigent defendants' right to counsel generally
- § 45:36 Eligibility for appointment of counsel
- § 45:37 Right to dismiss counsel and seek court-appointed substitute
- § 45:38 Ability to sue appointed counsel post-trial

VI. INEFFECTIVE ASSISTANCE GENERALLY

- § 45:39 Ineffectiveness—In general
- § 45:40 Ineffectiveness—Absence of counsel during portion of proceedings
- § 45:41 Ineffectiveness—Failure to assert available defense
- § 45:42 Ineffectiveness—Failure to investigate or to introduce evidence
- § 45:43 Ineffectiveness—Failure to make objections
- § 45:44 Ineffectiveness—Failure to bring in qualified outside experts
- § 45:45 Ineffectiveness—Strategy and related advice
- § 45:45.50 Ineffectiveness—Stipulations [*New*]
- § 45:46 Ineffectiveness—Failure to adopt position, argument, or tactics urged by defendant
- § 45:47 Ineffectiveness—Failure of trial counsel to pursue appeal or post-conviction petition
- § 45:48 Ineffectiveness—Counsel facing disciplinary charges or indictment
- § 45:48.50 Counsel admission to state bar [*New*]

VII. INEFFECTIVE ASSISTANCE AT SPECIFIC STAGE OR VENUE

- § 45:49 Ineffectiveness—Plea bargaining, plea offers, and related advice
- § 45:50 Ineffectiveness—Jury selection
- § 45:51 Ineffectiveness—Sentencing
- § 45:52 Ineffectiveness—Penalty phase of capital trial
- § 45:53 Ineffectiveness—Duty of appellate counsel

VIII. CONFLICT OF INTEREST

- § 45:54 In general

- § 45:55 Representation of co-defendants
- § 45:56 Previous representation of prosecution witness
- § 45:57 Counsel's obligation to reveal that defendant intends perjury or that
appellate claim is frivolous
- § 45:58 Waiver of conflict of interest

CHAPTER 46. CRUEL AND UNUSUAL PUNISHMENT *[REVISED CHAPTER]*

I. IN GENERAL

- § 46:1 In general
- § 46:2 Juvenile offenders

II. CAPITAL PUNISHMENT

- § 46:3 Capital punishment generally
- § 46:4 State constitutional & statutory requirements
- § 46:5 Persons eligible for death penalty—In general
- § 46:6 Persons ineligible for death penalty—Mentally ill or incompetent
persons *[Retitled]*
- § 46:7 Persons ineligible for death penalty—Intellectually disabled
persons *[Retitled]*
- § 46:8 Aggravating factors
- § 46:9 Mitigating factors
- § 46:10 Manner and effect of weighing or considering factors
- § 46:11 Manner and effect of weighing or considering factors—Effect of
invalid factor
- § 46:11.50 Manner of execution *[New]*

III. PROCEDURE IN CAPITAL TRIALS

- § 46:12 Capital punishment procedural requirements generally
- § 46:13 Counsel
- § 46:14 Rules of evidence and burden of proof in capital cases
- § 46:15 Decision to prosecute and conduct of prosecutor
- § 46:16 Matters related to jury
- § 46:17 Verdict
- § 46:18 Stay or reversal of execution and manner of execution
- § 46:19 Habeas claims *[New]*

CHAPTER 47. DOUBLE JEOPARDY

- § 47:0 In general
- § 47:5 In general—Interpretations by state courts
- § 47:10 When jeopardy attaches
- § 47:15 When jeopardy attaches—Interpretations by state courts
- § 47:20 Mistrials
- § 47:25 Mistrials—Reason for grant
- § 47:30 Crimes against separate sovereignties

TABLE OF CONTENTS

- § 47:35 Crimes against separate sovereignties—Dual sovereignty doctrine
- § 47:40 Implied acquittal
- § 47:45 Separate and distinct offenses
- § 47:50 Separate and distinct offenses—Same transaction
- § 47:55 Administrative proceedings
- § 47:65 Government misconduct *[New]*
- § 47:70 Issue preclusion *[New]*

CHAPTER 48. DUE PROCESS

- § 48:0 In general
- § 48:1 Interpretations by state courts *[New]*
- § 48:5 Drug violations *[Retitled]*
- § 48:10 Felonious homicide *[Retitled]*
- § 48:30 Sex crimes *[Retitled]*
- § 48:35 Clemency proceedings *[New]*
- § 48:40 Defendant's right to testify *[New]*
- § 48:45 Applicability of subsequent favorable jurisprudence *[New]*
- § 48:50 Involuntary medication of defendant *[New]*
- § 48:55 Right to appear before jury free of shackles and restraints *[New]*
- § 48:56 Conviction absent evidence of criminal intent or criminal negligence *[New]*

CHAPTER 49. EQUAL PROTECTION *[REVISED CHAPTER]*

I. IN GENERAL

- § 49:1 In general
- § 49:2 Race discrimination
- § 49:3 Sex discrimination
- § 49:4 Age discrimination
- § 49:5 Equal protection for indigent defendants
- § 49:6 Other characteristics or circumstances allegedly leading to denial of equal protection

II. EQUAL PROTECTION IN THE CRIMINAL LAW CONTEXT

- § 49:7 Equal protection challenges to statute under which defendant convicted
- § 49:8 Selective prosecution
- § 49:9 Selective enforcement
- § 49:10 Discrimination in jury selection
- § 49:11 Inequality in sentencing
- § 49:12 Unequal treatment in statutes affecting sentencing or time served
- § 49:13 Discriminatory treatment of prisoners and detainees
- § 49:14 Discriminatory treatment of parolees, probationers, and supervisees

CHAPTER 50. EX POST FACTO *[REVISED CHAPTER]*

- § 50:1 In general
- § 50:2 Continuing offenses
- § 50:3 Change in statute of limitations
- § 50:4 Sentencing generally
- § 50:5 Sentencing guidelines
- § 50:6 Prisoners, parolees, and probationers
- § 50:7 Sex offender laws
- § 50:8 Ex post facto judicial actions

CHAPTER 51. FREEDOM OF THE PRESS *[REVISED CHAPTER]*

- § 51:1 Press coverage of trials
- § 51:2 Press coverage of arrestees
- § 51:3 Press refusal to divulge information or testify
- § 51:4 Other issues

CHAPTER 52. FREEDOM OF RELIGION

- § 52:0 In general

CHAPTER 53. FREEDOM OF SPEECH AND EXPRESSION *[REVISED CHAPTER]*

I. IN GENERAL

- § 53:1 Forum *[New]*
- § 53:2 Means of expression *[New]*
- § 53:3 Compelled speech and expression *[New]*
- § 53:4 Videotaping and recording by private citizens *[New]*

II. RESTRICTIONS ON SPECIFIC TYPES OF CONTENT

- § 53:5 In general *[New]*
- § 53:6 Fighting words *[New]*
- § 53:7 Harassment and threats *[New]*
- § 53:8 Hate crimes *[New]*
- § 53:9 Obscenity *[New]*
- § 53:10 Child pornography *[New]*
- § 53:11 Lies *[New]*
- § 53:12 Restrictions on freedom to make, solicit, or receive payments for speech or expression *[New]*

CHAPTER 54. IDENTIFICATION PROCEDURES

- § 54:0 Right to have a lineup

TABLE OF CONTENTS

- § 54:5 Showups
- § 54:10 Suggestiveness of identification procedure

CHAPTER 55. RIGHT TO JURY TRIAL ***[REVISED CHAPTER]***

- § 55:1 In general
- § 55:2 “Serious” offenses
- § 55:3 Matters within jury’s exclusive province
- § 55:4 Waiver
- § 55:5 Adequacy of jury
- § 55:6 State statutory/constitutional provisions *[New]*

CHAPTER 56. PROPRIETY OF EXERCISE **OF POLICE POWER *[REVISED*** ***CHAPTER]***

I. PROPRIETY OF STATUTES

- § 56:1 In general

II. PROPRIETY OF LAW ENFORCEMENT ACTIONS **GENERALLY**

- § 56:2 In general
- § 56:3 Use of deadly force
- § 56:4 Use of excessive force
- § 56:5 Falsification or suppression of evidence
- § 56:6 Actions taken to stop escaping vehicles
- § 56:7 Actions involving persons with disabilities
- § 56:8 Actions taken in absence of jurisdiction
- § 56:9 Attempts to restrict observation and recording of law enforcement actions

III. PROCEDURAL CONCERNS RELATED TO SUITS **ALLEGING LAW ENFORCEMENT IMPROPRIETIES**

- § 56:10 Applicability of § 1983
- § 56:11 Other platforms for lawsuits alleging law enforcement improprieties
- § 56:12 Burden of proof and admissibility of evidence
- § 56:13 Qualified immunity
- § 56:14 Government and agency liability

CHAPTER 57. RETROACTIVITY OF **CONSTITUTIONAL RULINGS *[REVISED*** ***CHAPTER]***

- § 57:1 Applicability of new rules to cases on direct review

- § 57:2 Applicability of new rules to cases that are already final
- § 57:3 Rulings on whether specific decisions announced new rules

CHAPTER 58. PROHIBITION AGAINST UNLAWFUL SEARCHES AND SEIZURES [RETTLED AND REVISED CHAPTER]

I. OVERVIEW AND DETERMINATION OF WHETHER SEARCH OR SEIZURE OCCURRED

- § 58:1 Fourth Amendment in general
- § 58:2 What constitutes a “search” under Fourth Amendment
- § 58:3 Aerial surveys
- § 58:4 Dog sniffs
- § 58:5 Medical procedures
- § 58:6 DNA sampling and taking of physical specimens generally
- § 58:7 When does “seizure” occur?
- § 58:8 Governmental involvement
- § 58:9 Enforcement of tax liens
- § 58:9.50 Police review of business records
- § 58:10 Interpretation of state constitutions

II. RESIDENCES

- § 58:11 Need for search warrant
- § 58:12 Curtilage
- § 58:13 Arrest
- § 58:14 Knock and talk
- § 58:15 Residence of third party
- § 58:16 Illegal occupancy
- § 58:17 Protective sweep
- § 58:18 Interpretation of state constitutions

III. VEHICLES

- § 58:19 In general
- § 58:20 Traffic stop—reasonable suspicion
- § 58:21 Scope of protective search
- § 58:22 Prolongation of traffic stop
- § 58:23 Passengers
- § 58:24 Actions permissible if probable cause exists
- § 58:25 Checkpoints and roadblocks
- § 58:26 Interpretation of state constitutions

IV. OTHER LOCATIONS

- § 58:27 Street or public gathering place—Reasonable suspicion
- § 58:27.50 Street or public gathering place—Warrant check *[New]*

TABLE OF CONTENTS

§ 58:28	Stop and frisk
§ 58:29	Collective knowledge doctrine
§ 58:30	Place of business
§ 58:31	Hotel/motel room
§ 58:32	Hospital room
§ 58:33	Public transportation
§ 58:34	Crime scene
§ 58:35	United States border
§ 58:36	Open fields
§ 58:37	Foreign countries
§ 58:37.50	Premises and vehicles of law enforcement agency <i>[New]</i>

V. TARGET OF SEARCH OR SEIZURE

§ 58:38	Government employees
§ 58:39	Students
§ 58:40	Prisoners
§ 58:41	Parolees and probationers
§ 58:41.50	Persons living with parolees or probationers <i>[New]</i>
§ 58:42	Businesses and organizations generally
§ 58:43	Co-conspirators
§ 58:44	Non-citizens
§ 58:45	Interpretation of state constitutions

VI. PROPERTY SEARCHED AND/OR SEIZED

§ 58:46	Luggage
§ 58:47	Packages in transit
§ 58:48	Records
§ 58:49	Computers
§ 58:50	Trash
§ 58:51	Correspondence
§ 58:52	Abandoned and misplaced property
§ 58:53	Interpretation of state constitutions

VII. ARREST, SEARCH INCIDENT TO ARREST, AND INVENTORY

§ 58:54	Justification for arrest
§ 58:55	Manner of making arrest
§ 58:56	Search incident to arrest
§ 58:57	Inventory searches

VIII. WARRANTS

§ 58:58	In general
§ 58:59	Existence of probable cause
§ 58:60	Defects in warrants generally
§ 58:61	Warrant valid despite defects
§ 58:62	Anticipatory search warrants

- § 58:63 Telephonic search warrants
- § 58:64 Service of warrant
- § 58:65 Detention of occupants during search
- § 58:66 Scope of warrant
- § 58:67 Knock-and-announce rule
- § 58:68 Exceptions to knock-and-announce rule
- § 58:69 Interpretation of state constitutions

IX. EXCEPTIONS TO WARRANT REQUIREMENT

- § 58:70 Exigent circumstances generally
- § 58:71 Hot pursuit
- § 58:72 Community caretaker and emergency aid exceptions
- § 58:73 Regulatory search exception
- § 58:74 Plain view
- § 58:75 Plain feel
- § 58:76 Interpretation of state constitutions

X. WIRETAPS AND OTHER ELECTRONIC SURVEILLANCE

- § 58:77 Wiretaps generally
- § 58:78 Minimization requirement
- § 58:79 Admissibility of results of non-government wiretaps
- § 58:80 Cell phones
- § 58:81 Internet
- § 58:82 GPS and other tracking devices
- § 58:83 Infrared and thermal imaging
- § 58:84 Effect of failure to record and/or seal data

XI. ADMISSIBILITY AND STANDING

- § 58:85 Standing/expectation of privacy
- § 58:86 Admissibility in general
- § 58:87 Alternative source for information
- § 58:88 Intervening events and attenuation
- § 58:89 Good faith exception
- § 58:90 Interpretation of state constitutions

XII. CONSENT AND WAIVER

- § 58:91 In general
- § 58:92 Defendant's consent—voluntary
- § 58:93 Defendant's consent—involuntary or tainted
- § 58:94 Defendant's consent—Implied
- § 58:95 Third party consent
- § 58:96 Consent once removed
- § 58:97 Scope of consensual search
- § 58:98 Waiver
- § 58:99 Interpretation of state constitutions

TABLE OF CONTENTS

**CHAPTER 59. PROHIBITION AGAINST
SELF-INCRIMINATION**

I. SCOPE AND EXTENT OF RIGHT IN GENERAL

- § 59:5 Witness's assertion of privilege
- § 59:10 Witness's assertion of privilege—Basis for asserting privilege
- § 59:12 Waiver of privilege *[Deleted]*
- § 59:15 Effect of refusal to answer questions
- § 59:20 Silence as an admission
- § 59:21 Act-of-production privilege *[New]*

II. TESTIMONY AND RECORDS

- § 59:25 Testimony before grand jury
- § 59:26 Compelled statement or deposition *[New]*
- § 59:27 Habeas proceedings *[New]*
- § 59:30 Right to refuse examination by state psychiatrist
- § 59:35 Use of testimony obtained at probation revocation hearing
- § 59:36 Use of testimony obtained at statement-suppression hearing *[New]*
- § 59:45 Duty to pay tax as self-incrimination
- § 59:50 Duty to pay tax as self-incrimination—Tax returns
- § 59:65 Standing
- § 59:66 Subpoena of defendant's written records *[New]*
- § 59:67 Pre-sentence psychosexual examination *[New]*
- § 59:68 Increased sentence for failure to show remorse *[New]*
- § 59:69 Use of testimony compelled by foreign sovereign *[New]*

III. NONTESTIMONIAL ASPECTS

- § 59:70 Identifying physical characteristics
- § 59:75 Drunk driving tests
- § 59:90 Handwriting specimens
- § 59:100 Identifying confederates
- § 59:106 Tattoos *[New]*
- § 59:107 Finger or eye scan to access electronic devices *[New]*
- § 59:108 Requiring defendant to reveal password *[New]*

**CHAPTER 60. RIGHT TO SPEEDY TRIAL
*[REVISED CHAPTER]***

I. FEDERAL SPEEDY TRIAL ACT

- § 60:1 When speedy trial clock starts
- § 60:2 When speedy trial clock starts—Effect of superseding indictment
- § 60:3 Countable time—Statutory exclusions generally
- § 60:4 Countable time—Statutory exclusion for continuances in interest of justice

- § 60:5 Countable time—Excludability of continuances generally
- § 60:6 Countable time—Excludability of continuances requested by
defendant, defense counsel, or co-defendant
- § 60:7 Option to dismiss with or without prejudice
- § 60:8 Failure to timely assert rights and other forms of waiver
- § 60:9 Speedy indictment
- § 60:10 Delay in retrying defendant after successful appeal

II. OTHER SOURCES OF SPEEDY TRIAL RIGHTS

- § 60:11 Sixth Amendment speedy trial rights generally—A balancing test
- § 60:12 Sixth Amendment—Time that is *per se* excluded
- § 60:13 Constitution-based challenges to pre-indictment delay
- § 60:14 Constitution-based challenges to delay in resolving appeals
- § 60:15 Constitution-based challenges to sentencing delay
- § 60:16 Speedy trial rights under the Interstate Agreement on Detainers
- § 60:17 State speedy trial rights

CHAPTER 61. RIGHT TO PUBLIC TRIAL

[NEW]

- § 61:0 In general

CHAPTER 62. RIGHT TO BEAR ARMS

[NEW]

- § 62:1 In general

Table of Laws and Rules

Table of Cases

Index