REVISION OF TITLE 19.1 OF THE CODE OF VIRGINIA

REPORT OF THE
VIRGINIA CODE COMMISSION
To
THE GOVERNOR
And
THE GENERAL ASSEMBLY OF VIRGINIA

House Document No. 20

COMMONWEALTH OF VIRGINIA

Department of Purchases and Supply

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REVISION OF TITLE 19.1 OF THE CODE OF VIRGINIA

REPORT OF THE

VIRGINIA CODE COMMISSION

Richmond, Virginia
December 7, 1974

TO: Honorable Mills E. Godwin, Jr., Governor of Virginia

and

The General Assembly of Virginia

The General Assembly at its Special Session of 1971 directed the Virginia Code Commission, by House Joint Resolution No. 41, to make a study of certain matters, including the criminal laws of the State.

That portion of the Resolution relating to such laws directs the Commission to "make a thorough study of the criminal laws of the State and make recommendations for the review and recodification of all statutes of the State relating to crime and criminal procedure. Such review shall include determining whether sections should be deleted or added to the Code, whether changes in the penalty provisions should be made and such other relative changes as the Commission deems appropriate."

Honorable M. Ray Doubles, Retired Judge of the former Hustings Court of the City of Richmond, Part Two, was retained as Counsel to assist in the revision of Title 19.1, relating to criminal procedure.

The Commission has met with Counsel on numerous occasions and each section of Title 19.1 has been carefully considered, as well as many sections from other titles. As a result, many sections, and several chapters and articles, have been rewritten entirely and minor changes have been made in the language of many others to eliminate uncertainty, needless repetition and excess verbiage. Recent decisions of the Supreme Court of the United States have necessitated some redrafting to eliminate unconstitutional provisions in several of the present statutes.

Arrangement of chapters has been revised so that the subject matter in the title falls in more logical sequence.

Special comment on some of the more important changes are included in the body of this Report.

Conservators of the Peace

Chapter 2 of Title 19.1 (§§ 19.1-20 through 19.1-32) deals with

the appointment of conservators of the peace and their authority and duties. It reposes both police and judicial power in conservators of the peace in that they may issue warrants, make arrests and require a person so arrested to give a recognizance to keep the peace. In the opinion of the Commission, this combination of power violates constitutional concepts.

The revision found in Chapter 4 of Title 19.2 (§§ 19.2-12 through 19.2-25) empowers conservators of the peace to make arrests, but transfers the authority to issue warrants and hear cases for the purpose of requiring a recognizance to magistrates and other judicial officials. The revision also delineates more clearly the appointment, authority and duties of special conservators of the peace.

Search Warrants

Chapter 5 of Title 19.1 (§§ 19.1-83 through 19.1-89), which deals with the issuance of search warrants, has been revised to bring it in conformity with recent decisions and the Rules of Court. The revision is found in Chapter 5 of Title 19.2 (§§ 19.2-52 through 19.2-60).

Particular note is made of § 19.2-53 (a substitute for former § 19.1-84). The former section itemizes the articles for which a search warrant may issue. It fails to list many illegal articles and would require additions from time to time in accordance with future general legislation in the area of criminal law The revision, § 19.2-53, is cast in generic terms to cover all contraband and illegal articles, and conforms to recent decisions.

Grand Juries

Chapter 7 of Title 19.1 (§§ 19.1-147 through 19.1-160) covers the subject of grand juries, regular and special. As a result of the study of this subject and recommendations of the Virginia State Crime Commission, and a study thereof by the Code Commission, substantial changes have been made in the revision, particularly with respect to the special grand jury. The revision appears as Chapter 13 of Title 19.2 (§§ 19.2-191 through 19.2-215).

The fundamental distinction between regular grand juries and special grand juries has been retained—but the function, authority and power of, and procedure before, the special grand jury, have been spelled out in detail.

Limitation on Felony Prosecutions

§ 19.1-191 as amended by the 1974 Session of the General Assembly, which deals with time within which a felony trial must

commence in the circuit court after a case has been certified to it by a general district court, has been revised both to clarify the 1974 version and to cover situations not covered in the present statute.

The revision of this section is found in § 19.2-243, in which distinctions are made between situations where the accused is held in custody or is out on bail; whether a preliminary hearing was waived; and whether the accused has been arrested prior to indictment.

Deleted Sections

The following sections in Title 19.1 have been deleted and no counterpart is found in Title 19.2 except as noted.

19 1-7	When judge cannot sit on trial, how another judge procured to try the case Commission Note This problem is adequately covered in § 17-7
19 1-12 and 19 1-13	Public defenders in certain cities Public defenders in certain counties Commission Note The localities coming within the provisions of this special legislation have never made use of these sections
19 1-26	When person going armed required to give recognizance, with right of appeal Commission Note The language is too comprehensive and would cover a lawful hunter The purpose of the section is adequately covered in § 19 2-19
19 1-33 through 19 1-46 1	Post-mortem Examinations Commission Note These sections comprise Chapter 3 of Title 19 1, and with one exception, viz § 19 1-45, deal with administrative matters associated with the office of the Chief Medical Examiner and the duties of that office The chapter is being transferred to Title 32 (Health) § 19 1-45, dealing with receipt of reports and records into evidence, has been retained as § 19 2-188
19 1-48	Governor may deliver fugitive (to foreign power) Commission Note This section is unconstitutional The authority to extradite persons to foreign powers rests solely with the federal government
19 1-93	When warrant of arrest may issue against operator of railroad locomotive striking and killing another Commission Note No sound reason appears for the exception created by this section
19 1-109 9	Fee for admitting person to bail Commission Note This section is being transferred to Title 14 1

19 1-113	Bail when judge of corporation court is sick or absent Commission Note This provision is no longer necessary in view of the system of Circuit Courts
19 1-114, 19 1-115 and 19 1-117	Appointment of bail commissioners, etc Commission Note The provisions of these sections are no longer appropriate in view of the system of Magistrates
19 1-171	Unnecessary allegations may be ommitted from indictment Commission Note This section is adequately covered in other sections
19 1-185	What not to work a discontinuance Commission Note An unnecessary provision
19 1-186 1 and 19 1-186 2	Trial of certain traffic offenses Commission Note These two sections comprise Chapter 8 1 of Title 19 1, and are being transferred to Title 46 1
19 1-243	Benefit of clergy disallowed Commission Note Obselete
19 1-251	Conviction of lesser offenses under certain indictments Commission Note Transferred to Title 18 2 (See § 18 2-54)
19 1-263	Attorney for Commonwealth may issue summons for witnesses Commission Note Unnecessary
19 1-266	Witnesses in gambling, etc prosecutions Commission Note Transferred to Title 18 2 (See § 18 2-337)
19 1-280	When bill of exceptions may be taken Commission Note Covered in Rules of Court
19 1-290 1	Sections 8-1 1 and 8-1 2 and Rules of Court not affected by Chapter 11 Commission Note Unnecessary
19 1-326 and 19 1-327	Civil actions to recover certain penalties Commission Note In revising §§ 19 1-323 through 19 1-325 (see §§ 19 2-339 through 19 2-342) the sections noted have become unnecessary
19 1-343	When defendant who is sent to jail for nonpayment of fine may pay to clerk Commission Note Obsolete

CONCLUSION

Attached to and included in this Report are the following:

The Table of Comparative Sections is given for the purpose of tracing each section of the present law into its counterpart in Title 19.2. Certain words appearing in this Table have the following meanings, respectively. "Repealed" means that the section has been repealed by a previous act of the General Assembly. "Reserved" means that the particular Title 19.1 section number has never been used. "Deleted" means that the provisions of the section are not being reenacted in Title 19.2. "In" means that although the section as such is not being reenacted in Title 19.2, the substance thereof has been incorporated into the indicated section of Title 19.2 or is adequately included therein.

Following each section of proposed Title 19.2 there appears a Source Note to show what section of the present law it is based upon.

We express our appreciation to Judge M. Ray Doubles for the cooperation and assistance which he gave the Commission in the preparation of this Revision, and for the very considerable amount of time and effort which he expended in producing the tentative and final drafts of Title 19.2. We were fortunate to have the benefit of his knowledge of the laws relating to criminal procedure.

RECOMMENDATION

The Virginia Code Commission submits this Report, and recommends that the General Assembly enact the attached bill in 1975.

Respectfully submitted,
A L Philpott, Chairman
J Harry Michael, Jr , Vice Chairman
John A Banks, Jr
Frederick T Gray
John Wingo Knowles
Theodore V Morrison, Jr
*Robert E. Shepherd, Jr

*Robert E. Shepherd, Jr., Assistant Attorney General, was designated by Andrew P. Miller to represent him at the meetings of the Virginia Code Commission when the Commission was considering the drafts of Title 19.2.

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A BILL to revise, rearrange, amend and recodify the general laws of Virginia relating to criminal procedure generally; to that end to repeal Title 19.1 of the Code of Virginia, which title includes Chapters 1 through 17 and §§ 19.1-1 through 19.1-400, as severally amended, relating to criminal procedure generally; to amend the Code of Virginia by adding thereto in lieu of the foregoing title, chapters and sections of the Code repealed by this act a title numbered 19.2, chapters numbered 1 through 23 and sections numbered 19.2-1 through 19.2-392, relating to criminal procedure generally; to prescribe when such revision and recodification shall become effective; and to repeal all acts and parts of acts in conflict with the provisions of this act.

Be it enacted by the General Assembly of Virginia:

1. That Title 19.1 of the Code of Virginia, which title includes Chapters 1 through 17 and §§ 19.1-1 through 19.1-400, as severally amended, is repealed.

2. That the Code of Virginia is amended by adding thereto, in lieu of the title, chapters and sections of the Code herein repealed, a title numbered 19.2, chapters numbered 1 through 23 and sections numbered 19.2-1 through 19.2-392 as follows:

Title 19.2

Criminal Procedure.

CHAPTER 1.

General Provisions.

§ 19.2-1. Repealing clause.—All acts and parts of acts, all sections of this Code, and all provisions of municipal charters, inconsistent with the provisions of this title, are, except as herein otherwise provided, repealed to the extent of such inconsistency.

Source: § 19.1-1.

§ 19.2-2. Effect of repeal of Title 19.1 and enactment of this title.—The repeal of Title 19.1 effective as of October one, nineteen hundred seventy-five shall not affect any act or offense done or committed, or any penalty or forfeiture incurred, or any right established, accrued, or accruing on or before such date, or any prosecution, suit or action pending on that day. Except as herein otherwise provided, neither the repeal of Title 19.1 nor the enactment of this title shall apply to offenses committed prior to October one, nineteen hundred seventy-five and prosecutions for such offenses shall be governed by the prior law, which is continued in effect for that purpose. For the purposes of this section, an offense was committed prior to October one, nineteen hundred seventy-five, if any of the essential elements of the offense occurred

prior thereto.

Source: § 19.1-2.

§ 19.2-3. Certain notices, recognizances and processes validated.—Any notice given, recognizance taken, or process or writ issued before October one, nineteen hundred seventy-five, shall be valid although given, taken or to be returned to a day after such date, in like manner as if this title had been effective before the same was given, taken or issued.

Source: § 19.1-3.

§ 19.2-4. References to former sections, articles or chapters of Titles 18.1 and 19.1.—Whenever in this title any of the conditions, requirements, provisions or contents of any section, article or chapter of Titles 18.1 and 19.1, as such titles existed prior to October one, nineteen hundred seventy-five, are transferred in the same or in modified form to a new section, article or chapter of this title or of Title 18.2, and whenever any such former section, article or chapter is given a new number in this title or in Title 18.2, all references to any such former section, article or chapter of Title 19.1 or of Title 18.1 appearing elsewhere in this Code than in this title or in Title 18.2, shall be construed to apply to the new or renumbered section, article or chapter containing such conditions, requirements, provisions or contents or portions thereof.

Source: § 19.1-4.

§ 19.2-5. Rules of construction; meaning of certain terms.—In the construction of this title and of each section thereof, the rules of construction set forth in Chapter 2 (§ 1-10 et seq.) of Title 1 of this Code shall be observed, unless such construction would be inconsistent with the manifest intent of the General Assembly.

The word "court" as used in this title, unless otherwise clearly indicated by the context in which it appears, shall mean and include any court vested with appropriate jurisdiction under the Constitution and laws of this Commonwealth.

The word "judge" as used in this title, unless otherwise clearly indicated by the context in which it appears, shall mean and include any judge, associate judge or substitute judge, or magistrate, of any court.

The words "courts not of record," and "district court" as used in this title, unless otherwise clearly indicated by the context in which they appear, shall have the respective meanings assigned to them in Chapter 4.1 (§ 16.1-69.1 et seq.) of Title 16.1 of this Code.

Source: § 19.1-5.

§ 19.2-6. Appointive power of circuit courts.—Unless otherwise specifically provided, whenever an appointive power is given to the judge of a circuit court, the power shall be vested in the chief circuit judge thereof.

Source: New.

§ 19.2-7. Rewards for arrest of persons convicted of or charged with offenses; rewards for conviction of unknown offenders.—The Governor may offer a reward for apprehending and securing any person convicted of an offense or charged therewith, who shall have escaped from lawful custody or confinement, or for apprehending and securing any person charged with an offense, who, there is reason to fear, cannot be arrested in the common course of proceeding. The Governor may also offer a reward for the detection and conviction of the person guilty of an offense when such offense has been committed but the person guilty thereof is unknown.

Any sheriff, deputy sheriff, sergeant, deputy sergeant or any other officer may claim and receive any reward which may be offered for the arrest and detention of any offender against the criminal laws of this or any other state or nation.

Source: §§ 19.1-6 and 19.1-6.1.

§ 19.2-8. Limitation of prosecutions.—A prosecution for a misdemeanor, or any pecuniary fine, forfeiture, penalty or amercement, shall be commenced within one year next after there was cause therefore, except that a prosecution for petit larceny may be commenced within five years, and for an attempt to produce abortion, within two years after commission of the offense; and a prosecution for obtaining, attempting to obtain, aiding or abetting in obtaining public assistance under the Virginia Public Welfare and Assistance Law by means of a willful false statement, representation, impersonation or other fraudulent device shall be commenced within five years next after the commission of the offense; and a prosecution for making a false statement or representation of a material fact knowing it to be false or knowingly failing to disclose a material fact, to obtain or increase any benefit or other payment under the Virginia Unemployment Compensation Act shall be commenced within three years next after the commission of the offense. Nothing in this section shall be construed to apply to any person fleeing from justice or concealing himself within or without this State to avoid arrest, or be construed to limit the time within which any prosecution may be commenced for desertion of a wife or child or for neglect or refusal or failure to provide for the support and maintenance of a wife or child.

Source: § 19.1-8.

§ 19.2-9. Prosecution of certain criminal cases removed from the State to the federal courts; costs.—When any person indicted in the courts of this State for a violation of its laws, has his case removed to the district court of the United States under § 33 of the Judicial Code of the United States, it shall be the duty of the attorney for the Commonwealth for the county or city in which any such indictment is found to prosecute any such case in the United States district court to which the same shall be so removed, and for his services in this behalf he shall be paid a fee of one hundred dollars for each case tried by him in such United States district court, and mileage at the rate now allowed by law to the members

of the General Assembly for all necessary travel in going to and returning from such court, to be paid on his account when approved by the Attorney General.

A per diem of one dollar and fifty cents for each day of actual attendance upon such United States district court and mileage at a rate as provided by law for every mile of necessary travel in going to and returning from such court shall be paid out of the State treasury to each witness for the Commonwealth in every such case upon accounts therefor against the Commonwealth, certified by the attorney for the Commonwealth prosecuting such case and approved by the Attorney General.

It shall not be the duty of the Attorney General to appear for the Commonwealth in such cases unless he can do so without interfering with the efficient discharge of the duties imposed upon him by law; but he may appear with the attorney for the Commonwealth prosecuting such case in any case when the interests of the Commonwealth may in his judgment require his presence.

The Comptroller shall from time to time draw his warrants upon the State treasury in favor of the parties entitled to be paid the above compensation and expenses, or their assigns, upon bills certified and approved as above prescribed.

Source: § 19.1-14.

§ 19.2-10. Outlawry abolished.—No proceeding of outlawry shall hereafter be instituted or prosecuted.

Source: § 19.1-15.

§ 19.2-11. Procedure in contempt cases.—No court or judge shall impose a fine upon a juror, witness or other person for disobedience of its process or any contempt, unless he either be present in court at the time, or shall have been served with a rule, returnable to a certain time, requiring him to show cause why the fine should not be imposed and shall have failed to appear and show cause.

Source: § 19.1-16.

CHAPTER 2.

Conservators of the Peace and

Special Policemen.

Article 1.

Appointment.

§ 19.2-12. Who are conservators of the peace.—Every judge

throughout the State and every magistrate within the geographical area for which he is appointed or elected, shall be a conservator of the peace. In addition, every commissioner in chancery, while sitting as such commissioner, shall be a conservator of the peace.

Source: § 19.1-20.

§ 19.2-13. Special conservators of the peace; authority; bond; liability of employers.—Upon the application of the owner, proprietor or authorized custodian of any place within the Commonwealth and the showing of a necessity for the security of property or the peace, the circuit court of any county or city, in its discretion, may appoint one or more special conservators of the peace, who, within the area and for the time specified in the order of appointment, shall have all of the powers, functions, duties, responsibilities and authority of any other conservator of the peace.

Every person appointed as a special conservator of the peace pursuant to the provisions of this section, before entering upon the duties of such office, may be required by the court to enter into a bond with approved surety before the clerk of the circuit court of the county or city wherein such duties are to be performed, in the penalty of such sum as may be fixed by the court, conditioned upon the faithful performance of such duties.

If any such special conservator of the peace be the employee, agent or servant of another, his appointment as special conservator of the peace shall not relieve his employer, principal or master, from civil liability to another arising out of any wrongful action or conduct committed by such special conservator of the peace while within the scope of his employment.

Source: § 19.1-28.

§ 19.2-14. Conservators of the peace for fair grounds and cemeteries; bond required.—The superintendent or other person in charge of any fair grounds or any public or private cemetery shall, for the purpose of maintaining order and enforcing the criminal and police laws of the State, or the county or city in which such fair grounds or cemetery is situated, have all the powers, functions, duties, responsibilities and authority of a conservator of the peace within the fair grounds or cemetery over which he may have charge and within one-half of a mile around the same.

The provisions of § 19.2-13 relative to the giving of bond and the liability of an employer, principal or master, shall be applicable to every person exercising any powers of a conservator of the peace under this section.

Source: § 19.1-32.

§ 19.2-15. When such conservator need not be a citizen.—Any such conservator appointed under the provisions of § 19.2-13 whose jurisdiction is limited to the grounds attached to an airport, need not be a citizen of the Commonwealth if the proprietors of such airport shall, before any such conservator shall enter upon the duties of the

office, enter into bond with approved surety before the clerk of the circuit court having jurisdiction over such airport in the penalty of one thousand dollars for each conservator so appointed, with condition for the faithful discharge of his official duties.

Source: § 19.1-29.

§ 19.2-16. Appointment of employees of Division of Parks of Department of Conservation and Economic Development as conservators of the peace.—The Governor may appoint as a conservator of the peace any employee of the Division of Parks of the Department of Conservation and Economic Development who is recommended by the Director of such Department and the State Park Commissioner. Any such conservator of the peace, within the territorial area designated by the Governor, shall have the power and jurisdiction of any other conservator of the peace.

Source: § 19.1-29.1.

§ 19.2-17. Appointment of policemen for certain places; bond required.—Any court or judge mentioned in § 19.2-13 may also appoint, for the places mentioned in that section, one or more citizens as policeman or policemen with the same powers and duties as are vested in special policemen in counties under the provisions of Article 3 (§ 15.1-144 et seq.) of Chapter 3 of Title 15.1, except that they shall not have authority to execute civil process. Before any such policeman shall enter upon the duties of his office, he shall enter into bond with approved security before the clerk of the circuit court having jurisdiction over the county for which he is appointed in the penalty of one thousand dollars, with condition for the faithful discharge of his official duties.

Source: § 19.1-30.

Article 2.

Powers and Duties.

19.2-18. Powers and duties of conservators of the peace.—Every conservator of the peace shall have authority to arrest without a warrant in such instances as are set out in §§ 19.2-19 and 19.2-81. Upon making an arrest without a warrant, the conservator of the peace shall proceed in accordance with the provisions of § 19.2-22 or 19.2-82 as the case may be.

Source: 19.1-20.

§ 19.2-19. Recognizance to keep the peace.—If any person threaten to kill or injure another or to commit violence or injury against his person or property, or to unlawfully trespass upon his property, he shall be required to give a recognizance to keep the peace for such period not to exceed one year as the court or magistrate hearing the complaint may determine.

Source: § 19.1-27.

§ 19.2-20. Recognizance to keep the peace; complaint and issuance of warrant therefor.—If complaint be made to any magistrate or judge that a person should be required to give a recognizance to keep the peace due to any of the reasons set forth in § 19.2-19, such magistrate or judge shall examine on oath the complainant, and any witness who may be produced, reduce the complaint to writing, and cause it to be signed by the complainant; and if it appear proper, such magistrate or judge shall issue a warrant, reciting the complaint, and requiring the person complained of forthwith to be apprehended and brought before him or some other magistrate or judge.

Source: § 19.1-21.

§ 19.2-21. The proceeding when accused appears.—When such person appears, if the magistrate or judge, on hearing the parties, considers that there is not good cause for the complaint, he shall discharge such person, and may give judgment in his favor against the complainant for his costs. If he considers that there is good cause therefor, he may require a recognizance of the person against whom it is, and give judgment against him for the costs of the prosecution, or any part thereof; and, unless such recognizance be given, he shall commit him to jail by a warrant, stating the sum and time in and for which the recognizance is directed. The person given judgment under this section for costs may issue a writ of fieri facias thereon, if an appeal be not allowed; and proceedings thereupon may be according to §§ 16.1-99 through 16.1-101.

Source: § 19.1-22.

§ 19.2-22. Recognizance to keep the peace; arrests without a warrant.—A person arrested without a warrant by any conservator of the peace or other law-enforcement officer for any of the acts set forth in § 19.2-19 committed in the presence of such conservator of the peace or law -enforcement officer, shall be brought forthwith before a magistrate or judge, and proceedings shall be had in accordance with §§ 19.2-20 and 19.2-21.

Source: New.

§ 19.2-23. Payment of fees or mileage allowances into county or city treasury.—Any conservator or policeman appointed under the provisions of this chapter shall not be entitled to fees or mileage for performance of his duties as such conservator or policeman.

Source: § 19.1-31.

Article 3.

Appeals.

§ 19.2-24. When an appeal may be taken; witnesses

recognized.—Any person from whom a recognizance is required under the provisions of this chapter or who has been committed to jail for failure to give security therefor, may appeal to the circuit court of the county or city, and, in such case, the magistrate from whose judgment the appeal is taken shall recognize such of the witnesses as he thinks proper; provided, however, that the person taking the appeal may be required to give bail, with good security, for his appearance at the circuit court of the county or city.

Source: § 19.1-23.

§ 19.2-25. Power of the court when appeal taken.—The court may dismiss the complaint or affirm the judgment, and make what order it sees fit as to the costs. If it award costs against the appellant, the recognizance which he may have given shall stand as security therefor. When there is a failure to prosecute the appeal, such recognizance shall remain in force, although there be no order of affirmance. On any appeal the court may require of the appellant a new recognizance if it see fit.

Any person committed to jail under this chapter may be discharged by the circuit court of the county or city on such terms as it may deem reasonable.

Source: §§ 19.1-24 and 19.1-25.

CHAPTER 3.

Magistrates.

Article 1.

Transition Provisions.

§ 19.2-26. Repeal of inconsistent statutes, municipal charters, etc.—All acts and parts of acts, all sections of this Code, and all provisions of municipal charters, inconsistent with the provisions of this title, are, except as herein otherwise provided, repealed to the extent of such inconsistency.

Source: § 19.1-374.

§ 19.2-27. Effect of repeal of Title 39.1 on prior acts, offenses, etc.—The repeal of Title 39.1 effective as of January one, nineteen hundred seventy-four, shall not affect any act or offense done or committed or any penalty or forfeiture incurred, or any right established, accrued, or accruing on or before such date, or any prosecution, suit or action pending on that day.

Source: § 19.1-375.

§ 19.2-28. Certain notices, recognizances and processes validated.—Any notice given, recognizance taken, or process or writ issued, before January one, nineteen hundred seventy-four,

shall be valid although given, taken or to be returned to a day after such date, in like manner as if this title had been effective before the same was given, taken or issued.

Source: § 19.1-376.

§ 19.2-29. References to former sections, articles and chapters in Title 39.1.— Whenever in Chapters 3 (§ 19.2-26 et seq.) and 4 (§ 19.2-49 et seq.) of this title any of the conditions, requirements, provisions or contents of any section, article or chapter of Title 39.1, as such title existed prior to January one, nineteen hundred seventy-four, are transferred in the same or modified form to a new section, article or chapter, and whenever any such former section, article or chapter is given a new number in Chapters 3 and 4 of this title all references to any such former section, article or chapter of Title 39.1 appearing elsewhere in this Code than in Chapters 3 and 4 of this title shall be construed to apply to the new or renumbered section, article or chapter containing such conditions, requirements, provisions or contents or portions thereof.

Source: § 19.1-377.

Article 2.

Abolition of Justice of the Peace System.

§ 19.2-30. Abolition of justice of the peace system.—The office of justice of the peace having been abolished effective as of January one, nineteen hundred seventy-four, nevertheless, any justice of the peace in office December thirty-one, nineteen hundred seventy-three, may continue in office as a magistrate under the provisions of Chapters 3 (§ 19.2-26 et seq.) and 4 (§ 19.2-49 et seq.) of this title for the remainder of the term for which he had been elected or appointed and shall be eligible for future appointment to serve as a magistrate notwithstanding § 19.2-37.

Source: § 19.1-378.

§ 19.2-31. Abolition of office of issuing justice.—Effective January one, nineteen hundred seventy-four, the office of issuing justice as provided for in Chapter 2 (§ 39.1-20 et seq.) of Title 39.1 having been abolished, nevertheless, any such special justice of the peace in office December thirty-one, nineteen hundred seventy-three, and elected by the town council for a specific term to expire after that date, may continue in office for the remainder of that term. If he continues in office as provided herein, such justice shall exercise the same powers, perform the same duties, and receive such compensation as he was receiving as of December thirty-one, nineteen hundred seventy-three.

Source: § 19.1-379.

§ 19.2-32. References to justices of the peace.—References in law to justices of the peace shall be deemed to apply to magistrates

unless the provisions of Chapters 3 (§ 19.2-26 et seq.) and 4 (§ 19.2-49 et seq.) of this title shall render such reference inapplicable.

Source: § 19.1-380.

Article 3.

The Magistrate System.

§ 19.2-33. Office of magistrate.—The office of magistrate shall be vested with all the authority, duties and obligations previously vested in the office of justice of the peace prior to January one, nineteen hundred seventy-four.

Source: § 19.1-381.

§ 19.2-34. Number of magistrates.—There shall be at least one magistrate appointed for each county and city. Additional magistrates, only in the number necessary for the effective administration of justice, may be authorized for any county or city by the Committee on District Courts established pursuant to § 16.1-69.33. The requirement that at least one magistrate be appointed to serve in any county or city shall be deemed fulfilled in any county or city in which two magistrates are in service by virtue of § 19.2-30.

Source: § 19.1-382.

§ 19.2-35. Appointment; supervision generally.—Magistrates in each county and city shall be appointed by the chief judge of the circuit in which the county or city is located. The chief circuit judge shall have full supervisory authority over the magistrates so appointed, but may delegate this authority to the chief general district judge. Notwithstanding any other provision of law, the only methods for the selection of magistrates and special magistrates shall be as set out in this section and Chapter 4 (§ 19.2-49 et seq.) of this title, respectively.

The chief judge may also appoint so many substitute magistrates as may be authorized by the Committee on District Courts.

Source: § 19.1-383.

§ 19.2-36. Chief magistrates.—The chief circuit judge of a circuit may appoint a chief magistrate, for the purpose of maintaining the proper schedules, assisting in the training of the magistrates within such judicial district and to be responsible to the chief circuit judge for the conduct of the magistrates and to further assist the chief circuit judge in the operation of the magistrate system.

Source: § 19.1-384.

§ 19.2-37. Who may be appointed a magistrate.—Any person

may be appointed to the office of magistrate under this title subject to the limitations of Chapter 4 (§ 2.1-30 et seq.) of Title 2.1 of the Code and of this section.

A person shall be eligible for appointment to the office of magistrate under the provisions of this title: (a) if such person or his spouse is not a law-enforcement officer or otherwise charged with the duty of enforcing any of the laws of this Commonwealth or any ordinance of any political subdivision thereof; (b) if such person or his spouse is not a clerk, deputy or assistant clerk, or employee of any such clerk of a court not of record or police department or sheriff's office in any county or city with respect to appointment to the office of magistrate of such county or city; (c) if the appointment does not create a parent-child, husband-wife, or brother-sister relationship between a district court judge and such person serving within the same judicial district; provided (d) he shall be a United States citizen and a resident of the county or city for which he is appointed to serve as magistrate; provided no magistrate shall issue any warrant or process in complaint of his spouse, child, grandchild, parent, grandparent, parent-in-law, child-in-law, brother, sister, brother-in-law or sister-in-law, nephew, niece, uncle, aunt, first cousin, guardian or ward. The residence provisions contained in this section shall not be a bar to the reappointment of any magistrate in office on July one, nineteen hundred seventy-three, provided he is otherwise eligible to serve under the provisions of this chapter.

Source: § 19.1-385.

§ 19.2-38. Terms; compensation and benefits; vacancies; revocation of appointment.—Persons appointed as magistrates under the provisions of this chapter shall serve for a term of four years. Such term shall commence upon appointment and qualification. Appointments made pursuant to this chapter prior to July one, nineteen hundred seventy-four, shall be for the term beginning January one, nineteen hundred seventy-four, and magistrates so appointed may take office immediately upon qualification. Magistrates shall be entitled to compensation and other benefits only from the time they take office. Vacancies shall be filled for the unexpired term by the chief circuit judge. Appointments made under the provisions of this chapter shall be revocable at the pleasure of the chief circuit judge.

Source: § 19.1-386.

§ 19.2-39. Bond.—Every magistrate appointed under the provisions of this chapter shall enter into bond in the sum of five thousand dollars, made payable to the Commonwealth, before the clerk of the circuit court which exercises jurisdiction over the political subdivision wherein such magistrate shall serve, for the faithful performance of his duties. The premium for such bond shall be paid by the Commonwealth. Provided, however, that in lieu of specific bonds, the Committee on District Courts may in its discretion procure faithful performance of duty blanket bonds for any or all of the districts enumerated in § 16.1-69.6 covering all magistrates included in such districts and for the penalty contained

in this section, unless in the discretion of the Committee, bonds with a larger penalty should be obtained. Such blanket bonds shall be made payable to the Commonwealth and shall cover all funds handled by a magistrate whether such funds belong to the Commonwealth or any political subdivision thereof. Provided further, that in those instances where specific bonds for magistrates are in effect, the Committtee on District Courts may, whenever it deems it advisable, terminate such specific bonds upon obtaining a blanket bond covering such magistrates with appropriate refunds or credit being made for the unearned premiums on the specific bonds terminated. A copy of any such blanket bond so procured shall be filed with the State Comptroller and with the clerk of the respective circuit court which exercises jurisdiction over the district wherein such magistrate shall serve. The premiums for such blanket bonds shall be paid by the Commonwealth.

Source: § 19.1-387.

§ 19.2-40. Exception for special magistrates.—This article shall not apply to any county or city wherein special magistrates are appointed pursuant to the provisions of Chapter 4 (§ 19.2-49 et seq.) of this title, except that the provisions of § 19.2-37 shall be applicable to special magistrates.

Source: § 19.1-388.

Article 4.

Supervision.

§ 19.2-41. When chief general district judge to exercise general supervisory power; rules and regulations.—When delegated the authority by the chief circuit judge, the chief general district judge shall exercise general supervisory power over the administration of magistrates within the district. When such authority is delegated, it shall be the duty of the chief general district judge to supervise the magistrates within the district and to promulgate such reasonable rules and regulations as may be deemed necessary to supplement or clarify the provisions of this chapter with respect to such magistrates, to include fixing the time and place of the sitting of such magistrates.

Source: § 19.1-389.

§ 19.2-42. Duty of Commonwealth's attorney.—It shall be the duty of the Commonwealth's attorney to render legal advice to the magistrates within his city or county and to advise them, when necessary, of changes in law and procedure.

Source: § 19.1-391.

§ 19.2-43. Duty of Executive Secretary of Supreme Court.—It shall be the duty of the Executive Secretary of the Supreme Court to assist the chief general district judges and general district courts in

the supervision and mandatory training of magistrates for which purpose he shall be authorized to conduct training sessions and meetings for magistrates and provide information and materials for their use. He may appoint one or more magistrates to assist him and, in addition, with the approval of the Chief Justice, require annual reports to be filed by the magistrates on their work as such, fees associated therewith and other information pertinent to their office, on forms to be furnished by him.

Source: § 19.1-392.

Article 5.

Jurisdiction and Powers.

§ 19.2-44. Territorial jurisdiction.—Except as provided in § 19.2-44.1 a magistrate shall exercise the powers conferred by this title only in the judicial district for which he is appointed.

Source: § 19.1-393.

§ 19.2-44.1. Substitute magistrates.—When, due to death, sickness, vacation or inability to serve under the provisions of § 19.2-37, a magistrate is not available in a county or city, the chief judge of the circuit court having jurisdiction over the district may appoint one or more magistrates or substitute magistrates from any adjoining county or city within the judicial district to serve until such time as a duly appointed magistrate or substitute magistrate is again available in such county or city.

The order of appointment of such magistrate or substitute magistrate shall specify the period such magistrate or substitute magistrate shall serve and during this period such magistrate or substitute magistrate shall exercise the powers as enumerated in § 19.2-45, in the same manner as if he had been appointed in that county or city.

Source: § 19.1-393.1

§ 19.2-45. Powers enumerated.—A magistrate shall have the following powers only:

(1) To issue process of arrest in accord with the provisions of §§ 19.2-71 to 19.2-82 of the Code;

(2) To issue search warrants in accord with the provisions of §§ 19.2-52 to 19.2-60 of the Code;

(3) To admit to bail or commit to jail all persons charged with offenses subject to the limitations of and in accord with general laws on bail;

(4) The same power to issue warrants and subpoenas within such county or city as is conferred upon district courts. Such

attachments, warrants and subpoenas shall be returnable before a district court;

(5) To issue civil warrants directed to the sheriff or constable of the county or city wherein the defendant resides, together with a copy thereof, requiring him to summon the person against whom the claim is, to appear before a district court on a certain day, not exceeding thirty days from the date thereof to answer such claim. If there be two or more defendants and any defendant resides outside the jurisdiction in which the warrant is issued, the summons for such defendant residing outside the jurisdiction may be directed to the sheriff of the county or city of his residence, and such warrant may be served and returned as provided in § 16.1-80;

(6) To administer oaths and take acknowledgments;

(7) To act as conservators of the peace;

(8) To hear and decide complaints, as provided by law, that persons be required to give a recognizance to keep the peace.

Source: § 19.1-394

Article 6.

Compensation and Fees.

§ 19.2-46. Compensation.—The salaries of all magistrates shall be fixed and paid as provided in Article 5.1 (§ 14.1-44.1 et seq.) of Chapter 1 of Title 14.1. The salaries referred to herein shall be in lieu of all fees which may accrue to the recipient by virtue of his office. Notwithstanding this section, justices of the peace in office December thirty-one, nineteen hundred seventy-three, who become magistrates under § 19.2-30 shall be entitled for the remainder of such term to receive the fees to which they were entitled under law effective on such date.

Each substitute magistrate shall receive for his services a per diem compensation as may be established by the Committee on District Courts.

Source: § 19.1-395.

§ 19.2-47. Magistrate not to receive claims or evidence of debt for collection.—No magistrate shall receive claims or evidence of debt for collection; and it shall be unlawful for any magistrate to receive claims of any kind for collection, or to accept or receive money or any other things of value by way of commission or compensation for or on account of any collection made by or through him on any such claim, either before or after judgment. Any magistrate violating this section shall be guilty of a class 1 misdemeanor.

Source: § 19.1-396.

§ 19.2-48. Audits.—The Auditor of Public Accounts shall audit the records of all magistrates who serve in any county or city upon request of the chief district judge of the district in which such county or city is located.

Source: § 19.1-397.

§ 19.2-48.1. Quarters for Magistrates.—Each county and city having a general district court or juvenile and domestic relations district court and having one or more full-time magistrates appointed pursuant to Article 3 of this Chapter, shall provide suitable quarters for such magistrates. In so far as possible, such quarters should be located in a public facility and should be appropriate to conduct the affairs of a judicial officer as well as provide convenient access to law-enforcement officers. Such county or city shall also provide all furniture and other equipment necessary for the efficient operation of the office.

Source: New.

CHAPTER 4

Special Magistrates.

§ 19.2-49. Office of special justice abolished.—Special justices, previously appointed pursuant to former § 19.1-32.1, whose terms expire March one, nineteen hundred seventy-five, shall continue in office as special magistrates pursuant to this section and their term shall be extended to January one, nineteen hundred seventy-six. Thereafter, such special magistrates shall be eligible to reappointment pursuant to this chapter.

Source: § 19.1-398.

§ 19.2-50. Appointment, terms, powers and duties, salaries, etc., of special magistrates.—The chief judge of the circuit court of any circuit may from time to time appoint as many special magistrates for a county or city within such circuit as he deems necessary or proper to perform the duties and exercise the powers set out herein. Special magistrates shall be appointed for terms of four years. Such terms shall commence January one of the year following appointment. Such appointment shall be revocable at the pleasure of the appointing authority. Such special magistrates shall qualify in the same manner as is prescribed by law for magistrates, and shall be conservators of the peace within the county or city for which they are appointed. They shall exercise within such county or city all the power and authority which is conferred upon magistrates by general law.

When any court violations bureau is duly established in any county or city, then such special magistrates shall be employees of such county or city, for the purpose of performing the duties and functions of such bureau and shall be subject to all such general administrative regulations governing county or city employees as

may be reasonably applied to such special magistrates and the chief general district court judge having criminal jurisdiction of such county or city shall have the power of the chief administrative officer of such bureau and shall have general power to suspend any special magistrate without pay for a period not to exceed twenty days for any breach of rules or procedures; provided, however, that such power of suspension shall not be exercised unless and until an order of the circuit court has been entered delegating to the general district court judge such general discretionary power of suspension and setting forth therein provision for review by the circuit court of any abuse of such discretion.

The salaries of special magistrates shall be fixed and paid by the governing body of the county or city in which event all fees collected by such special magistrates or to which they shall be entitled shall be paid monthly into the county or city treasury and used as far as possible to pay such salaries.

After the appointment of such special magistrates for a county or city, no magistrate shall thereafter be appointed for such county or city.

Source: § 19.1-399.

§ 19.2-51. Chief special magistrates.—The chief judge of the circuit court having jurisdiction in any city or county having at least two special magistrates may appoint one special magistrate as a chief special magistrate for the purpose of maintaining schedules, assisting in training and being responsible to the chief district judge for the conduct of the special magistrates so appointed and to properly maintain the special magistrate system within the city or county so using a special magistrate system.

Source: § 19.1-400.

CHAPTER 5.

Search Warrants.

§ 19.2-52. When a search warrant may issue.—Search warrants, based upon complaint on oath supported by an affidavit as required in § 19.2-54, may be issued by any judge, magistrate or other person having authority to issue criminal warrants, if he be satisfied from such complaint and affidavit that there is reasonable and probable cause for the issuance of such a search warrant.

Source: § 19.1-83.

§ 19.2-53. What may be searched and seized.—Search warrants may be issued for the search of specified places, things or persons, and seizure therefrom of the following things as specified in the warrant:

(1) Weapons or other objects used in the commission of crime;

(2) Articles or things the sale or possesssion of which is unlawful;

(3) Stolen property or the fruits of any crime;

(4) Any object or thing, including without limitation, documents, books, papers, records or body fluids, constituting evidence of the commission of crime.

Source: § 19.1-84.

§ 19.2-54. Affidavit preliminary to issuance of search warrant; general search warrant prohibited.—No search warrant shall be issued until there is filed with the officer authorized to issue the same an affidavit of some person reasonably describing the place, thing or person to be searched, the things to be searched for thereunder, alleging briefly material facts, constituting the probable cause for the issuance of such warrant and alleging substantially the offense in relation to which such search is to be made and that the object or thing searched for constitutes evidence of the commission of such offense. Such affidavit shall be certified by the officer who issues such warrant to the county clerk of his county or to the court clerk, admitting deeds to record, of his city and filed with such clerk within seven days after the issuance of such warrant and shall by such clerk be preserved as a record and shall at all times be subject to inspection by the public. Each such clerk shall maintain an index of all such affidavits filed in his office in order to facilitate inspection. No such warrant shall be issued on an affidavit omitting such essentials, and no general warrant for the search of a house, place, compartment, vehicle or baggage shall be issued.

Failure of the officer issuing such warrant to file the required affidavit shall not invalidate any search made under the warrant unless such failure shall continue for a period of thirty days. If the affidavit is filed prior to the expiration of the thirty-day period, nevertheless, evidence obtained in any such search shall not be admissible until a reasonable time after the filing of the required affidavit.

Source: § 19 1-85.

§ 19.2-55. Issuing general search warrant or search warrant without affidavit a malfeasance.—Any person having authority to issue criminal warrants who wilfully and knowingly issues a general search warrant or a search warrant without the affidavit required by § 19.2-54 shall be deemed guilty of a malfeasance.

Source: § 19.1-89

§ 19.2-56. To whom search warrant directed; what it shall command; contents.—The judge, magistrate or other official authorized to issue criminal warrants, shall issue a search warrant if he finds from the facts or circumstances recited in the affidavit that there is probable cause for the issuance thereof.

Every search warrant shall (i) be directed to the sheriff,

sergeant, or any policeman of the county or corporation in which the place to be searched is located, (ii) name the affiant, (iii) recite the offense in relation to which the search is to be made, (iv) name or describe the place to be searched, (v) describe the property to be searched for, and (vi) recite that the magistrate has found probable cause to believe that the property constitutes evidence of a crime (identified in the warrant) or tends to show that a person (named or described therein) has committed or is committing a crime.

The warrant shall command that the place be forthwith searched, either in day or night, and that the objects described in the warrant, if found there, be seized and produced before a court having jurisdiction of the offense in relation to which the warrant was issued, together with the person in whose possession the same are found.

Any warrant directed "to any policeman of a county, city or town" shall be executed by the policeman or other officer into whose hands it shall come or be delivered.

Every search warrant shall contain the date and time it was issued. The failure of any such search warrant to contain the date and time it was issued shall not render the warrant void, provided that the date and time of issuing of said warrant be established by competent evidence.

Source: § 19.1-86.

§ 19.2-57. Execution and return of warrant; list of property seized.—The warrant shall be executed by the search of the place described in the warrant and, if property described in the warrant be found there, by the seizure of the property. The officer who seizes any property shall prepare an inventory thereof, under oath. Any seized property shall be produced before the court designated in the warrant. The officer executing the warrant shall endorse the date of execution thereon and shall file the warrant, with the inventory attached (or a notation that no property was seized), within three days after the execution of such search warrant in the court having criminal jurisdiction which will hear the case involving the articles seized and shall become a part of the record in the case.

Source: § 19.1-87.1.

§ 19.2-58. Disposition of property seized.—If any such warrant be executed by the seizure of property, or of any other of the things aforesaid, the same shall be safely kept by the direction of such judge or court, to be used as evidence, and thereafter be disposed of as provided by law; provided, however, that any such property seized under such warrant which is not used in evidence and any property which is stolen or embezzled property shall be restored to its owner, and the things mentioned in § 19.2-53 may be burnt or otherwise destroyed, under such direction, as soon as there is no further need for its use as evidence unless it is otherwise expressly provided by law.

Source: § 19.1-87.

§ 19.2-59. Search without warrant a misdemeanor; exceptions; civil liability; additional penalty.—No officer of the law or any other person shall search any place, thing or person, except by virtue of and under a warrant issued by a proper officer. Any officer or other person searching any place, thing or person otherwise than by virtue of and under a search warrant, shall be guilty of a class 1 misdemeanor. Any officer or person violating the provisions of this section shall be liable to any person aggrieved thereby in both compensatory and punitive damages. Any officer found guilty of a second offense under this section shall, upon conviction thereof, in addition to the penalty hereinbefore provided, immediately forfeit his office, and such conviction shall be deemed to create a vacancy in such office to be filled according to law.

Provided, however, that any officer empowered to enforce the game laws may without a search warrant enter for the purpose of enforcing such laws, any freight yard or room, passenger depot, baggage room or warehouse, storage room or warehouse, train, baggage car, passenger car, express car, Pullman car or freight car of any common carrier, or any boat, automobile or other vehicle; but nothing in this proviso contained shall be construed to permit a search of any occupied berth or compartment on any passenger car or boat of any baggage, bag, trunk, box or other closed container without a search warrant.

Provided further, however, that as an incident to a lawful arrest, an officer or other person, without a search warrant, may search the person arrested and the open part of any vehicle in which he may be occupying at the time or furniture or receptacles within his easy grasping distance, for weapons and for objects related to the offense for which he is being arrested which could be readily destroyed or disposed of.

Source: § 19.1-88.

§ 19.2-60. Motion for return of seized property and to suppress.—A person aggrieved by an allegedly unlawful search or seizure may move the court to return any seized property and to suppress it for use as evidence. The court shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted by a court of record, any seized property shall be restored as soon as practicable unless otherwise subject to lawful detention, and such property shall not be admissible in evidence at any hearing or trial. If the motion is granted by a court not of record, such property shall not be admissible in evidence at any hearing or trial before that court, but the ruling shall have no effect on any hearing or trial in a court of record.

Source: New.

CHAPTER 6.

Interception of Wire or Oral Communications.

§ 19.2-61. Definitions.—As used in this chapter·

(1) "Wire communication" means any communication made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception furnished or operated by any person engaged as a common carrier in providing or operating such facilities for the transmission of communications;

(2) "Oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectations;

(3) "Intercept" means the aural acquisition of the contents of any wire or oral communication through the use of any electronic, mechanical or other device;

(4) "Electronic, mechanical or other device" means any device or apparatus which can be used to intercept a wire or oral communication other than:

(a) Any telephone or telegraph instrument, equipment or facility, or any component thereof, (i) furnished to the subscriber or user by a communications common carrier in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business; or (ii) being used by a communications common carrier in the ordinary course of its business, or by an investigative or law-enforcement officer in the ordinary course of his duties;

(b) A hearing aid or similar device being used to correct subnormal hearing to not better than normal;

(5) "Person" means any employee or agent of the Commonwealth or a political subdivision thereof, and any individual, partnership, association, joint stock company, trust or corporation;

(6) "Investigative or law-enforcement officer" means any officer of the United States or of a state or political subdivision thereof, who is empowered by law to conduct investigations of or to make arrests for offenses enumerated in this chapter, and any attorney authorized by law to prosecute or participate in the prosecution of such offenses;

(7) "Contents" when used with respect to any wire or oral communication, includes any information concerning the identity of the parties to such communication or the existence, substance, purport or meaning of that communication;

(8) "Judge of competent jurisdiction" means a judge of any court of record of the Commonwealth with general criminal jurisdiction;

(9) "Communications common carrier" means any person

engaged as a common carrier for hire in communication by wire or radio or in radio transmission of energy; and

(10) "Aggrieved person" means a person who was a party to any intercepted wire or oral communication or a person against whom the interception was directed.

Source: § 19.1-89.1.

§ 19.2-62. Interception, disclosure, etc., of wire or oral communications unlawful; penalties; exceptions.—(1) Except as otherwise specifically provided in this chapter any person who:

(a) Willfully intercepts, endeavors to intercept or procures any other person to intercept or endeavor to intercept, any wire or oral communication;

(b) Willfully uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical or other device to intercept any oral communication;

(c) Willfully discloses, or endeavors to disclose, to any other person the contents of any wire or oral communication knowing or having reason to know that the information was obtained through the interception of a wire or oral communication; or

(d) Willfully uses, or endeavors to use, the contents of any wire or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication; shall be guilty of a class 6 felony.

(2) (a) It shall not be unlawful under this chapter for an operator of a switchboard, or an officer, employee or agent of any communications common carrier, whose facilities are used in the transmission of a wire communication, to intercept, disclose or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the carrier of such communication; provided, that such communications common carriers shall not utilize service observing or random monitoring except for mechanical or service quality control checks. It shall not be a criminal offense under this chapter for an officer, employee or agent of any communications common carrier to provide information facilities or technical assistance to an investigative or law-enforcement officer, who, pursuant to this chapter, is authorized to intercept a wire or oral communication.

(b) It shall not be a criminal offense under this chapter for a person to intercept a wire or oral communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception.

Source: § 19.1-89.2.

§ 19.2-63. Manufacture, possession, sale or advertising of certain devices unlawful; penalties; exceptions.—(1) Except as

otherwise specifically provided in this chapter, any person who willfully:

(a) Manufactures, assembles, possesses, or sells any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire or oral communications; or

(b) Places in any newspaper, magazine, handbill, or other publication any advertisement of:

(i) Any electronic, mechanical, or other device knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire or oral communications, or

(ii) Any other electronic, mechanical, or other device where such advertisement promotes the use of such device for the purpose of the surreptitious interception of wire or oral communications; shall be guilty of a class 6 felony

(2) It shall not be unlawful under this section for:

(a) A communications common carrier or an officer, agent, or employee of, or a person under contract with, a communications common carrier, in the normal course of the communications common carrier's business, or

(b) An officer, agent, or employee of, or a person under contract with the United States, the Commonwealth or a political subdivision thereof, in the normal course of the activities of the United States, the Commonwealth, or a political subdivision thereof, to manufacture, assemble, possess, or sell any electronic, mechanical, or other device knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire or oral communications.

Source: § 19.1-89.3.

§ 19.2-64. Forfeiture of unlawful devices.—Any electronic, mechanical or other device used, manufactured, assembled, possessed, sold, or advertised in violation of § 19.2-62 or 19.2-63 may be seized and forfeited to the Commonwealth, and turned over to the court of record in the city or county in which it was seized and such property shall be disposed of in such manner as the court may direct.

Source: § 19.1-89.4.

§ 19.2-65. When intercepted communications and evidence derived therefrom not to be received in evidence.—Whenever any wire or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing or other proceeding in or before any court, grand jury, department, officer, commission, regulatory body, legislative committee or other agency of this State

or a political subdivision thereof if the disclosure of that information would be in violation of this chapter

Source: § 19.1-89.5.

§ 19.2-66. When Attorney General or Commonwealth's attorney may apply for order authorizing interception of communications.—The Attorney General in any case where the Attorney General is authorized by law to prosecute or pursuant to a request in his official capacity of an attorney for the Commonwealth in any city or county may apply to a judge of competent jurisdiction for the jurisdiction where the proposed intercept is to be made for an order authorizing the interception of wire or oral communications by the Department of State Police, when such interception may reasonably be expected to provide evidence of the commission of a felonious offense of extortion, bribery, or any felony violation of § 54-524.101:1. Such application shall be made, and such order may be granted, in conformity with the provisions of § 19.2-68.

Source: § 19.1-89.6.

§ 19.2-67. Disclosure of information obtained by authorized means.—(1) Any investigative or law-enforcement officer, who by any means authorized by this chapter, has obtained knowledge of the contents of any wire or oral communication, or evidence derived therefrom, may disclose such contents to another investigative or law-enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

(2) Any investigative or law-enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire or oral communication or evidence derived therefrom may use such contents to the extent such use is appropriate to the proper performance of his official duties.

(3) Any person who has received, by any means authorized by this chapter, any information concerning a wire or oral communication, or evidence derived therefrom intercepted in accordance with the provisions of this chapter may disclose the contents of that communication or such derivative evidence while giving testimony under oath or affirmation in any criminal proceeding for an offense specified in § 19.2-66, or any conspiracy or attempt to commit the same, in any court of the United States or of any state or in any federal or state grand jury proceeding.

(4) No wire or oral communication which is a privileged communication between the parties to the conversation which is intercepted in accordance with, or in violation of, the provisions of this chapter shall lose its privileged character, nor shall it be disclosed or used in any way

(5) When an investigative or law-enforcement officer, while engaged in intercepting wire or oral communications in the manner authorized herein, intercepts wire or oral communications relating to offenses other than those specified in the order of authorization

the contents thereof, and evidence derived therefrom, shall not be disclosed or used as provided in § 19.2-67 (1)-(3). Violations of this subsection (5) shall be punishable as provided in § 19.2-62.

Source: § 19.1-89.7.

§ 19.2-68. Application for and issuance of order authorizing interception; contents of order; recording and retention of intercepted communications, applications and orders; notice to parties; introduction in evidence of information obtained.—(1) Each application for an order authorizing the interception of a wire or oral communication shall be made in writing upon oath or affirmation to the appropriate judge of competent jurisdiction and shall state the applicant's authority to make such application. Each application shall be verified by the Attorney General to the best of his knowledge and belief and shall include the following information:

(a) The identity of the Commonwealth's attorney who requested the Attorney General to apply for such order;

(b) A full and complete statement of the facts and circumstances relied upon by the applicant to justify his belief that an order should be issued, including (i) details as to the particular offense that has been, is being or is about to be committed, (ii) a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, (iii) a particular description of the type of communications sought to be intercepted, (iv) the identity of the person, if known, committing the offense and whose communications are to be intercepted;

(c) A full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(d) A statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

(e) A full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any judge for authorization to intercept wire or oral communications involving any of the same persons, facilities or places specified in the application, and the action taken by the judge on each such application; and

(f) Where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

(2) The judge may require the applicant to furnish additional testimony of documentary evidence in support of the application.

(3) Upon such application the judge may enter an ex parte order, as requested or as modified, authorizing interception of wire or oral communications within the territorial jurisdiction of the court in which the judge is sitting, if the judge determines on the basis of the facts submitted by the applicant that:

(a) There is probable cause for belief that an individual is committing, has committed or is about to commit an offense enumerated in § 19.2-66 of this chapter;

(b) There is probable cause for belief that particular communications concerning that offense will be obtained through such interception;

(c) Normal investigative procedures have been tried and have failed, or reasonably appear to be unlikely to succeed if tried, or to be too dangerous; and interception under this chapter is the only alternative investigative procedure available;

(d) There is probable cause for belief that the facilities from which, or the place where, the wire or oral communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by such person.

(4) Each order authorizing the interception of any wire or oral communication shall specify:

(a) The identity of the person, if known, whose communications are to be intercepted;

(b) The nature and location of the communications facilities as to which, or the place where, authority to intercept is granted;

(c) A particular description of the type of communication sought to be intercepted, and a statement of the particular offense enumerated in § 19.2-66 to which it relates;

(d) That such interception is to be conducted only by the Department of State Police; and

(e) The period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

An order authorizing the interception of a wire or oral communication shall, upon request of the applicant, direct that a communications common carrier, landlord, custodian or other person shall furnish the Department of State Police forthwith all information, facilities and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such carrier, landlord, custodian

or person is providing the person whose communications are to be intercepted. Any communications common carrier, landlord, custodian or other person furnishing such facilities or technical assistance shall be compensated therefor by the Commonwealth at the prevailing rates, to be paid out of the criminal fund.

(5) No order entered under this section may authorize the interception of any wire or oral communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than fifteen days. Extensions of an order may be granted, but only upon application for an extension made in accordance with subsection (1) of this section and the court's making the findings required by subsection (3) of this section. The period of extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event for longer than fifteen days. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this chapter, and must terminate upon attainment of the authorized objective, or in any event in fifteen days.

(6) Whenever an order authorizing interception is entered pursuant to this chapter, the order shall require reports to be made to the judge who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Such reports shall be made at such intervals as the judge shall require.

(7) (a) The contents of any wire or oral communication intercepted by any means authorized by this chapter shall, if possible, be recorded on tape or wire or other comparable device. Should it not be possible to record the intercepted communication, a detailed resume of such communication shall forthwith be reduced to writing and filed with the court. The recording of the contents of any wire or oral communication under this subsection shall be done in such way as will protect the recording from editing or other alterations and shall not be duplicated except upon order of the court as hereafter provided. Immediately upon the expiration of the period of the order, or extensions thereof, such recording or detailed resume shall be made available to the judge issuing such order and sealed under his directions. Custody of any recordings or detailed resumes shall be vested with the court and shall not be destroyed for a period of ten years from the date of the order and then only by direction of the court; provided, however, should any interception fail to reveal any information related to the offense or offenses for which it was authorized, such recording or resume shall be destroyed after the expiration of sixty days after the notice required by subsection 7 (d) of § 19.2-68 is served. Duplicate recordings may be made for use or disclosure pursuant to the provisions of subsections (1) and (2) of § 19.2-67 for investigations. The presence of the seal provided for by this subsection, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire or oral communication or evidence derived therefrom under subsection (3) of § 19.2-67

(b) Applications made and orders granted or denied under this chapter shall be sealed by the judge. Custody of the applications and orders shall be wherever the judge directs. Such applications and orders shall be disclosed only upon a showing of good cause before a judge of competent jurisdiction and shall not be destroyed except on order of the issuing or denying judge, and in any event shall be kept for ten years.

(c) Any violation of the provisions of this subsection may be punished as contempt of the issuing or denying court.

(d) Within a reasonable time but not later than ninety days after the filing of an application for an order of authorization which is denied or the termination of the period of an order or extensions thereof, the issuing or denying judge shall cause to be served, on the persons named in the order or the application, and such other parties to intercepted communications as the judge may determine in his discretion that is in the interest of justice, an inventory which shall include notice of:

(1) The fact of the entry of the order or the application;

(2) The date of the entry and the period of authorized interception, or the denial of the application;

(3) The fact that during the period wire or oral communications were or were not intercepted; and

(4) The fact that unless he files a motion with the court within sixty days after the service of notice upon him, the recordation or resume may be destroyed in accordance with § 19.2-67(7) (a) of this chapter.

The judge, upon the filing of a motion, shall make available to such person or his counsel for inspection the intercepted communications, applications and orders. The serving of the inventory required by this subsection may be postponed for additional periods, not to exceed thirty days each, upon the ex parte showing of good cause to a judge of competent jurisdiction.

(8) (a) The contents of any intercepted wire or oral communication or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing or other proceeding in a State court unless each party to the communication and to such proceeding, not less than ten days before the trial, hearing or proceeding, has been furnished with a copy of the court order, accompanying application under which the interception was authorized and the contents of any intercepted wire or oral communication that is to be used in any trial, hearing or other proceeding in a State court. This ten-day period may be waived by the judge if he finds that it was not possible to furnish the party with the above information ten days before the trial, hearing or proceeding and that the party will not be prejudiced by the delay in receiving such information; provided that such information in any event shall be given prior to the day of the trial, and the inability to comply with such ten-day period shall be grounds for the granting

of a continuance to either party.

(b) The judge who considers an application for an interception under this chapter, whether issuing or denying the order, shall be disqualified from presiding at any trial resulting from or in any manner connected with such interception, regardless of whether the evidence acquired thereby is used in such trial.

(9) Any aggrieved person in any trial, hearing or proceeding in or before any court, department, officer, agency, regulatory body or other authority of the State, or a political subdivision thereof, may move to suppress the contents of any intercepted wire or oral communication, or evidence derived therefrom, on the grounds that:

(i) The communication was unlawfully intercepted, or was not intercepted in compliance with this chapter; or

(ii) The order of the authorization or approval under which it was intercepted is insufficient on its face; or

(iii) The interception was not made in conformity with the order of authorization or approval; or

(iv) The interception is not admissible into evidence in any trial, proceeding or hearing in a State court under the applicable rules of evidence.

Such motion shall be made before the trial, hearing or proceeding unless there was no opportunity to make such motion or the person was not aware of the grounds of the motion. If the motion is granted pursuant to (i), (ii), (iii) of this subsection, the contents of the intercepted wire or oral communication or evidence derived therefrom shall be treated as having been obtained in violation of this chapter. The judge, upon the filing of such motion by the aggrieved person, shall make available to the aggrieved person, or his counsel, for inspection the intercepted communication.

Source: § 19.1-89.8.

§ 19.2-69. Civil action for unlawful interception, disclosure or use.—Any person whose wire or oral communication is intercepted, disclosed or used in violation of this chapter shall (1) have a civil cause of action against any person who intercepts, discloses or uses, or procures any other person to intercept, disclose or use such communications, and (2) be entitled to recover from any such person:

(a) Actual damages but not less than liquidated damages computed at the rate of one hundred dollars a day for each day of violation or one thousand dollars, whichever is higher;

(b) Punitive damages; and

(c) A reasonable attorney's fee and other litigation costs reasonably incurred.

A good faith reliance on a court order or legislative authorization shall constitute a complete defense to any civil or criminal action brought under this chapter or under any other law.

Source: § 19.1-89.9.

§ 19.2-70. Reports to be filed by courts and Attorney General.—All courts of the State and the Attorney General shall file all reports required by 18 U.S.C.A. § 2519. The Attorney General shall file a written report with the Clerks of the Senate and House of Delegates on or before December thirty-first of each year setting forth the number of applications made pursuant to this chapter, the number of interceptions authorized, the number of arrests resulting from each application, the number of convictions including a breakdown by offense, the cost of each application granted and the number of requests denied. Such information shall be made available by such Clerks to any member of the General Assembly upon request.

Source: § 19.1-89.10.

CHAPTER 7.

Arrest.

§ 19.2-71. Who may issue process of arrest.—Process for the arrest of a person charged with a criminal offense may be issued by the judge, or clerk of any circuit court, any general district court, any juvenile and domestic relations district court, or any magistrate as provided for in Chapters 3 and 4 of this Title.

Source: § 19.1-90.

§ 19.2-72. When it may issue; what to recite and require.—On complaint of a criminal offense to any officer authorized to issue criminal warrants he shall examine on oath the complainant and any other witnesses, or when such officer shall suspect that an offense punishable otherwise than by a fine has been committed he may, without formal complaint, issue a summons for witnesses and shall examine such witnesses. If upon such examination such officer finds that there is probable cause to believe the accused has committed an offense, such officer shall issue a warrant for his arrest. The warrant shall (i) be directed to an appropriate officer or officers, (ii) name the accused or, if his name is unknown, set forth a description by which he can be identified with reasonable certainty, (iii) describe the offense charged with reasonable certainty, (iv) command that the accused be arrested and brought before a court of appropriate jurisdiction in the county, city or town in which the offense was allegedly committed, and (v) be signed by the issuing officer The warrant shall require the officer to whom it is directed to summon such witnesses as shall be therein named to appear and give evidence on the examination. But in a city or town having a police force, the warrant shall be directed "To any policeman of such city (or town)," and shall be executed by the policeman into whose hands it shall come or be delivered.

Source: § 19.1-91.

§ 19.2-73. Issuance of summons instead of warrant in certain cases.—In any misdemeanor case or in any class of misdemeanor cases, or in any case involving complaints made by any State or local governmental official or employee having responsibility for the enforcement of any statute, ordinance or administrative regulation, the magistrate may issue a summons instead of a warrant when specifically authorized by the court or courts having jurisdiction over the trial of the offense charged. Any person on whom such summons is served shall appear on the date set forth in same, and if such person fails to appear in such court at such time and on such date then he shall be guilty of a class 1 misdemeanor.

Source: § 19.1-146.

§ 19.2-74. Issuance and service of summons in place of warrant in misdemeanor case.—Whenever any person is arrested for a violation of any county, city or town ordinance or of any provision of this Code punishable as a misdemeanor, except as otherwise provided in Title 46.1, or § 18.1-54 of the Code of Virginia, as amended, the arresting officer shall take the name and address of such person and issue a summons or otherwise notify him in writing to appear at a time and place to be specified in such summons or notice. Upon the giving by such person of his written promise to appear at such time and place, the officer shall forthwith release him from custody.

Any person refusing to give such written promise to appear shall be taken immediately by the arresting or other police officer before the nearest or most accessible judicial officer or other person qualified to admit to bail having jurisdiction, who shall proceed according to provisions of § 19.2-123.

Any person who willfully violates his written promise to appear, given in accordance with this section, shall be guilty of a misdemeanor, regardless of the disposition of, and in addition to, the charge upon which he was originally arrested.

Anything in this section to the contrary notwithstanding, if any person is believed by the arresting officer to be likely to disregard a summons issued under the provisions of this section, the arresting officer shall take such person forthwith before the nearest or most accessible judicial officer or other person qualified to admit to bail in lieu of issuing the summons, who shall determine whether or not probable cause exists that such person is likely to disregard a summons, and may issue either a summons or warrant as he may determine proper.

Notwithstanding the above, if any person is reasonably believed by the arresting officer to be likely to cause harm to himself or to any other person, the officer may take such person before a magistrate or other issuing authority of the county or city in which the violation occurred and request the issuance of a warrant.

Source: § 19.1-92.1.

§ 19.2-75. Copy of process to be left with accused; exception.—Except as provided in § 46.1-178, any process issued against a person charged with a criminal offense shall be in duplicate and the officer serving such process shall leave a copy with the person charged.

Source: § 19.1-92.

§ 19.2-76. Execution and return of warrant or summons; arrest anywhere in the State.—An officer may execute within his jurisdiction a warrant or summons issued anywhere in the State. A warrant shall be executed by the arrest of the accused, and a summons shall be executed by delivering a copy to the accused personally, or, if the accused be a corporation, in the same manner as in a civil case. The officer executing a warrant shall endorse the date of execution thereon and make return thereof to a judicial official having authority to grant bail. The officer executing a summons shall endorse the date of execution thereon and make return thereof to the court to which the summons is returnable.

Whenever a person is arrested upon a warrant in a county or corporation other than that in which the charge ought to be tried, the officer making the arrest shall bring the accused before a judicial officer authorized to grant bail in the county or corporation in which the accused is arrested. Such official shall either commit the accused to the custody of an officer for transfer forthwith to the county or corporation where the charge ought to be tried, or admit the accused to bail or commit him to jail for transfer as soon as possible; and such official shall endorse on the warrant the action taken thereon.

Source: §§ 19.1-98 and 19.1-99.

§ 19.2-77. Flight, pursuit, arrest anywhere in the State.—Whenever a person in the custody of an officer shall escape or whenever a person shall flee from an officer attempting to arrest him, such officer, with or without a warrant, may pursue such person anywhere in the State and, when actually in close pursuit, may arrest him wherever he is found. If the arrest is made in a county or corporation adjoining that from which the accused fled, the officer may forthwith return the accused before the proper official of the county or corporation from which he fled. If the arrest is made beyond the foregoing limits, the officer shall proceed according to the provisions of § 19.2-76, and if such arrest is made without a warrant, the officer shall procure a warrant from the magistrate of the county or corporation wherein the arrest was made, charging the accused with the offense committed in the county or corporation from which he fled.

Source: § 19.1-94.

§ 19.2-78. Uniform of officer making arrest.—All officers whose duties are to make arrests acting under the authority of any law of this State or any subdivision thereof, who shall make any arrest, search or seizure on any public road or highway of this State shall be dressed at the time of making any such arrest, search or seizure

in such uniform as he may customarily wear in the performance of his duties which will clearly show him to casual observation to be an officer.

Nothing in this section shall render unlawful any arrest, search or seizure by an officer who is not in such customary uniform.

Source: §§ 19.1-95 and 19.1-96.

§ 19.2-79. Arrest by officers of other states of the United States.—Any member of a duly organized state, county or municipal peace unit of another state of the United States who enters this State in close pursuit, and continues within this State in such close pursuit, of a person in order to arrest him on the ground that he has committed a felony in such other state shall have the same authority to arrest and hold in custody such person as members of a duly organized state, county or municipal peace unit of this State have to arrest and hold in custody a person on the ground that he has committed a felony in this State, if the state from which such person has fled extends similar privileges to any member of a duly organized State, county or municipal peace unit of this Commonwealth.

If an arrest is made in this State by an officer of another state in accordance with the provisions of the first paragraph of this section, he shall without unnecessary delay take the person arrested before a judge of a general district court, or of the circuit court, of the county or city in which the arrest was made, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the judge determines that the arrest was lawful he shall commit the person arrested to await for a reasonable time the issuance of an extradition warrant by the Governor. If the judge determines that the arrest was unlawful he shall discharge the person arrested.

The first paragraph of this section shall not be construed so as to make unlawful any arrest in this State which would otherwise be lawful.

For the purpose of this section the word "State" shall include the District of Columbia.

Souce: § 19.1-97.

§ 19.2-80. Duty of arresting officer; bail.—An officer making an arrest under a warrant shall bring the arrested person without unnecessary delay before and return such warrant to a court of appropriate jurisdiction of the county or corporation in which the warrant is issued, or before an official having authority to grant bail, who shall admit him to bail or commit him to jail; provided, however, that instead of admitting to bail or committing to jail, such official may, if the accused consents and the Commonwealth does not object, proceed to trial if the accused is charged with a misdemeanor and the official is a judge of a court not of record having jurisdiction to try him for such misdemeanor.

Source: § 19.1-98.

§ 19.2-81. Arrests without warrants in certain cases.—Members of the State Police force of the Commonwealth, the sheriffs of the various counties, and their deputies, the members of any county police force, the members of any duly constituted police force of any city or town of the Commonwealth and the special policemen of the counties as provided by § 15.1-144, provided such officers are in uniform, or displaying a badge of office, may arrest, without a warrant, any person who commits any crime in the presence of such officer and any person whom he has reasonable grounds or probable cause to suspect of having committed a felony not in his presence; and any such officer, may, at the scene of any motor vehicle accident, or in the apprehension of any person charged with the theft of any motor vehicle, on any of the highways of the Commonwealth, upon reasonable grounds to believe, based upon personal investigation, including information obtained from eyewitnesses, that a crime has been committed by any person then and there present, apprehend such person without a warrant of arrest; and such officers may arrest, without a warrant, persons duly charged with crime in another jurisdiction upon receipt of a telegram, computer print out, facsimile print out, a radio or teletype message, in which telegram, computer printout, facsimile printout, radio or teletype message shall be given the name or a reasonably accurate description of such person wanted, the crime alleged and an allegation that such person is likely to flee the jurisdiction of the Commonwealth.

Source: § 19.1-100.

§ 19.2-82. Procedure upon arrest without warrant.—A person arrested without a warrant shall be brought forthwith before an officer authorized to issue criminal warrants in the county or city where the arrest is made, unless such person is released on summons as provided by law. The officer before whom such person is brought shall proceed to examine the officer making the arrest. If the officer before whom such person is brought has reasonable grounds upon which to believe that a criminal offense has been committed, and that the person arrested has committed such offense, he shall issue such a warrant as might have been issued prior to the arrest of such person under the provisions of § 19.2-72. If such a warrant is issued the case shall thereafter be disposed of under the provisions of §§ 19.2-183 to 19.2-190, if the issuing officer is a judge; under the provisions of §§ 19.2-119 to 19.2-134 if the issuing officer is a magistrate, clerk or other authorized officer If such a warrant be not issued the person so arrested shall be released; provided, however, that this section shall not bar a judge of a court not of record from proceeding in accord with the provisions of § 16.1-129.1.

Source: § 19.1-100.1

§ 19.2-83. Authority of police officers to stop, question and search suspicious persons.—Any police officer may detain a person in a public place whom he reasonably suspects is committing, has committed or is about to commit a felony or possesses a concealed weapon in violation of § 18.2-308, and may require of such person his name and address. Provided further, that such police officer

may, if he reasonably believes that such person intends to do him bodily harm, search his person for a dangerous weapon, and if such person is found illegally to possess a dangerous weapon, the police officer shall take possession of the same and dispose of it as is provided by law. If during such search for a dangerous weapon the officer finds upon such person any article or thing the possession of which is unlawful, he shall seize the same and arrest the person for such unlawful possession.

Source: § 19.1-100.2.

CHAPTER 8.

Extradition of Criminals.

Article 1.

Fugitives from Foreign Nations.

§ 19.2-84. Governor to surrender on requisition of President.—The Governor shall whenever required by the executive authority of the United States, pursuant to the Constitution and laws thereof, deliver over to justice any person found within the State, who is charged with having committed any crime without the jurisdiction of the United States.

Source: § 19.1-47.

Article 2.

Uniform Criminal Extradition Act.

§ 19.2-85. Definitions.—When appearing in this chapter:

(1) The term "Governor" includes any person performing the functions of Governor by authority of the law of this State;

(2) The term "executive authority" includes the Governor, and any person performing the functions of Governor in a state other than this State;

(3) The term "State," referring to a state other than this State, includes any other state or territory, organized or unorganized, of the United States of America, and the District of Columbia; and

(4) The term "judge" means a judge of a court of record having criminal jurisdiction.

Source: § 19.1-49.

§ 19.2-86. Fugitives from justice; duty of Governor.—Subject to the provisions of this chapter, the provisions of the Constitution of

the United States controlling, and any and all acts of Congress enacted in pursuance thereof, the Governor shall have arrested and delivered up to the executive authority of any other of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this State.

Source: § 19.1-50.

§ 19.2-87. Form of demand.—No demand for the extradition of a person charged with, or convicted of, crime in another state shall be recognized by the Governor unless in writing alleging, except in cases arising under § 19.2-91, that the accused was present in the demanding state at the time of the commission of the alleged crime and that thereafter he fled from such state, and accompanied: (1) by a copy of an indictment found, (2) by a copy or an information supported by an affidavit filed in the state having jurisdiction of the crime, (3) by a copy of an affidavit made before a magistrate in such state together with a copy of any warrant which was issued thereupon, or (4) by a copy of a judgment of conviction or of a sentence imposed in execution thereof together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of the indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the executive authority making the demand.

Source: § 19.1-51.

§ 19.2-88. Governor may investigate case.—When a demand shall be made upon the Governor by the executive authority of another state for the surrender of a person so charged with, or convicted of, crime, the Governor may call upon the Attorney General or any other officer of this State to investigate or assist in investigating the demand and to report to him the situation and circumstances of the person so demanded and whether he ought to be surrendered.

Source: § 19.1-52.

§ 19.2-89. Extradition of persons imprisoned or awaiting trial in another state.—When it is desired to have returned to this State a person charged in this State with a crime and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the Governor may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this State as soon as the prosecution in this State is terminated.

Source: § 19.1-53.

§ 19.2-90. Extradition of persons who have left demanding state

involuntarily.—The Governor may also surrender on demand of the executive authority of any other state any person in this State who is charged in the manner provided in §§ 19.2-109 to 19.2-111, with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily.

Source: § 19.1-54

§ 19.2-91. Extradition of persons not in demanding state at time of commission of crime.—The Governor may also surrender, on demand of the executive authority of any other state, any person in this State charged in such other state in the manner provided in § 19.2-87 with committing an act in this State, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand. The provisions of this chapter not otherwise inconsistent shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom.

Source: § 19.1-55.

§ 19.2-92. Issue of Governor's warrant of arrest; its recitals.—If the Governor decides that a demand for the extradition of a person, charged with, or convicted of, crime in another state should be complied with, he shall sign a warrant of arrest, which shall be sealed with the State seal, and be directed to the sheriff or sergeant of any county or city or to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance.

Source: § 19.1-56.

§ 19.2-93. Manner and place of execution.—Such warrant shall authorize the officer or other person to whom it is directed to arrest the accused at any time and at any place where he may be found within the State and to command the aid of all peace officers or other persons in the execution of the warrant and to deliver the accused, subject to the provisions of this chapter, to the duly authorized agent of the demanding state.

Source: § 19.1-57.

§ 19.2-94. Assistance to arresting officer.—Every officer or other person empowered to make the arrest, as provided in the preceding section, shall have the same authority, in arresting the accused, to command assistance therein as the sheriffs and sergeants of the several counties and cities of this State have by law in the execution of any criminal process directed to them, with like penalties against those who refuse to render their assistance.

Source: § 19.1-58.

§ 19.2-95. Rights of accused persons; application for writ of habeas corpus.—No person arrested upon such warrant shall be

delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a circuit or general district court in this State, who shall inform him of the demand made for his surrender and of the crime with which he is charged, and that he has the right to demand and procure legal counsel; and if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge or trial justice shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof and of the time and place of hearing thereon shall be given to the attorney for the Commonwealth of the county or city in which the arrest is made and in which the accused is in custody, and to the agent of the demanding state.

Source: § 19.1-59.

§ 19.2-96. Penalty for noncompliance with preceding section.—Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the Governor's warrant in wilful disobedience to the last preceding section shall be guilty of a class 1 misdemeanor.

Source: § 19.1-60.

§ 19.2-97. Confinement in jail when necessary.—The officer or persons executing the Governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered, may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail shall receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person being chargeable with the expense of keeping.

Source: § 19.1-61.

§ 19.2-98. Same; for prisoners being taken through State.—The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state or to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this State with such prisoner for the purpose of returning immediately such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail shall receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping, provided, however, that such officer or agent shall deliver to the jailer the warrant or legal order authorizing custody of the prisoner. Such prisoner shall not be entitled to demand a new requisition while in this State.

Source: § 19.1-62.

§ 19.2-99. Arrest prior to requisition.—Whenever: (1) any person within this State shall be charged on the oath of any credible

person before any judge, magistrate or other officer authorized to issue criminal warrants in this State with the commission of any crime in any other state and, except in cases arising under § 19.2-91, (a) with having fled from justice, (b) with having been convicted of a crime in that state and of having escaped from confinement, or (c) of having broken the terms of his bail, probation, or parole, or (2) complaint shall have been made before any such judge, magistrate or other officer in this State setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under § 19.2-91, (a) has fled from justice, (b) having been convicted of a crime in that state has escaped from confinement, or (c) broken the terms of his bail, probation or parole, and that the accused is believed to be in this State, such judge, magistrate or other officer shall issue a warrant directed to any sheriff or to any peace officer commanding him to apprehend the person named therein, wherever he may be found in this State, and to bring him before any judge who may be available in or convenient of access to the place where the arrest may be made, to answer the charge of complaint and affidavit. A certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

Source: § 19.1-63.

§ 19.2-100. Arrest without a warrant.—The arrest of a person may be lawfully made also by any peace officer or private person without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year. But when so arrested the accused shall be taken before a judge, magistrate or other officer authorized to issue criminal warrants in this State with all practicable speed and complaint made against him under oath setting forth the ground for the arrest as in the preceding section; and thereafter his answer shall be heard as if he had been arrested on a warrant.

Source: § 19.1-64.

§ 19.2-101. Confinement to await requisition; bail.—If from the examination before the judge it appears that the person held pursuant to either of the two preceding sections is the person charged with having committed the crime alleged and, except in cases arising under § 19.2-91, that he has fled from justice, the judge shall, by a warrant reciting the accusation, commit him to jail for such a time, not exceeding thirty days, specified in the warrant as will enable the arrest of the accused to be made under a warrant of the Governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in the next section, or until he shall be legally discharged.

Source: § 19.1-65.

§ 19.2-102. Bail; in what cases; conditions of bond.—Unless the offense with which the prisoner is charged is shown to be an offense

punishable by death or life imprisonment under the laws of the state in which it was committed, any judge, magistrate or other person authorized by law to admit persons to bail in this State may admit the person arrested to bail by bond, with sufficient sureties, and in such sum as he deems proper, conditioned upon his appearance before a judge at a time specified in such bond and upon his surrender for arrest upon the warrant of the Governor of this State.

Source: § 19.1-66.

§ 19.2-103. Discharge, recommitment or renewal of bail.—If the accused is not arrested under warrant of the Governor by the expiration of the time specified in the warrant or bond, any judge in this State may discharge him or may recommit him for a further period not to exceed sixty days, or such judge may again take bail for his appearance and surrender, as provided in the preceding section, but within a period not to exceed sixty days after the date of such new bond.

Source: § 19.1-67

§ 19.2-104. Forfeiture of bail.—If the prisoner is admitted to bail and fails to appear and surrender himself according to the conditions of his bond, any judge of a circuit or general district court by proper order, shall declare the bond forfeited and order his immediate arrest without warrant if he be within this State. Recovery may be had on such bond in the name of the State as in the case of other bonds given by the accused in criminal proceedings within this State.

Source: § 19.1-68.

§ 19.2-105. Persons under criminal prosecution in this State at time of requisition.—If a criminal prosecution has been instituted against such person under the laws of this State and is still pending, the Governor, in his discretion, either may surrender him on demand of the executive authority of another state or hold him until he has been tried and discharged or convicted and punished in this State.

Source: § 19.1-69.

§ 19.2-106. Guilt or innocence of accused, when inquired into.—The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the Governor or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as above provided shall have been presented to the Governor, except as it may be involved in identifying the person held as the person charged with the crime.

Source: § 19.1-70.

§ 19.2-107. Governor may recall warrant or issue alias.—The Governor may recall his warrant of arrest or may issue another warrant whenever he deems it proper.

Source: § 19.1-71.

§ 19.2-108. Fugitives from this State; duty of Governor.—Whenever the Governor shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation or parole in this State, from the executive authority of any other state, or from the chief justice or an associate justice of the Supreme Court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this State to some agent commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county or city in this State in which the offense was committed.

Source: § 19.1-72.

§ 19.2-109. Application for requisition for return of person charged with crime.—When the return to this State of a person charged with crime in this State is required, the attorney for the Commonwealth shall present to the Governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place and circumstances of its commission, the state in which he is believed to be, including the location of the accused therein at the time the application is made, and certifying that, in the opinion of the attorney for the Commonwealth, the ends of justice require the arrest and return of the accused to this State for trial and that the proceeding is not instituted to enforce a private claim.

Source: § 19.1-73.

§ 19.2-110. Application for requisition for return of escaped convict, etc.—When the return to this State is required of a person who has been convicted of a crime in this State and has escaped from confinement or broken the terms of his bail, probation or parole, the attorney for the Commonwealth, of the county or city in which the offense was committed, or the warden of the institution or sheriff of the county or city from which the escape was made, shall present to the Governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole and the state in which he is believed to be, including the location of the person therein at the time application is made.

Source: § 19.1-74.

§ 19.2-111. Form of such applications; copies, etc.—The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge of a circuit or general district court or other officer issuing the warrant stating the offense with which the accused is charged, or of the judgment of conviction or of the

sentence. The attorney for the Commonwealth, warden or sheriff may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application, with the action of the Governor indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information, and affidavits, or of the judgment of conviction or of the sentence shall be filed in the office of the Secretary of the Commonwealth, to remain of record in that office. The other copies of all papers shall be forwarded with the Governor's requisition.

Source: § 19.1-75.

§ 19.2-112. Costs and expenses.—The expenses incident to the extradition of any person under the four preceding sections shall be paid out of the State treasury, on warrants of the Comptroller issued upon vouchers signed by the Governor, or such other person as may be designated by him for such purpose.

Source: § 19.1-76.

§ 19.2-113. Immunity from service of process in certain civil actions.—A person brought into this State by, or after waiver of, extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceeding to answer which he is being or has been returned, until he has been convicted in the criminal proceeding, or, if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited.

Source: § 19.1-77.

§ 19.2-114. Written waiver of extradition proceedings.—Any person arrested in this State charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his bail, probation or parole may waive the issuance and service of the warrant provided for in §§ 19.2-92 and 19.2-93 and all other procedure incidental to extradition proceedings by executing or subscribing in the presence of a judge of a circuit or general district court within this State a writing which states that he consents to return to the demanding state; provided, however, that before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of his rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in § 19.2-95.

If and when such consent has been duly executed it shall forthwith be forwarded to the office of the Governor and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent of the demanding state, and shall deliver or cause to be delivered to such agent a copy of such consent; provided, however, that nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an executive procedure or to limit the powers, rights or duties of the

officers of the demanding state or of this State.

Source: § 19.1-78.

§ 19.2-115. Nonwaiver by this State.—Nothing in this chapter contained shall be deemed to constitute a waiver by this State of its right, power or privilege to try such demanded person for crime committed within this State, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence or punishment for any crime committed within this State, nor shall any proceedings had under this chapter which result in, or fail to result in, extradition be deemed a waiver by this State of any of its rights, privileges or jurisdiction in any way whatsoever.

Source: § 19.1-79.

§ 19.2-116. No right of asylum; no immunity from other criminal prosecutions while in this State.—After a person has been brought back to this State by, or after waiver of, extradition proceedings he may be tried in this State for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition.

Source: § 19.1-80.

§ 19.2-117. Interpretation.—The provisions of this article shall be so interpreted and construed as to effectuate its general purposes to make uniform the law of those states which enact statutes similar thereto.

Source: § 19.1-81.

§ 19.2-118. Short title.—This article may be cited as the Uniform Criminal Extradition Act.

Source: § 19.1-82.

CHAPTER 9.

Bail and Recognizances.

Article 1.

Bail.

§ 19.2-119. "Judicial officer" defined.—As used in this article the term "judicial officer" means, unless otherwise indicated, any magistrate within his jurisdiction, any judge of a district court and the clerk or deputy clerk of any district court or circuit court within their respective cities and counties, any judge of a circuit court, and any justice of the Supreme Court of Virginia.

Source: § 19.1-109.1.

§ 19.2-120. Right to bail.—An accused who is held in custody pending trial for an offense shall be admitted to bail by a judicial officer as defined in § 19.2-119, unless there is probable cause to believe that:

(1) He will not appear for trial or at such other time and place as may be directed, or

(2) His liberty will constitute an unreasonable danger to the public.

Source: New.

§ 19.2-121. Fixing the terms of bail.—If the accused is admitted to bail, the terms thereof shall be such as, in the judgment of the official granting the same, will be reasonably calculated to insure the presence of the accused, having regard to (1) the nature and circumstances of the offense, (2) the weight of the evidence, (3) the financial ability to pay bail, and (4) the character of the accused.

Source: New.

§ 19.2-122. Bail by arresting officer.—A person arrested on a capias to answer, or hear judgment on, a presentment, indictment or information for a misdemeanor, or on an attachment, other than an attachment to compel the performance of a judgment or of an order or decree in a civil case, may be admitted to bail by the officer who arrests him, the officer taking a recognizance in such sum, not being less than two hundred dollars unless by general or special order of the court a less sum be authorized, as he, regarding the case and estate of the accused, may deem sufficient to secure his appearance before the court from which the process issued at the time required thereby. The officers shall return the recognizance to the court on or before the return day of such process. If without sufficient cause he fail to make such return, he shall forfeit twenty dollars.

Source: § 19.1-109.

§ 19.2-123. Release of accused on unsecured bond or promise to appear; conditions of release.—(a) If any judicial officer has brought before him any person held in custody and charged with an offense, other than an offense punishable by death, said judicial officer shall consider the release pending trial of the accused on his written promise to appear in court as directed or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer. In determining whether or not to release the accused on his written promise to appear or an unsecured bond the judicial officer shall take into account the nature and circumstances of the offense charged, the accused's family ties, employment, financial resources, the length of his residence in the community, his record of convictions, and his record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings, and any other information available to him which he believes relevant to the determination of whether or not the defendant is likely to absent himself from court proceedings.

Should the judicial officer determine that such a release will not reasonably assure the appearance of the accused as required, or, in the case of a juvenile charged with the violation of an offense which if committed by an adult would be a crime, the judicial officer shall then, either in lieu of or in addition to the above methods of release, impose any one, or any combination of the following conditions of release which will reasonably assure the appearance of the accused for trial:

(1) Place the person in the custody of a designated person or organization agreeing to supervise him;

(2) Place restrictions on the travel, association or place of abode of the person during the period of release;

(3) Require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; or

(4) Impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours.

(b) Nothing contained in this section shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the court.

(c) Nothing in this section shall be construed to prevent an officer taking a juvenile into custody from releasing that juvenile pursuant to § 16.1-197 of this Code.

Source: § 19.1-109.2.

§ 19.2-124. Appeal from an order denying bail or fixing the terms thereof or terms of a recognizance.—If a magistrate or other judicial officer denies bail to an accused, or requires excessive bail, or fixes unreasonable terms of a recognizance under § 19.2-123, the accused may appeal therefrom successively to the next higher court or judge thereof up to and including the Supreme Court of Virginia or any justice thereof.

Source: §§ 19.1-109.3, 19.1-112 and 19.1-117.

§ 19.2-125. Release pending appeal from conviction in court not of record.—A person who has been convicted of an offense in a court not of record and who has noted an appeal shall be given credit for any bond that he may have posted in the court from which he appeals and shall be treated in accordance with the provisions of §§ 19.2-123 and 19.2-124.

Source: § 19.1-109.4.

§ 19.2-126. Release of person charged with capital offense.—A person who is charged with an offense punishable by death shall be treated in accordance with the provisions of § 19.2-123 unless the court or judge thereof has reason to believe that no one or more conditions of release will reasonably assure that the person will not

flee or pose a danger to any other person or to the community.

Source: § 19.1-109.5.

§ 19.2-127. Conditions of release of material witness.—If it appears by affidavit that the testimony of a person is material in any criminal proceeding, and it reasonably appears that it will be impossible to secure his presence by a subpoena, a judge shall inquire into the conditions of his release pursuant to § 19.2-123.

Source: § 19.1-109.6.

§ 19.2-128. Penalties for failure to appear.—Whoever, having been released pursuant to this chapter, willfully fails to appear before any court or judicial officer as required, shall, after notice to all interested parties, incur a forfeiture of any security which was given or pledged for his release, unless one of the parties can show good cause for excusing the absence, or unless the court, in its sound discretion, shall determine that neither the interests of justice nor the power of the court to conduct orderly proceedings will be served by such forfeiture. In addition, he shall be guilty of a class 1 misdemeanor.

Source: § 19.1-109.7.

§ 19.2-129. Power of court to punish for contempt.—Nothing in this chapter shall interfere with or prevent the exercise by any court of the Commonwealth of its power to punish for contempt, except that a person shall not be sentenced for contempt and under the provisions of § 19.2-128 for the same absence.

Source: § 19.1-109.8.

§ 19.2-130. Bail in subsequent proceeding arising out of initial arrest.—Any person admitted to bail by a judge or clerk of a court not of record or by a magistrate shall not be required to be admitted to bail in any subsequent proceeding arising out of the initial arrest unless the court having jurisdiction of such subsequent proceeding deems the initial amount of bail or security taken inadequate. When the court having jurisdiction of the proceeding believes the amount of bail or security inadequate, it may increase the amount of such bail or require new and additional sureties.

Source: § 19.1-111.1.

§ 19.2-131. Bail for accused held in jurisdiction other than that of trial.—In any case in which a person charged with a misdemeanor or felony is held in some county, city or town other than that in which he is to be tried upon such charge, he may be admitted to bail by any judicial officer of the county, city or town in which he is so held in accordance with the provisions of law concerning the granting of bail in cases in which persons are so admitted to bail or recognizance, when held in the county, city or town in which they are to be tried.

In such case, such judicial officer before whom he is brought

may, without trial or examination, let him to bail, upon taking a recognizance for his appearance before the court having cognizance of the case. The fact of taking such recognizance shall be certified by the court or officer taking it upon the warrant under which such person was arrested and the warrant and recognizance shall be returned forthwith to the clerk of the court before whom the accused is to appear. And to such court, the judicial officer who issued such warrant shall recognize or cause to be summoned such witnesses as he may think proper.

Source: §§ 19.1-118 and 19.1-119.

§ 19.2-132. Motion to increase amount of bail fixed by magistrate or clerk.—If the amount of the bail fixed by a magistrate or clerk be deemed inadequate, the attorney for the Commonwealth of the county or city in which the accused is held for trial may, on reasonable notice to the accused, move the court, or the judge thereof to increase the amount of such bail.

Source: § 19.1-120.

§ 19.2-133. When bail may be increased, or new sureties required; surety may take indemnity.—Although a party has been admitted to bail, if the amount thereof is subsequently deemed insufficient, or the security taken inadequate, the court having jurisdiction to try the case in which the bail was required, or the judge thereof, or the officer before whom the bail was given, may increase the amount of such bail, or may require new or additional sureties therefor, or both. Any surety in a bail bond or a recognizance for the appearance of one charged with crime may take from his principal collateral or other security to indemnify such surety against liability.

Source: § 19.1-121.

§ 19.2-134. When bail piece to be delivered to bail.—In all cases in which recognizances, at the suit of the Commonwealth, may have been, or shall hereafter be entered into, it shall be the duty of the clerk of the court in which, or in the clerk's office of which, any recognizance is filed, to deliver to the bail on his applying therefor, a bail piece, in substance, as follows: "A. B. of the county (or corporation) of ....., is delivered to bail, unto C. D. of the county (or corporation) of ....., at the suit of the Commonwealth. Given under my hand, this ..... day of ....., in the year ....."

Source: § 19.1-123.

Article 2.

Recognizances.

§ 19.2-135. Commitment for trial; recognizance; notice to attorney for the Commonwealth.—When a judge considers that there is sufficient cause for charging the accused with a felony,

unless it be a case wherein it is otherwise specially provided, the commitment shall be for trial. Any recognizance taken of the accused shall be upon the following conditions: (1) that he appear to answer for the offense with which he is charged before the court or judge before whom the case will be tried at such time as may be stated in the recognizance and at any time or times to which the proceedings may be continued and before any court or judge thereafter in which proceedings on the charge are held; (2) that he shall not depart from the Commonwealth without the leave of such court or judge; and (3) that he shall keep the peace and be of good behavior until the case is finally disposed of. Every such recognizance shall also include a waiver such as is required by § 49-12 in relation to the bonds therein mentioned and though such waiver be not expressed in the recognizance it shall be deemed to be included therein in like manner and with the same effect as if it was so expressed. The judge shall return to the clerk of the court wherein the accused is to be tried, as soon as may be, a certificate of the nature of the offense, showing whether the accused was committed to jail or recognized for his appearance; and the clerk, as soon as may be, shall inform the attorney for the Commonwealth of such certificate.

When a recognizance is taken of a witness in a case against an accused, the condition thereof shall be that he appear to give evidence in such case and that he shall not depart from the Commonwealth without the leave of such court or judge.

Source: §§ 19.1-125, 19.1-128 and 19.1-133.

§ 19.2-136 How recognizances payable; penalty.— Recognizances in criminal cases, where the offense is charged to have been committed against the Commonwealth, shall be payable to the Commonwealth of Virginia. Recognizances in criminal cases where the offense charged is a violation of a county, city or town ordinance, shall be payable to such county, city or town. Every recognizance under this title shall be in such sum as the court or officer requiring it may direct.

Source: § 19.1-127

§ 19.2-137. Order of court on recognizance.—When such recognizance is taken by a court of a person to answer a charge or of a witness to give evidence it shall be sufficient for the order of the court taking the recognizance to state that the party or parties recognized were duly recognized in such sum as the court may have directed with such surety as the court may have accepted for his or their appearance before such court at such time as may have been prescribed by the court to answer for the offense with which such person is charged or to give evidence, as the case may be.

Source: § 19.1-129.

§ 19.2-138. Allowing cash deposits in lieu of recognizances with surety —When a person charged with a criminal offense is admitted to bail by a court or an officer authorized by law so to do for his appearance before a court or judge having jurisdiction of the case,

for a hearing thereon, he may instead of entering into a recognizance with surety give his personal recognizance and deposit, or cause to be deposited for him, in cash, the amount of bail he is required to furnish, with such court or officer, who shall give to the person whose funds are so deposited an official receipt therefor.

Source: § 19.1-130.

§ 19.2-139. Form of receipt for same.—In order that officials may be able to give such official receipts, it shall be the duty of the Auditor of Public Accounts to provide all such officials with official prenumbered receipt books in quadruplicate, consisting of an original and three carbon copies, the original receipt to go to the person whose funds are deposited, the first carbon copy to go to the court or judge before whom the person recognized is to appear, the second carbon copy to the Auditor of Public Accounts and the other copy to remain in the receipt book; and the official with whom such cash was so deposited shall deliver the same, along with the first carbon copy of the receipt, to the court or judge before whom the person recognized is to appear or to the clerk of such court or judge, if authorized by law to receive the same, who shall give him an official receipt therefor.

Source: § 19.1-131.

§ 19.2-140. Disposition of such money.—If there be no default in the observance of the conditions of the recognizance, or if there be default and it be a case which may be tried in the absence of the defendant and he is so tried, and if, upon the trial of the case, the defendant be found not guilty, the money so deposited shall be refunded to the person making such deposit, or upon his order, but if the defendant be found guilty, the court or judge trying the case shall apply the money, or so much thereof as may be necessary, to the payment of such fines and costs, or costs, as may be adjudged against the defendant, and the residue thereof, if any, shall be paid over to the person making such deposit, or upon his order; provided, that if there be an appeal from the judgment of a judge trying any such case, or if it be a charge of felony and be sent on for investigation by a grand jury, the money so deposited shall be paid over by such judge to the clerk of the court to which such appeal is taken, or to which the case is sent on for investigation by a grand jury thereof, who shall issue to such judge his official receipt therefor.

If there be default in any such recognizance, and if the case be not tried in the absence of the defendant and the money disposed of as hereinabove provided for, the forfeiture thereof shall be noted of record and proceedings had thereon, as provided by law, and the money so deposited shall be held subject to the order of the court upon the final disposition of such proceedings.

Source: § 19.1-132.

§ 19.2-141. How recognizance taken for insane person or one under disability.—A recognizance which would be taken of a person

but for his being a minor, insane or otherwise mentally incompetent, may be taken of another person and without further surety, if such other person be deemed sufficient, for the performance by such minor, insane or otherwise mentally incompetent person, of the conditions of the recognizance.

Source: § 19.1-134.

§ 19.2-142. Where recognizance taken out of court to be sent.—A person taking a recognizance out of court shall forthwith transmit it to the clerk of the court for appearance before which it is taken; or, if it be not for appearance before a court, to the clerk of the circuit court of the county or city in which it is taken; and it shall remain filed in the clerk's office.

Source: § 19.1-136.

§ 19.2-143. Where default recorded; process on recognizance; when copy may be used.—When a person, under recognizance in a criminal case, either as party or witness, fails to perform the condition thereof, if it be to appear before a court of record, or court not of record, a hearing shall be held upon reasonable notice to all parties affording them opportunity to show cause why said recognizance should not be forfeited. If the court finds the recognizance should be forfeited, the default shall be recorded therein, unless, the defendant be brought before the court within thirty days of the findings of default. After thirty days of the finding of default, his default shall be recorded therein, and if it be to appear before a court not of record, his default shall be entered by the judge of such court, on the page of his docket whereon the case is docketed unless the defendant has been delivered or appeared before the court. The process on any such forfeited recognizance shall be issued from the court before which the appearance was to be, and wherein such forfeiture was recorded or entered. Any such process issued by a judge when the penalty of the recognizance so forfeited is in excess of five thousand dollars shall be made returnable to the circuit court of his county or city, and when not in excess of five thousand dollars it shall be made returnable before, and tried by, such judge, who shall promptly transmit to the clerk of the circuit court of his county or city wherein deeds are recorded an abstract of such judgment as he may render thereon, which shall be forthwith docketed by the clerk of such court.

If the defendant appear before or be delivered to the court within sixty days of the findings of default, the court may remit part or all of any bond previously ordered forfeited by the courts.

Evidence that the defendant is incarcerated or subject to court process in another jurisdiction on the day his appearance is required or a medical certificate from a duly licensed physician that the defendant was physically unable to so appear may be considered evidence of good cause why the recognizance should not be forfeited.

If such recognizance so forfeited be not for such appearance, process thereon shall be issued from the court in which it was

taken, or the court to which it was made returnable, and in a proceeding in one court on a recognizance entered in another a copy thereof shall be evidence in like manner as the original would be if it had been entered in the court wherein the proceeding is being had thereon.

The foregoing provisions of this section shall not apply to a case in which the defendant posted a cash bond and the case is tried in his absence and the money so deposited disposed of by the court or judge in the manner prescribed by law

Source: § 19.1-137.

§ 19.2-144. Forfeiture of recognizance while in military or naval service.—If in any motion, action, suit or other proceeding made or taken in any court of this Commonwealth on a forfeited bail bond or recognizance, or to enforce the payment of the same in any manner or any judgment thereon, or to forfeit any bail bond or recognizance, it appear that the person for whose alleged default such bail bond or recognizance was forfeited or judgment rendered, or such motion is made or proceeding taken, was prevented from complying with the condition of such bail bond or recognizance by reason of his having enlisted or been drafted in the army or navy of the United States, then judgment or decree on such motion, action, suit or other proceeding shall be given for the defendant.

Source: § 19.1-139.

§ 19.2-145. How penalty remitted.—When in an action or scire facias on a recognizance the penalty is adjudged to be forfeited the court may on an application of a defendant remit the penalty or any part of it and render judgment on such terms and conditions as it deems reasonable.

Source: § 19.1-140.

§ 19.2-146. Defects in form of recognizance not to defeat action or judgment.—No action or judgment on a recognizance shall be defeated or arrested by reason of any defect in the form of the recognizance, if it appear to have been taken by a court or officer authorized to take it and be substantially sufficient.

Source: § 19.1-141.

§ 19.2-147. Docketing judgments on forfeited recognizances and bonds.—Whenever a judgment is entered in any court of record in favor of the Commonwealth of Virginia upon a forfeited recognizance or bond, the clerk of the court in which the judgment is rendered shall certify an abstract of the same to the clerk of the circuit court of the county or city wherein the judgment debtor resides or of any city or county in which he may own real property, who shall thereupon enter the abstract of judgment upon his judgment docket, for which service he shall be allowed the sum of fifty cents, payable out of the State treasury.

Source: § 19.1-142.

§ 19.2-148. Surety discharged on payment of amount, etc., into court.—A surety in a recognizance may, after default, pay into the court from which the process has issued, or may issue thereon, the amount for which he is bound, with such costs as the court may direct, and be thereupon discharged.

Source: § 19.1-143.

§ 19.2-149. How surety in recognizance may surrender principal and be discharged from liability.—A surety in a recognizance may at any time arrest his principal and surrender him to the court before which the recognizance was taken or before which such principal's appearance is required, or to the sheriff, sergeant or jailer of the county or city wherein the court before which such principal's appearance is required is located; in addition to the above authority, upon the application of the surety, the court, or the clerk thereof, before which the recognizance was taken, or before which such principal's appearance is required, shall issue a capias for the arrest of such principal, and such capias may be executed by such surety, or his authorized agent, or by any sheriff, sergeant or police officer, and the person executing such capias shall deliver such principal and such capias to the sheriff or jailer of the county or the sheriff, sergeant or jailer of the city in which the appearance of such principal is required, and thereupon the said surety shall be discharged from liability for any act of the principal subsequent thereto. Such sheriff, sergeant or jailer shall thereafter deliver such capias to the clerk of such court, with his endorsement thereon acknowledging delivery of such principal to his custody.

Source: § 19.1-144.

§ 19.2-150. The proceeding, when surety surrenders principal.—If the surrender be to the court, it shall make such order as it deems proper; if the surrender be to a sheriff, sergeant or jailer, the officer to whom the accused has been surrendered shall give the surety a certificate of the fact. After such surrender the accused shall be treated in accordance with the provisions of § 19.2-123 unless the court or judge thereof has reason to believe that no one or more conditions of release will reasonably assure that the accused will not flee or pose a danger to any other person or to the community.

Source: § 19.1-145.

Article 3.

Satisfaction and Discharge.

§ 19.2-151. Satisfaction and discharge of assault and similar charges.—When a person is in jail or under a recognizance to answer a charge of assault and battery or other misdemeanor, or has been indicted for an assault and battery or other misdemeanor, for which there is a remedy by civil action, unless the offense was committed by or upon any law-enforcement officer or riotously in violation of §§ 18.2-404 to 18.2-407, or with intent to commit a

felony, if the party injured appear before the judge who made the commitment or took the recognizance, or before the court in which the indictment is pending, and acknowledge in writing that he has received satisfaction for the injury, such judge, or court may, in his or its discretion, by an order, supersede the commitment, discharge the recognizance, or dismiss the prosecution, upon payment by the defendant of costs accrued to the Commonwealth or any of its officers.

Source: § 19.1-18.

§ 19.2-152. Order discharging recognizance, or superseding commitment; judgment for costs.—Every order discharging a recognizance shall be filed with the clerk before the session of the court at which the party was to appear. Where a person is held under a commitment, any order superseding a commitment shall be delivered to the jailer, who shall forthwith discharge the witnesses, if any, and the accused, and judgment against the accused shall be entered in the court for the costs of the prosecution.

Source: § 19.1-19.

CHAPTER 10.

Disability of Judge or Attorney for the Commonwealth; Court Appointed Counsel; Interpreters; Transcripts.

Article 1.

Disability of Judge.

§ 19.2-153. When judge cannot sit on trial; how another judge procured to try the case.

Source: § 19.1-7

Note: This section has been deleted since its provisions are stated in § 17-7 and Canon 3(c) of the Canons of Judicial Ethics.

§ 19.2-154. Death or disability of judge during trial; how another judge procured to continue with trial.—If by reason of death, sickness or other disability the judge who presided at a criminal jury trial is unable to proceed with and finish the trial, another judge of that court or a judge designated by the Chief Justice of the Supreme Court or by a justice designated by him for that purpose, may proceed with and finish the trial or, in his discretion, may grant and preside at a new trial. If by reason of such disability, the judge who presided at any trial is unable to perform the duties to be performed by the court after a finding of guilty by the jury or the court, another judge of that court, or a judge designated as provided in the preceding sentence, may perform those duties or, in his

discretion, may grant and preside at a new trial. Before proceeding with the trial or performing such duties, such judge shall certify that he has familiarized himself with the record of the trial.

Source: New.

Article 2.

Disability of Attorney for Commonwealth.

§ 19.2-155. Disqualification or temporary disability of attorney for Commonwealth; appointment of substitute powers, duties and compensation of such appointee.—If the attorney for the Commonwealth of any county or city is connected by blood or marriage with the accused, or is so situated with respect to such accused as to render it improper, in his opinion, concurred in by the judge, for him to act, or if such attorney for the Commonwealth of any county or city is unable to act, or to attend to his official duties as attorney for the Commonwealth, due to sickness, disability or other reason of a temporary nature, then upon notification by such attorney for the Commonwealth, or upon the certificate of his attending physician, or the clerk of the court, which fact shall be entered of record, the judge of the circuit court shall appoint an attorney at law for such case or cases, term or terms of court, or period or periods of time, as may be necessary or desirable, and the same to be forthwith entered of record. Such attorney at law shall act in place of, and otherwise perform the duties and exercise the powers of, such disqualified or disabled attorney for the Commonwealth, in regard to such case or cases, for the term or terms of the court, or the period or periods of time, for which the appointment and designation is made, or until the disqualified or disabled attorney for the Commonwealth shall again be able to attend to his duties as such.

The attorney at law so appointed shall receive such compensation as the judge of the circuit court in which the case is tried or the service is rendered deems reasonable, in addition to his actual expenses for the time that he is actually engaged, such compensation and expenses to be paid by the State.

Source: §§ 19.1-9 and 19.1-10.

§ 19.2-156. Prolonged absence of attorney for Commonwealth.—If it shall be necessary for the attorney for the Commonwealh of any county or city to absent himself for a prolonged period of time from the performance of the duties of his office, then, upon notification by such attorney for the Commonwealth, or by the court on its own motion, and the facts being entered of record, the judge of the circuit court shall appoint an attorney at law as acting attorney for the Commonwealth to serve for such length of time as may be necessary Such acting attorney for the Commonwealth shall act in place of and otherwise perform the duties and exercise the powers of such regular attorney for the Commonwealth, and while so acting shall receive the salary

and allowance for expenses fixed by the State Compensation Board for such regular attorney for the Commonwealth, who during such length of time shall not receive any such salary or allowance.

Source: § 19.1-11.

Article 3.

Appointment of Attorney for Accused.

§ 19.2-157. Duty of court to ascertain whether person charged with criminal offense is represented by counsel.—Except as may otherwise be provided in § 16.1-173, whenever a person charged with a criminal offense the penalty for which may be death or confinement in the penitentiary or jail, including charges for revocation of suspension of imposition or execution of sentence or probation, appears before any court without being represented by counsel, the court shall inform him of his right to counsel. The accused shall be allowed a reasonable opportunity to employ counsel of his own choice, or, if appropriate, the statement of indigence provided for in § 19.2-159 may be executed.

Source: §§ 19.1-241.1 and 19.1-241.7

§ 19.2-158. When person not free on bail shall be informed of right to counsel and amount of bail.—Every person charged with an offense described in § 19.2-157, who is not free on bail or otherwise, shall be brought before the judge of a court not of record on the first day on which such court sits after the person is charged, at which time the judge shall inform the accused of the amount of his bail and his right to counsel.

No hearing on the charges against the accused shall be had until the foregoing conditions have been complied with, and the accused shall be allowed a reasonable opportunity to employ counsel of his own choice, or, if appropriate, the statement of indigence provided for in § 19.2-159 may be executed.

Source: §§ 19.1-241.2 and 19.1-241.8.

§ 19.2-159. Statement of indigence by person charged with felony; appointment of counsel.—If the accused shall claim that he is indigent, and the charge against him is a felony, the court shall ascertain by oral examination of the accused and other competent evidence whether or not the accused is indigent within the contemplation of law; and if the court thereby determines that such accused is indigent as contemplated by law, the court shall provide the accused with a statement which shall contain the following:

"I have been advised this.....day of....., 19.... by the (name of court) court of my right to representation by counsel in the trial of the charge pending against me; I certify that I am without means to employ counsel of may own choosing and I hereby request the court to appoint counsel for me."

(signature of accused)

The accused shall execute the said statement under oath, and the said court shall appoint competent counsel to represent the accused in the proceeding against him, including an appeal, if any, until relieved or replaced by other counsel.

The executed statement by the accused and the order of appointment of counsel shall be filed with and become a part of the record of such proceeding.

Source: § 19.1-241.3.

§ 19.2-160. Statement of indigence by person charged with nonfelonious offense; appointment of counsel or waiver of right.—If the charge against the accused is a misdemeanor the penalty for which may be by confinement in jail, and the accused is not represented by counsel, the court shall ascertain by oral examination of the accused whether or not the accused desires to waive his right to counsel.

In the event the accused desires to waive his right to counsel, and the court ascertains that such waiver is voluntary and intelligently made, then the court shall provide the accused with a statement which shall contain the following:

"I have been advised this..... day of ....., 19...., by the (name of court) court of my right to representation by counsel in the trial of the charge pending against me. I have been further advised that, if I am unable to afford counsel, one will be appointed for me free of charge.

"Understanding my right to have counsel appointed for me free of charge, I wish to waive that right and have the court proceed with my case without an attorney being appointed for me.

"I hereby waive my right to have counsel appointed for me, voluntarily and of my own free will, without any threats, promises, force or undue influence."

(signature of accused)

Any executed statement herein provided for shall be filed with and become a part of the record of such proceeding.

In the absence of a waiver of counsel by the accused, and if he shall claim that he is indigent, the court shall proceed in the same manner as is provided in § 19.2-159.

Should the defendant refuse or otherwise fail to sign either of the statements described in this section and § 19.2-159, the court shall note such refusal on the record. Such refusal shall be deemed to be a waiver of the right to counsel, and the court, after so advising the accused and offering him the opportunity to rescind his refusal shall, if such refusal is not rescinded and the accused's

signature given, proceed to hear and decide the case.

Source: § 19.1-241.9.

§ 19.2-161. Penalty for false swearing with regard to statement of accused.—Any person charged with a felony who shall falsely swear or who shall execute the statement provided for in § 19.2-159 knowing such statement to be false, shall be guilty of perjury, punishable as a class 5 felony.

Any person charged with a misdemeanor punishable by confinement in jail who shall falsely swear or who shall execute the statement provided for in § 19.2-159 knowing such statement to be false shall be guilty of a class 1 misdemeanor.

Source: §§ 19.1-241.6 and 19.1-241.12.

§ 19.2-162. Continuances to be granted if necessary.—Courts before which criminal proceedings are pending shall afford such continuances and take such other action as is necessary to comply with the provisions of this chapter.

Source: §§ 19.1-241.4 and 19.1-241.10.

§ 19.2-163. Compensation of court-appointed counsel.—Counsel appointed to represent an indigent accused on a criminal charge shall be compensated for his services in an amount fixed by each of the courts in which he appears in accordance with the following schedule:

(1) In a court not of record, a sum not to exceed seventy-five dollars;

(2) In a circuit court to defend a felony charge that may be punishable by death or by confinement in the penitentiary for a period of more than twenty years, a sum not to exceed four hundred dollars; and to defend any other felony charge, a sum not to exceed two hundred dollars; and to defend any misdemeanor charge punishable by confinement in jail, a sum not to exceed one hundred dollars.

The court shall direct the payment of such reasonable expenses incurred by such court appointed attorney as it deems appropriate under the circumstances of the case.

The court shall direct that the foregoing payments shall be paid out by the Commonwealth, if the Commonwealth has initiated the prosecution, or by the county, city or town, if a county, city or town has initiated the prosecution, to the attorney so appointed to defend such person as compensation for such defense.

When such directive is entered upon the order book of the court, the Commonwealth, county, city or town, as the case may be, shall provide for the payment out of its treasury of the sum of money so specified. If the defendant is convicted, the amount allowed by the court to the attorney appointed to defend him shall

be taxed against the defendant as a part of the costs of prosecution and, if collected, the same shall be paid to the Commonwealth, or the county, city or town, as the case may be. An abstract of such costs shall be docketed in the judgment docket and execution lien book maintained by such court.

Source: §§ 19.1-241.5, 19.1-241.11, 14.1-184 and 14.1-184.1.

Article 4.

Public Defenders.

§§ 19.2-163.1, 19.2-163.2, 19.2-163.3 and 19.2-163.4. Public Defender Commission; appointment of public defenders.—Chapter 800 of the Acts of 1972, approved April 10, 1972, relating to creation of a Public Defender Commission, appointment by such Commission of public defenders in selected areas and the duties of such public defenders and their assistants, is incorporated in this Code by this reference.

Source: §§ 19.1-32.2, 19.1-32.3, 19.1-32.4 and 19.1-32.5.

Article 5.

Appointment of Interpreters.

§ 19.2-164. Interpreters for the deaf and non-English-speaking persons.—There shall be provided in any criminal case in which a deaf or non-English-speaking person is the accused, an interpreter for the deaf or such non-English-speaking person. Such interpreter shall be appointed by the judge of the court in which such case is to be heard, from a list of qualified interpreters provided by the Virginia Registry of Interpreters for the Deaf, or by an English-speaking person fluent in the language of the country of the accused, to be appointed by the judge, unless the accused shall obtain an interpreter of his own choosing who is approved by the court as being competent. In either event the compensation of such interpreter shall be fixed by the court, and shall be paid from the general fund of the State treasury, as part of the expense of trial, but such fee shall not be assessed as part of the costs. The provisions of this section shall apply in both courts of record and not of record.

Source: § 19.1-246.1.

Article 6.

Recording Evidence and Incidents of Trial.

§ 19.2-165. Recording evidence and incidents of trial in felony

cases and cost thereof; cost of transcripts.—In all felony cases, the court or judge trying the case shall by order entered of record provide for the recording verbatim of the evidence and incidents of trial either by a court reporter or by mechanical or electronic devices approved by the court, and the expense of reporting or recording the trial of criminal cases shall be paid by the Commonwealth out of the appropriation for criminal charges, upon approval of the trial judge, but the Commonwealth shall be entitled to receive from the defendant, if convicted, the per diem charges of the reporter or reasonable charge attributable to the cost of operating such mechanical or electronic devices, which charges shall be taxed as a part of the costs of the case. Provided, however, in all felony cases where it appears to the court from the affidavit of the defendant and other evidence that the defendant intends to seek an appeal and is financially unable to pay such costs or to bear the expense of a copy of the transcript of the evidence for an appeal, the trial court shall, upon the motion of counsel for the defendant, order the evidence transcribed for such appeal and all costs therefor paid by the Commonwealth out of the appropriation for criminal charges. If the conviction is not reversed, all costs paid by the Commonwealth, under the provisions hereof, shall be assessed against the defendant.

The administration of this section shall be under the direction of the Supreme Court of Appeals of Virginia.

Source: § 17-30.1(part).

§ 19.2-166. Court reporter.—Each judge of a court of record having jurisdiction over criminal proceedings shall be authorized, in all felony cases, to appoint a court reporter to report proceedings or to operate mechanical or electrical devices for recording proceedings, to transcribe the report or record of such proceedings, to perform any stenographic work related to such report, record or transcript, and to perform stenographic work relating to habeas corpus proceedings within such court's jurisdiction, including work pertinent to the court's findings of fact and conclusions of law pertinent thereto. Such reporter shall be paid by the Commonwealth on a per diem or work basis as appropriate out of the appropriation for criminal charges.

Source: § 17-30.1:1.

CHAPTER 11.

Proceedings on Question of Insanity.

§ 19.2-167. Accused while insane or feebleminded not to be tried.—No person shall, while he is insane or feebleminded, be tried for a criminal offense.

Source: § 19.1-227.

§ 19.2-168. Notice to Commonwealth of intention to present

evidence of insanity; continuance if notice not given.—In any case in which a person charged with a crime shall plan to present psychiatric evidence of his insanity or feeblemindedness at his trial, he, or his counsel, shall give notice in writing to the attorney for the Commonwealth, at least ten days prior to his trial, of his intention to present such evidence. In the event that such notice is not given, and the person presents psychiatric evidence at his trial as a defense, then the Commonwealth shall have the right of continuance for a reasonable period of time.

Source: § 19.1-227.1

§ 19.2-169. Raising question of sanity; commitment before arraignment.—If, prior to arraignment of any person charged with crime, either the court or attorney for the Commonwealth or counsel for the accused has reason to believe that such person, because of mental disease or defect, is in such mental condition that he lacks substantial capacity to understand the proceedings against him or to assist in his own defense, and it is necessary for evaluation and observation in order for the court to determine whether such person is mentally competent to plead and stand trial or understand the proceedings against him and assist in his own defense, the court or the judge thereof may, after hearing evidence or the representations of counsel on the subject, commit the accused to a State facility designated by the Commissioner of Mental Health and Mental Retardation for examination, evaluation, observation, and report if it is felt by the court that temporary hospitalization, not to exceed forty-five days, is required for such determination and such commitment shall be under such limitations as the court may order, pending the determination of his mental condition. However, if in the opinion of the court such examination, evaluation and observation can be satisfactorily performed at some other appropriate facility, the court, in its discretion, may order such examination, evaluation, and observation to be performed at such facility other than a State facility designated by the Commissioner of Mental Health and Mental Retardation, provided such facility is designated by such Commissioner as being appropriate.

In any case where the court believes that temporary hospitalization of the accused at a State facility designated by the Commissioner is necessary for detailed evaluation, examination, and observation, in order for the court to determine whether such person, because of mental disease or defect, is mentally competent to plead and stand trial or assist in his own defense, the court shall appoint a psychiatric committee of one or more physicians skilled in the diagnosis of insanity, and when any person is alleged to be feebleminded, the court may likewise appoint persons skilled in the diagnosis of feeblemindedness, not to exceed three, to examine, evaluate and observe the accused prior to any order of temporary hospitalization as provided herein. The psychiatric committee shall make such investigation of the case as it may deem necessary and shall reduce its finding or findings to writing and report to the court, the attorney for the Commonwealth, and counsel for the accused the mental condition of the defendant at the time of their examination and their medical opinion as to whether more

extensive examination, evaluation, and observation is required. Thereafter, if the court, in its discretion, determines that more thorough examination, evaluation, and observation is desirable, the court may commit the accused to a designated State facility for additional examination, evaluation, and observation as provided for herein.

Upon committing the accused to a designated State facility for more extensive examination, evaluation, and observation, the court shall order that a copy of the complaint or indictment, attested by the clerk, together with the name and address of the attorney for the Commonwealth and the attorney for the accused, the nature of the charge and whether it is a felony or misdemeanor, the name and address of the committing court and judge thereof, a summary of the facts surrounding the alleged crime, the prior criminal record of the accused, if known, the report of the examining psychiatric committee, including a personal history, completed and signed by all members of the examining psychiatric committee, according to the form prescribed by the State Mental Health and Mental Retardation Board, and such other necessary information as may be required by such Board, be forwarded to the receiving facility. Such information shall be delivered with the accused to the director of the facility to which the defendant is committed pursuant to the provisions of this section.

Whenever a temporary commitment for a determination of mental condition that requires hospitalization at a designated facility is made as provided for in this section, such determination shall be made within forty-five days of the date the facility received the accused for such determination or within such additional time, not to exceed thirty days, which may be authorized by the court at the request of the facility director. Within such time, the appropriate facility director or his duly designated representative shall report his findings to the court or judge which ordered the commitment, the attorney for the Commonwealth, and the attorney for the accused and such court or judge shall forthwith send for the accused and receive him for trial if the defendant is capable of understanding the proceedings against him and capable of assisting in his own defense, but if the defendant lacks such capacity or requires hospitalization for the treatment of his mental disease or defect, an appropriate court shall commit the accused pursuant to the provisions of § 37.1-67 of the Code of Virginia and, thereafter, the accused shall be subject to the provisions of Title 37.1 with respect to treatment, care, transfer, discharge, and all other applicable sections. However, at least ten days prior to the unconditional release or discharge of such individual charged with a crime, the facility director shall notify the appropriate court or judge thereof, the appropriate attorney for the Commonwealth and the attorney for the accused of such intended release or discharge.

The fact that the defendant lacks capacity to understand the proceedings against him or lacks capacity to assist in his own defense does not preclude any legal objection to the prosecution which is susceptible of fair determination prior to trial and which may be undertaken without the personal participation of the defendant. However, such proceedings or pretrial hearing shall be

granted only if counsel for the defendant satisfies the court by affidavit or otherwise that as an attorney he has reasonable grounds for a good-faith belief that his client has, on the facts and the law, a defense to the charge other than mental disease or defect excluding responsibility.

As used in this section the term "court" shall be construed to include courts not of record and courts of record.

Source: § 19.1-228.

§ 19.2-170. When question raised by court; commitment after arraignment.—If, at any time after arraignment, the judge presiding at the trial shall find reasonable ground to question the sanity or mentality of the accused, the court may suspend the trial, declare a mistrial, and then proceed as prescribed in § 19.2-169, which action shall be without prejudice to the right of the Commonwealth to retry the accused when his mentality has been determined.

Source: § 19.1-229.

§ 19.2-171. Return of accused from facility when sane or restored to sanity —If any such person committed for observation pursuant to § 19.2-169 or 19.2-170 is, in the opinion of the superintendent, not insane or feebleminded, or when such person, if insane, has been restored to sanity, the superintendent shall give notice in writing to the clerk of the court from which such person was committed, and such clerk shall forthwith issue a praecipe to an officer of the court, directing him forthwith to bring the person from the facility and commit him to the jail or custody from which he was removed, where he shall be held in accordance with the terms of the process by which he was originally committed or confined.

Source: § 19.1-230.

§ 19.2-172. Superintendent of institution to report finding that accused is insane or feebleminded; commission to inquire into sanity or mentality.—If any person so committed for observation pursuant to § 19.2-169 or 19.2-170 is, in the opinion of the superintendent, insane or feebleminded, the superintendent shall report such finding to the court from which such person was committed but shall retain custody of such person subject to the further order of the court. And upon receiving such report the court, after notice to the attorney for the Commonwealth and counsel for the accused, shall appoint a commission of not to exceed three physicians, skilled in the diagnosis of insanity and feeblemindedness, any or all of whom may be from the staff of the facility where the person is committed for observation, who shall inquire into the fact as to the sanity or mentality of such person and report their findings to the court.

Source: § 19.1-230.1

§ 19.2-173. Procedure on finding of sanity or insanity by commission.—If the commission find the accused to be sane at the

time of their examination, they shall make no other inquiry and the superintendent of the facility where the accused is committed for observation shall give notice in writing to the clerk of the court from which such person was committed and such clerk shall forthwith issue a praecipe to the officer of the court, requiring him to forthwith bring the prisoner from the facility and commit him to the jail or custody from which he was removed, where he shall be held in accordance with the terms of the process by which he was originally committed or confined. If the commission find that he is insane or feebleminded at the time of their examination the court, after notice to the attorney for the Commonwealth and counsel for the accused, shall order him to be confined in the proper hospital until he has been restored to sanity.

Source: § 19.1-231.

§ 19.2-174. Advice as to condition of person confined.-The superintendent shall from time to time, or as often as the court may require, inform the court of the condition of such person while confined in the hospital.

Source: § 19.1-232.

§ 19.2-175. Expenses of physicians, etc.—Each expert or physician or clinical psychologist skilled in the diagnosis of insanity or feeblemindedness or other physician appointed by the court to render professional service pursuant to § 19.2-169 or to subparagraphs (1) and (2) of § 19.2-181, who is not regularly employed by the State of Virginia, or, if regularly employed by the State of Virginia but on authorized leave therefrom, shall receive a fee of fifty dollars for each examination and report thereof to the court and, if he be required to appear as a witness in any hearing held pursuant to such sections, shall receive mileage and a fee of fifty dollars for each day during which he is required so to serve. Itemized account of expense, duly sworn to, must be presented to the court, and when allowed shall be certified to the Comptroller for payment out of the State treasury, and be by him charged against the appropriation made to pay criminal charges. Allowance for the fee and for the per diem authorized shall also be made by order of the court, duly certified to the Comptroller for payment out of the appropriation to pay criminal charges.

Source: § 19.1-233.

§ 19.2-176. Determination of insanity after conviction but before sentence.—If, after conviction and before sentence of any person, the judge presiding at the trial shall find reasonable ground to question his sanity or mentality, it may appoint a commission of not to exceed three physicians to inquire into the fact as to his sanity or mentality and may sentence him or commit him to jail or to the proper hospital as set forth in § 19.2-169 according as the commission may find him to be sane or insane or feebleminded. If committed to a proper hospital, he shall be retained until he is restored to sanity, or in the case of one committed as feebleminded, until he has adjusted to the point that he has sufficient reason and judgment to live outside of an institution with safety to himself and

others, and the time such person is confined to such hospital shall be deducted from any term for which he may be sentenced to any penal institution, reformatory or elsewhere.

Source: § 19.1-234.

§ 19.2-177. Same; after sentence.—If any person, after conviction and sentencing for any crime, and while serving such sentence in any penal institution is declared by a commission of insanity to be insane or feebleminded, he shall be committed by the court to the proper hospital, and there kept until he is restored to sanity; and the time such person is confined in the proper hospital shall be deducted from the term for which he was sentenced.

Source: § 19.1-235.

§ 19.2-178. Where prisoner kept when no vacancy in facility or hospital.—When a court shall have entered any of the orders provided for in § 19.2-169, 19.2-170, 19.2-173, 19.2-176 or 19.2-177, the sheriff of the county or city or the proper officer of the penal institution shall immediately proceed to ascertain whether a vacancy exists at the proper facility or hospital and until it is ascertained that there is a vacancy such person shall be kept in the jail of such county or city or in such custody as the court may order, or in the penal institution in which he is confined, until there is room in such facility or hospital. Any person whose care and custody is herein provided for shall be taken to and from the facility or hospital to which he was committed by an officer of the penal institution having custody of him, or by the sheriff of the county or city whose court issued the order of commitment, and the expenses incurred in such removals shall be paid by such penal institution, county or city.

Source: § 19.1-236.

§ 19.2-179. When accused to be taken from hospital and committed to jail.—When the superintendent of a State hospital shall give notice to the clerk of the court, in pursuance of § 37 1-102, such clerk forthwith shall issue a praecipe to an officer of the court, requiring him forthwith to bring the prisoner from the hospital and commit him to jail.

Source: § 19.1-237

§ 19.2-180. Sentence or trial of prisoner, when restored to sanity.—When a prisoner whose trial or sentence was suspended by reason of his being found to be insane or feeble-minded, has been found to be mentally competent and is brought from a hospital and committed to jail, if already convicted, he shall be sentenced, and if not, the court shall proceed to try him as if no delay had occurred on account of his insanity or feeble-mindedness.

Source: § 19 1-238.

§ 19.2-181. Verdict of acquittal by reason of insanity to state the fact; commitment; release.—(1) When the defense is insanity or

feeblemindedness of the defendant at the time the offense was committed, the jury shall be instructed, if they acquit him on that ground, to state the fact with their verdict, and the court shall place him in temporary custody of the Commissioner of Mental Health and Mental Retardation, hereinafter referred to as the Commissioner, and appoint three physicians or two physicians and one clinical psychologist, skilled in the diagnosis of insanity and feeblemindedness, to examine the defendant and make such investigation as they may deem necessary in order to determine whether, at the time of their examination, he is insane or feebleminded and to determine whether his discharge would be dangerous to the public peace and safety or to himself and to report their findings to the court. If the court is satisfied by the report, or such testimony of the examining physicians or clinical psychologist as it deems necessary, that the defendant is insane or feebleminded or that his discharge would be dangerous to public peace and safety or to himself, the court shall order him to be committed to the custody of the Commissioner. Otherwise, the defendant forthwith shall be discharged and released.

(2) If the superintendent of the State hospital in which a person is confined under paragraph (1) of this section is of the opinion that a person committed to his custody, pursuant to paragraph (1) of this section, is not insane or feebleminded and may be discharged or released without danger to the public peace and safety or to himself, he shall make application for the discharge or release of such person in a report to the court by which such person was committed and shall transmit a copy of such application and report to the attorney for the Commonwealth for the city or county from which the defendant was committed. Upon receipt of such application for discharge or release, the court forthwith shall appoint at least two qualified psychiatrists, one of whom shall be the superintendent of a State mental institution other than the one in which the person is confined, to examine such person and to report within sixty days their opinion as to his mental condition. To facilitate such examination and the proceedings thereon, the Commissioner shall transfer such person to the appropriate State mental institution located nearest the place where the court sits.

(3) If the court is satisfied by the application and report seeking the release or discharge of the committed person filed pursuant to paragraph (2) of this section and by the report or such testimony of the reporting psychiatrists, appointed pursuant to paragraph (2) of this section, as the court deems necessary, that the committed person is not insane or feebleminded and that his discharge or release will not be dangerous to the public peace and safety or to himself, the court shall order his discharge or release. If the court is not so satisfied, it shall promptly order a hearing to determine whether the committed person is at that time insane or feebleminded and to determine whether his discharge would be dangerous to the public peace and safety or to himself. Any such hearing shall be deemed a civil proceeding and the burden shall be on the committed person to prove that he is not insane or feebleminded and that his discharge would not be dangerous to the public peace and safety or to himself. According to the determination of the court upon such hearing, the committed person

shall thereupon be discharged or released or shall be recommitted to the custody of the Commissioner. It shall be the duty of the superintendent of the institution in which such person is confined, at yearly intervals commencing six months after the date of confinement, to make a report of such person's condition to the court from which he was committed.

(4) At yearly intervals commencing six months after the date of confinement, and not more frequently, a committed person may make application to the court by which he was committed for his discharge or release and shall transmit a copy of such application and report to the attorney for the Commonwealth for the city or county from which the defendant was committed and the procedure to be followed upon such application shall be the same as that prescribed above in the case of an application by the superintendent of the institution in which such person is confined. The attorney for the Commonwealth for the city or county from which the defendant was committed shall represent the interests of the Commonwealth in proceedings under subsections (3) and (4) of this section.

(5) No trial court in this Commonwealth, other than the court which ordered the commitment of a person committed pursuant to paragraph (1) of this section, shall have jurisdiction to entertain any action seeking the release of such person committed pursuant to paragraph (1), whether the release is sought through application for a writ of habeas corpus or otherwise. Errors committed or allowed by the court having jurisdiction over the release proceedings set forth in paragraphs (2), (3) and (4) of this section shall be appealable to the Supreme Court as in other civil cases except appeals of right.

(6) Costs of the services of physicians or clinical psychologists required by this section shall be paid by the State as provided in § 19.2-177

(7) In applying this section the term "feebleminded" shall be construed to mean a person who is adjudicated legally incompetent because of mental deficiency by a circuit court in which he is charged with crime and who is also found to lack the mental condition to enable him to be discharged without danger to the public peace and safety or to himself.

Source: § 19.1-239.

§ 19.2-182. Representation by counsel in proceeding for commitment.—(a) In any proceeding for commitment under this title, the judge before whom such proceeding is being held, or upon whose order such proceeding is held, shall ascertain if the person whose commitment is sought is represented by counsel. If such person is not represented by counsel, the judge shall appoint an attorney at law to represent such person in such proceeding. For his services rendered therein, the attorney shall receive a fee of twenty-five dollars to be paid by the State.

(b) Any attorney representing any person in any proceeding for commitment under this title shall, prior to such proceeding,

personally consult with such person.

Source: § 19.1-239.1.

CHAPTER 12.

Hearing.

§ 19.2-183. Examination of witnesses; assistance of counsel; power to adjourn case.—The judge before whom any person is brought for an offense shall, as soon as may be, in the presence of such person, examine on oath the witnesses for and against him. Before conducting the hearing or accepting a waiver of the hearing, the judge shall advise the accused of his right to counsel and, if the accused is indigent and the offense charged be punishable by confinement in jail or the penitentiary, the judge shall appoint counsel as provided by law.

At the hearing the judge shall, in the presence of the accused, hear testimony presented for and against the accused. In felony cases, the accused shall not be called upon to plead, but he may cross-examine witnesses, introduce witnesses in his own behalf, and testify in his own behalf.

A judge may adjourn a trial, pending before him, not exceeding ten days at one time, without the consent of the accused.

Source: §§ 19.1-101 and 19.1-102.

§ 19.2-184. Witnesses may be separated.—While a witness is under such examination all other witnesses may by order of the judge be excluded from the place of examination and kept separate from each other.

Source: § 19.1-104.

§ 19.2-185. Testimony may be reduced to writing and subscribed.—When the judge deems it proper the testimony of the witnesses may be reduced to writing, and, if required by him, shall be signed by them respectively.

The judge of the court of record to which the case may be or has been certified may order the testimony of the witnesses at the preliminary hearing to be reduced to writing.

Source: § 19.1-105.

§ 19.2-186. When accused to be discharged, tried, committed or bailed by judge.—The judge shall discharge the accused if he consider that there is not sufficient cause for charging him with the offense.

If a judge consider that there is sufficient cause only to charge the accused with an offense which the judge has jurisdiction to try,

then he shall try the accused for such offense and convict him if he deem him guilty and pass judgment upon him in accordance with law just as if the accused had first been brought before him on a warrant charging him with such offense.

If a judge consider that there is sufficient cause to charge the accused with an offense that he does not have jurisdiction to try then he shall certify the case to the appropriate court having jurisdiction and shall commit the accused to jail or let him to bail pursuant to the provisions of § 19.2-123.

Source: § 19.1-106.

§ 19.2-187. Admission into evidence of certain certificates of analysis.—In any preliminary hearing of any criminal offense, a certificate of analysis of a person performing an analysis or examination, performed in any laboratory operated by the Division of Consolidated Laboratory Services or authorized by such Division to conduct such analysis or examination, or performed by the Federal Bureau of Investigation, the federal Postal Inspection Service, the federal Bureau of Alcohol, Tobacco and Firearms, or the federal Drug Enforcement Administration when such certificate is duly attested by such person, shall be admissible in evidence as evidence of the facts therein stated and the results of the analysis or examination referred to therein, provided that the certificate of analysis shall be filed with the clerk of the court hearing the case at least seven days prior to the preliminary hearing.

Any such certificate of analysis purporting to be signed by any such person shall be admissible as evidence in such preliminary hearing without any proof of the seal or signature or of the official character of the person whose name is signed to it.

Source: § 19.1-106.1.

§ 19.2-188. Reports and records received as evidence.—Reports of investigations made by the Chief Medical Examiner or his assistants or by medical examiners, and the records and reports of autopsies made under the authority of Title 32 of this Code, shall be received as evidence in any court or other proceeding, and copies of records, photographs, laboratory findings and records in the office of the Chief Medical Examiner or any medical examiner, when duly attested by the Chief Medical Examiner or one of his Assistant Chief Medical Examiners, or the medical examiner in whose office the same are, shall be received as evidence in any court or other proceeding for any purpose for which the original could be received without any proof of the official character or the person whose name is signed thereto.

Source: § 19.1-45.

§ 19.2-189. Commitment of accused for further examination. If the accused be committed, it shall be by an order of the judge stating that he is committed for further examination on a day specified in the order And on that day he may be brought before such judge by his verbal order to the officer by whom he was

committed, or by a written order to a different person.

Source: § 19.1-107.

§ 19.2-190. To whom, and when, examination and recognizance to be certified.—Every examination and recognizance for a felony taken under this chapter, shall, by the person taking it, be certified to the clerk of the circuit court of the county or city in which the party charged is to be tried, or the witness is to appear, on or before the first day of its next term. If he fail he may be compelled to do so by attachment as for a contempt.

Source: § 19.1-108.

CHAPTER 13.

Grand Juries.

Article 1.

In General.

§ 19.2-191. Functions of a grand jury.—The functions of a grand jury are two-fold:

(1) To consider bills of indictment prepared by the attorney for the Commonwealth and to determine whether as to each such bill there is sufficient probable cause to return such indictment "a true bill". This function shall be performed solely by a regular grand jury.

(2) To investigate and make report thereon concerning any condition which tends to promote criminal activity in the community or which indicates misfeasance of governmental authority by government agencies or the officials thereof. This function may be exercised by either a special grand jury or a regular grand jury as hereinafter provided.

Source: New.

§ 19.2-192. Secrecy in grand jury proceedings.—Except as otherwise provided in this chapter, every member of a regular or special grand jury shall keep secret all proceedings which occurred during sessions of the grand jury; provided, however, in a prosecution for perjury of a witness examined before a regular grand jury, a regular grand juror may be required by the court to testify as to the testimony given by such witness before the regular grand jury.

Source: New.

Article 2.

Regular Grand Juries.

§ 19.2-193. Number of regular grand juries.—There shall be a regular grand jury at each term of the circuit court of each county and city, unless the court, on the motion of the attorney for the Commonwealth or with his concurrence, finds that it is unnecessary or impractical to impanel a grand jury for the particular term and enters an order to that effect.

Whenever the number of cases to be considered by the grand jury at a given term is so great as to hamper the intelligent consideration thereof by a single grand jury, the court may order two or more regular grand juries to be impanelled to sit separately at the same or a different time during the term.

Whenever a regular grand jury has been discharged, the court, during the term, may impanel another regular grand jury.

Source: § 19.1-147.

§ 19.2-194. When and how grand jurors to be selected and summoned; lists to be delivered to clerk.—The judges of such courts shall annually, in the month of June, July, or August, select from the citizens of each city and county of their respective circuits at least sixty persons and not more than one hundred twenty persons eighteen years of age or over, of honesty, intelligence and good demeanor and suitable in all respects to serve as grand jurors, who, except as hereinafter provided, shall be the grand jurors for the county or city from which they are selected for twelve months next thereafter. Such jurors shall be selected in each county from the several magisterial districts of the county and in each city from the several wards of the city in proportion to the population thereof. The judge making the selection shall at once furnish to the clerk of his court in each county and city of his circuit a list of those selected for that county or city. The clerk, not more than twenty days before the commencement of each term of his court at which a regular grand jury is required, shall issue a venire facias to the sheriff of his county or city, commanding him to summon not less than five nor more than seven of the persons selected as aforesaid (the number to be designated by the judge of the court by an order entered of record) to be named in the writ to appear on the first day of the court to serve as grand jurors. No such person shall be required to appear more than once until all the others have been summoned once, nor more than twice until the others have been twice summoned, and so on. The clerk, in issuing the venire facias shall apportion the grand jurors, as nearly as may be, ratably among the magisterial districts or wards; but the Circuit Court of James City County, or the judge thereof in vacation, shall select the grand jurors for such court from such county and the city of Williamsburg in such proportion from each as he may think proper.

Any person who has legal custody of and is responsible for a child sixteen years of age or younger or a person having a mental or physical impairment requiring continuous care during normal court hours shall be excused from jury service upon his request.

Source: § 19.1-148.

§ 19.2-195. Number and qualifications of grand jurors.—A regular grand jury shall consist of not less than five nor more than seven persons. Each grand juror shall be a citizen of this State, eighteen years of age or over, and shall have been a resident of this State one year and of the county or corporation in which the court is to be held six months, and in other respects a qualified juror, and, when the grand juror is for a circuit court of a county, not an inhabitant of a city, except in those cases in which the circuit court of the county has jurisdiction in the city, in which case the city shall be considered as a magisterial district, or the equivalent of a magisterial district, of the county for the purpose of the jury lists.

Source: § 19.1-150.

§ 19.2-196. How deficiency of jurors supplied.—If a sufficient number of grand jurors do not appear, the court may order the deficiency to be supplied from the bystanders or from a list furnished by the judge to the sheriff or sergeant.

Source: § 19.1-151.

§ 19.2-197. Foreman of grand jury; oaths of jurors and witnesses.—From among the persons summoned who attend the court shall select a foreman who shall be sworn as follows: "You shall diligently inquire, and true presentment make, of all such matters as may be given you in charge, or come to your knowledge, touching the present service. You shall present no person through prejudice or ill-will, nor leave any unpresented through fear or favor, but in all your presentments you shall present the truth, the whole truth, and nothing but the truth. So help you God". The other grand jurors shall afterwards be sworn as follows: "The same oath that your foreman has taken on his part, you and each of you shall observe and keep on your part. So help you God". Any witness testifying before the grand jury may be sworn by the foreman.

Source: § 19.1-152.

§ 19.2-198. When new foreman or juror may be sworn in.—If the foreman or any grand juror, at any time after being sworn, fail or be unable to attend, another may be sworn in his stead.

Source: § 19.1-153.

§ 19.2-199. Judge to charge grand jury; persons summoned as petit jurors not to be present when grand jury charged.—The grand jury, after being sworn, shall be charged by the judge of the court and shall then be sent to their room. In the charge given by the court to a regular grand jury, the court shall instruct it to advise the court after their considerations of the bills of indictment whether it desires to be impanelled as a special grand jury to consider any matters provided for in paragraph (2) of § 19.2-191.

Source: § 19.1-154.

§ 19.2-200. Duties of grand jury.—The grand jury shall inquire of and present all felonies, misdemeanors and violations of penal laws committed within the jurisdiction of the respective courts wherein it is sworn; except that no presentment shall be made of a matter for which there is no corporal punishment, but only a fine, where the fine is limited to an amount not exceeding five dollars. After a regular grand jury has concluded its deliberation on bills of indictment and made its return thereon, the court shall inquire of it whether it desires to perform any of the functions provided for in paragraph (2) of § 19.2-191. If the jury or any member thereof responds in the affirmative, the court shall impanel so many of that jury as answer in the affirmative, plus any additional members as may be necessary to complete the panel, as a special grand jury.

Source: § 19.1-155.

§ 19.2-201. Officers to give information of violation of penal laws to attorney for Commonwealth.—Every commissioner of the revenue, sheriff, constable or other officer shall promptly give information of the violation of any penal law to the attorney for the Commonwealth, who shall forthwith institute and prosecute all necessary and proper proceedings in such case, whether in the name of the Commonwealth or of a county or corporation, and may in such case issue or cause to be issued a summons for any witnesses he may deem material to give evidence before the court or grand jury. Except as otherwise provided in this chapter, no attorney for the Commonwealth shall go before any grand jury except when duly sworn to testify as a witness, but he may advise the foreman of a regular grand jury or any member or members thereof in relation to the discharge of their duties.

Source: § 19.1-156.

§ 19.2-202. How indictments found and presentment made.—At least four of a regular grand jury must concur in finding or making an indictment or presentment. It may make a presentment or find an indictment upon the information of two or more of its own body, or on the testimony of witnesses called on by the grand jury, or sent to it by the court. If only one of their number can testify as to an offense, he shall be sworn as any other witness. When a presentment or indictment is so made or found, the names of the grand jurors giving the information, or of the witnesses, shall be written at the foot of the presentment or indictment.

Source: § 19.1-157.

§ 19.2-203. Indictments ignored may be sent to another grand jury; what irregularities not to vitiate indictment, etc.—Although a bill of indictment be returned not a true bill the same or another bill of indictment against the same person for the same offense may be sent to, and acted on, by the same or another grand jury. No irregularity in the time or manner of selecting the jurors, or in the writ of venire facias, or in the manner of executing the same, shall vitiate any presentment, indictment or finding of a grand jury.

Source: § 19.1-158.

§ 19.2-204. Penalties on officers and jurors for failure of duty.—A court whose officer fails without good cause, when it is his duty, to summon a grand jury and return a list of its names shall fine him twenty dollars. A person summoned and failing to attend a court as a grand juror shall be fined by the court not less than five dollars nor more than twenty dollars, unless, after being summoned to show cause against the fine, he give a reasonable excuse for his failure.

Source: § 19.1-159.

§ 19.2-205. Pay and mileage of grand jurors.—Every person who serves upon a grand jury, regular or special, shall receive the same compensation and mileage allowed jurors in civil cases by § 8-208.33 and the same shall be paid out of the county or corporation levy.

Source: § 19.1-160.

Article 3.

Special Grand Juries.

§ 19.2-206. When impanelled.—Special grand juries may be impanelled by a circuit court at any time to perform the functions provided for in paragraph (2) of § 19.2-191.

Source: New.

§ 19.2-207. Composition of a special grand jury.—Special grand juries shall consist of not less than seven and not more than eleven members, and shall be summoned from a list prepared by the court. Members of a special grand jury shall possess the same qualifications as those prescribed for members of a regular grand jury. The court shall appoint one of the members as foreman.

Source: New.

§ 19.2-208. Subpoena power of special grand jury.—The special grand jury may subpoena persons to appear before it to testify and to produce specified records, papers and documents, but before any witness testifies, he shall be warned by the foreman that he need not answer any questions or produce any evidence that would tend to incriminate him, and that the witness may have counsel of his own procurement present when he appears to testify, and at the same time the foreman also shall warn each witness that he may later be called upon to testify in any case that might grow out of the investigation and report of the special grand jury. Notwithstanding the provisions of this section, all provisions of this Code relative to immunity granted to witnesses who testify before a grand jury shall remain applicable.

The foreman shall administer the oath prescribed by law for witnesses, and any member of the special grand jury may examine a

witness.

Source: New.

§ 19.2-209. Presence of counsel for a witness.—Any witness appearing before a special grand jury shall have the right to have counsel of his own procurement present when he testifies. Such counsel shall have the right to consult with and advise the witness during his examination, but shall not have the right to conduct an examination of his own of the witness.

Source: New.

§ 19.2-210. Presence of the attorney for the Commonwealth.—The attorney for the Commonwealth shall not be present at any time while the special grand jury is in session except that during the investigatory stage of its proceedings he may be present when his presence is requested by the special grand jury or when the special grand jury was empanelled upon his motion. When present before the special grand jury he may interrogate witnesses provided the special grand jury requests or consents to such interrogation.

The attorney for the Commonwealth shall not be present during or after the investigative stage of the proceedings at any time while the special grand jury is discussing, evaluating or considering the testimony of a witness or is deliberating in order to reach decisions or prepare its report, except that he may be present when his legal advice is requested by the special grand jury.

Source: New.

§ 19.2-211. Provision for special counsel and other personnel.—At the request of the special grand jury, the court may designate special counsel to assist it in its work, and may also provide it with appropriate specialized personnel for investigative purposes.

Source: New.

§ 19.2-212. Provision for a court reporter.—A court reporter shall be provided for a special grand jury to record, manually or electronically, and transcribe all oral testimony taken before a special grand jury, but such reporter shall not be present during any stage of its deliberations. The notes, tapes and transcriptions of the reporter are for the sole use of the special grand jury, and the contents thereof shall not be divulged by anyone except as hereinafter provided. After the special grand jury has completed its use of the said notes, tapes and transcriptions, the foreman shall cause them to be sealed, the container dated, and delivered to the court.

The court shall cause the sealed container to be kept safely If any witness testifying before the special grand jury is prosecuted subsequently for perjury, the court, on motion of either the attorney for the Commonwealth or the defendant, shall permit them both to have access to the testimony given by the defendant when a witness before the special grand jury, and the said testimony shall be

admissible in the perjury case.

If no prosecution for perjury is instituted within three years from the date of the report of the special grand jury, the court shall cause the sealed container to be destroyed.

Source: New.

§ 19.2-213. Report by the special grand jury.—At the conclusion of its investigation and deliberation, the special grand jury shall file a report of its findings with the court, including therein any recommendations that it may deem appropriate, after which it shall be discharged.

Source: New.

§ 19.2-214. Subsequent prosecutions.—Any bill of indictment for alleged criminal offenses, which may follow as a result of the report of the special grand jury, shall be prepared by the attorney for the Commonwealth for presentation to a regular grand jury.

Source: New.

§ 19.2-215. Costs of a special grand jury.—All costs incurred for services provided by the court for a special grand jury shall be paid by the Commonwealth.

Source: New.

CHAPTER 14.

Presentments, Indictments and Informations.

Article 1.

Necessity for Indictment, etc.

§ 19.2-216. Definition of indictment, presentment and information.—An indictment is a written accusation of crime, prepared by the attorney for the Commonwealth and returned "a true bill" upon the oath or affirmation of a legally impanelled grand jury.

A presentment is a written accusation of crime prepared and returned by a grand jury from their own knowledge or observation, without any bill of indictment laid before them.

An information is a written accusation of crime or a complaint for forfeiture of property or money or for imposition of a penalty, prepared and presented by a competent public official upon his oath of office.

Source: New.

§ 19.2-217 When information filed; prosecution for felony to be by indictment or presentment.—An information may be filed by the attorney for the Commonwealth based upon a complaint in writing verified by the oath of a competent witness; but no person shall be put upon trial for any felony, unless an indictment or presentment shall have first been found or made by a grand jury in a court of competent jurisdiction or unless such person, by writing signed by such person before the court having jurisdiction to try such felony or before the judge of such court shall have waived such indictment or presentment, in which event he may be tried on a warrant or information. If the accused be in custody, or has been recognized or summoned to answer such information, presentment or indictment, no other process shall be necessary; but the court may, in its discretion, issue process to compel the appearance of the accused.

Source: § 19.1-162.

§ 19.2-218. Preliminary examination of person arrested on charge of felony.—No person who is arrested on a charge of felony shall be denied a preliminary hearing upon the question of whether there is reasonable ground to believe that he committed the offense and no indictment shall be returned in a court of record against any such person prior to such hearing unless such hearing is waived in writing by the accused.

Source: § 19.1-163.1.

§ 19.2-219. When capias need not be issued but summons issued; judgment.—No capias need be issued on a presentment or indictment of an offense for which there is no punishment but a fine or forfeiture, limited to an amount not exceeding twenty dollars; but a summons to answer such presentment or indictment may be issued against the accused; and if it be served ten days before the return day thereof, and he does not appear, judgment may be rendered against him for the penalty. If he appear, the court may, unless he demand a jury, hear and determine the matter and give judgment thereon.

Source: § 19.1-164.

Article 2.

Form and Requisites.

§ 19.2-220. Contents of indictment in general.—The indictment or information shall be a plain, concise and definite written statement, (1) naming the accused, (2) describing the offense charged, (3) identifying the county, city or town in which the accused committed the offense, and (4) reciting that the accused committed the offense on or about a certain date. In describing the offense, the indictment or information may use the name given to the offense by the common law, or the indictment or information may state so much of the common law or statutory definition of the offense as is sufficient to advise what offense is charged.

Source: New.

§ 19.2-221. Form of prosecutions generally; murder and manslaughter.—The prosecutions for offenses against the Commonwealth, unless otherwise provided, shall be by presentment, indictment or information. While any form of presentment, indictment or information which informs the accused of the nature and cause of the accusation against him shall be good the following shall be deemed sufficient for murder and manslaughter:

State of Virginia ..... county (or city) to-wit: The grand jurors of the State of Virginia, in and for the body of the county (or city) of ....., upon their oaths present that A ..... B ....., on the ..... day of ....., nineteen ....., in the county (or city) of ..... feloniously did kill and murder one C ..... D ..... against the peace and dignity of the Commonwealth.

A grand jury may, in case of homicide, which in their opinion amounts to manslaughter only, and not to murder, find an indictment against the accused for manslaughter and in such case the indictment shall be sufficient if it be in form or effect as follows:

State of Virginia ..... county (or city) to-wit: The grand jurors of the State of Virginia, in and for the body of the county (or city) of ....., upon their oaths present that A ..... B ....., on the ..... day of ....., nineteen ..... in the county (or city) of ..... feloniously and unlawfully did kill and slay one C ..... D ....., against the peace and dignity of the Commonwealth.

Source: § 19.1-166.

§ 19.2-222. What sufficient statement in indictment for perjury or subornation of perjury.—In an indictment or accusation for perjury or subornation of perjury it shall be sufficient to state the substance of the offense charged against the accused, in what court or by whom the oath was administered which is charged to have been falsely taken, and to aver that such court or person had competent authority to administer the same, together with proper averments to falsify the matter wherein the perjury is assigned, without setting forth any part of any record or proceeding at law or equity, or the commission or authority of the court or person before whom the perjury was committed; but nothing herein shall be construed to allow, without the consent of the accused, a part only of any record, proceeding or writing to be given in evidence on the trial of such indictment or accusation. A distinct allegation, averment or statement in any part of the indictment that the defendant did corruptly swear falsely, or did, on the occasion mentioned in the indictment, commit willful perjury, shall be a sufficient allegation of the falsity of the oath alleged to have been taken.

In indictments or accusations under § 18.2-435 it shall be unnecessary to allege which statement made by the accused was false, but the other requirements set forth in the foregoing paragraph shall be followed as closely as consistency will permit,

identifying each of the circumstances under which the statements of the accused were made.

Source: § 19.1-167.

§ 19.2-223. Charging several acts of embezzlement; description of money.—In a prosecution against a person accused of embezzling or fraudulently converting to his own use bullion, money, bank notes or other security for money it shall be lawful in the same indictment or accusation to charge and thereon to proceed against the accused for any number of distinct acts of such embezzlements or fraudulent conversions which may have been committed by him within six months from the first to the last of the acts charged in the indictment; and it shall be sufficient to allege the embezzlement or fraudulent conversion to be of money without specifying any particular money, gold, silver, note or security. Such allegation, so far as it regards the description of the property, shall be sustained if the accused be proved to have embezzled any bullion, money, bank note or other security for money although the particular species be not proved.

And in a prosecution for the larceny of United States currency or for obtaining United States currency by a false pretense or token, or for receiving United States currency knowing the same to have been stolen, it shall be sufficient if the accused be proved guilty of the larceny of national bank notes or United States treasury notes, certificates for either gold or silver coin, fractional coin, currency, or any other form of money issued by the United States government, or of obtaining the same by false pretense or token, or of receiving the same knowing it to have been stolen although the particular species be not proved.

Source: § 19.1-168.

§ 19.2-224. In prosecution for forgery, unnecessary to set forth copy of forged instrument.—In a prosecution for forging or altering any instrument or other thing, or attempting to employ as true any forged instrument or other thing, or for any of the offenses mentioned in Article 1 (§ 18.2-168 et seq.) of Chapter 6 of Title 18.2, it shall not be necessary to set forth any copy or facsimile of such instrument or other thing; but it shall be sufficient to describe the same in such manner as would sustain an indictment for stealing such instrument or other thing, supposing it to be the subject of larceny.

Source: § 19.1-169.

§ 19.2-225. Allegation of intent.—Where an intent to injure, defraud or cheat is required to constitute an offense, it shall be sufficient, in an indictment or accusation therefor, to allege generally an intent to injure, defraud or cheat without naming the person intended to be injured, defrauded or cheated; and it shall be sufficient, and not be deemed a variance, if there appear to be an intent to injure, defraud or cheat the United States, or any state, or any county, corporation, officer or person.

Source: § 19.1-170.

§ 19.2-226. What defects in indictments not to vitiate them.—No indictment or other accusation shall be quashed or deemed invalid:

(1) For omitting to set forth that it is upon the oaths of the jurors or upon their oaths and affirmations;

(2) For the insertion of the words "upon their oath", instead of "upon their oaths";

(3) For not in terms alleging that the offense was committed "within the jurisdiction of the court" when the averments show that the case is one of which the court has jurisdiction;

(4) For the omission or misstatement of the title, occupation, estate, or degree of the accused or of the name or place of his residence;

(5) For omitting the words "with force and arms" or the statement of any particular kind of force and arms;

(6) For omitting to state, or stating imperfectly, the time at which the offense was committed when time is not the essence of the offense;

(7) For failing to allege the kind or value of an instrument which caused death or to allege that it was of no value;

(8) For omitting to charge the offense to be "against the form of the statute or statutes", or

(9) For the omission or insertion of any other words of mere form or surplusage.

Nor shall it be abated for any misnomer of the accused; but the court may, in case of a misnomer appearing before or in the course of a trial, forthwith cause the indictment or accusation to be amended according to the fact.

Source: § 19.1-172.

§ 19.2-227. When judgment not to be arrested or reversed.—Judgment in any criminal case shall not be arrested or reversed upon any exception or objection made after a verdict to the indictment or other accusation, unless it be so defective as to be in violation of the Constitution.

Source: § 19.1-165.

§ 19.2-228. Name and address of complaining witness to be written on indictment, etc., for misdemeanor.—In a prosecution for a misdemeanor the name and address of the complaining witness, if there be one, shall be written at the foot of the presentment, indictment or information when it is made, found or filed. In case

the grand jury that brings in such presentment or indictment or the attorney for the Commonwealth who files such information fail to write the name of a complaining witness at the foot of the presentment, indictment or information, then the name of a complaining witness may be entered of record as such by the court on the motion of the defendant or the attorney for the Commonwealth at any time before the judgment.

Source: § 19.1-173.

§ 19.2-229. When complaining witness required to give security for costs.—For good cause the court may require a complaining witness to give security for the costs and if he fails to do so dismiss the prosecution at his costs.

Source: § 19.1-174.

§ 19.2-230. Bill of particulars.—A court of record may direct the filing of a bill of particulars at any time before trial. A motion for a bill of particulars shall be made before a plea is entered and at least seven days before the day fixed for trial and the bill of particulars shall be filed within such time as is fixed by the court.

Source: § New.

Article 3.

Amendments.

§ 19.2-231. Amendment of indictment, presentment or information.—If there be any defect in form in any indictment, presentment or information, or if there shall appear to be any variance between the allegations therein and the evidence offered in proof thereof, the court may permit amendment of such indictment, presentment or information, at any time before the jury returns a verdict or the court finds the accused guilty or not guilty, provided the amendment does not change the nature or character of the offense charged. After any such amendment the accused shall be arraigned on the indictment, presentment or information as amended, and shall be allowed to plead anew thereto, if he so desires, and the trial shall proceed as if no amendment had been made; but if the court finds that such amendment operates as a surprise to the accused, he shall be entitled, upon request, to a continuance of the case for a reasonable time.

Source: §§ 19.1-175, 19.1-176 and 19.1-177.

Article 4.

Process.

§ 19.2-232. What process to be awarded against accused on

indictment, etc.—When an indictment or presentment is found or made, or information filed, the court, or the judge thereof, shall award process against the accused to answer the same, if he be not in custody. Such process, if the prosecution be for a felony, shall be a capias; if it be for a misdemeanor, for which imprisonment may be imposed, it may be a capias or summons, in the discretion of the court or judge; in all other cases, it shall be, in the first instance a summons, but if a summons be returned executed and the defendant does not appear, or be returned not found, the court or judge may award a capias.

Source: § 19.1-178.

§ 19.2-233. How awarded, directed, returnable, and executed.—Section 8-44 shall apply to process in criminal, as well as in civil cases; and the court may, in the same case against the same person, award at the same time, or different times, several writs of summons or capias directed to officers of different counties or cities. An officer having a capias under which the accused is let to bail shall give a certificate of the fact, which shall protect him against any other capias which may have been issued for the same offense. A summons shall be served by delivering a copy thereof to the party in person and the clerk issuing such summons shall deliver or transmit therewith as many copies thereof as there are persons named therein on whom it is to be served.

Source: § 19.1-179.

§ 19.2-234. To whom person arrested may be delivered.—An officer who, under a capias from a court, arrests a person accused of an offense not bailable or for which bail is not given shall deliver the accused to such court, if sitting, or to the jailer thereof, who shall receive and imprison him.

Source: § 19.1-183.

§ 19.2-235. Clerks to mail process to officers in other counties, etc.—The clerk of every court shall forward, by mail, all process issued for the Commonwealth, directed to the officer of any county or city other than his own.

Source: § 19.1-181.

19.2-236. Where process of arrest issued may be executed.—When process of arrest in a criminal prosecution is issued from a court, either against a party accused or a witness, the officer to whom it is directed or delivered may execute it in any part of the State.

Source: § 19.1-182.

§ 19.2-237. Process on indictment or presentment for misdemeanor.—On any indictment or presentment for a misdemeanor process shall be issued immediately. If the accused appear and plead to the charge, the trial shall proceed without delay, unless good cause for continuance be shown. If, being

summoned in any case not requiring the appointment of counsel, he fail to appear and plead, after the summons has been executed ten days the court may either award a capias or proceed to trial in the same manner as if the accused had appeared, plead not guilty and waived trial by jury. And any warrant charging any misdemeanor not requiring the appointment of counsel and returnable before a judge elected under Chapter 4.1 of Title 16.1 upon which the accused has been summoned or recognized to appear before such judge and shall fail to appear in response to such summons or recognizance, may be tried by such judge as if accused had appeared and plead not guilty. The court may proceed to judgment in the absence of the accused and may make such order as may be necessary for the execution of such judgment.

Source: §§ 19.1-180 and 19.1-184.

§ 19.2-238. Summons against a corporation; proceedings; expense.—A summons against a corporation to answer an indictment, presentment or information may be served as provided in §§ 8-59 and 8-60; and if the defendant after being so served fail to appear, the court may proceed to trial and judgment, without further process, as if the defendant had appeared, plead not guilty and waived trial by jury. And when, in any such case, publication of a copy of the process is required according to such sections, the expense of such publication may be certified by the court to the Comptroller, and shall be paid out of the State treasury; but the same shall be taxed with other costs and collected from the defendant, if judgment be for the Commonwealth, and be paid into the State treasury by the officer collecting the same.

Source: § 19.1-186.

CHAPTER 15.

Trial and Its Incidents.

Article 1.

Jurisdiction.

§ 19.2-239. Jurisdiction in criminal cases.—The circuit courts, except where otherwise provided, shall have exclusive original jurisidiction for the trial of all presentments, indictments and informations for offenses committed within their respective circuits.

Source: § 19.1-187.

§ 19.2-240. Clerks shall make out criminal docket.—Before every term of any court in which criminal cases are to be tried the clerk of the court shall make out a separate docket of criminal cases then pending, in the following order, numbering the same:

(1) Felony cases;

(2) Misdemeanor cases.

He shall docket all felony cases in the order in which the indictments are found and all misdemeanor cases in the order in which the presentments or indictments are found or informations are filed or appeals are allowed by magistrates and as soon as any presentments or indictments are made at a term of court he shall forthwith docket the same in the order required above.

Source: § 19.1-189 (part).

§ 19.2-241. Time within which court to set criminal cases for trial.—The judge of each circuit court shall fix a day of his court when the trial of criminal cases will commence, and may make such general or special order in reference thereto, and to the summoning of witnesses, as may seem proper, but all criminal cases shall be disposed of before civil cases, unless the court shall direct otherwise.

When an indictment is found against a person for felony or when an appeal has been perfected from the conviction of a misdemeanor, the accused, if in custody, or if he appear according to his recognizance, may be tried at the same term and shall be tried at the next term thereafter unless good cause be shown for a continuance; provided that no trial shall be held on the first day of the term unless it be with consent of the attorney for the Commonwealth and the accused and his attorney.

Source: §§ 19.1-188, 19.1-189(part) and 19.1-190.

§ 19.2-242. Accused discharged from jail, if not indicted in time.—A person in jail on a criminal charge shall be discharged from imprisonment if a presentment, indictment or information be not found or filed against him before the end of the second term of the court at which he is held to answer, unless it appear to the court that material witnesses for the Commonwealth have been enticed or kept away or are prevented from attendance by sickness or inevitable accident, and except, also, in the case provided in § 19.2-169. A discharge under the provisions of this section shall not, however, prevent a reincarceration after a presentment or indictment has been found.

Source: § 19.1-163.

§ 19.2-243. Limitation on prosecution of felony due to lapse of time after finding of probable cause; certain exceptions.—Where a general district court has found that there is probable cause to believe that the accused has committed a felony, the accused, if he is held continuously in custody thereafter, shall be forever discharged from prosecution for such offense if there be no trial commenced in the circuit court within five months from the date such probable cause was found by the district court, and if the accused is not held in custody but has been recognized for his appearance in the circuit court to answer for such offense, he shall be forever discharged from prosecution therefor if there be no trial commenced in the circuit court within nine months from the date

such probable cause was found.

If there was no preliminary hearing in the district court, or if such preliminary hearing was waived by the accused, the commencement of the running of the five and nine months periods, respectively, set forth in this section, shall be from the date an indictment or presentment is found against the accused.

If an indictment or presentment is found against the accused but he has not been arrested for the offense charged therein, the five and nine months periods, respectively, shall commence to run from the date of his arrest thereon.

The provisions of this section shall not apply to such period of time as the failure to try the accused was caused:

(1) By his insanity or by reason of his confinement in a hospital for care and observation,

(2) By the witnesses for the Commonwealh being enticed or kepy away or prevented from attending by sickness or inevitable accident,

(3) By the granting of a separate trial at the request of a person indicted jointly with others for a felony,

(4) By continuance granted on the motion of the accused, or by his concurrence in such a motion by the attorney for the Commonwealth, or by reason of his escaping from jail or failing to appear according to his recognizance,

(5) By the inability of the jury to agree in their verdict.

But the time during the pendency of any appeal in any appellate court shall not be included as applying to the provisions of this section.

Source: § 19.1-191.

Article 2.

Venue.

§ 19.2-244. Venue in general.—Except as otherwise provided by law, the prosecution of a criminal case shall be had in the county or city in which the offense was committed. Except as to motions for a change of venue, all other questions of venue must be raised before verdict in cases tried by a jury and before the finding of guilty in cases tried by the court without a jury

Source: New.

§ 19.2-245. Offenses committed without and made punishable within the State and embezzlement committed within the State;

where prosecuted.—Prosecution for offenses committed wholly or in part without and made punishable within this State may be in any county or city in which the offender is found or to which he is sent by any judge or court; and if any person shall commit larceny or embezzlement beyond the jurisdiction of this State and bring the stolen property into the same he shall be liable to prosecution and punishment for larceny or embezzlement in any county or city into which he shall have taken the property as if the same had been wholly committed therein; provided, that if any person shall commit embezzlement within this State he shall be liable to prosecution and punishment for his offense in the county or city in which the offense occurred or in the county or city in which he was legally obligated to deliver the embezzled funds or property.

Source: § 19.1-220.

§ 19.2-246. Injury inflicted by a person within the State upon one outside the same.—If a mortal wound or other violence or injury be inflicted by a person within this State upon one outside of the same, or upon one in this State who afterwards dies from the effect thereof out of the State, the offender shall be amenable to prosecution and punishment for the offense in the courts of the county or city in which he was at the time of the commission thereof as if the same had been committed in such county or city.

Source: § 19.1-221.

§ 19.2-247. Venue when it is not known where homicide was committed.—Where evidence exists that a homicide has been committed either within or without this State, under circumstances which make it unknown where such crime was committed, the offense shall be amenable to prosecution in the courts of the county or city where the body of the victim may be found, as if the offense has been committed in such county or city

Source: § 19.1-221.1.

§ 19.2-248. Venue when mortal wound, etc., inflicted in one county and death ensues in another.—If a mortal wound, or other violence or injury, be inflicted, or poison administered in one county or city, and death ensue therefrom in another county or city, the offense may be prosecuted in either

Source: § 19.1-223.

§ 19.2-249. Offenses committed on boundary of two counties, etc.; where prosecuted.—An offense committed on the boundary of two counties, or within three hundred yards thereof, may be alleged to have been committed, and may be prosecuted and punished, in either county, and any sheriff, deputy sheriff, or other police officer shall have jurisdiction to make arrests and preserve the peace for a like distance on either side of the boundary line between such counties.

Source: § 19.1-222.

§ 19.2-250. How far jurisdiction of corporate authorities extends.—The jurisdiction of the corporate authorities of each town or city, in criminal cases involving offenses against the Commonwealth, shall extend within the State one mile beyond the corporate limits of such town or city; except that such jurisdiction of the corporate authorities of towns situated in counties having a density of population in excess of three hundred inhabitants per square mile, or in counties adjacent to cities having a population of one hundred and seventy thousand or more, shall extend only to the corporate limits of such town.

Source: § 15.1-141.

§ 19.2-251. When and how venue may be changed.—A circuit court may, on motion of the accused or of the Commonwealth, for good cause, order the venue for the trial of a criminal case in such court to be changed to some other circuit court. Such motion when made by the accused may be made in his absence upon a petition signed and sworn to by him.

Whenever the mayor of any city, or the sheriff of any county, shall call on the Governor for military force to protect the accused from violence, the judge of the circuit court of the city or county having jurisdiction of the offense shall, upon a petition signed and sworn to by the accused, whether he be present or not, at once order the venue to be changed to the circuit court of a city or county sufficiently remote from the place where the offense was committed to insure the safe and impartial trial of the accused.

Source: § 19.1-224.

§ 19.2-252. Court may admit accused to bail; if not bailed, what to be done with him.—When the venue is so changed, the court making the order may admit the accused to bail and shall recognize the witnesses and the accused if admitted to bail and the bail be given, to appear on some certain day before the court to which the case is removed; if the accused be not admitted to bail or the bail required be not given, the court shall remand him to its own jail and order its officer to remove him thence to the jail of the court to which the case is removed, so that he shall be there before the day for the appearance of the witnesses.

Source: § 19.1-225.

§ 19.2-253. Procedure upon and after change of venue.—The clerk of the court which orders a change of venue shall certify copies of the recognizances aforesaid and of the record of the case to the clerk of the court to which the case is removed, who shall thereupon issue a venire facias, directed to the officer of such court; and such court shall proceed with the case as if the prosecution had been originally therein; and for that purpose the certified copies aforesaid shall be sufficient.

Source: § 19.1-226.

Article 3.

Arraignment; Pleas; Trial Without Jury.

§ 19.2-254. Arraignment; pleas.—Arraignment shall be conducted in open court. It shall consist of reading to the accused the charge on which he will be tried and calling on him to plead thereto. In a felony case, arraignment is not necessary when waived by the accused. In a misdemeanor case, arraignment is not necessary when waived by the accused or his counsel, or when the accused fails to appear.

An accused may plead not guilty, guilty, or in a misdemeanor case, nolo contendere. The court may refuse to accept a plea of guilty to any lesser offense included in the charge upon which the accused is arraigned; but, in misdemeanor cases the court shall not refuse to accept a plea of nolo contendere.

Source: New.

§ 19.2-255. Defendant allowed to plead several matters of law or fact.—The defendant in any criminal prosecution may plead as many several matters, whether of law or fact, as he shall think necessary, and he may file pleas in bar at the same time with pleas in abatement, or within a reasonable time thereafter; but the issues on the pleas in abatement shall be first tried.

Source: § 19.1-242.

§ 19.2-256. Approvers.—Approvers shall not be admitted in any case.

Source: § 19.1-244.

§ 19.2-257. Trial without a jury in felony cases; pleas.—Upon a plea of guilty in a felony case, tendered in person by the accused after being advised by counsel, the court shall hear and determine the case without the intervention of a jury; or if the accused plead not guilty, with his consent after being advised by counsel and the concurrence of the attorney for the Commonwealth and of the court entered of record, the court shall hear and determine the case without the intervention of a jury. In such cases the court shall have and exercise all the powers, privileges and duties given to juries by any statute relating to crimes and punishments.

Source: § 19.1-192.

§ 19.2-258. Trial of misdemeanors by court without jury; absence of defendant.—In all cases of a misdemeanor upon a plea of guilty, tendered in person by the accused or his counsel, the court shall hear and determine the case without the intervention of a jury. If the accused plead not guilty, in person or by his counsel, the court, in its discretion, with the concurrence of the accused and the attorney for the Commonwealth, may hear and determine the case without the intervention of a jury. In each instance the court shall

have and exercise all the powers and duties vested in juries by any statute relating to crimes and punishments.

When a person charged with a misdemeanor has been admitted to bail or released upon his own recognizance for his appearance before a court of record having jurisdiction of the case, for a hearing thereon and fails to appear in accordance with the condition of his bail or recognizance, he shall be deemed to have waived trial by a jury and the case may be heard in his absence as upon a plea of not guilty.

Source: § 19.1-193.

§ 19.2-259. On trial for felony, accused to be present; when court may enter plea for him, and trial go on.—A person tried for felony shall be personally present during the trial. If when arraigned he will not plead or answer and does not confess his guilt the court shall have the plea of not guilty entered and the trial shall proceed as if the accused had put in that plea. But for the purposes of this section a motion for a continuance, whether made before or after arraignment, shall not be deemed to be part of the trial.

Source: § 19.1-240.

Article 4.

Trial by Jury.

§ 19.2-260. Provisions of Title 8 apply except as provided in this article.—Except as otherwise provided in this article, trial by jury in criminal cases shall be regulated as provided for in Chapter 11.1 (§ 8-208.2 et seq.) of Title 8.

Source: New.

§ 19.2-261. Charging grand jury in presence of person selected as juror.—The court shall not charge the grand jury in the presence of any person selected as a juror to try any person indicted by the said grand jury. A violation of this provision shall constitute reversible error in any criminal case tried by a jury composed of one or more such veniremen.

Source: § 8-208.20.

§ 19.2-262. Waiver of jury trial; numbers of jurors in criminal cases; how jurors selected from panel.—(1) In any criminal case in which trial by jury is dispensed with as provided by law, the whole matter of law and fact shall be heard and judgment given by the court. In appeals from juvenile and domestic relations district courts the infant, through his guardian ad litem or counsel, may waive a jury.

(2) Twelve persons from a panel of twenty shall constitute a jury in a felony case. Five persons from a panel of eleven shall

constitute a jury in a misdemeanor case.

(3) The parties or their counsel, beginning with the attorney for the Commonwealth, shall alternately strike off one name from the panel until the number remaining shall be reduced to the number required for a jury.

(4) In any case in which persons indicted for felony elect to be tried jointly, if counsel or the accused are unable to agree on the full number to be stricken, or, if for any other reason counsel or the accused fail or refuse to strike off the full number of jurors allowed such party, the clerk shall place in a box ballots bearing the names of the jurors whose names have not been stricken and shall cause to be drawn from the box such number of ballots as may be necessary to complete the number of strikes allowed the party or parties failing or refusing to strike. Thereafter, if the opposing side is entitled to further strikes, they shall be made in the usual manner

Source: § 8-208.21(part).

§ 19.2-263. Separate juries for separate trials of persons jointly indicted.—If a person, indicted jointly with others for a felony, elects to be tried separately, the panel summoned for their trial may be used for him who is first tried and the court shall cause to be summoned a new panel for the trial of the others, jointly or separately, as they may elect.

Source: § 8-208.30.

§ 19.2-264. When jury need not be kept together in felony case; sufficient compliance with requirement.—In any case of a felony the jury shall not be kept together unless the court otherwise directs. Whenever a jury is required to be kept together, it shall be deemed sufficient compliance although the court for good cause permits one or more of such jurors to be separated from the others; provided all such jurors, whether separated or not, be kept in charge of officers provided therefor.

Source: §§ 8-208.31 and 8-208.32.

Article 5.

Miscellaneous Provisions.

§ 19.2-265. Opening statement of counsel.—On the trial of any case of felony or misdemeanor and before any evidence is submitted on either side, the attorney for the Commonwealth and counsel for the accused, respectively, shall have the right to make an opening statement of their case.

Source: § 19.1-245.

§ 19.2-266. Exclusion of persons from trial.—In the trial of all criminal cases, whether the same be felony or misdemeanor cases,

the court may, in its discretion, exclude from the trial any persons whose presence would impair the conduct of a fair trial, provided that the right of the accused to a public trial shall not be violated.

A court shall not permit the taking of photographs in the courtroom during the progress of judicial proceedings or the broadcasting of judicial proceedings by radio or televesion.

Source: § 19.1-246.

CHAPTER 16.

Witnesses.

Article 1.

In General.

§ 19.2-267. Provisions applicable to witnesses in criminal as well as civil cases.—Sections 8-294 and 8-296 to 8-303, inclusive, shall apply to a criminal as well as a civil case in all respects, except that a witness in a criminal case shall be obliged to attend, and may be proceeded against for failing to do so, although there may not previously have been any payment, or tender to him of anything for attendance, mileage, or tolls.

Source: § 19.1-262.

§ 19.2-268. Right of accused to testify.—In any case of felony or misdemeanor, the accused may be sworn and examined in his own behalf, and if so sworn and examined, he shall be deemed to have waived his privilege of not giving evidence against himself, and shall be subject to cross-examination as any other witness; but his failure to testify shall create no presumption against him, nor be the subject of any comment before the court or jury by the prosecuting attorney.

Source: § 19.1-264.

§ 19.2-269. Convicts as witnesses.—A person convicted of a felony or perjury shall not be incompetent to testify, but the fact of conviction may be shown in evidence to affect his credit.

Source: § 19.1-265.

§ 19.2-270. When statement by accused as witness not received as evidence.—In a criminal prosecution, other than for perjury, or in an action on a penal statute, evidence shall not be given against the accused of any statement made by him as a witness upon a legal examination, unless such statement was made when examined as a witness in his own behalf.

Source: § 19.1-267

§ 19.2-271. Certain judicial officers incompetent to testify under certain circumstances.—No judge shall be competent to testify in any criminal or civil proceeding as to any matter which shall have come before him in the course of his official duties.

No clerk of any court, magistrate, or other person having the power to issue warrants, shall be competent to testify in any criminal or civil proceeding, except proceedings wherein the defendant is charged with perjury, as to any matter which shall have come before him in the course of his official duties.

Source: §§ 19.1-267 and 19.1-268.

Article 2.

Witnesses from or for Another State.

§ 19.2-272. Definitions.—"Witness" as used in this article shall include a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution or proceeding.

The word "State" shall include any territory of the United States and the District of Columbia.

Source: § 19.1-269.

§ 19.2-273. Certificate that witness is needed in another state; hearing.—If a judge of a court of record in any state which by its laws has made provisions for commanding persons within that state to attend and testify in this State certifies under the seal of such court (1) that there is a criminal prosecution pending in such court or that a grand jury investigation has commenced or is about to commence, (2) that a person being within this State is a material witness in such prosecution or grand jury investigation and (3) that his presence will be required for a specified number of days, upon presentation of such certificate to any judge of a court of record in the county or city in which such person is, such judge shall fix a time and place for hearing and shall make an order directing the witness to appear at a time and place certain for the hearing.

Source: § 19.1-270.

§ 19.2-274. When court to order witness to attend.—If at such hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or grand jury investigation in the other state and that the laws of the state in which the prosecution is pending, or grand jury investigation has commenced or is about to commence (and of any other state through which the witness may be required to pass by ordinary course of travel) will give to him protection from arrest and the service of civil and criminal process, the judge shall issue a summons, with a copy of the certificate attached, directing the

witness to attend and testify in the court where the prosecution is pending, or where a grand jury investigation has commenced or is about to commence at a time and place specified in the summons. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

Source: § 19.1-271.

§ 19.2-275. Arrest of witness.—If the certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure his attendance in the requesting state, such judge may, in lieu of notification of the hearing, direct that such witness be forthwith brought before him for the hearing; and the judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability, may, in lieu of issuing subpoena or summons, order that the witness be forthwith taken into custody and delivered to an officer of the requesting state.

Source: § 19.1-272.

§ 19.2-276. Penalty for failure to attend and testify.—If the witness who is summoned as above provided, after being paid or tendered by some properly authorized person the sum of ten cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and five dollars for each day that he is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this State.

Source: § 19.1-273.

§ 19.2-277. Summoning witnesses in another state to testify in this State.—If a person in any state which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions or grand jury investigations commenced or about to commence in this State is a material witness in a prosecution pending in a court of record in this State, or in a grand jury investigation which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. The certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this State to assure his attendance in this State. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

Source: § 19.1-274.

§ 19.2-278. Tender of mileage and per diem to such witnesses; issuance of warrant necessary to make tender.—If the witness is summoned to attend and testify in this State he shall be tendered the sum of ten cents a mile for each mile by the ordinary traveled

route to and from the court where the prosecution is pending and five dollars for each day that he is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this State a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the court.

The judge issuing the certificate prescribed in § 19.2-277 may, by order, direct the clerk of the court involved to issue such warrant or warrants payable out of the State treasury, as may be necessary to make the tender hereinabove prescribed; and after the entry of such order, such clerk, upon application of the attorney for the Commonwealth of the county or city involved, or of the accused, if certificate for the attendance of witness has been issued by such judge on his behalf as authorized by § 19.2-330, shall issue such warrant or warrants and deliver them to the said attorney for the Commonwealth, who shall, forthwith, cause such tender to be made. Upon issuance of any such warrant or warrants said clerk shall deliver a certified copy of the court's order to the Comptroller, and the said warrant or warrants shall be paid out of the State treasury upon presentation.

Unless and until appropriate forms shall be obtained, such warrants may be issued on the regular forms provided for the payment of witness fees and allowances, but in such event the clerk issuing the same shall make a notation thereon that they were issued pursuant to the provisions of this section.

Source: § 19.1-275.

§ 19.2-279. Penalty for failure of such witnesses to testify.—If such witness, after coming into this State, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this State.

Source: § 19.1-276.

§ 19.2-280. Exemption of such witnesses from arrest or service of process.—If a person comes into this State in obedience to a summons directing him to attend and testify in this State he shall not while in this State pursuant to such summons be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this State under the summons.

If a person passes through this State while going to another state in obedience to a summons to attend and testify in that state or while returning therefrom, he shall not while so passing through this State be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this State under the summons.

Source: § 19.1-277

§ 19.2-281. Construction of article.—This article shall be so

interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it.

Source: § 19.1-278.

§ 19.2-282. How article cited.—This article may be cited as the "Uniform Act to Secure the Attendance of Witnesses from without a State in Criminal Proceedings."

Source: § 19.1-279.

CHAPTER 17.

Convictions; Effect Thereof.

Article 1.

Proof and Verdicts.

§ 19.2-283. How accused may be convicted of felony.—No person shall be convicted of felony, unless by his confession of guilt in court, or by his plea, or by the verdict of a jury, accepted and recorded by the court, or by judgment of the court trying the case without a jury according to law.

Source: § 19.1-248.

§ 19.2-284. Proof of ownership in offense relating to property — In a prosecution for an offense committed upon, relating to or affecting real estate, or for stealing, embezzling, destroying, injuring or fraudulently receiving or concealing any personal estate it shall be sufficient to prove that when the offense was committed the actual or constructive possession, or a general or special property, in the whole or any part of such estate was in the person or entity alleged in the indictment or other accusation to be the owner thereof.

Source: § 19.1-247.

§ 19.2-285. Accused guilty of part of offense charged, sentence; on new trial what tried.—If a person indicted of a felony be by the jury acquitted of part of the offense charged, he shall be sentenced for such part as he is so convicted of, if the same be substantially charged in the indictment, whether it be felony or misdemeanor. If the verdict be set aside and a new trial granted the accused, he shall not be tried for any higher offense than that of which he was convicted on the last trial.

Source: § 19.1-249.

§ 19.2-286. Conviction of attempt or being accessory on indictment for felony; effect of general verdict of not guilty.—On an indictment for felony the jury may find the accused not guilty of the felony but guilty of an attempt to commit such felony, or of being an

accessory thereto; and a general verdict of not guilty, upon such indictment, shall be a bar to a subsequent prosecution for an attempt to commit such felony, or of being an accessory thereto.

Source: § 19.1-254.

§ 19.2-287. Verdict and judgment, when jury agree as to some and disagree as to others.—When two or more persons are charged and tried jointly, the jury may render a verdict as to any of them as to whom they agree. Thereupon judgment shall be entered according to the verdict; and as to the others the case shall be tried by another jury.

Source: § 19.1-256.

§ 19.2-288. Verdict when accused found guilty of murder; if guilt confessed, duty of the court.—If a person indicted for murder be found by the jury guilty of any punishable homicide, they shall in their verdict fix the degree thereof and ascertain the extent of the punishment to be inflicted within the bounds prescribed by §§ 18.2-30 to 18.2-36.

Source: § 19.1-250.

§ 19.2-289. Conviction of petit larceny.—In a prosecution for grand larceny, if it be found that the thing stolen is of less value than one hundred dollars, the jury may find the accused guilty of petit larceny.

Source: § 19.1-252.

§ 19.2-290. Conviction of petit larceny though thing stolen be worth more than one hundred dollars.—In a prosecution for petit larceny, though the thing stolen be of the value of one hundred dollars or more, the jury may find the accused guilty; and upon a conviction under this or the preceding section (§ 19.2-289) the accused shall be sentenced for petit larceny.

Source: § 19.1-253.

§ 19.2-291. Faulty counts; motion to strike; general verdict of guilty.—When there are several counts in the indictment one or more of which are faulty, the accused may move to strike the faulty count or counts or move the court to instruct the jury to disregard them. If he does neither and a general verdict of guilty is found, judgment shall be entered against the accused, if any count be good, though others be faulty, unless the court can plainly see that the verdict could not have been found on the good count. If the accused demurs to the faulty count or moves the court to instruct the jury to disregard it and his demurrer or motion is overruled and there is a general verdict of guilty and it cannot be seen on which count the verdict was founded, if the jury has been discharged, it shall be set aside; but if it is manifest that it could not have been found on the bad count, the verdict shall be allowed to stand.

Source: § 19.1-255.

Article 2.

Former Jeopardy.

§ 19.2-292. Acquittal by jury on merits bar to further prosecution for same offense.—A person acquitted upon the facts and merits on a former trial, may plead such acquittal in bar of a second prosecution for the same offense, notwithstanding any defect in the form or substance of the indictment or accusation on which he was acquitted, unless the case be for a violation of the law relating to the State revenue and the acquittal be reversed on a writ of error on behalf of the Commonwealth.

Source: § 19.1-257

§ 19.2-293. When acquittal not a bar to further prosecution for same offense.—A person acquitted of an offense on the ground of a variance between the allegations and the proof of the indictment or other accusation, or upon an exception to the form or substance thereof, may be arraigned again on a new indictment or other proper accusation, and tried and convicted for the same offense, notwithstanding such former acquittal.

Source: § 19.1-258.

§ 19.2-294. Offense against two or more statutes or ordinances.—If the same act be a violation of two or more statutes, or of two or more ordinances, or of one or more statutes and also one or more ordinances, conviction under one of such statutes or ordinances shall be a bar to a prosecution or proceeding under the other or others. Furthermore, if the same act be a violation of both a State and a federal statute a prosecution or proceeding under the federal statute shall be a bar to a prosecution or proceeding under the State statute.

Source: § 19.1-259.

§ 19.2-294.1. Dismissal of one of dual charges for driving while intoxicated and reckless driving upon conviction of other charge.—Whenever any person is charged with a violation of § 18.2-266 or any similar ordinances of any county, city, or town and reckless driving growing out of the same act or acts and is convicted of one of these charges, the court shall dismiss the remaining charge.

Source: § 19.1-259.1.

CHAPTER 18.

Sentence; Judgment; Execution of Sentence.

Article 1.

General Provisions.

§ 19.2-295. Ascertainment of punishment in criminal cases.—Within the limits prescribed by law, the term of confinement in the penitentiary or in jail and the amount of fine, if any, of a person convicted of a criminal offense, shall be ascertained by the jury, or by the court in cases tried without a jury.

Source: §§ 19.1-291 and 19.1-292.

§ 19.2-296. Withdrawal of plea of guilty.—A motion to withdraw a plea of guilty or nolo contendere may be made only before sentence is imposed or imposition of a sentence is suspended; but to correct manifest injustice, the court within twenty-one days after entry of a final order may set aside the judgment of conviction and permit the defendant to withdraw his plea.

Source: New.

§ 19.2-297. Confinement of person convicted of petit larceny previously sentenced for like offenses.—When a person is convicted of petit larceny, and it is alleged in the indictment on which he is convicted, and admitted, or found by the jury or judge before whom he is tried, that he has been before sentenced in the United States for the like offense, he shall be confined in jail not less than thirty days nor more than twelve months; and for a third, or any subsequent offense, he shall be confined in the penitentiary not less than one nor more than two years.

Source: § 19.1-293.

§ 19.2-298. Pronouncement of sentence.—After a finding of guilty, sentence shall be pronounced, or decision to suspend the imposition of sentence shall be announced, without unreasonable delay. Pending pronouncement, the court may commit the accused to jail or may continue or alter the bail. Before pronouncing the sentence, the court shall inqure of the accused if he desires to make a statement and if he desires to advance any reason why judgment should not be pronounced against him.

Source: New.

§ 19.2-299. Presentence investigation and report.—(a) After a finding of guilty, a court of record may direct a probation officer to make a presentence investigation and a written report in any case. The accused may demand and be entitled to such investigation and report after he has pleaded guilty to, or has been convicted in a trial without a jury of, a felony punishable by death or confinement for more than ten years.

(b) The written report of the presentence investigation shall contain any prior criminal record of the accused and such additional information as the court may desire or the probation officer may deem helpful to the court in imposing sentence or in granting probation. The probation officer shall file his written report with the judge and shall furnish copies to the attorney for the Commonwealth and defense counsel after entry of a guilty plea or

conviction and within a reasonable time before the day of sentencing. The probation officer shall present his report in open court in the presence of the accused, who shall be advised of its contents and given the right to cross-examine the probation officer as to any matter contained therein and to present additional facts bearing upon a proper sentence.

Source: New.

§ 19.2-300. Deferring for mental examination sentence of person convicted of offense indicating sexual abnormality.—In the case of the conviction in any court of record of any person for any criminal offense which indicates sexual abnormality, the trial judge may on his own initiative, or shall upon application of the attorney for the Commonwealth, the defendant, or counsel for defendant or other person acting for the defendant, defer sentence until the report of a mental examination of the defendant can be secured to guide the judge in determining what disposition shall be made of the defendant.

Source: § 53-278.2.

§ 19.2-301. Judge shall require examination; by whom made; report; expenses of psychiatrist.—The trial judge shall require the Department of Mental Health and Mental Retardation to have a mental examination made in accord with § 19.2-300, and report thereon, unless a prior report on such person has been submitted to the court by the Department during the proceedings, to be made by a psychiatrist employed in any State hospital or in any mental hospital maintained by the State. Such report shall be furnished to the judge and shall be available to the counsel for defendant and to the attorney for the Commonwealth. The psychiatrist making the examination shall not be entitled to any compensation for making the examination and the report but shall be paid his actual expenses on vouchers approved by the trial judge, out of funds appropriated for criminal expenses.

Source: § 53-278.3.

§ 19.2-302. Construction and administration of §§ 19.2-300 and 19.2-301.—Nothing contained in § 19.2-300 or 19.2-301 shall be construed to conflict with or repeal any statute in regard to the Department of Mental Health and Mental Retardation, and such sections shall be administered with due regard to the authority of, and in cooperation with, the Commissioner of Mental Health and Mental Retardation.

Source: § 53-278.4.

§ 19.2-303. Suspension of sentence; probation.—After conviction, whether with or without jury, the court, unless prohibited by statute, may suspend imposition of sentence or suspend the sentence in whole or part and in addition may place the accused on probation.

Source: New

§ 19.2-304. Increasing or decreasing probation period and modification of conditions.—The court may subsequently increase or decrease the probation period and may revoke or modify any condition of probation, but only upon a hearing after reasonable notice to both the defendant and the attorney for the Commonwealth.

Source: § 53-273.

§ 19.2-305. Requiring fines, costs, restitution for damages or support from probationer.—While on probation the defendant may be required to pay in one or several sums a fine and costs imposed at the time of being placed on probation as a condition of such probation, and the failure of the defendant to pay such fine and costs at the prescribed time or times may be deemed a breach of such probation. Such defendant may be required to make restitution or reparation to the aggrieved party or parties for actual damages or loss caused by the offense for which conviction was had, or may be required to provide for the support of his wife or others for whose support he may be legally responsible.

Source: § 53-274.

§ 19.2-306. Revocation of suspension of sentence and probation.—The court may, for any cause deemed by it sufficient which occurred at any time within the probation period, or if none, within the period of suspension fixed by the court, or if neither, within the maximum period for which the defendant might originally have been sentenced to be imprisoned, revoke the suspension of sentence and any probation, if the defendant be on probation, and cause the defendant to be arrested and brought before the court at any time within one year after the probation period, or if no probation period has been prescribed then within one year after the period of suspension fixed by the court, or if neither a probation period nor a period of suspension has been prescribed then within one year after the maximum period for which the defendant might originally have been sentenced to be imprisoned, whereupon, in case the imposition of sentence has been suspended, the court may pronounce whatever sentence might have been originally imposed. In case the execution of the sentence has been suspended, the original sentence shall be in full force and effect, and neither the time of probation or of suspension shall be taken into account to diminish the original sentence. In the event that any person placed on probation shall leave the jurisdiction of the court without the consent of the judge, or having obtained leave to remove to another locality violates any of the terms of his probation, he may be apprehended and returned to the court and dealt with as provided above. Provided, however, that nothing contained herein shall be construed to deprive any person of his right to appeal in the manner provided by law to the circuit court having criminal jurisdiction from a judgment or order revoking any suspended sentence.

Source: § 53-275.

§ 19.2-307. Contents of judgment order.—The judgment order

shall set forth the plea, the verdict or findings and the adjudication and sentence, whether or not the case was tried by jury, and if not, whether the consent of the accused was concurred in by the court and the attorney for the Commonwealth. If the accused is found not guilty, or for any other reason is entitled to be discharged, judgment shall be entered accordingly. If an accused is tried at one time for two or more offenses, the court may enter one judgment order respecting all such offenses.

Source: New.

§ 19.2-308. When two or more sentences run concurrently.—When any person is convicted of two or more offenses, and sentenced to confinement, such sentences shall not run concurrently, unless expressly ordered by the court.

Source: § 19.1-294.

§ 19.2-309. Sentence of confinement for conviction of a combination of felony and misdemeanor offenses.—When any person is convicted of a combination of felony and misdemeanor offenses and sentenced to confinement therefor, in determining the sequence of confinement, the felony sentence and commitment shall take precedence and such person shall first be committed to serve the felony sentence.

Source: § 19.1-295.

§ 19.2-310. Transportation of convicts to the penitentiary — Every person sentenced by a court to confinement in the State penal system upon conviction of a felony shall be conveyed to an appropriate receiving unit operated by the Department of Corrections in the manner hereinafter provided. The clerk of the court in which the person is sentenced shall forthwith transmit to the Director of the Department of Corrections an abstract of the judgment and within thirty days from the date of the judgment shall forthwith transmit to the Director a certified copy or copies of the order of trial and a certified copy of the complete final order, and if he fail to do so he shall forfeit one hundred dollars. Such abtract and copy or copies shall contain, as nearly as ascertainable, the birth date of the person sentenced. The city sergeant, jailor, or sheriff shall certify to the Superintendent of the Virginia State Penitentiary any jail credits to which the person to be confined is entitled at such time as that person is transferred to the custody of the Superintendent of the Virginia State Penitentiary.

Following receipt of such abstract the Director or his designee shall dispatch a guard to the county or corporation with a warrant directed to the sheriff authorizing him to deliver the convict to the guard whose duty it shall be to take charge of the person and convey him to an appropriate receiving unit designated by the Director or his designee. Under no circumstances shall persons be conveyed to the receiving unit or units of the State penal system beyond the maximum capacity of the unit or units as established by the Director; in this regard, the Director or his designee shall allocate space available in the receiving unit or units by giving first

priority to the transportation, as the transportation facilities of the Department of Corrections may permit, of those persons held in jails who in the opinion of the Director or his designee require immediate transportation to a receiving unit.

Source: § 19.1-296.

Article 2.

Indeterminate Commitment.

§ 19.2-311. Commitment to Department of Corrections in certain cases; duration and character of commitment.—(a) The judge or jury, as the case may be, when fixing punishment in those cases specifically enumerated in subsection (b) of this section, may, in their discretion, in lieu of imposing any other penalty provided by law, commit persons convicted in such cases for a period of four years, which commitment shall be indeterminate in character. Such persons shall be committed to the Department of Corrections for initial confinement for a period not to exceed three years, when funds and facilities are provided by the General Assembly. Such confinement shall be followed by at least one year of supervisory parole, conditioned on good behavior, but such parole period shall not, in any case, continue beyond the four-year period.

(b) The provisions of subsection (a) of this section shall be applicable in those cases in which the person convicted:

(1) Committed the offense of which convicted after becoming eighteen but before becoming twenty-one years of age; or was a juvenile certified for trial as an adult under the provisions of § 16.1-176 or 16.1-177; and

(2) Was convicted of an offense which is either (i) a felony not punishable by the mandatory death penalty, or (ii) a misdemeanor involving injury to a person or damage to or destruction of property, or (iii) a misdemeanor involving moral turpitude which constitutes the third or more numerous conviction for such person (in which case evidence of past convictions shall be considered by the judge in determining if the provisions of this section are applicable); and

(3) Is considered by the judge or jury, as the case may be, to be capable of returning to society as a productive citizen following a reasonable amount of rehabilitation.

Source: § 19.1-295.1.

§ 19.2-312. Same; initial study, etc., and ultimate confinement.—Every person committed to the Department under § 19.2-311 shall be confined first at the institution established under the provisions of Chapter 5.1 (§ 53-128.1 et seq.) of Title 53 of the Code of Virginia for fully adequate study, testing and diagnosis prior to a determination by the Department as to where such person shall be confined; provided, however, that any such person may be

committed to a mental hospital or like institution, as provided by law during such period or transferred thereto; and provided, further, that females so committed shall be confined at the State Industrial Farm for Women for purposes of both initial study and ultimate confinement.

Source: § 19.1-295.2.

§ 19.2-313. Same; eligibility for release.—Any person committed under the provisions of § 19.2-311 shall be eligible for release following initial study, testing and diagnosis at any time prior to the completion of three years in confinement. The Virginia Parole Board shall have discretion to release such person upon a determination that he or she has demonstrated that such release is compatible with the interests of society and of such person and his or her successful rehabilitation to that extent. The Department and Parole Board shall make continuous evaluation of their progress to determine their readiness for release. All such persons, in any event, shall be released by the Parole Board after three years' confinement.

Source: § 19.1-295.3.

§ 19.2-314. Same; supervision of persons released.—The Virginia Parole Board shall supervise every person released under § 19.2-313 for a period of at least one year and may continue such supervised parole for a longer period, if it deems such advisable, provided such initial parole period shall not extend beyond the termination of the four-year period.

Source: § 19.1-295.4.

§ 19.2-315. Same; compliance with terms and conditions of parole; time on parole not counted as part of commitment period.—Every person on parole under § 19.2-314 shall comply with such terms and conditions as may be prescribed by the Board according to § 53-257 and shall be subject to the penalties imposed by law for a violation of such terms and conditions; provided, however, such person shall in no case be returned to the institution established under Chapter 5.1 (§ 53-128.1 et seq.) of Title 53. Time on parole shall not be counted as part of the four-year period of commitment under this section.

Source: § 19.1-295.5.

§ 19.2-316. Same; evaluation and report prior to determining punishment.—The court, in its discretion, may prior to determining punishment as provided for in § 19.2-311 or other applicable provisions of law, commit, for a period not to exceed sixty days, the person convicted to the diagnostic facilities of the institution established under Chapter 5.1 (§ 53-128.1 et seq.) of Title 53 for evaluation and report. If additional evaluation is deemed advisable, the Department of Corrections may apply to the court for an extension of such commitment for a period of up to sixty days. The court shall not be bound by such report in the matter of determining punishment.

Source: § 19.1-295.6.

CHAPTER 19.

Exceptions and Writs of Error.

§ 19.2-317. When writ of error lies in criminal case for accused; when for Commonwealth; when for city or town.—A writ of error shall lie in a criminal case to the judgment of a circuit court or the judge thereof, from the Supreme Court. It shall lie in any such case for the accused and if the case be for the violation of any law relating to the State revenue it shall lie also for the Commonwealth. And a writ of error shall also lie for any city or town from the Supreme Court to the judgment of any circuit court declaring any ordinance of such city or town to be unconstitutional or otherwise invalid, except when the violation of any such ordinance is made a misdemeanor by State statute.

Source: § 19.1-282.

§ 19.2-318. Writ of error to judgment for contempt.—To a judgment for a contempt of court a writ of error shall lie from the Supreme Court. This section shall also be construed to authorize a writ of error to a judgment of a circuit court rendered on appeal from a judgment of a court not of record for contempt.

Source: § 19.1-283.

§ 19.2-319. When execution of sentence to be suspended.—If a person sentenced by a circuit court to death or confinement in the penitentiary indicates an intention to apply for a writ of error, the court shall postpone the execution of its sentence for such time as it may deem proper.

In any other criminal case wherein judgment is given by any court and in any case of judgment for a contempt, to which a writ of error lies, the court giving such judgment may postpone the execution thereof for such time and on such terms as it deems proper. And in any case after conviction if the sentence, or the execution thereof, is suspended in accordance with this section, or for any other cause, the court, or the judge thereof, may, and in any case of a misdemeanor shall, let the prisoner to bail in such penalty and for appearance at such time as the nature of the case may require. A writ of error from the Supreme Court shall lie to any such judgment refusing bail or requiring excessive bail.

Source: § 19.1-281.

§ 19.2-320. Appeal in criminal cases to comply with Rules of Court.—Any party for whom a writ of error lies may apply therefor by complying with the provisions of the Rules of the Supreme Court of Virginia relative to the appeal of criminal cases.

Source: § 19.1-284.

§ 19.2-321. To whom petition presented.—The petition in a case wherein a writ of error lies from the Supreme Court may be presented to the Court, or, in the vacation of the Court, to any justice thereof.

Source: § 19.1-285.

§ 19.2-322. When writ of error allowed, and to operate as supersedeas.—The Court or any justice to whom a petition is duly presented, if of opinion that the judgment complained of ought to be reviewed, may allow a writ of error, which may operate as a supersedeas thereto if the Court or justice awarding it so direct, on such terms and conditions as the Court or justice may prescribe.

Source: § 19.1-286.

§ 19.2-323. Denial by justice no bar to allowance by Court.—The denial of a writ of error by a justice of the Supreme Court, in the vacation of the Court on petition presented to him, shall not prevent the allowance of the writ by the Court, if by it deemed proper, on presentation of the petition to the Court at its next term.

Source: § 19.1-287.

§ 19.2-324. Decision of appellate court.—The court from which a writ of error lies shall affirm the judgment, if there be no error therein, and reverse the same in whole or in part, if erroneous, and enter such judgment as the court whose error is sought to be corrected ought to have entered; or remand the cause and direct a new trial; affirming in those cases where the voices on both sides are equal.

Source: § 19.1-288.

§ 19.2-325. Provisions which apply to criminal as well as civil cases; when plaintiff in error unable to pay printing costs.—Sections 8-482, 8-497.1, 8-499, 8-500 and 14.1-120 shall apply as well to criminal cases as to civil cases; provided, that in a felony case in the Supreme Court, if the plaintiff in error file with the clerk of the Court an affidavit that he is unable to pay or secure to be paid the costs of printing the record in the case, together with a certificate of the judge of the trial court to the effect that he has investigated the matter and is of opinion that the plaintiff in error is unable to pay, or secure to be paid, such costs, the printing shall be done as if the costs had been paid and the clerk shall not be required to account for and pay the same into the State treasury; but if the costs be not paid or secured to be paid and upon the hearing of the case the judgment of the court below be wholly affirmed by the Supreme Court, the Court in affirming shall also give judgment in behalf of the Commonwealth against the plaintiff in error for the amount of the costs to be taxed by its clerk.

Source: § 19.1-289.

§ 19.2-326. Payment of expenses of appeals of indigent defendants.—In any felony case wherein the judge of the court of

record, from the affidavit of the defendant or any other evidence certifies that the defendant is financially unable to pay his attorneys' fees, costs and expenses incident to an appeal, the Supreme Court shall order the payment of such attorneys' fees, costs or necessary expenses of such attorneys in an amount deemed reasonable by the court, by the Commonwealth out of the appropriation for criminal charges; provided that if the conviction is upheld on appeal, the attorney's fees, costs and necessary expenses of such attorney paid by the Commonwealth under the provisions hereof shall be assessed against the defendant.

Source: § 17-30.2.

§ 19.2-327. How judgment of appellate court certified and entered.—The judgment of the Supreme Court shall be certified to the court to whose judgment the writ of error was allowed, which court, or the clerk thereof in vacation, shall cause the same to be entered on its order book as its own judgment.

Source: § 19.1-290.

CHAPTER 20.

Taxation and Allowance of Costs.

§ 19.2-328. When jailers and sheriffs to summon or employ guards and other persons; allowances therefor.—Whenever in the discretion of the court it is necessary for the safekeeping of a prisoner under charge of, or sentence for, crime, whether the prisoner be in jail, hospital, court or elsewhere, the court may order the jailer to summon a sufficient guard, and whenever ordered by the court to do so, the sheriff of any county or city shall summon or employ temporarily such person or persons as may be needed to preserve proper order or otherwise to aid the court in its proper operation and functioning, and for such guard or other service the court may allow therefor so much as it deems proper, not exceeding twenty dollars per day for each person, the same to be paid out of the State treasury, except when payment for such guard is otherwise provided under the provisions of § 53-183.3 of the Code of Virginia.

Source: § 19.1-308.

§ 19.2-329. Allowance to witnesses.—Sections 14.1-190 to 14.1-194, inclusive, shall apply to a person attending as a witness, under a recognizance or summons in a criminal case, as well as to a person attending under a summons in a civil case, except that in a criminal case a witness who travels over fifty miles to the place of attendance shall have for each day's attendance one dollar, instead of fifty cents; and a person residing out of this State, who attends a court therein as a witness, shall be allowed by the court a proper compensation for attendance and travel to and from the place of his abode, the amount of the same to be fixed by the court.

Source: § 19.1-312.

§ 19.2-330. Compensation to witnesses from out of the State.—Any witness from without the State whose attendance is compelled under the provisions of Chapter 16, Article 2 (§ 19.2-272 et seq.) of this title shall be deemed to render a service within the meaning of § 19.2-332 and the compensation and expenses of such witness, whether on behalf of the Commonwealth or the accused, may be paid out of the State treasury in accordance with the provisions of such section. But the compensation and expenses of any witness summoned on behalf of an accused shall not be certified to the State treasury as a compensation under such section except in cases when the court or judge thereof is satisfied that the defendant is without means to pay same and is unable to provide the costs incident thereto.

Source: § 19.1-313.

§ 19.2-331. When Commonwealth pays witnesses in case of misdemeanor.—Payment shall not be made out of the State treasury to a witness attending for the Commonwealth in any prosecution for a misdemeanor unless it appears that the sum to which the witness is entitled cannot be obtained:

(1) If it be a case wherein there is a prosecutor and the defendant is convicted, by reason of the insolvency of the defendant, or

(2) If it be a case in which there is no prosecutor, by reason of the acquittal or insolvency of the defendant or other cause.

Source: § 19.1-314.

§ 19.2-332. Compensation to officer or other person for services not otherwise compensable.—Whenever in a criminal case an officer or other person renders any service required by law for which no specific compensation is provided, or whenever any other service has been rendered pursuant to the request or prior approval of the court, the court shall allow therefor such sum as it deems reasonable, including mileage at a rate provided by law, and such allowance shall be paid out of the State treasury from the appropriation for criminal charges on the certificate of the court stating the nature of the service. This section shall not prevent any payment under § 2.1-223.6, which could have been made if this section had not been enacted.

This section shall not be construed to authorize the payment of any additional compensation to an officer or other employee of the State who is compensated for his services exclusively by salary unless it be otherwise expressly provided by law.

Source: § 19.1-315.

§ 19.2-333. No State fees to attorney for the Commonwealth.—No fee to an attorney for the Commonwealth shall be payable out of the State treasury, unless it be expressly so provided.

Source: § 19.1-316.

§ 19.2-334. By whom certificate of allowance to be made; vouchers to accompany it.—The certificate required by § 14.1-85, shall, when the payment is to be to a clerk, be from the court whereof he is clerk, and when it is to be to a sheriff or other officer, from the court in which the prosecution is, or to which a judge of a court not of record shall certify such expense, as hereinafter mentioned. Any other expense incident to a proceeding in a criminal case which is payable out of the State treasury otherwise than under § 2.1-223.6, 19.2-330 or 19.2-332 shall be certified by the court. If it be a judge of a court not of record exercising jurisdiction, it shall be certified by such judge to the circuit court before which he qualified, which court shall certify the same, if it appears to be correct, to the Comptroller. With the certificate of allowance there shall be transmitted to the Comptroller the vouchers on which it is made. The court, in passing upon any account for fees or expenses required to be certified by it under this section, before certifying the account, may, in its discretion, require proof of the correctness of any item thereof, notwithstanding the affidavit of the party in whose favor such account is. In all cases the judge of a court not of record shall file with his account a copy of the warrant on which his proceedings were had.

The entry of such certificate of allowance shall state how much thereof is on account of each person prosecuted.

Source: §§ 19.1-317 and 19.1-318.

§ 19.2-335. Judges of courts not of record to certify to clerk costs of proceedings in criminal cases before them.—A judge of a court not of record before whom there is any proceeding in a criminal case shall certify to the clerk of the circuit court of his county or city, and a judge or court before whom there is, in a criminal case, any proceeding preliminary to conviction in another court, upon receiving information of the conviction from the clerk of the court wherein it is, shall certify to such clerk all the expenses incident to such proceedings which are payable out of the State treasury.

Source: § 19.1-319.

§ 19.2-336. Clerk to make up statement of whole cost, and issue execution therefor.—In every criminal case the clerk of the circuit court in which the accused is convicted, or, if the conviction be before a court not of record, the clerk to which the judge thereof certifies as aforesaid, shall, as soon as may be, make up a statement of all the expenses incident to the prosecution, including such as are certified under § 19.2-335, and execution for the amount of such expenses shall be issued and proceeded with; and Chapter 21 (§ 19.2-339 et seq.) of this title shall apply thereto in like manner as if, on the day of completing the statement, there was a judgment in such court in favor of the Commonwealth against the accused for such amount as a fine; provided, however, that in any case in which an accused waives trial by jury, at least ten days before trial, but the Commonwealth or the court trying the case refuses to so waive,

then the cost of the jury shall not be included in such statement or judgment.

Source: § 19.1-320.

§ 19.2-337. Claims not presented in time, to be disallowed.—If by reason of the failure of a person to present his claim in due time a sum be not included in such execution which would have been included if so presented, such claim, unless there be good cause for the failure, shall be disallowed.

Source: § 19.1-321.

§ 19.2-338. Collection by town of cost of transporting prisoners.—(1) Notwithstanding any provision of any charter or any law to the contrary, any town may provide that any person convicted of violating any ordinance of the town may be charged, in addition to all other costs, fines, fees and charges, the costs of transporting such person so convicted to and from a jail or other penal institution outside the corporate limits of such town designated by the town as a place of confinement for persons arrested for violating the ordinances of the town and required to be held in jail pending trial upon such charge. The cost of such transportation shall be taxed as a part of the costs payable by persons convicted of violating such ordinances and the costs shall be taxed in accordance with the schedules provided in §§ 14.1-105 and 14.1-111 of the Code of Virginia.

(2) No officer transporting any person convicted of violating any ordinance of the town, as provided in subsection (1) hereof, shall charge or be paid, nor shall such town receive directly or indirectly, more than the cost of transporting such person when more than one person is transported.

Source: § 19.1-322.

CHAPTER 21.

Recovery of Fines and Penalties.

Article 1.

Proceedings to Recover.

§ 19.2-339. Word "fine" construed.—Whenever the word "fine" is used in this chapter, it shall be construed to refer solely to the pecuniary penalty imposed by a court or jury upon a defendant who has been found guilty of a crime. The word "fine" shall not include other forfeitures, penalties, costs, amercements or the like, even though they follow as a consequence of conviction of crime.

Source: § 19.1-323.

§ 19.2-340. Fines to be to State; how recovered; in what

name.—When any statute prescribes a fine, unless it be otherwise expressly provided or would be inconsistent with the manifest intention of the General Assembly, it shall be to the Commonwealth and recoverable by presentment, indictment, information or warrant. Fines imposed and costs taxed in a criminal prosecution for committing an offense against the State shall constitute a judgment in favor of the Commonwealth, and, if not paid at the time they are imposed, execution may issue thereon in the same manner as upon any other monetary judgment.

Source: § 19.1-324.

§ 19.2-341. Penalties other than fines; how recovered; in what name; limitation of actions.—When any statute prescribes a monetary penalty other than a fine, unless it be otherwise expressly provided or would be inconsistent with the manifest intention of the General Assembly, it shall be to the Commonwealth and recoverable by warrant, presentment, indictment, or information. Penalties imposed and costs taxed in any such proceeding shall constitute a judgment in favor of the Commonwealth, and, if not paid at the time they are imposed, execution may issue thereon in the same manner as upon any other monetary judgment. No such proceeding of any nature, however, shall be brought or had for the recovery of such a penalty or costs due the Commonwealth or any political subdivision thereof, unless within twenty years from the date of the offense or delinquency giving rise to imposition of such penalty.

Source: § 19.1-324.

§ 19.2-342. Where and in what court proceeding to be.—In a proceeding under § 19.2-341, such warrant, presentment, indictment or information shall be in the county or city wherein the offense was committed or the delinquency occurred.

Source: § 19.1-325.

§ 19.2-343. (Reserved)

§ 19.2-344. (Reserved)

Article 2.

Reports, etc., of Fines and Costs.

§ 19.2-345. District courts to return warrants with itemized fines and costs, and pay to clerk.—Between the first and tenth day of each month every district court shall make return of the warrants in all criminal cases finally disposed of by such court in the preceding month. Such return shall be made to the clerk of the circuit court of the county or city within which such district court is located. Upon every such return shall be itemized the fine and costs, or costs, if there be no fine, imposed in each case, or other disposition thereof. Every such district court shall, at the time of

making said return, pay to the clerk to whom the return is made any fines and costs shown by the return to be due to the Commonwealth, for which the receiving clerk shall issue his receipt on the official form. When the judge of any district court acquits the accused he shall certify the costs of the trial and to whom due; and if he returns judgment against the prosecuting witness for costs he shall so state.

Source: § 19.1-335.

§ 19.2-346. Clerks to file and index such warrants and issue execution upon unpaid fines; when destroyed.—Upon receipt of the warrants under § 19.2-345, the clerk of the circuit court shall file and properly index the same and, when necessary, issue execution or other proper process upon those fines and costs, or costs, remaining unpaid as though such fines and costs had been imposed in his court. Such warrants shall be maintained as public records for a period of twenty years, after which they may be destroyed.

Source: § 19.1-336.

§ 19.2-347. Clerks' fees.—The clerk's fee for his services under § § 19.2-345 and 19.2-346 shall be one dollar and twenty-five cents upon every such fine and costs, or costs, which fee shall be taxed and collected as a part of the costs in each case. In cases wherein the accused is acquitted, or wherein the costs are not collected from the accused in Commonwealth cases, the clerk's fee shall be twenty-five cents only, to be paid out of the State treasury on proper accounts. The clerk's fee for filing warrants and summonses for violations of local ordinances shall be taxed as a part of the costs and paid in conformity with § 14.1-123 of this Code.

Source: § 19.1-337.

Article 3.

Collection and Disposition of Fines.

§ 19.2-348. Attorneys for the Commonwealth to superintend issue of executions, etc.—The attorney for the Commonwealth shall superintend the issuing of all executions or judgments for fines and penalties going wholly or in part to the Commonwealth in the circuit court of his county or city.

Source: § 19.1-341.1.

§ 19.2-349. Clerks to report unsatisfied fines, etc.; duty of attorneys for the Commonwealth.—The clerk of the circuit court of every county and city shall, on or before the thirtieth day of January and the thirtieth day of July of each year, submit to the judge of his court and to the attorney for the Commonwealth of his county or city a report of all fines, costs, forfeitures and penalties imposed in his court which remain unsatisfied as of the last day of the month preceding the month in which such report is made. And it shall be

the duty of the attorney for the Commonwealth to make inquiries into the reasons why such fines, costs, forfeitures and penalties remain unsatisfied; and if it appears from such inquiries that any such fines, costs, forfeitures or penalties may be satisfied, the attorney for the Commonwealth forthwith shall cause proper proceedings to be instituted for the collection and satisfaction thereof.

Source: § 19.1-341.2.

§ 19.2-350. When sheriff not to receive fines.—No sheriff or other law-enforcement officer shall receive any fine, penalty or costs imposed by a court not of record, except under process duly issued.

Source: § 19.1-342.

§ 19.2-351. How fines disposed of; informer.—Although a law may allow an informer or person prosecuting to have part of a fine or penalty, the whole thereof shall go to the Commonwealth, unless the name of such informer or prosecutor be endorsed on, or written at the foot of, the presentment at the time it is made, or of the indictment before it is presented to the grand jury, or of the information before it is filed, or of the writ issued in the action, or the process on the warrant, or the notice of the motion before service of such writ, process, or notice.

Source: § 19.1-344.

§ 19.2-352. Officers to pay fines to clerks; default; forfeiture, etc.—Every sheriff or other officer receiving money under a writ of fieri facias or capias pro fine shall pay the same to the clerk of the court from which such process issued, on or before the return day of such process; and if such sheriff or other officer fail to pay the money, or fail to return such writ of fieri facias or capias pro fine, he shall, for every such failure, unless good cause be shown therefor, forfeit twenty dollars; and the clerk shall, within ten days from the return day of such process, report the failure to pay such money, or to return such process, to the attorney for the Commonwealth, who shall proceed at once against such officer in default to recover such money and the forfeiture aforesaid.

Source: § 19.1-345.

§ 19.2-353. Certain fines paid into the Literary Fund.—The proceeds of all fines and penalties collected for offenses committed against the State, and directed by Article VIII, § 8 of the Constitution of Virginia to be set apart as a part of a perpetual and permanent literary fund, shall be paid and collected only in lawful money of the United States, and shall be paid into the State treasury to the credit of the Literary Fund, and shall be used for no other purpose whatsoever.

Source: § 19.1-346.

§ 19.2-353.1. Fieri facias, and proceedings thereon.—Any writ

of fieri facias issued under this chapter and the proceedings on the same shall conform to the writ of fieri facias and proceedings thereon under chapter 35 (§ 8-758 et seq.) of Title 8.

Source: § 19.1-347.

Article 4.

Payment of Fines and Costs on Installment Basis, etc.

§ 19.2-354. Authority of court to order payment of fine and costs in installments or upon other terms and conditions.—Whenever a defendant is convicted of a violation of any criminal law of the Commonwealth or of any political subdivision thereof, or found not innocent in the case of a juvenile, and is sentenced to pay a fine, and it shall appear to the court on its own motion or on motion of the defendant that such defendant is unable to pay such fine forthwith, the court may order the defendant to pay such fine and any costs which the defendant may be required to pay in installments or upon such other terms and conditions or within such period of time as may enable the defendant to pay such fine and costs.

Source: § 19.1-347.1.

§ 19.2-355. Petition of defendant.—(a) In determining whether the defendant is unable to pay such fine forthwith, the court may require such defendant to file a petition, under oath, with the court, upon a form provided by the court, setting forth the financial condition of the defendant.

(b) Such form shall be a questionnaire, and shall include, but shall not be limited to: the name and residence of the defendant; his occupation, if any; his family status and the number of persons dependent upon him; his monthly income; whether or not his dependents are employed and, if so, their approximate monthly income; his banking accounts, if any; real estate owned by the defendant, or any interest he may have in real estate; income produced therefrom; any independent income accruing to the defendant; tangible and intangible personal property owned by the defendant, or in which he may have an interest; and a statement listing the approximate indebtedness of the defendant to other persons. Such form shall also include a payment plan of the defendant, if the court should exercise its discretion in permitting the payment of such fine and costs in installments or other conditions to be fixed by the court. At the end of such form there shall be printed in bold face type, in a distinctive color the following: THIS STATEMENT IS MADE UNDER OATH, ANY FALSE STATEMENT OF A MATERIAL FACT TO ANY QUESTION CONTAINED HEREIN SHALL CONSTITUTE PERJURY UNDER THE PROVISIONS OF § 18.2-434 OF THE CODE OF VIRGINIA. THE MAXIMUM PENALTY FOR PERJURY IS CONFINEMENT IN THE PENITENTIARY FOR A PERIOD OF TEN YEARS. A copy of the petition shall be retained by the defendant.

(c) If the defendant is unable to read or write, the court, or the clerk, may assist the defendant in completing the petition and require him to affix his mark thereto. The consequences of the making of a false statement shall be explained to such defendant.

Source: § 19.1-347.2.

§ 19.2-356. Payment of fine as condition of probation or suspension of sentence.—If a defendant is sentenced to pay a fine and payment of the fine or fine and costs is ordered to be made on an installment basis or on other conditions under the provisions of § 19.2-354, and if the defendant is also placed on probation, or imposition or execution of sentence is suspended, the court may make payment of the fine pursuant to such order a condition of probation or suspension of sentence.

Source: § 19.1-347.3.

§ 19.2-357. Requiring that defendant be of peace and good behavior until fine and costs are paid.—If a defendant is permitted to pay a fine or fine and costs on an installment basis, or under such other conditions as the court shall fix under the provisions of § 19.2-354, the court may require as a condition that the defendant be of peace and good behavior until the fine and costs are paid.

Source: § 19.1-347.4.

§ 19.2-358. Procedure on default in payment of fine or installment thereof.—(a) When an individual sentenced to pay a fine defaults in the payment of a fine or an installment, the court upon the motion of the Commonwealth or upon its own motion, may require him to show cause why he should not be imprisoned for nonpayment.

(b) Following an order to show cause, unless the defendant shows that his default was not attributable to an intentional refusal to obey the sentence of the court, or not attributable to a failure on his part to make a good faith effort to obtain the necessary funds for payment, the court may order the defendant imprisoned as for a contempt for a term not to exceed sixty days. The court may provide in its order that payment or satisfaction of the fine at any time will entitle the defendant to his release from such imprisonment or, after entering the order, may at any time reduce the sentence for good cause shown, including payment or satisfaction of the fine.

(c) If it appears that the default is excusable under the standards set forth in subsection (b) hereof, the court may enter an order allowing the defendant additional time for payment, reducing the amount of the fine or of each installment, or remitting the unpaid portion in whole or in part.

(d) Nothing in this section shall be deemed to alter or interfere with employment for collection of fines of any means authorized for the enforcement of money judgments rendered in favor of the Commonwealth.

Source: § 19.1-347.6.

Article 5.

Receipts for Fines.

§ 19.2-359. Official receipts for fines.—Every officer collecting a fine, fine and costs or costs when no fine is imposed shall give an official receipt therefor to the person making the payment, and the clerk of the court shall use the official receipt in receipting to a court not of record for payments made to the clerk; and when the fine, fine and costs or costs are collected by execution, the clerk shall receipt to the officer making payment to him upon the official receipts.

Source: § 19.1-348.

§ 19.2-360. Forms of receipts; distribution; record of disposition; instructions.—The Comptroller shall prescribe and prepare forms of official receipts for fines and distribute them to the clerks of the circuit courts and to the clerks of the courts not of record for their use.

Each form shall be numbered and properly authenticated by the Comptroller. Each receipt form shall bear the date of issue, name of person to whom receipt is given, name of person making payment and amount paid, and be signed by the officer to whom the payment is made. A record of the disposition of each receipt form shall be maintained as prescribed by the Comptroller.

Receipt forms shall be accompanied by instructions from the Comptroller for their use. A receipt in any other form shall not be valid against the Commonwealth.

Source: § 19.1-349.

§ 19.2-361. Misuse, misappropriation or wilful failure to account for fines is embezzlement.—If any officer misuse, misappropriate, or wilfully fail to return or account for, a fine collected by him he shall be deemed guilty of embezzlement and shall be punished as for the embezzlement of public funds and the failure, without good cause, to produce or account for any receipt form received by him shall be prima facie evidence of his embezzlement of the amount represented thereby.

Source: § 19.1-350.

Article 6.

Relief from Fines and Penalties.

§ 19.2-362. Court not to remit fine or penalty except for

contempt or as provided in § 19.2-358.—No court shall remit any fine or penalty, except for a contempt, which the court during the same term may remit either wholly or in part, and except as provided in § 19.2-358. This section shall not impair the judicial power of the court to set aside a verdict or judgment, or to grant a new trial.

Source: § 19.1-351.

§ 19.2-363. Relief from fines and penalties.—The Governor shall have power, in his discretion, to remit, in whole or in part, fines and penalties, in all cases of felony or misdemeanor, after conviction, whether paid into the State treasury or not, except when judgment shall have been rendered against any person for contempt of court, for nonperformance of or disobedience to some order, decree or judgment of such court, or when the fine or penalty has been imposed by the State Corporation Commission, or when the prosecution has been carried on by the House of Delegates. The Governor may, in his discretion, remit, refund or release, in whole or in part, any forfeited recognizance or any judgment rendered thereon, provided, in the opinion of the Governor, the evidence accompanying such application warrants the granting of the relief asked for. But the provisions of the three following sections and § 19.2-368 shall be complied with as a condition precedent to such action by the Governor; provided, that when the party against whom the fine or penalty has been imposed and judgment rendered therefor has departed this life leaving a spouse or children surviving, the Governor may remit such fine or penalty upon the certificate of the judge of the circuit court of the county or city wherein such fine or penalty was imposed and judgment rendered, that to enforce the same against the estate, real or personal, of the decedent, would impose hardship upon the spouse or children. In any case when the Governor remits, in whole or in part, a fine or penalty, if the same has been paid into the State treasury, on the order of the Governor such fine or penalty or so much thereof as is remitted shall be paid by the State Treasurer, on the warrant of the Comptroller, out of the fund into which the fine or penalty was paid.

Source: § 19.1-352.

§ 19.2-364. The proceedings therefor; in what court.—Such person or his personal representative, as the case may be, shall file a petition in the clerk's office of the circuit court of the county or city wherein such fine or penalty was imposed, or such liability established, at least fifteen days before the term of the court at which the same is to be heard, and shall set forth the grounds upon which relief is asked. Ten days' notice thereof in writing shall be given to the attorney for the Commonwealth of the county or city.

Source: § 19.1-353.

§ 19.2-365. Duties of attorneys for the Commonwealth.—The attorney for the Commonwealth, at or before the hearing of such petition, shall file an answer to the same. He shall cause to be summoned such witnesses and shall introduce all such testimony as may be necessary and proper to protect the interest of the

Commonwealth; and the petitioner may cause to be summoned such witnesses and shall introduce all such testimony as may be necessary and proper to protect his interest.

Source: § 19.1-354.

§ 19.2-366. Duty of court; certificate and opinion.—The court wherein such petition is filed shall hear all such testimony as may be offered, either by the petitioner or attorney for the Commonwealth, and after the evidence has been heard shall cause to be made out by the clerk of the court a certificate of the facts proved, and file with the same an opinion, in writing, as to the propriety of granting the relief prayed for.

Source: § 19.1-355.

§ 19.2-367. Proceedings to be according to the common law.—All proceedings had before the court under the provisions of the three preceding sections shall be according to the course of the common-law practice, except that no formal pleadings shall be necessary.

Source: § 19.1-356.

§ 19.2-368. Course of proceeding when relief asked of the Governor.—Whenever application shall be made to the Governor by or on behalf of any person desiring to be relieved, in whole or in part, of any such fine or penalty, the petition, answer, certificate of facts, and opinion of the court provided for in §§ 19.2-364, 19.2-365 and 19.2-366, duly authenticated by the clerk of the court, shall accompany the application, which shall be in writing. In all cases in which the Governor shall remit a fine or penalty he shall issue his order to the clerk of the court by which such fine or penalty was imposed; or if such fine or penalty was imposed by a court not of record, to the clerk of the circuit court of the county or city in which the judge of such court not of record holds office, and such court shall, at its next term, or immediately, if then in session, cause such order to be spread upon the law order book of its court; and the clerk of such court shall immediately, upon the receipt of such order, mark the judgment for such fine or penalty, and costs, or so much thereof as the person may have been relieved of, "remitted by the Governor," upon the judgment lien docket of the court of the county or city in which it may have been recorded. The Governor shall communicate to the General Assembly at each session the particulars of every case of fine or penalty remitted, with his reason for remitting the same.

Source: § 19.1-357

CHAPTER 22.

Enforcement of Forfeitures.

§ 19.2-369. Information to be filed by attorney for the

Commonwealth.—If any statute provides for the forfeiture of any property or money, or if any property or money be seized as forfeited for a violation of any of the provisions of this Code, and a different mode of enforcing the forfeiture is not prescribed, in order to enforce the same the attorney for the Commonwealth for the county or city wherein the forfeiture was incurred shall file in the clerk's office of the circuit court of his county or city an information in the name of the Commonwealth against such property or money by name or general designation.

Source: §§ 19.1-17 and 19.1-358.

§ 19.2-370. Contents of information.—The information shall allege the seizure, and set forth in general terms the causes or grounds of forfeiture. It shall also pray that the property be condemned as forfeited to the Commonwealth and be sold and the proceeds of sale disposed of according to law, and that all persons concerned in interest be cited to appear and show cause why the property should not be condemned and sold to enforce the forfeiture.

Source: § 19.1-359.

§ 19.2-371. Signing and swearing to information.—If the proceeding be instituted by an informer, he shall sign and swear to the information. The attorney for the Commonwealth also shall sign it, but if the law on which the proceeding is based contains no provisions as to informers, the signature of the attorney for the Commonwealth alone shall be sufficient.

Source: § 19.1-360.

§ 19.2-372. Issuance of warrant.—Upon the filing of the information, the clerk shall forthwith issue a warrant directed to the sheriff or other law-enforcement officer of the county or city, commanding him to take the property into his possession and hold the same subject to further proceedings in the cause. If from any cause the warrant be not executed, other like warrants may be successively issued until one be executed.

Source: § 19.1-361.

§ 19.2-373. Execution and return of warrant.—The officer serving the warrant shall take the property into his possession and forthwith return the warrant and report to the clerk in writing thereon his action thereunder.

Source: § 19.1-362.

§ 19.2-374. Notice issued by clerk.—As soon as the warrant has been executed and returned, the clerk shall issue a notice reciting briefly the filing of the information, the object thereof, the issuing of the warrant and the seizure of the property thereunder, and citing all persons concerned in interest to appear on a day fixed on said notice which date shall not be less than ten days from the date of such notice, and show cause why the prayer of the information for

condemnation and sale should not be granted. He shall, at least ten days before the day fixed by the notice for appearance, post a copy of the notice at the front door of the courthouse of his county or city. Such posting shall be sufficient service of the notice on all persons concerned in interest, except as provided in §§ 19.2-375 and 19.2-376.

Source: § 19.1-363.

§ 19.2-375. Notice to Commissioner of Division of Motor Vehicles; duties of Commissioner.—If the property so seized be a motor vehicle required by the motor vehicle laws of Virginia to be registered, the attorney for the Commonwealth shall forthwith notify the Commissioner of the Division of Motor Vehicles, by certified mail, of such seizure and the motor number of the vehicle so seized, and the Commissioner shall promptly certify to such attorney for the Commonwealth the name and address of the person in whose name such vehicle is registered, together with the name and address of any person holding a lien thereon, and the amount thereof. The Commissioner shall also forthwith notify such registered owner and lienor, in writing, of the reported seizure and the county or city wherein such seizure was made.

The certificate of the Commissioner, concerning such registration and lien shall be received in evidence in any proceeding, either civil or criminal, under any provision of this chapter, in which such facts may be material to the issue involved.

Source: § 19.1-363.1.

§ 19.2-376. Owners, purchasers and lienors of vehicles to be made parties defendant; notice of hearing.—The owner of and all persons in any manner then indebted or liable for the purchase price of the property, if such property be a conveyance or vehicle of any kind, and any person having a lien thereon, if they be known to the attorney who files the information, shall be made parties defendant thereto, and shall be served with notice in the manner provided by law for serving a notice, at least ten days before the date therein specified for the hearing on the information, if they be residents of this State; and if they be unknown or nonresidents, or cannot with reasonable diligence be found in this State, they shall be deemed sufficiently served by publication of the notice once a week for two successive weeks in some newspaper published in such county or city, or if none be published therein, then in some newspaper having general circulation therein, and a notice shall be sent by registered mail of such seizure to the last known address of the owner of such conveyance or vehicle.

Source: § 19.1-363.2.

§ 19.2-377. Bond by owner or lienor to secure possession.—If the owner or lienor of the seized property shall desire to obtain possession thereof before the hearing on the information filed against the same, such property shall be appraised by the sheriff of the county or city in which the court where such information is filed is located, who shall promptly inspect and appraise the property,

under oath, at its fair cash value, and forthwith make return thereof in writing, to the clerk's office of the court in which the proceedings are pending. Upon the return, the owner or lienor may give a bond payable to the Commonwealth, in a penalty of the amount equal to the appraised value of the property plus the court costs which may accrue, with security to be approved by the clerk, and conditioned for the performance of the final judgment of the court, on the trial of the information, and with a further condition to the effect that, if upon the hearing on the information, the judgment of the court be that such property, or any part thereof, or such interest and equity as the owner or lienor may have therein, be forfeited, judgment may thereupon be entered against the obligors on such bond for the penalty thereof, without further or other proceedings against them thereon, to be discharged by the payment of the appraised value of the property so seized and forfeited and costs, upon which judgment, execution may issue, on which the clerk shall endorse, "no security to be taken." Upon giving of the bond, the property shall be delivered to the owner or lienor.

Source: § 19.1-364.

§ 19.2-378. Sale of property liable to injury.—If the property seized under the warrant be perishable or liable to deterioration, decay, or injury by being detained in custody pending the proceedings the court or the judge thereof may order the same to be sold upon such notice as he in his discretion may deem proper and hold the proceeds of sale to abide the event of such proceedings, or if such property may be stored without deterioration, decay or injury, the court in its discretion may order the same to be stored pending final outcome of the proceedings.

Source: § 19.1-365.

§ 19.2-379. Defense to information; rights of owners or lienors without knowledge of illegal use.—Any person concerned in interest may appear and make defense to the information, which may be done by answer on oath. The fact that the person by whom the property was used in violating the law has not been convicted of such violation shall be no defense. The information shall be independent of any proceeding against such person or any other for violation of law Unless otherwise specifically provided by law, no forfeiture shall extinguish the rights of any person without knowledge of the illegal use of such property who is the lawful owner or who has a lien on the same which has been perfected in the manner provided by law.

Source: § 19.1-366.

§ 19.2-380. Trial of issues of fact.—When the case is ready for trial, such issues of fact as are made by the pleadings, or as the court may direct, shall be tried by a jury, unless a trial by jury be dispensed with by consent of parties, in which case, the court shall determine the whole matter of law and fact.

Source: § 19.1-367.

§ 19.2-381. Judgment of condemnation and sale of property; when judgment given on bond of owner or lienor.—If the forfeiture be established, the judgment shall be that the property be condemned as forfeited to the Commonwealth and further that the same be sold, unless a sale thereof has been already made under § 19.2-378 or unless the court shall determine that the property forfeited is of such minimal value that the sale thereof would not be in the best interest of the Commonwealth. If such sale has been made, the further judgment shall be against the proceeds. If the property condemned has been delivered to the claimant under § 19.2-377, such further judgment shall be against the obligors in the bond for the penalty thereof to be discharged by the payment of the appraised value of the property, upon which judgment, process of execution shall be awarded and the clerk shall endorse thereon, "No security is to be taken."

Money that is forfeited shall be disposed of pursuant to the provisions of § 19.2-383.

Contraband, the sale or possession of which is unlawful, and property not sold because of the minimal value thereof, shall be ordered destroyed by the court.

Source: § 19.1-368.

§ 19.2-382. Sale to be for cash; title of purchaser.—Any sale ordered in the cause shall be made for cash, after due advertisement, and shall vest in the purchaser a clear and absolute title to the property sold.

Source: § 19.1-369.

§ 19.2-383. Disposition of proceeds of sale.—The proceeds of sale, and whatever may be realized on any bond given under § 19.2-377, and any money forfeited, shall be disposed of by the court according to the rights of the parties.

Source: § 19.1-370.

§ 19.2-384. Payment of expenses and costs.—Expenses and costs incurred in the proceedings shall be paid as the court, in its discretion, shall determine; except that no costs shall be adjudged against the Commonwealth.

Source: § 19.1-371.

§ 19.2-385. Writ of error and supersedeas.—For the purpose of review on a writ of error or supersedeas, a final judgment or order in the cause shall be deemed a final judgment or order in a civil case (not in chancery) within the meaning of § 8-462.

Source: § 19.1-372.

§ 19.2-386. How forfeitures of property not otherwise provided for are enforced.—Except as otherwise specifically provided by law, whenever any property is forfeited to the Commonwealth by reason

of the violation of any law, the court before which the offender is convicted shall order sale or other disposition of the property and proceeds of any such sale as provided for in §§ 19.2-381 through 19.2-384.

Source: § 19.1-373.

CHAPTER 23.

Central Criminal Records Exchange.

§ 19.2-387. Exchange to operate as a division of Department of State Police; authority of Superintendent of State Police.—(a) The Central Criminal Records Exchange shall operate as a separate division within the Department of State Police and shall be the sole criminal record keeping agency of the State, except for the Division of Motor Vehicles.

(b) The Superintendent of State Police is hereby authorized to employ such personnel, establish such offices and acquire such equipment as shall be necessary to carry out the purposes of this chapter and is also authorized to enter into agreements with other State agencies for services to be performed for it by employees of such other agencies.

Source: § 19.1-19.1:1.

§ 19.2-388. Duties and authority of Exchange.—It shall be the duty of the Central Criminal Records Exchange to receive, classify and file records required to be reported to it by § 19.2-390. The Exchange shall also receive, record, and file the F.B.I. record of any person as furnished by the Federal Bureau of Investigation. Such records may also contain any information made available to the Exchange by any law-enforcement agency or any State official or agency prior to March fifteen, nineteen hundred sixty-eight. The Exchange is authorized to prepare and furnish to all State and local law-enforcement officials and agencies, and to clerks of circuit courts and courts not of record, forms which shall be used for the making of such reports.

Source: § 19.1-19.2(a)

§ 19.2-389. Furnishing copies of records.—The Central Criminal Records Exchange shall furnish copies of the records in its files respecting any person concerning whom a report has been made under the provisions of this chapter, to any of the following persons or agencies upon the request of such person, agency or authorized representative thereof: (i) the person concerning whom such a report has been made; and (ii) any official or agency required to make reports to it, or any federal law-enforcement agency, or the armed forces of the United States, or any State or local probation or parole officer or similar federal officer employed by any federal court in this State, or any official of any penal institution of this State, or any agency of any other state which maintains a repository

of criminal records, or the chief law-enforcement officer or agency of any other state. Such records shall not be made available to the public.

Source: § 19.1-19.2(b).

§ 19.2-390. Reports to be made by local law-enforcement officers, conservators of the peace and clerks of court.—(a) Every State official or agency having the power to arrest, the sheriffs of counties, the police officials of cities and towns, and any other local law-enforcement officer or conservator of the peace having the power to arrest for a felony shall make a report to the Central Criminal Records Exchange, on forms provided by it, of any arrest on a charge of treason or of any felony or of any offense punishable as a misdemeanor under Title 54, under Title 18.2 except a violation of Chapter 7, Article 2 (§ 18.2-266 et seq.) of this latter title and except drunkenness and disorderly conduct. Such reports shall contain such information as shall be required by the Exchange and shall be accompanied by fingerprints of the individual arrested and information as to whether a photograph of the individual is available.

(b) The clerk of each court of record and court not of record shall make a report to the Central Criminal Records Exchange of any dismissal, nolle prosequi, acquittal, or conviction of, or failure of a grand jury, to return a true bill as to, any person charged with an offense listed in subsection (a) of this section. No such report of conviction shall be made by the clerk of a court not of record unless the period allowed for an appeal has elapsed and no appeal has been perfected. In the event that the records in the office of any clerk show that any conviction has been nullified in any manner, he shall also make a report of that fact, and each clerk of a court of record, upon receipt of certification thereof from the Supreme Court, shall report to the Exchange, on forms provided by it, any reversal or other amendment to a prior sentence reported to the Exchange. For each such report made by a clerk of a court of record, he shall be allowed a fee of fifty cents to be paid from the appropriation for criminal charges.

(c) In addition to those offenses enumerated in paragraph (a) of this section, the Central Criminal Records Exchange may receive, classify and file any other fingerprints and records of arrest or confinement submitted to it by any law-enforcement agency or any correctional institution.

Source: § 19.1-19.3.

§ 19.2-391. Records to be made available to Exchange by State officials and agencies; duplication of records.—Each State official and agency shall make available to the Central Criminal Records Exchange such of their records as are pertinent to its functions and shall cooperate with the Exchange in the development and use of equipment and facilities on a joint basis, where feasible. No State official or agency shall maintain records which are a duplication of the records on deposit in the Central Criminal Records Exchange, except to the extent necessary for efficient internal administration

of such agency

Source: § 19.1-19.4.

§ 19.2-392. Fingerprints and photographs by police authorities.—All duly constituted police authorities having the power of arrest may take the fingerprints and photographs of any person arrested by them and charged with a felony or with any misdemeanor an arrest for which is to be reported by them to the Central Criminal Records Exchange. Such authorities shall make such records available to the Central Criminal Records Exchange. Such authorities are authorized to provide, on the request of duly appointed law-enforcement officers, copies of any fingerprint records they may have, and to furnish services and technical advice in connection with the taking, classifying and preserving of fingerprints and fingerprint records.

Source: § 19.1-19.6.

3. That this act is in force on and after October one, nineteen hundred seventy-five.