

**REPORT OF THE
VIRGINIA STATE CRIME COMMISSION
TO
THE GOVERNOR
AND
THE GENERAL ASSEMBLY
OF VIRGINIA
ON
THE GRAND JURY SYSTEM IN VIRGINIA
(INTERIM REPORT)**



SENATE DOCUMENT NO. 37

**COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
Richmond
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COMMONWEALTH OF VIRGINIA



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GOVERNOR OF VIRGINIA

AND

THE GENERAL ASSEMBLY OF VIRGINIA

MEMBERS

From the Senate of Virginia

Stanley C. Walker, *Chairman*

George S. Aldhizer, II

George M. Warren, Jr.

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Appointments by the Governor

Erwin S. Solomon, *Vice Chairman*

William N. Paxton, Jr.

George F. Ricketts

Lewis W. Hurst
Executive Director

Laurence Leonard
Assistant Director

Pursuant to Senate Joint Resolution No. 64, 1974 Session,
the sub-committee of the State Crime Commission, as listed
below, offers the following report on The Grand Jury System
In Virginia.

This report is also included with other information as a
part of the Annual Report of the State Crime Commission.

Respectfully submitted,

Stanley C. Walker
Chairman

MEMBERS OF COMMISSION

Stanley C. Walker, Chairman

Erwin S. Solomon, Vice Chairman

George S. Aldhizer, II

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1 SENATE JOINT RESOLUTION NO. 64

2

3 *Directing the Virginia State Crime Commission to make a study of the grand jury system*
4 *as it exists in the Commonwealth of Virginia and, if the Commission deems it*
5 *advisable, to recommend legislation to improve the efficiency of the system.*

6

7 Agreed to by the Senate, March 1, 1974

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9 Agreed to by the House of Delegates, March 8, 1974

10

11 Whereas, in the investigation of particularly complex criminal
12 cases, the presence of the attorney for the Commonwealth in the
13 grand jury room would be beneficial and desirable in enabling the
14 grand jury to fulfill its function, and at present, an attorney for the
15 Commonwealth is prohibited by § 19.1-156 from going before a
16 grand jury during their deliberations except when duly sworn as a
17 witness; and

18 Whereas, the law does not provide for the payment of fees and
19 expenses to expert witnesses and consultants appearing before a
20 grand jury, and the services of such persons are frequently required
21 by grand juries investigating complex factual situations; and

22 Whereas, the law does not provide for recording of grand jury
23 proceedings, either by stenographers or mechanical means, and it
24 would often be helpful to a grand jury to have the benefit of a tran-
25 scribed record of the proceedings in deliberations; now, therefore,
26 be it

27 Resolved by the Senate, the House of Delegates concurring,
28 That the Virginia State Crime Commission shall make a careful
29 study of the grand jury system as it presently exists in the Common-
30 wealth with particular reference to the role of the attorney for the
31 Commonwealth in the grand jury system, the payment of fees and
32 expenses to expert witnesses and consultants, and the recording of
33 grand jury proceedings. If the study concludes that legislation is ad-
34 visable to improve the efficiency of the grand jury system, the Com-
35 mission shall recommend the necessary legislation as it deems ad-
36 visable.

37 All agencies of the State shall assist the Commission in this

1 undertaking.

2 The Commission shall complete its study and report to the Gen-
3 eral Assembly not later than November one, nineteen hundred sev-
4 enty-four.

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GRAND JURY

The 1974 General Assembly, with the passage of Senate Joint Resolution No. 64, directed the Crime Commission to study the grand jury system as it exists in the Commonwealth. The Commission was directed to consider particularly the role of the Attorney for the Commonwealth in the grand jury system, the payment of fees and expenses to expert witnesses and consultants, and the recording of grand jury proceedings. The Commission was further directed to recommend such legislation as it finds advisable to improve the efficiency of the system.

In carrying out their legislative mandate, the Crime Commission established the following 18-member study group: Robert Y. Button, former Attorney General of Virginia, Culpeper; Gordon Campbell, attorney, Norfolk; B. A. Davis, III, Judge 22nd Judicial Circuit, Rocky Mount; M. Ray Doubles, retired judge, Hustings Court Part II, City of Richmond; Robert C. Fitzgerald, former State Senator, attorney, Fairfax; Frederick T. Gray, State Senator, attorney, Chesterfield; William H. Hodges, Judge, First Judicial Circuit, City of Chesapeake; Murray J. Janus, attorney, Richmond; J. Harry Michael, State Senator, attorney, Charlottesville; Theodore V. Morrison, Jr., Crime Commission member, State Delegate, attorney, Newport News; Edith H. Paxton, Clerk of the Circuit Court, City of Staunton; A. L. Philpott, Crime Commission member, State Delegate, attorney, Bassett; Willard M. Robinson, Jr., commonwealth's attorney, Newport News; William P. Robinson, Jr., attorney, Norfolk; C. Vernon Spratley, Jr., attorney, Newport News; R. Reid Young, Jr., attorney, Martinsville; George M. Warren, Crime Commission member, State Senator, attorney, Bristol; Stanley C. Walker, Crime Commission chairman, State Senator, businessman, Norfolk. Delegate Philpott was chosen to serve as chairman.

There has been an increase in the last several years in the use of special grand juries to investigate alleged criminal activity and official misconduct in the Commonwealth. A number of instances recently of the impanelling of special grand juries have given rise to questions concerning the efficiency of the grand jury system as it presently exists. These instances have pointed out weaknesses in the system that seem to indicate the need for revisions.

The study group conducted public hearings, reviewed research material, and reviewed statutory provisions for grand jury systems in 33 other states. The committee heard testimony from the commonwealth's attorneys and the foremen of two grand juries who were recently involved in lengthy grand jury investigations.

The state's present grand jury system had its origin in 12th century England. In its earliest form the grand jury was responsible for determining community standards and charging crimes based upon it. Initially its purpose was to contribute to the centralization of government and increase the power of the king. As the grand jury became an established institution, it developed as protection against tyranny and as a prized safeguard of individual liberty through its power not to indict. The committee felt strongly that the grand jury still serves as a buffer between the accused and officers of the state and is an important step in the criminal justice system. They could envision that in the absence of the grand jury, rights of the accused might not properly be protected.

As society and governmental hierarchy have grown, governmental officials have become farther removed from the electorate. Citizens need some recourse, other than the power to vote, against malfeasance of officials. Because of the grand jury's aspect of secrecy and its subpoena power, it is the best suited for it.

Virginia's grand jury system has the dual function of protecting individuals against the power of the state and investigating allegations of impropriety and matters of public concern. The grand jury performs its protective function in the *regular* grand jury when it determines whether there is probable cause to believe that an individual has committed a specific crime. This *regular* grand jury acts upon indictments which have been pre-prepared by the commonwealth's attorney, who has knowledge of the evidence and has conducted an investigation prior to the grand jury's session. The function of investigating allegations of impropriety and criminal activity is usually carried out by a *special* grand jury. In cases of the *special* grand jury the public is quite often the victim and often citizens are reluctant to testify or to discuss the case with investigators or the commonwealth's attorney. The *regular* grand jury may, of course, consider matters which are not covered in the routine pre-prepared indictments.

One of the weaknesses of the system was found to be that the grand jury is serving two distinct functions while operating under unspecified rules in carrying out the duties assigned to it. In order to make the system more efficient, the grand jury should be restructured to meet the demands of its two functions.

It was the committee's recommendation that the system be divided into the *regular* grand jury and the *investigative* grand jury. The *regular* grand jury would serve the protective function by considering pre-prepared indictments. The *investigative* grand jury would serve the investigative function by investigating allegations of criminal activity of public concern, and malfeasance of governmental officials. The *regular* grand jury should continue to operate as it is presently. The *investigative* grand jury should be given the tools with which to properly conduct investigations.

The committee felt strongly that neither the *regular* nor the *investigative* grand jury should have the authority to grant immunity to witnesses.

Under the committee's proposal, the *investigative* grand jury would be given the tools of legal assistance, expert witnesses, and transcription of testimony; however, they would not have the power to indict, only report.

Under the current Virginia system, the commonwealth's attorney is not allowed to be present during any of the grand jury proceedings unless sworn as a witness. The jurors, untrained in the law, often have a difficult time eliciting necessary evidence and may return indictments based on incompetent evidence. In order to give the *investigative* grand jury the benefit of legal assistance, the committee recommended that provisions be made so the commonwealth's attorney, upon request of the investigating grand jury and consent of the court, would be present during the session of the *investigative* grand jury, not only as a witness, but for the purpose of questioning the witness.

Investigations by *special* grand juries are often lengthy; testimony is received by numerous witnesses. The same will be true for *investigative* grand juries. It is difficult, if not impossible, for jurors to remember exact testimony and to place in context the facts elicited over a long period of time. The committee recommended that provisions be made for proceedings of the *investigative* grand jury to be recorded; the expense for the service should be payable from the state criminal fund. Upon proper showing to the court, the proceedings should be transcribed and made available to the grand jurors. There should be specific authorization for the court to swear the court reporter and transcribers to secrecy and provide that they be subject to contempt for violation. The notes of the reporter, the recording or transcription, if there be one, should be filed with

the court and sealed. There should be two exceptions to the sealing of the report. If there is a subsequent indictment alleging a criminal offense, upon motion for good cause of either the defense or the Commonwealth, the proceedings relevant to that indictment could be transcribed and made available to either the defense or Commonwealth or both. In the other case, if the commonwealth's attorney desires to seek a perjury indictment against a witness before the grand jury, then the relevant recording should be transcribed and made available to the commonwealth's attorney, and after indictment, if one be returned, to defense counsel. Relevant proceedings would mean the entire testimony of the particular witness. Relevancy would be determined by the court.

Investigations carried out by grand juries often deal with highly complex and technical matters. Many times grand juries need the aid and assistance of specially trained persons. Presently there is no statutory provision for securing such assistance. The committee recommended that the *investigative* grand jury, upon consent of the court, be given authority to expend monies for expert witnesses. Such expenditures should be payable out of the state criminal fund.

When the grand jury acts in its investigative capacity it ceases to be the protector of the individual and becomes the accuser. If the *investigative* grand jury were to have power, as a *regular* grand jury, to indict as well as investigate, the same body would be acting as accuser and evaluator of the evidence. Therefore, the committee recommended that the *investigative* grand jury not have the power to indict, but should report and make recommendations to the court. The commonwealth's attorney would then seek the necessary indictments, based on the report, from the next *regular* grand jury.

Due to the lack of guidelines, grand jurors sometimes assume that they have the authority to investigate and report on socially reprehensible conduct regardless of whether it is governed by criminal law. The committee felt there should be a definite statement of proper scope of a grand jury report. They recommended that the scope of the *investigative* grand jury be restricted to investigating conditions which tend to promote criminal activity and malfeasance on the part of government officials in their official capacity.

The committee found that there is a lack of orientation given and a lack of information available to grand jurors at the outset of their work. In most instances the jurors are given a charge by the judge as their only instructions and in some cases that charge is not a written one but merely an oral one. The committee recommended that a handbook be prepared and made available to grand jurors explaining fully the grand jury's function, responsibilities, power, and services available to them.

The Crime Commission concurs with the study committee's recommendations. They feel its recommendations, if adopted, would provide the tools necessary for proper utilization of the grand jury system's indicting and investigating functions. They contend that with proper utilization, the grand jury system can be an important factor in effective government and in protection of citizens' rights.

The Commission, in conjunction with the Code Commission, will sponsor legislation in the 1975 Session of the General Assembly to implement these recommendations. See proposed legislation in Appendix I of this report.

RECOMMENDATIONS

1. The grand jury system should be retained and its functions divided into two distinct segments: the *regular* and the *investigative* grand jury.
 - a. The *regular* grand jury should carry out its traditional role as the body considering pre-prepared indictments.
 - b. The *investigative* grand jury should have investigative powers only, it should not have the power to indict, but should make a report and recommendations to the court. The *investigative* grand jury would replace what heretofore has been called the *special* grand jury.
2. After consideration of all pre-prepared indictments, if there are other matters to be considered the *regular* grand jury may become an *investigative* grand jury but then they would not indict, but report to the court. The court may impanel an *investigative* grand jury other than the *regular* grand jury.
3. *Investigative* grand jurors need not be chosen from the *regular* grand jury list. Once having served on the *investigative* grand jury, no juror should be eligible to serve on a subsequent *regular* grand jury which would consider any matter which was before the *investigative* grand jury on which he served.
4. The scope of the *investigative* grand jury should be restricted to investigating and making reports concerning any conditions which tend to promote criminal activity in the community and investigating malfeasance on the part of government officials in their official capacity.
5. The commonwealth's attorney may be present during the information gathering process of the *investigative* grand jury for the purpose of rendering legal assistance and questioning witnesses. The commonwealth's attorney should never be before the *regular* grand jury unless he is sworn as a witness, and then he should not be present while any other witness is testifying. The commonwealth's attorney may, in the case of the *regular* grand jury, give legal advice to the foreman of the jury outside the grand jury room.
6. Upon consent of the court, the *investigative* grand jury may avail themselves of investigative assistance and expert witnesses.
7. The proceedings of the *investigative* grand jury should be recorded. These proceedings should be transcribed during the course of the proceedings only upon request of the grand jury. The recording or transcription, if there be one, should be filed with the court and sealed.
 - a. Except if there is a subsequent indictment alleging a criminal offense, upon motion for good cause of either the defense or the Commonwealth the proceedings relevant to that indictment can be transcribed and made available to either the defence or the Commonwealth or both. Relevant proceedings would mean the entire testimony of the particular witness. Relevancy would be determined by the court.

- h. And except, if the commonwealth's attorney desires to seek a prejury indictment against a witness before the grand jury, then the recording should be transcribed and made available to the commonwealth's attorney.
8. There should be specific authorization for the court to swear the court reporter and transcribers to secrecy and provide that they are subject to contempt for violation of that.
 9. Neither the *regular* nor the *investigative* grand jury should have the authority to grant immunity.
 10. Expenses of the *investigative* grand jury, subject to approval of the court, including those for expert witnesses and technical assistance should be payable from the criminal fund of the State.
 11. A handbook should be prepared and made available to grand jurors explaining fully the grand jury's function, responsibilities, power, and services available to them.

A Dissenting Report Of Senator J. Harry Michael, Jr.:

The report of the Grand Jury Study Committee seems to me to be excellent in most respects. It is the result of a careful and detailed consideration of many facets of this area which needed that detailed consideration. I agree completely with most of the conclusions of the report. A consideration of the underlying fundamentals of the grand jury system, and of the manner in which the system has been applied on the Federal level, compel me, however, to dissent from the opinion of the majority on two points.

The first of these relates to permitting the commonwealth's attorney to go into the investigative grand jury room, there to work with the investigative grand jury in seeking indictments. My comments recognize that the proposal for the commonwealth's attorney to go into the jury room, etc., relate only to the proposed "special" or "investigative" grand jury, and that the present rule would continue as to the "regular" grand jury. This split procedure seems to me, however, more a sop than otherwise, since the critical area is that covered by the investigative grand jury.

Having had some reasonable experience with the grand jury system on the Federal level, where the recommended process prevails, I am convinced that the procedure which is recommended in the majority report is one which would bring into our State procedure a system where the investigative grand jury is simply an extension of the prosecutor's arm. The commonwealth's attorney now has available to him the wide range of investigative tools in the police departments, the State Police, the special laboratories maintained by State and local entities, the ability to secure specialized expert assistance, etc. With all these resources now available, a brief reflection on the Federal system shows the advantages to the prosecutor in having this extra investigative tool. The scope of activity of the special grand jury has broad subpoena powers, can compel testimony of witnesses under oath and is made up of laymen who will have working with them a prosecutor-- and only a prosecutor -- who can far too easily decide to follow a course tailored to serve the ends of prosecution only. Where then remains the true function of the grand jury, to serve the body politic? It is no sufficient answer to say that these matters are merely semantics, or are rarefied broodings on philosophical doctrines. We have recently seen enough of the evils that flow from disregard of basic principles and from the use of semantics to conceal and distort.

Virginia's system has served us well over the two and a half centuries in which it has been operating. I know of no situation in which the commonwealth's attorney has felt that he could not act because he was not able to be present in the grand jury room at the time it considered the indictment. Consider, if you will, the fact that the commonwealth's attorney has full access to the list of those who appear before the grand jury. He has every right in the world to talk to those who appear before the grand jurors and, human nature being what it is, any reasonable

interrogation is likely to elicit from those witnesses who have appeared before the grand jury, when the prosecutor undertakes a subsequent interrogation of those witnesses. Frankly, I see no particular handicap to the commonwealth's attorney in not being able to appear before the grand jury and, as the majority report puts it, "to work with the investigative grand jury". It is true that the commonwealth's attorney involved in one of the Tidewater special grand jury situations felt that he could have proceeded more effectively in the prosecution of the indictments had he been present in the grand jury room. I submit that he is exactly right; it will always be easier to prosecute under those circumstances. It is a matter of weighing the values in conflict in this particular situation, namely, to assist in prosecution, or to exercise the very much broader and, to me, more important function of protection to the individual and to the body politic. In my scales, the latter value far outweighs the former.

I fear the institution of a process by which the investigative grand jury in Virginia could be converted into an arm of the commonwealth's attorney. This is not its function in Virginia, and has never been its function. Adopting this procedure now would bring us squarely in parallel with the Federal system, where, in too many instances, the grand jury has its historical function, only to serve as the United States Attorney's investigative tool.

I strongly favor retaining for the investigative grand jury the present prohibition which would not allow the commonwealth's attorney to appear in the grand jury room to work with the investigative grand jury.

While I am sure that I read the sentence out of context, I think most of the basis for my objection is summed up by quoting from a sentence in the majority report on page 5, as follows:

"Allowing the commonwealth's attorney to work with the investigative grand jury on such matters would be most beneficial to the prosecutor."

I do not see any corresponding benefit to any other party involved in the process.

A second point of objection which I have to the majority report relates to the investigative grand jury report to the Court. The provision here is that the report would be public, and that the commonwealth's attorney would then seek the necessary indictments from the next regular grand jury. I object strongly to the proposition that the report would be made public after it is filed with the court by the investigative grand jury. I object primarily because it seems to me that we are creating a method for character assassination with little or no possible remedy for those persons affected. The report indicates that "the lack of a judicial forum is not as significant as it once was", basing this on the fact that the mass media provides a forum.

Where the parties are put under a so-called "gag rule" by the Court, the effectiveness of the mass media becomes one of the sleazy and indirect method of eliciting testimony from underlings, and from others who have biased and improper motives for releasing the information. The principals are under the gag rule; the attorneys are likewise forbidden to make any comment. Under these circumstances, any enterprising reporter worth his salt is going to turn to any source he can to elicit any information that can be found concerning the report.

I strongly feel that the report of the investigative grand jury made to the court should not be made public, but that the report should be made available to the commonwealth's attorney, who would then seek the indictment he judged to be appropriate based on the report, from the next regular grand jury.

The fact that the "media forum" offers no restriction on the rules of evidence, and

provides grounds for "dramatic denials and counter-charges" is probably the best basis for my feeling that the report should not be made public until indictments have been issued.

Aside from these two points, the report seems to be an admirable result from a comprehensive and detailed review of the problem in our law system, and I strongly support the other recommendations of the report.

APPENDIX I

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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.

17 Be it enacted by the General Assembly of Virginia:

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

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

25 Title 19.2

26 Criminal Procedure.

27 CHAPTER 1.

28 General Provisions.

29 § 19.2-1. *Repealing clause.*—All acts and parts of acts, all sections of this Code, and
30 all provisions of municipal charters, inconsistent with the provisions of this title, are,
31 except as herein otherwise provided, repealed to the extent of such inconsistency.

32 § 19.2-2. *Effect of repeal of Title 19.1 and enactment of this title.*—The repeal of Title
33 19.1 effective as of October one, nineteen hundred seventy-five shall not affect any act or
34 offense done or committed, or any penalty or forfeiture incurred, or any right established,
35 accrued, or accruing on or before such date, or any prosecution, suit or action pending on
36 that day. Except as herein otherwise provided, neither the repeal of Title 19.1 nor the
37 enactment of this title shall apply to offenses committed prior to October one, nineteen

1 hundred seventy-five and prosecutions for such offenses shall be governed by the prior
2 law, which is continued in effect for that purpose. For the purposes of this section, an
3 offense was committed prior to October one, nineteen hundred seventy-five, if any of the
4 essential elements of the offense occurred prior thereto.

5 § 19.2-3. Certain notices, recognizances and processes validated.—Any notice given,
6 recognizance taken, or process or writ issued before October one, nineteen hundred
7 seventy-five, shall be valid although given, taken or to be returned to a day after such date,
8 in like manner as if this title had been effective before the same was given, taken or
9 issued.

10 § 19.2-4. References to former sections, articles or chapters of Titles 18.1 and 19.1.—
11 Whenever in this title any of the conditions, requirements, provisions or contents of any
12 section, article or chapter of Titles 18.1 and 19.1, as such titles existed prior to October
13 one, nineteen hundred seventy-five, are transferred in the same or in modified form to a
14 new section, article or chapter of this title or of Title 18.2, and whenever any such former
15 section, article or chapter is given a new number in this title or in Title 18.2, all references
16 to any such former section, article or chapter of Title 19.1 or of Title 18.1 appearing
17 elsewhere in this Code than in this title or in Title 18.2, shall be construed to apply to the
18 new or renumbered section, article or chapter containing such conditions, requirements,
19 provisions or contents or portions thereof.

20 § 19.2-5. Rules of construction; meaning of certain terms.—In the construction of this
21 title and of each section thereof, the rules of construction set forth in Chapter 2 (§ 1-10 et
22 seq.) of Title 1 of this Code shall be observed, unless such construction would be
23 inconsistent with the manifest intent of the General Assembly.

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

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

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

33 § 19.2-6. Appointive power of circuit courts.—Unless otherwise specifically provided,
34 whenever an appointive power is given to the judge of a circuit court, the power shall be
35 vested in the chief circuit judge thereof.

36 § 19.2-7. Rewards for arrest of persons convicted of or charged with offenses;
37 rewards for conviction of unknown offenders.—The Governor may offer a reward for

1 apprehending and securing any person convicted of an offense or charged therewith, who
2 shall have escaped from lawful custody or confinement, or for apprehending and securing
3 any person charged with an offense, who, there is reason to fear, cannot be arrested in the
4 common course of proceeding. The Governor may also offer a reward for the detection and
5 conviction of the person guilty of an offense when such offense has been committed but
6 the person guilty thereof is unknown.

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

10 § 19.2-8. Limitation of prosecutions.—A prosecution for a misdemeanor, or any
11 pecuniary fine, forfeiture, penalty or amercement, shall be commenced within one year
12 next after there was cause therefore, except that a prosecution for petit larceny may be
13 commenced within five years, and for an attempt to produce abortion, within two years
14 after commission of the offense; and a prosecution for obtaining, attempting to obtain,
15 aiding or abetting in obtaining public assistance under the Virginia Public Welfare and
16 Assistance Law by means of a willful false statement, representation, impersonation or
17 other fraudulent device shall be commenced within five years next after the commission of
18 the offense; and a prosecution for making a false statement or representation of a material
19 fact knowing it to be false or knowingly failing to disclose a material fact, to obtain or
20 increase any benefit or other payment under the Virginia Unemployment Compensation
21 Act shall be commenced within three years next after the commission of the offense.
22 Nothing in this section shall be construed to apply to any person fleeing from justice or
23 concealing himself within or without this State to avoid arrest, or be construed to limit the
24 time within which any prosecution may be commenced for desertion of a wife or child or
25 for neglect or refusal or failure to provide for the support and maintenance of a wife or
26 child.

27 § 19.2-9. Prosecution of certain criminal cases removed from the State to the federal
28 courts; costs.—When any person indicted in the courts of this State for a violation of its
29 laws, has his case removed to the district court of the United States under § 33 of the
30 Judicial Code of the United States, it shall be the duty of the attorney for the
31 Commonwealth for the county or city in which any such indictment is found to prosecute
32 any such case in the United States district court to which the same shall be so removed,
33 and for his services in this behalf he shall be paid a fee of one hundred dollars for each
34 case tried by him in such United States district court, and mileage at the rate now allowed
35 by law to the members of the General Assembly for all necessary travel in going to and
36 returning from such court, to be paid on his account when approved by the Attorney
37 General.

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

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

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

15 *§ 19.2-10. Outlawry abolished.—No proceeding of outlawry shall hereafter be*
16 *instituted or prosecuted.*

17 *§ 19.2-11. Procedure in contempt cases.—No court or judge shall impose a fine upon*
18 *a juror, witness or other person for disobedience of its process or any contempt, unless he*
19 *either be present in court at the time, or shall have been served with a rule, returnable to a*
20 *certain time, requiring him to show cause why the fine should not be imposed and shall*
21 *have failed to appear and show cause.*

22 *CHAPTER 2.*

23 *Conservators of the Peace and*

24 *Special Policemen.*

25 *Article 1.*

26 *Appointment.*

27 *§ 19.2-12. Who are conservators of the peace.—Every judge throughout the State and*
28 *every magistrate within the geographical area for which he is appointed or elected, shall be*
29 *a conservator of the peace. In addition, every commissioner in chancery, while sitting as*
30 *such commissioner, shall be a conservator of the peace.*

31 *§ 19.2-13. Special conservators of the peace; authority; bond; liability of employers.—*
32 *Upon the application of the owner, proprietor or authorized custodian of any place within*
33 *the Commonwealth and the showing of a necessity for the security of property or the*
34 *peace, the circuit court of any county or city, in its discretion, may appoint one or more*
35 *special conservators of the peace, who, within the area and for the time specified in the*
36 *order of appointment, shall have all of the powers, functions, duties, responsibilities and*
37 *authority of any other conservator of the peace.*

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

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

11 *§ 19.2-14. Conservators of the peace for fair grounds and cemeteries; bond*
12 *required.—The superintendent or other person in charge of any fair grounds or any public*
13 *or private cemetery shall, for the purpose of maintaining order and enforcing the criminal*
14 *and police laws of the State, or the county or city in which such fair grounds or cemetery*
15 *is situated, have all the powers, functions, duties, responsibilities and authority of a*
16 *conservator of the peace within the fair grounds or cemetery over which he may have*
17 *charge and within one-half of a mile around the same.*

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

21 *§ 19.2-15. When such conservator need not be a citizen.—Any such conservator*
22 *appointed under the provisions of § 19.2-13 whose jurisdiction is limited to the grounds*
23 *attached to an airport, need not be a citizen of the Commonwealth if the proprietors of*
24 *such airport shall, before any such conservator shall enter upon the duties of the office,*
25 *enter into bond with approved surety before the clerk of the circuit court having*
26 *jurisdiction over such airport in the penalty of one thousand dollars for each conservator*
27 *so appointed, with condition for the faithful discharge of his official duties.*

28 *§ 19.2-16. Appointment of employees of Division of Parks of Department of*
29 *Conservation and Economic Development as conservators of the peace.—The Governor*
30 *may appoint as a conservator of the peace any employee of the Division of Parks of the*
31 *Department of Conservation and Economic Development who is recommended by the*
32 *Director of such Department and the State Park Commissioner. Any such conservator of*
33 *the peace, within the territorial area designated by the Governor, shall have the power and*
34 *jurisdiction of any other conservator of the peace.*

35 *§ 19.2-17. Appointment of policemen for certain places; bond required.—Any court or*
36 *judge mentioned in § 19.2-13 may also appoint, for the places mentioned in that section,*
37 *one or more citizens as policeman or policemen with the same powers and duties as are*

1 vested in special policemen in counties under the provisions of Article 3 (§ 15.1-144 et seq.)
2 of Chapter 3 of Title 15.1, except that they shall not have authority to execute civil
3 process. Before any such policeman shall enter upon the duties of his office, he shall enter
4 into bond with approved security before the clerk of the circuit court having jurisdiction
5 over the county for which he is appointed in the penalty of one thousand dollars, with
6 condition for the faithful discharge of his official duties.

7

Article 2.

8

Powers and Duties.

9 19.2-18. Powers and duties of conservators of the peace.—Every conservator of the
10 peace shall have authority to arrest without a warrant in such instances as are set out in §
11 § 19.2-19 and 19.2-81. Upon making an arrest without a warrant, the conservator of the
12 peace shall proceed in accordance with the provisions of § 19.2-22 or 19.2-82 as the case
13 may be.

14 § 19.2-19. Recognizance to keep the peace.—If any person threaten to kill or injure
15 another or to commit violence or injury against his person or property, or to unlawfully
16 trespass upon his property, he shall be required to give a recognizance to keep the peace
17 for such period not to exceed one year as the court or magistrate hearing the complaint
18 may determine.

19 § 19.2-20. Recognizance to keep the peace; complaint and issuance of warrant
20 therefor.—If complaint be made to any magistrate or judge that a person should be
21 required to give a recognizance to keep the peace due to any of the reasons set forth in §
22 19.2-19, such magistrate or judge shall examine on oath the complainant, and any witness
23 who may be produced, reduce the complaint to writing, and cause it to be signed by the
24 complainant; and if it appear proper, such magistrate or judge shall issue a warrant,
25 reciting the complaint, and requiring the person complained of forthwith to be
26 apprehended and brought before him or some other magistrate or judge.

27 § 19.2-21. The proceeding when accused appears.—When such person appears, if the
28 magistrate or judge, on hearing the parties, considers that there is not good cause for the
29 complaint, he shall discharge such person, and may give judgment in his favor against the
30 complainant for his costs. If he considers that there is good cause therefor, he may require
31 a recognizance of the person against whom it is, and give judgment against him for the
32 costs of the prosecution, or any part thereof; and, unless such recognizance be given, he
33 shall commit him to jail by a warrant, stating the sum and time in and for which the
34 recognizance is directed. The person given judgment under this section for costs may issue
35 a writ of fieri facias thereon, if an appeal be not allowed; and proceedings thereupon may
36 be according to §§ 16.1-99 through 16.1-101.

37 § 19.2-22. Recognizance to keep the peace; arrests without a warrant.—A person

1 arrested without a warrant by any conservator of the peace or other law-enforcement
2 officer for any of the acts set forth in § 19.2-19 committed in the presence of such
3 conservator of the peace or law-enforcement officer, shall be brought forthwith before a
4 magistrate or judge, and proceedings shall be had in accordance with §§ 19.2-20 and 19.2-
5 21.

6 § 19.2-23. *Payment of fees or mileage allowances into county or city treasury.*—Any
7 conservator or policeman appointed under the provisions of this chapter shall not be
8 entitled to fees or mileage for performance of his duties as such conservator or policeman.

9 Article 3.

10 Appeals.

11 § 19.2-24. *When an appeal may be taken; witnesses recognized.*—Any person from
12 whom a recognizance is required under the provisions of this chapter or who has been
13 committed to jail for failure to give security therefor, may appeal to the circuit court of the
14 county or city, and, in such case, the magistrate from whose judgment the appeal is taken
15 shall recognize such of the witnesses as he thinks proper; provided, however, that the
16 person taking the appeal may be required to give bail, with good security, for his
17 appearance at the circuit court of the county or city.

18 § 19.2-25. *Power of the court when appeal taken.*—The court may dismiss the
19 complaint or affirm the judgment, and make what order it sees fit as to the costs. If it
20 award costs against the appellant, the recognizance which he may have given shall stand
21 as security therefor. When there is a failure to prosecute the appeal, such recognizance
22 shall remain in force, although there be no order of affirmance. On any appeal the court
23 may require of the appellant a new recognizance if it see fit.

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

26 CHAPTER 3.

27 Magistrates.

28 Article 1.

29 Transition Provisions.

30 § 19.2-26. *Repeal of inconsistent statutes, municipal charters, etc.*—All acts and parts
31 of acts, all sections of this Code, and all provisions of municipal charters, inconsistent with
32 the provisions of this title, are, except as herein otherwise provided, repealed to the extent
33 of such inconsistency.

34 § 19.2-27. *Effect of repeal of Title 39.1 on prior acts, offenses, etc.*—The repeal of
35 Title 39.1 effective as of January one, nineteen hundred seventy-four, shall not affect any
36 act or offense done or committed or any penalty or forfeiture incurred, or any right
37 established, accrued, or accruing on or before such date, or any prosecution, suit or action

1 *pending on that day.*

2 § 19.2-28. *Certain notices, recognizances and processes validated.—Any notice given,*
3 *recognizance taken, or process or writ issued, before January one, nineteen hundred*
4 *seventy-four, shall be valid although given, taken or to be returned to a day after such*
5 *date, in like manner as if this title had been effective before the same was given, taken or*
6 *issued.*

7 § 19.2-29. *References to former sections, articles and chapters in Title 39.1.—*
8 *Whenever in Chapters 3 (§ 19.2-26 et seq.) and 4 (§ 19.2-49 et seq.) of this title any of the*
9 *conditions, requirements, provisions or contents of any section, article or chapter of Title*
10 *39.1, as such title existed prior to January one, nineteen hundred seventy-four, are*
11 *transferred in the same or modified form to a new section, article or chapter, and*
12 *whenever any such former section, article or chapter is given a new number in Chapters 3*
13 *and 4 of this title all references to any such former section, article or chapter of Title 39.1*
14 *appearing elsewhere in this Code than in Chapters 3 and 4 of this title shall be construed*
15 *to apply to the new or renumbered section, article or chapter containing such conditions,*
16 *requirements, provisions or contents or portions thereof.*

17 *Article 2.*

18 *Abolition of Justice of the Peace System.*

19 § 19.2-30. *Abolition of justice of the peace system.—The office of justice of the peace*
20 *having been abolished effective as of January one, nineteen hundred seventy-four,*
21 *nevertheless, any justice of the peace in office December thirty-one, nineteen hundred*
22 *seventy-three, may continue in office as a magistrate under the provisions of Chapters 3 (§*
23 *19.2-26 et seq.) and 4 (§ 19.2-49 et seq.) of this title for the remainder of the term for*
24 *which he had been elected or appointed and shall be eligible for future appointment to*
25 *serve as a magistrate notwithstanding § 19.2-37.*

26 § 19.2-31. *Abolition of office of issuing justice.—Effective January one, nineteen*
27 *hundred seventy-four, the office of issuing justice as provided for in Chapter 2 (§ 39.1-20 et*
28 *seq.) of Title 39.1 having been abolished, nevertheless, any such special justice of the peace*
29 *in office December thirty-one, nineteen hundred seventy-three, and elected by the town*
30 *council for a specific term to expire after that date, may continue in office for the*
31 *remainder of that term. If he continues in office as provided herein, such justice shall*
32 *exercise the same powers, perform the same duties, and receive such compensation as he*
33 *was receiving as of December thirty-one, nineteen hundred seventy-three.*

34 § 19.2-32. *References to justices of the peace.—References in law to justices of the*
35 *peace shall be deemed to apply to magistrates unless the provisions of Chapters 3 (§ 19.2-*
36 *26 et seq.) and 4 (§ 19.2-49 et seq.) of this title shall render such reference inapplicable.*

37 *Article 3.*

1 *The Magistrate System.*

2 § 19.2-33. *Office of magistrate.—The office of magistrate shall be vested with all the*
3 *authority, duties and obligations previously vested in the office of justice of the peace prior*
4 *to January one, nineteen hundred seventy-four.*

5 § 19.2-34. *Number of magistrates.—There shall be at least one magistrate appointed*
6 *for each county and city. Additional magistrates, only in the number necessary for the*
7 *effective administration of justice, may be authorized for any county or city by the*
8 *Committee on District Courts established pursuant to § 16.1-69.33. The requirement that at*
9 *least one magistrate be appointed to serve in any county or city shall be deemed fulfilled in*
10 *any county or city in which two magistrates are in service by virtue of § 19.2-30.*

11 § 19.2-35. *Appointment; supervision generally.—Magistrates in each county and city*
12 *shall be appointed by the chief judge of the circuit in which the county or city is located.*
13 *The chief circuit judge shall have full supervisory authority over the magistrates so*
14 *appointed, but may delegate this authority to the chief general district judge.*
15 *Notwithstanding any other provision of law, the only methods for the selection of*
16 *magistrates and special magistrates shall be as set out in this section and Chapter 4 (§*
17 *19.2-49 et seq.) of this title, respectively.*

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

20 § 19.2-36. *Chief magistrates.—The chief circuit judge of a circuit may appoint a chief*
21 *magistrate, for the purpose of maintaining the proper schedules, assisting in the training of*
22 *the magistrates within such judicial district and to be responsible to the chief circuit judge*
23 *for the conduct of the magistrates and to further assist the chief circuit judge in the*
24 *operation of the magistrate system.*

25 § 19.2-37. *Who may be appointed a magistrate.—Any person may be appointed to the*
26 *office of magistrate under this title subject to the limitations of Chapter 4 (§ 2.1-30 et seq.)*
27 *of Title 2.1 of the Code and of this section.*

28 *A person shall be eligible for appointment to the office of magistrate under the*
29 *provisions of this title: (a) if such person or his spouse is not a law-enforcement officer or*
30 *otherwise charged with the duty of enforcing any of the laws of this Commonwealth or*
31 *any ordinance of any political subdivision thereof; (b) if such person or his spouse is not a*
32 *clerk, deputy or assistant clerk, or employee of any such clerk of a court not of record or*
33 *police department or sheriff's office in any county or city with respect to appointment to*
34 *the office of magistrate of such county or city; (c) if the appointment does not create a*
35 *parent-child, husband-wife, or brother-sister relationship between a district court judge and*
36 *such person serving within the same judicial district; provided (d) he shall be a United*
37 *States citizen and a resident of the county or city for which he is appointed to serve as*

1 *magistrate; provided no magistrate shall issue any warrant or process in complaint of his*
2 *spouse, child, grandchild, parent, grandparent, parent-in-law, child-in-law, brother, sister,*
3 *brother-in-law or sister-in-law, nephew, niece, uncle, aunt, first cousin, guardian or ward.*
4 *The residence provisions contained in this section shall not be a bar to the reappointment*
5 *of any magistrate in office on July one, nineteen hundred seventy-three, provided he is*
6 *otherwise eligible to serve under the provisions of this chapter.*

7 § 19.2-38. *Terms; compensation and benefits; vacancies; revocation of appointment.—*
8 *Persons appointed as magistrates under the provisions of this chapter shall serve for a*
9 *term of four years. Such term shall commence upon appointment and qualification.*
10 *Appointments made pursuant to this chapter prior to July one, nineteen hundred seventy-*
11 *four, shall be for the term beginning January one, nineteen hundred seventy-four, and*
12 *magistrates so appointed may take office immediately upon qualification. Magistrates shall*
13 *be entitled to compensation and other benefits only from the time they take office.*
14 *Vacancies shall be filled for the unexpired term by the chief circuit judge. Appointments*
15 *made under the provisions of this chapter shall be revocable at the pleasure of the chief*
16 *circuit judge.*

17 § 19.2-39. *Bond.—Every magistrate appointed under the provisions of this chapter*
18 *shall enter into bond in the sum of five thousand dollars, made payable to the*
19 *Commonwealth, before the clerk of the circuit court which exercises jurisdiction over the*
20 *political subdivision wherein such magistrate shall serve, for the faithful performance of*
21 *his duties. The premium for such bond shall be paid by the Commonwealth. Provided,*
22 *however, that in lieu of specific bonds, the Committee on District Courts may in its*
23 *discretion procure faithful performance of duty blanket bonds for any or all of the districts*
24 *enumerated in § 16.1-69.6 covering all magistrates included in such districts and for the*
25 *penalty contained in this section, unless in the discretion of the Committee, bonds with a*
26 *larger penalty should be obtained. Such blanket bonds shall be made payable to the*
27 *Commonwealth and shall cover all funds handled by a magistrate whether such funds*
28 *belong to the Commonwealth or any political subdivision thereof. Provided further, that in*
29 *those instances where specific bonds for magistrates are in effect, the Committee on*
30 *District Courts may, whenever it deems it advisable, terminate such specific bonds upon*
31 *obtaining a blanket bond covering such magistrates with appropriate refunds or credit*
32 *being made for the unearned premiums on the specific bonds terminated. A copy of any*
33 *such blanket bond so procured shall be filed with the State Comptroller and with the clerk*
34 *of the respective circuit court which exercises jurisdiction over the district wherein such*
35 *magistrate shall serve. The premiums for such blanket bonds shall be paid by the*
36 *Commonwealth.*

37 § 19.2-40. *Exception for special magistrates.—This article shall not apply to any*

1 county or city wherein special magistrates are appointed pursuant to the provisions of
2 Chapter 4 (§ 19.2-49 et seq.) of this title, except that the provisions of § 19.2-37 shall be
3 applicable to special magistrates.

4 Article 4.

5 Supervision.

6 § 19.2-41. When chief general district judge to exercise general supervisory power;
7 rules and regulations.—When delegated the authority by the chief circuit judge, the chief
8 general district judge shall exercise general supervisory power over the administration of
9 magistrates within the district. When such authority is delegated, it shall be the duty of the
10 chief general district judge to supervise the magistrates within the district and to
11 promulgate such reasonable rules and regulations as may be deemed necessary to
12 supplement or clarify the provisions of this chapter with respect to such magistrates, to
13 include fixing the time and place of the sitting of such magistrates.

14 § 19.2-42. Duty of Commonwealth's attorney.—It shall be the duty of the
15 Commonwealth's attorney to render legal advice to the magistrates within his city or
16 county and to advise them, when necessary, of changes in law and procedure.

17 § 19.2-43. Duty of Executive Secretary of Supreme Court.—It shall be the duty of the
18 Executive Secretary of the Supreme Court to assist the chief general district judges and
19 general district courts in the supervision and mandatory training of magistrates for which
20 purpose he shall be authorized to conduct training sessions and meetings for magistrates
21 and provide information and materials for their use. He may appoint one or more
22 magistrates to assist him and, in addition, with the approval of the Chief Justice, require
23 annual reports to be filed by the magistrates on their work as such, fees associated
24 therewith and other information pertinent to their office, on forms to be furnished by him.

25 Article 5.

26 Jurisdiction and Powers.

27 § 19.2-44. Territorial jurisdiction.—Except as provided in § 19.2-44.1 a magistrate
28 shall exercise the powers conferred by this title only in the judicial district for which he is
29 appointed.

30 § 19.2-44.1. Substitute magistrates.—When, due to death, sickness, vacation or
31 inability to serve under the provisions of § 19.2-37, a magistrate is not available in a
32 county or city, the chief judge of the circuit court having jurisdiction over the district may
33 appoint one or more magistrates or substitute magistrates from any adjoining county or
34 city within the judicial district to serve until such time as a duly appointed magistrate or
35 substitute magistrate is again available in such county or city.

36 The order of appointment of such magistrate or substitute magistrate shall specify
37 the period such magistrate or substitute magistrate shall serve and during this period such

1 *magistrate or substitute magistrate shall exercise the powers as enumerated in § 19.2-45, in*
2 *the same manner as if he had been appointed in that county or city.*

3 *§ 19.2-45. Powers enumerated.—A magistrate shall have the following powers only:*

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

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

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

10 *(4) The same power to issue warrants and subpoenas within such county or city as is*
11 *conferred upon district courts. Such attachments, warrants and subpoenas shall be*
12 *returnable before a district court;*

13 *(5) To issue civil warrants directed to the sheriff or constable of the county or city*
14 *wherein the defendant resides, together with a copy thereof, requiring him*
15 *person against whom the claim is, to appear before a district court on a*
16 *exceeding thirty days from the date thereof to answer such claim. If there be*
17 *defendants and any defendant resides outside the jurisdiction in which*
18 *issued, the summons for such defendant residing outside the jurisdiction*
19 *to the sheriff of the county or city of his residence, and such warrant may*
20 *returned as*

21 *(6) To administer oaths*

22 *(7) To act as conservators*

23 *(8) To hear and decide complaints, as provided by law, that persons*
24 *give a recognizance to*

26
27 *§ 19.2-46. Compensation.—The salaries of all magistrates shall be fixed*
28 *provided in Article 5.1 (§ 14.1-44.1 et seq.) of Chapter 1 of Title 14.1.*

29 *to herein shall be in lieu of all fees which may accrue to the recipient by*
30 *office. Notwithstanding this section, justices of the peace in*
31 *nineteen hundred seventy-three, who become magistrates under § 19.2-30*
32 *for the remainder of such term to receive the fees to which they were*
33 *effective*

34 *Each substitute magistrate shall receive for his services a per*
35 *may be established by the Committee*

36 *§ 19.2-47. Magistrate not to receive claims or evidence of*
37 *magistrate shall receive claims or evidence of debt for collection; and it*

1 for any magistrate to receive claims of any kind for collection, or to accept or receive
2 money or any other things of value by way of commission or compensation for or on
3 account of any collection made by or through him on any such claim, either before or after
4 judgment. Any magistrate violating this section shall be guilty of a class 1 misdemeanor.

5 § 19.2-48. Audits.—The Auditor of Public Accounts shall audit the records of all
6 magistrates who serve in any county or city upon request of the chief district judge of the
7 district in which such county or city is located.

8 § 19.2-48.1. Quarters for Magistrates.—Each county and city having a general district
9 court or juvenile and domestic relations district court and having one or more full-time
10 magistrates appointed pursuant to Article 3 of this Chapter, shall provide suitable quarters
11 for such magistrates. In so far as possible, such quarters should be located in a public
12 facility and should be appropriate to conduct the affairs of a judicial officer as well as
13 provide convenient access to law-enforcement officers. Such county or city shall also
14 provide all furniture and other equipment necessary for the efficient operation of the office.

15 CHAPTER 4.

16 Special Magistrates.

17 § 19.2-49. Office of special justice abolished.—Special justices, previously appointed
18 pursuant to former § 19.1-32.1, whose terms expire March one, nineteen hundred seventy-
19 five, shall continue in office as special magistrates pursuant to this section and their term
20 shall be extended to January one, nineteen hundred seventy-six. Thereafter, such special
21 magistrates shall be eligible to reappointment pursuant to this chapter.

22 § 19.2-50. Appointment, terms, powers and duties, salaries, etc., of special
23 magistrates.—The chief judge of the circuit court of any circuit may from time to time
24 appoint as many special magistrates for a county or city within such circuit as he deems
25 necessary or proper to perform the duties and exercise the powers set out herein. Special
26 magistrates shall be appointed for terms of four years. Such terms shall commence
27 January one of the year following appointment. Such appointment shall be revocable at the
28 pleasure of the appointing authority. Such special magistrates shall qualify in the same
29 manner as is prescribed by law for magistrates, and shall be conservators of the peace
30 within the county or city for which they are appointed. They shall exercise within such
31 county or city all the power and authority which is conferred upon magistrates by general
32 law.

33 When any court violations bureau is duly established in any county or city, then such
34 special magistrates shall be employees of such county or city, for the purpose of
35 performing the duties and functions of such bureau and shall be subject to all such general
36 administrative regulations governing county or city employees as may be reasonably
37 applied to such special magistrates and the chief general district court judge having

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

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

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

14 *§ 19.2-51. Chief special magistrates.—The chief judge of the circuit court having*
15 *jurisdiction in any city or county having at least two special magistrates may appoint one*
16 *special magistrate as a chief special magistrate for the purpose of maintaining schedules,*
17 *assisting in training and being responsible to the chief district judge for the conduct of the*
18 *special magistrates so appointed and to properly maintain the special magistrate system*
19 *within the city or county so using a special magistrate system.*

20 *CHAPTER 5.*

21 *Search Warrants.*

22 *§ 19.2-52. When a search warrant may issue.—Search warrants, based upon*
23 *complaint on oath supported by an affidavit as required in § 19.2-54, may be issued by any*
24 *judge, magistrate or other person having authority to issue criminal warrants, if he be*
25 *satisfied from such complaint and affidavit that there is reasonable and probable cause for*
26 *the issuance of such a search warrant.*

27 *§ 19.2-53. What may be searched and seized.—Search warrants may be issued for the*
28 *search of specified places, things or persons, and seizure therefrom of the following things*
29 *as specified in the warrant:*

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

31 *(2) Articles or things the sale or possession of which is unlawful;*

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

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

35 *§ 19.2-54. Affidavit preliminary to issuance of search warrant; general search warrant*
36 *prohibited.—No search warrant shall be issued until there is filed with the officer*
37 *authorized to issue the same an affidavit of some person reasonably describing the place,*

1 *thing or person to be searched, the things to be searched for thereunder, alleging briefly*
2 *material facts, constituting the probable cause for the issuance of such warrant and*
3 *alleging substantially the offense in relation to which such search is to be made and that*
4 *the object or thing searched for constitutes evidence of the commission of such offense.*
5 *Such affidavit shall be certified by the officer who issues such warrant to the county clerk*
6 *of his county or to the court clerk, admitting deeds to record, of his city and filed with*
7 *such clerk within seven days after the issuance of such warrant and shall by such clerk be*
8 *preserved as a record and shall at all times be subject to inspection by the public. Each*
9 *such clerk shall maintain an index of all such affidavits filed in his office in order to*
10 *facilitate inspection. No such warrant shall be issued on an affidavit omitting such*
11 *essentials, and no general warrant for the search of a house, place, compartment, vehicle*
12 *or baggage shall be issued.*

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

18 *§ 19.2-55. Issuing general search warrant or search warrant without affidavit a*
19 *malfeasance.—Any person having authority to issue criminal warrants who wilfully and*
20 *knowingly issues a general search warrant or a search warrant without the affidavit*
21 *required by § 19.2-54 shall be deemed guilty of a malfeasance.*

22 *§ 19.2-56. To whom search warrant directed; what it shall command; contents.—The*
23 *judge, magistrate or other official authorized to issue criminal warrants, shall issue a*
24 *search warrant if he finds from the facts or circumstances recited in the affidavit that*
25 *there is probable cause for the issuance thereof.*

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

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

37 *Any warrant directed “to any policeman of a county, city or town” shall be executed*

1 by the policeman or other officer into whose hands it shall come or be delivered.

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

6 § 19.2-57. Execution and return of warrant; list of property seized.—The warrant
7 shall be executed by the search of the place described in the warrant and, if property
8 described in the warrant be found there, by the seizure of the property. The officer who
9 seizes any property shall prepare an inventory thereof, under oath. Any seized property
10 shall be produced before the court designated in the warrant. The officer executing the
11 warrant shall endorse the date of execution thereon and shall file the warrant, with the
12 inventory attached (or a notation that no property was seized), within three days after the
13 execution of such search warrant in the court having criminal jurisdiction which will hear
14 the case involving the articles seized and shall become a part of the record in the case.

15 § 19.2-58. Disposition of property seized.—If any such warrant be executed by the
16 seizure of property, or of any other of the things aforesaid, the same shall be safely kept
17 by the direction of such judge or court, to be used as evidence, and thereafter be disposed
18 of as provided by law; provided, however, that any such property seized under such
19 warrant which is not used in evidence and any property which is stolen or embezzled
20 property shall be restored to its owner, and the things mentioned in § 19.2-53 may be
21 burnt or otherwise destroyed, under such direction, as soon as there is no further need for
22 its use as evidence unless it is otherwise expressly provided by law.

23 § 19.2-59. Search without warrant a misdemeanor; exceptions; civil liability;
24 additional penalty.—No officer of the law or any other person shall search any place, thing
25 or person, except by virtue of and under a warrant issued by a proper officer. Any officer
26 or other person searching any place, thing or person otherwise than by virtue of and under
27 a search warrant, shall be guilty of a class 1 misdemeanor. Any officer or person violating
28 the provisions of this section shall be liable to any person aggrieved thereby in both
29 compensatory and punitive damages. Any officer found guilty of a second offense under
30 this section shall, upon conviction thereof, in addition to the penalty hereinbefore provided,
31 immediately forfeit his office, and such conviction shall be deemed to create a vacancy in
32 such office to be filled according to law.

33 Provided, however, that any officer empowered to enforce the game laws may
34 without a search warrant enter for the purpose of enforcing such laws, any freight yard or
35 room, passenger depot, baggage room or warehouse, storage room or warehouse, train,
36 baggage car, passenger car, express car, Pullman car or freight car of any common carrier,
37 or any boat, automobile or other vehicle; but nothing in this proviso contained shall be

1 construed to permit a search of any occupied berth or compartment on any passenger car
2 or boat of any baggage, bag, trunk, box or other closed container without a search
3 warrant.

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

9 § 19.2-60. Motion for return of seized property and to suppress.—A person aggrieved
10 by an allegedly unlawful search or seizure may move the court to return any seized
11 property and to suppress it for use as evidence. The court shall receive evidence on any
12 issue of fact necessary to the decision of the motion. If the motion is granted by a court of
13 record, any seized property shall be restored as soon as practicable unless otherwise
14 subject to lawful detention, and such property shall not be admissible in evidence at any
15 hearing or trial. If the motion is granted by a court not of record, such property shall not
16 be admissible in evidence at any hearing or trial before that court, but the ruling shall have
17 no effect on any hearing or trial in a court of record.

18 CHAPTER 6.

19 Interception of Wire or Oral Communications.

20 § 19.2-61. Definitions.—As used in this chapter:

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

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

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

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

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

1 *ordinary course of his duties;*

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

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

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

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

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

16 *(9) "Communications common carrier" means any person engaged as a common*
17 *carrier for hire in communication by wire or radio or in radio transmission of energy; and*

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

20 *§ 19.2-62. Interception, disclosure, etc., of wire or oral communications unlawful;*
21 *penalties; exceptions.—(1) Except as otherwise specifically provided in this chapter any*
22 *person who:*

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

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

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

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

34 *(2) (a) It shall not be unlawful under this chapter for an operator of a switchboard,*
35 *or an officer, employee or agent of any communications common carrier, whose facilities*
36 *are used in the transmission of a wire communication, to intercept, disclose or use that*
37 *communication in the normal course of his employment while engaged in any activity*

1 which is a necessary incident to the rendition of his service or to the protection of the
2 rights or property of the carrier of such communication; provided, that such
3 communications common carriers shall not utilize service observing or random monitoring
4 except for mechanical or service quality control checks. It shall not be a criminal offense
5 under this chapter for an officer, employee or agent of any communications common
6 carrier to provide information facilities or technical assistance to an investigative or law-
7 enforcement officer, who, pursuant to this chapter, is authorized to intercept a wire or oral
8 communication.

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

12 § 19.2-63. Manufacture, possession, sale or advertising of certain devices unlawful;
13 penalties; exceptions.—(1) Except as otherwise specifically provided in this chapter, any
14 person who willfully:

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

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

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

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

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

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

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

37 § 19.2-64. Forfeiture of unlawful devices.—Any electronic, mechanical or other device

1 used, manufactured, assembled, possessed, sold, or advertised in violation of § 19.2-62 or
2 19.2-63 may be seized and forfeited to the Commonwealth, and turned over to the court of
3 record in the city or county in which it was seized and such property shall be disposed of
4 in such manner as the court may direct.

5 § 19.2-65. When intercepted communications and evidence derived therefrom not to
6 be received in evidence.—Whenever any wire or oral communication has been intercepted,
7 no part of the contents of such communication and no evidence derived therefrom may be
8 received in evidence in any trial, hearing or other proceeding in or before any court, grand
9 jury, department, officer, commission, regulatory body, legislative committee or other
10 agency of this State or a political subdivision thereof if the disclosure of that information
11 would be in violation of this chapter.

12 § 19.2-66. When Attorney General or Commonwealth's attorney may apply for order
13 authorizing interception of communications.—The Attorney General in any case where the
14 Attorney General is authorized by law to prosecute or pursuant to a request in his official
15 capacity of an attorney for the Commonwealth in any city or county may apply to a judge
16 of competent jurisdiction for the jurisdiction where the proposed intercept is to be made
17 for an order authorizing the interception of wire or oral communications by the
18 Department of State Police, when such interception may reasonably be expected to provide
19 evidence of the commission of a felonious offense of extortion, bribery, or any felony
20 violation of § 54-524.101:1. Such application shall be made, and such order may be
21 granted, in conformity with the provisions of § 19.2-68.

22 § 19.2-67. Disclosure of information obtained by authorized means.—(1) Any
23 investigative or law-enforcement officer, who by any means authorized by this chapter, has
24 obtained knowledge of the contents of any wire or oral communication, or evidence
25 derived therefrom, may disclose such contents to another investigative or law-enforcement
26 officer to the extent that such disclosure is appropriate to the proper performance of the
27 official duties of the officer making or receiving the disclosure.

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

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

1 state or in any federal or state grand jury proceeding.

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

6 (5) When an investigative or law-enforcement officer, while engaged in intercepting
7 wire or oral communications in the manner authorized herein, intercepts wire or oral
8 communications relating to offenses other than those specified in the order of
9 authorization the contents thereof, and evidence derived therefrom, shall not be disclosed
10 or used as provided in § 19.2-67 (1)-(3). Violations of this subsection (5) shall be punishable
11 as provided in § 19.2-62.

12 § 19.2-68. Application for and issuance of order authorizing interception; contents of
13 order; recording and retention of intercepted communications, applications and orders;
14 notice to parties; introduction in evidence of information obtained.—(1) Each application
15 for an order authorizing the interception of a wire or oral communication shall be made in
16 writing upon oath or affirmation to the appropriate judge of competent jurisdiction and
17 shall state the applicant's authority to make such application. Each application shall be
18 verified by the Attorney General to the best of his knowledge and belief and shall include
19 the following information:

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

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

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

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

37 (e) A full and complete statement of the facts concerning all previous applications

1 *known to the individual authorizing and making the application, made to any judge for*
2 *authorization to intercept wire or oral communications involving any of the same persons,*
3 *facilities or places specified in the application, and the action taken by the judge on each*
4 *such application; and*

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

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

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

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

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

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

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

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

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

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

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

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

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

1 *An order authorizing the interception of a wire or oral communication shall, upon*
2 *request of the applicant, direct that a communications common carrier, landlord, custodian*
3 *or other person shall furnish the Department of State Police forthwith all information,*
4 *facilities and technical assistance necessary to accomplish the interception unobtrusively*
5 *and with a minimum of interference with the services that such carrier, landlord, custodian*
6 *or person is providing the person whose communications are to be intercepted. Any*
7 *communications common carrier, landlord, custodian or other person furnishing such*
8 *facilities or technical assistance shall be compensated therefor by the Commonwealth at*
9 *the prevailing rates, to be paid out of the criminal fund.*

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

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

27 *(7) (a) The contents of any wire or oral communication intercepted by any means*
28 *authorized by this chapter shall, if possible, be recorded on tape or wire or other*
29 *comparable device. Should it not be possible to record the intercepted communication, a*
30 *detailed resume of such communication shall forthwith be reduced to writing and filed with*
31 *the court. The recording of the contents of any wire or oral communication under this*
32 *subsection shall be done in such way as will protect the recording from editing or other*
33 *alterations and shall not be duplicated except upon order of the court as hereafter*
34 *provided. Immediately upon the expiration of the period of the order, or extensions thereof,*
35 *such recording or detailed resume shall be made available to the judge issuing such order*
36 *and sealed under his directions. Custody of any recordings or detailed resumes shall be*
37 *vested with the court and shall not be destroyed for a period of ten years from the date of*

1 the order and then only by direction of the court; provided, however, should any
2 interception fail to reveal any information related to the offense or offenses for which it
3 was authorized, such recording or resume shall be destroyed after the expiration of sixty
4 days after the notice required by subsection 7 (d) of § 19.2-68 is served. Duplicate
5 recordings may be made for use or disclosure pursuant to the provisions of subsections (1)
6 and (2) of § 19.2-67 for investigations. The presence of the seal provided for by this
7 subsection, or a satisfactory explanation for the absence thereof, shall be a prerequisite for
8 the use or disclosure of the contents of any wire or oral communication or evidence
9 derived therefrom under subsection (3) of § 19.2-67.

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

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

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

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

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

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

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

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

36 (8) (a) The contents of any intercepted wire or oral communication or evidence
37 derived therefrom shall not be received in evidence or otherwise disclosed in any trial,

1 hearing or other proceeding in a State court unless each party to the communication and
2 to such proceeding, not less than ten days before the trial, hearing or proceeding, has been
3 furnished with a copy of the court order, accompanying application under which the
4 interception was authorized and the contents of any intercepted wire or oral
5 communication that is to be used in any trial, hearing or other proceeding in a State court.
6 This ten-day period may be waived by the judge if he finds that it was not possible to
7 furnish the party with the above information ten days before the trial, hearing or
8 proceeding and that the party will not be prejudiced by the delay in receiving such
9 information; provided that such information in any event shall be given prior to the day of
10 the trial, and the inability to comply with such ten-day period shall be grounds for the
11 granting of a continuance to either party.

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

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

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

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

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

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

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

35 § 19.2-69. Civil action for unlawful interception, disclosure or use.—Any person
36 whose wire or oral communication is intercepted, disclosed or used in violation of this
37 chapter shall (1) have a civil cause of action against any person who intercepts, discloses

1 or uses, or procures any other person to intercept, disclose or use such communications,
2 and (2) be entitled to recover from any such person:

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

6 (b) Punitive damages; and

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

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

11 § 19.2-70. Reports to be filed by courts and Attorney General.—All courts of the
12 State and the Attorney General shall file all reports required by 18 U.S.C.A. § 2519. The
13 Attorney General shall file a written report with the Clerks of the Senate and House of
14 Delegates on or before December thirty-first of each year setting forth the number of
15 applications made pursuant to this chapter, the number of interceptions authorized, the
16 number of arrests resulting from each application, the number of convictions including a
17 breakdown by offense, the cost of each application granted and the number of requests
18 denied. Such information shall be made available by such Clerks to any member of the
19 General Assembly upon request.

20

CHAPTER 7.

21

Arrest.

22 § 19.2-71. Who may issue process of arrest.—Process for the arrest of a person
23 charged with a criminal offense may be issued by the judge, or clerk of any circuit court,
24 any general district court, any juvenile and domestic relations district court, or any
25 magistrate as provided for in Chapters 3 and 4 of this Title.

26 § 19.2-72. When it may issue; what to recite and require.—On complaint of a criminal
27 offense to any officer authorized to issue criminal warrants he shall examine on oath the
28 complainant and any other witnesses, or when such officer shall suspect that an offense
29 punishable otherwise than by a fine has been committed he may, without formal
30 complaint, issue a summons for witnesses and shall examine such witnesses. If upon such
31 examination such officer finds that there is probable cause to believe the accused has
32 committed an offense, such officer shall issue a warrant for his arrest. The warrant shall
33 (i) be directed to an appropriate officer or officers, (ii) name the accused or, if his name is
34 unknown, set forth a description by which he can be identified with reasonable certainty,
35 (iii) describe the offense charged with reasonable certainty, (iv) command that the accused
36 be arrested and brought before a court of appropriate jurisdiction in the county, city or
37 town in which the offense was allegedly committed, and (v) be signed by the issuing

1 officer. The warrant shall require the officer to whom it is directed to summon such
2 witnesses as shall be therein named to appear and give evidence on the examination. But
3 in a city or town having a police force, the warrant shall be directed "To any policeman of
4 such city (or town)," and shall be executed by the policeman into whose hands it shall
5 come or be delivered.

6 § 19.2-73. Issuance of summons instead of warrant in certain cases.—In any
7 misdemeanor case or in any class of misdemeanor cases, or in any case involving
8 complaints made by any State or local governmental official or employee having
9 responsibility for the enforcement of any statute, ordinance or administrative regulation,
10 the magistrate may issue a summons instead of a warrant when specifically authorized by
11 the court or courts having jurisdiction over the trial of the offense charged. Any person on
12 whom such summons is served shall appear on the date set forth in same, and if such
13 person fails to appear in such court at such time and on such date then he shall be guilty
14 of a class 1 misdemeanor.

15 § 19.2-74. Issuance and service of summons in place of warrant in misdemeanor
16 case.—Whenever any person is arrested for a violation of any county, city or town
17 ordinance or of any provision of this Code punishable as a misdemeanor, except as
18 otherwise provided in Title 46.1, or § 18.1-54 of the Code of Virginia, as amended, the
19 arresting officer shall take the name and address of such person and issue a summons or
20 otherwise notify him in writing to appear at a time and place to be specified in such
21 summons or notice. Upon the giving by such person of his written promise to appear at
22 such time and place, the officer shall forthwith release him from custody.

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

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

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

37 Notwithstanding the above, if any person is reasonably believed by the arresting

1 officer to be likely to cause harm to himself or to any other person, the officer may take
2 such person before a magistrate or other issuing authority of the county or city in which
3 the violation occurred and request the issuance of a warrant.

4 § 19.2-75. Copy of process to be left with accused; exception.—Except as provided in
5 § 46.1-178, any process issued against a person charged with a criminal offense shall be in
6 duplicate and the officer serving such process shall leave a copy with the person charged.

7 § 19.2-76. Execution and return of warrant or summons; arrest anywhere in the
8 State.—An officer may execute within his jurisdiction a warrant or summons issued
9 anywhere in the State. A warrant shall be executed by the arrest of the accused, and a
10 summons shall be executed by delivering a copy to the accused personally, or, if the
11 accused be a corporation, in the same manner as in a civil case. The officer executing a
12 warrant shall endorse the date of execution thereon and make return thereof to a judicial
13 official having authority to grant bail. The officer executing a summons shall endorse the
14 date of execution thereon and make return thereof to the court to which the summons is
15 returnable.

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

23 § 19.2-77. Flight, pursuit, arrest anywhere in the State.—Whenever a person in the
24 custody of an officer shall escape or whenever a person shall flee from an officer
25 attempting to arrest him, such officer, with or without a warrant, may pursue such person
26 anywhere in the State and, when actually in close pursuit, may arrest him wherever he is
27 found. If the arrest is made in a county or corporation adjoining that from which the
28 accused fled, the officer may forthwith return the accused before the proper official of the
29 county or corporation from which he fled. If the arrest is made beyond the foregoing
30 limits, the officer shall proceed according to the provisions of § 19.2-76, and if such arrest
31 is made without a warrant, the officer shall procure a warrant from the magistrate of the
32 county or corporation wherein the arrest was made, charging the accused with the offense
33 committed in the county or corporation from which he fled.

34 § 19.2-78. Uniform of officer making arrest.—All officers whose duties are to make
35 arrests acting under the authority of any law of this State or any subdivision thereof, who
36 shall make any arrest, search or seizure on any public road or highway of this State shall
37 be dressed at the time of making any such arrest, search or seizure in such uniform as he

1 may customarily wear in the performance of his duties which will clearly show him to
2 casual observation to be an officer.

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

5 § 19.2-79. Arrest by officers of other states of the United States.—Any member of a
6 duly organized state, county or municipal peace unit of another state of the United States
7 who enters this State in close pursuit, and continues within this State in such close
8 pursuit, of a person in order to arrest him on the ground that he has committed a felony in
9 such other state shall have the same authority to arrest and hold in custody such person as
10 members of a duly organized state, county or municipal peace unit of this State have to
11 arrest and hold in custody a person on the ground that he has committed a felony in this
12 State, if the state from which such person has fled extends similar privileges to any
13 member of a duly organized State, county or municipal peace unit of this Commonwealth.

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

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

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

26 § 19.2-80. Duty of arresting officer; bail.—An officer making an arrest under a
27 warrant shall bring the arrested person without unnecessary delay before and return such
28 warrant to a court of appropriate jurisdiction of the county or corporation in which the
29 warrant is issued, or before an official having authority to grant bail, who shall admit him
30 to bail or commit him to jail; provided, however, that instead of admitting to bail or
31 committing to jail, such official may, if the accused consents and the Commonwealth does
32 not object, proceed to trial if the accused is charged with a misdemeanor and the official is
33 a judge of a court not of record having jurisdiction to try him for such misdemeanor.

34 § 19.2-81. Arrests without warrants in certain cases.—Members of the State Police
35 force of the Commonwealth, the sheriffs of the various counties, and their deputies, the
36 members of any county police force, the members of any duly constituted police force of
37 any city or town of the Commonwealth and the special policemen of the counties as

1 provided by § 15.1-144, provided such officers are in uniform, or displaying a badge of
2 office, may arrest, without a warrant, any person who commits any crime in the presence
3 of such officer and any person whom he has reasonable grounds or probable cause to
4 suspect of having committed a felony not in his presence; and any such officer, may, at the
5 scene of any motor vehicle accident, or in the apprehension of any person charged with the
6 theft of any motor vehicle, on any of the highways of the Commonwealth, upon reasonable
7 grounds to believe, based upon personal investigation, including information obtained from
8 eyewitnesses, that a crime has been committed by any person then and there present,
9 apprehend such person without a warrant of arrest; and such officers may arrest, without
10 a warrant, persons duly charged with crime in another jurisdiction upon receipt of a
11 telegram, computer print out, facsimile print out, a radio or teletype message, in which
12 telegram, computer printout, facsimile printout, radio or teletype message shall be given
13 the name or a reasonably accurate description of such person wanted, the crime alleged
14 and an allegation that such person is likely to flee the jurisdiction of the Commonwealth.

15 § 19.2-82. Procedure upon arrest without warrant.—A person arrested without a
16 warrant shall be brought forthwith before an officer authorized to issue criminal warrants
17 in the county or city where the arrest is made, unless such person is released on summons
18 as provided by law. The officer before whom such person is brought shall proceed to
19 examine the officer making the arrest. If the officer before whom such person is brought
20 has reasonable grounds upon which to believe that a criminal offense has been committed,
21 and that the person arrested has committed such offense, he shall issue such a warrant as
22 might have been issued prior to the arrest of such person under the provisions of § 19.2-72.
23 If such a warrant is issued the case shall thereafter be disposed of under the provisions of
24 §§ 19.2-183 to 19.2-190, if the issuing officer is a judge; under the provisions of §§ 19.2-119
25 to 19.2-134 if the issuing officer is a magistrate, clerk or other authorized officer. If such a
26 warrant be not issued the person so arrested shall be released; provided, however, that this
27 section shall not bar a judge of a court not of record from proceeding in accord with the
28 provisions of § 16.1-129.1.

29 § 19.2-83. Authority of police officers to stop, question and search suspicious
30 persons.—Any police officer may detain a person in a public place whom he reasonably
31 suspects is committing, has committed or is about to commit a felony or possesses a
32 concealed weapon in violation of § 18.2-308, and may require of such person his name and
33 address. Provided further, that such police officer may, if he reasonably believes that such
34 person intends to do him bodily harm, search his person for a dangerous weapon, and if
35 such person is found illegally to possess a dangerous weapon, the police officer shall take
36 possession of the same and dispose of it as is provided by law. If during such search for a
37 dangerous weapon the officer finds upon such person any article or thing the possession of

1 *which is unlawful, he shall seize the same and arrest the person for such unlawful*
2 *possession.*

3 **CHAPTER 8.**

4 ***Extradition of Criminals.***

5 **Article 1.**

6 ***Fugitives from Foreign Nations.***

7 § 19.2-84. *Governor to surrender on requisition of President.—The Governor shall*
8 *whenever required by the executive authority of the United States, pursuant to the*
9 *Constitution and laws thereof, deliver over to justice any person found within the State,*
10 *who is charged with having committed any crime without the jurisdiction of the United*
11 *States.*

12 **Article 2.**

13 ***Uniform Criminal Extradition Act.***

14 § 19.2-85. *Definitions.—When appearing in this chapter:*

15 (1) *The term “Governor” includes any person performing the functions of Governor*
16 *by authority of the law of this State;*

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

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

22 (4) *The term “judge” means a judge of a court of record having criminal jurisdiction.*

23 § 19.2-86. *Fugitives from justice; duty of Governor.—Subject to the provisions of this*
24 *chapter, the provisions of the Constitution of the United States controlling, and any and all*
25 *acts of Congress enacted in pursuance thereof, the Governor shall have arrested and*
26 *delivered up to the executive authority of any other of the United States any person*
27 *charged in that state with treason, felony, or other crime, who has fled from justice and is*
28 *found in this State.*

29 § 19.2-87. *Form of demand.—No demand for the extradition of a person charged*
30 *with, or convicted of, crime in another state shall be recognized by the Governor unless in*
31 *writing alleging, except in cases arising under § 19.2-91, that the accused was present in*
32 *the demanding state at the time of the commission of the alleged crime and that thereafter*
33 *he fled from such state, and accompanied: (1) by a copy of an indictment found, (2) by a*
34 *copy or an information supported by an affidavit filed in the state having jurisdiction of*
35 *the crime, (3) by a copy of an affidavit made before a magistrate in such state together*
36 *with a copy of any warrant which was issued thereupon, or (4) by a copy of a judgment of*
37 *conviction or of a sentence imposed in execution thereof together with a statement by the*

1 executive authority of the demanding state that the person claimed has escaped from
2 confinement or has broken the terms of his bail, probation or parole. The indictment,
3 information or affidavit made before the magistrate must substantially charge the person
4 demanded with having committed a crime under the law of that state; and the copy of the
5 indictment, information, affidavit, judgment of conviction or sentence must be
6 authenticated by the executive authority making the demand.

7 § 19.2-88. Governor may investigate case.—When a demand shall be made upon the
8 Governor by the executive authority of another state for the surrender of a person so
9 charged with, or convicted of, crime, the Governor may call upon the Attorney General or
10 any other officer of this State to investigate or assist in investigating the demand and to
11 report to him the situation and circumstances of the person so demanded and whether he
12 ought to be surrendered.

13 § 19.2-89. Extradition of persons imprisoned or awaiting trial in another state.—
14 When it is desired to have returned to this State a person charged in this State with a
15 crime and such person is imprisoned or is held under criminal proceedings then pending
16 against him in another state, the Governor may agree with the executive authority of such
17 other state for the extradition of such person before the conclusion of such proceedings or
18 his term of sentence in such other state, upon condition that such person be returned to
19 such other state at the expense of this State as soon as the prosecution in this State is
20 terminated.

21 § 19.2-90. Extradition of persons who have left demanding state involuntarily.—The
22 Governor may also surrender on demand of the executive authority of any other state any
23 person in this State who is charged in the manner provided in §§ 19.2-109 to 19.2-111, with
24 having violated the laws of the state whose executive authority is making the demand,
25 even though such person left the demanding state involuntarily.

26 § 19.2-91. Extradition of persons not in demanding state at time of commission of
27 crime.—The Governor may also surrender, on demand of the executive authority of any
28 other state, any person in this State charged in such other state in the manner provided in
29 § 19.2-87 with committing an act in this State, or in a third state, intentionally resulting in
30 a crime in the state whose executive authority is making the demand. The provisions of
31 this chapter not otherwise inconsistent shall apply to such cases, even though the accused
32 was not in that state at the time of the commission of the crime, and has not fled
33 therefrom.

34 § 19.2-92. Issue of Governor's warrant of arrest; its recitals.—If the Governor decides
35 that a demand for the extradition of a person, charged with, or convicted of, crime in
36 another state should be complied with, he shall sign a warrant of arrest, which shall be
37 sealed with the State seal, and be directed to the sheriff or sergeant of any county or city

1 or to any peace officer or other person whom he may think fit to entrust with the
2 execution thereof. The warrant must substantially recite the facts necessary to the validity
3 of its issuance.

4 § 19.2-93. Manner and place of execution.—Such warrant shall authorize the officer
5 or other person to whom it is directed to arrest the accused at any time and at any place
6 where he may be found within the State and to command the aid of all peace officers or
7 other persons in the execution of the warrant and to deliver the accused, subject to the
8 provisions of this chapter, to the duly authorized agent of the demanding state.

9 § 19.2-94. Assistance to arresting officer.—Every officer or other person empowered
10 to make the arrest, as provided in the preceding section, shall have the same authority, in
11 arresting the accused, to command assistance therein as the sheriffs and sergeants of the
12 several counties and cities of this State have by law in the execution of any criminal
13 process directed to them, with like penalties against those who refuse to render their
14 assistance.

15 § 19.2-95. Rights of accused persons; application for writ of habeas corpus.—No
16 person arrested upon such warrant shall be delivered over to the agent whom the
17 executive authority demanding him shall have appointed to receive him unless he shall first
18 be taken forthwith before a judge of a circuit or general district court in this State, who
19 shall inform him of the demand made for his surrender and of the crime with which he is
20 charged, and that he has the right to demand and procure legal counsel; and if the prisoner
21 or his counsel shall state that he or they desire to test the legality of his arrest, the judge
22 or trial justice shall fix a reasonable time to be allowed him within which to apply for a
23 writ of habeas corpus. When such writ is applied for, notice thereof and of the time and
24 place of hearing thereon shall be given to the attorney for the Commonwealth of the
25 county or city in which the arrest is made and in which the accused is in custody, and to
26 the agent of the demanding state.

27 § 19.2-96. Penalty for noncompliance with preceding section.—Any officer who shall
28 deliver to the agent for extradition of the demanding state a person in his custody under
29 the Governor's warrant in wilful disobedience to the last preceding section shall be guilty
30 of a class 1 misdemeanor.

31 § 19.2-97. Confinement in jail when necessary.—The officer or persons executing the
32 Governor's warrant of arrest, or the agent of the demanding state to whom the prisoner
33 may have been delivered, may, when necessary, confine the prisoner in the jail of any
34 county or city through which he may pass; and the keeper of such jail shall receive and
35 safely keep the prisoner until the officer or person having charge of him is ready to
36 proceed on his route, such officer or person being chargeable with the expense of keeping.

37 § 19.2-98. Same; for prisoners being taken through State.—The officer or agent of a

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

12 § 19.2-99. Arrest prior to requisition.—Whenever: (1) any person within this State
13 shall be charged on the oath of any credible person before any judge, magistrate or other
14 officer authorized to issue criminal warrants in this State with the commission of any
15 crime in any other state and, except in cases arising under § 19.2-91, (a) with having fled
16 from justice, (b) with having been convicted of a crime in that state and of having escaped
17 from confinement, or (c) of having broken the terms of his bail, probation, or parole, or (2)
18 complaint shall have been made before any such judge, magistrate or other officer in this
19 State setting forth on the affidavit of any credible person in another state that a crime has
20 been committed in such other state and that the accused has been charged in such state
21 with the commission of the crime, and, except in cases arising under § 19.2-91, (a) has fled
22 from justice, (b) having been convicted of a crime in that state has escaped from
23 confinement, or (c) broken the terms of his bail, probation or parole, and that the accused
24 is believed to be in this State, such judge, magistrate or other officer shall issue a warrant
25 directed to any sheriff or to any peace officer commanding him to apprehend the person
26 named therein, wherever he may be found in this State, and to bring him before any judge
27 who may be available in or convenient of access to the place where the arrest may be
28 made, to answer the charge of complaint and affidavit. A certified copy of the sworn
29 charge or complaint and affidavit upon which the ~~warrant~~ is issued shall be attached to the
30 warrant.

31 § 19.2-100. Arrest without a warrant.—The arrest of a person may be lawfully made
32 also by any peace officer or private person without a warrant upon reasonable information
33 that the accused stands charged in the courts of a state with a crime punishable by death
34 or imprisonment for a term exceeding one year. But when so arrested the accused shall be
35 taken before a judge, magistrate or other officer authorized to issue criminal warrants in
36 this State with all practicable speed and complaint made against him under oath setting
37 forth the ground for the arrest as in the preceding section; and thereafter his answer shall

1 *be heard as if he had been arrested on a warrant.*

2 § 19.2-101. *Confinement to await requisition; bail.—If from the examination before*
3 *the judge it appears that the person held pursuant to either of the two preceding sections*
4 *is the person charged with having committed the crime alleged and, except in cases arising*
5 *under § 19.2-91, that he has fled from justice, the judge shall, by a warrant reciting the*
6 *accusation, commit him to jail for such a time, not exceeding thirty days, specified in the*
7 *warrant as will enable the arrest of the accused to be made under a warrant of the*
8 *Governor on a requisition of the executive authority of the state having jurisdiction of the*
9 *offense, unless the accused give bail as provided in the next section, or until he shall be*
10 *legally discharged.*

11 § 19.2-102. *Bail; in what cases; conditions of bond.—Unless the offense with which*
12 *the prisoner is charged is shown to be an offense punishable by death or life imprisonment*
13 *under the laws of the state in which it was committed, any judge, magistrate or other*
14 *person authorized by law to admit persons to bail in this State may admit the person*
15 *arrested to bail by bond, with sufficient sureties, and in such sum as he deems proper,*
16 *conditioned upon his appearance before a judge at a time specified in such bond and upon*
17 *his surrender for arrest upon the warrant of the Governor of this State.*

18 § 19.2-103. *Discharge, recommitment or renewal of bail.—If the accused is not*
19 *arrested under warrant of the Governor by the expiration of the time specified in the*
20 *warrant or bond, any judge in this State may discharge him or may recommit him for a*
21 *further period not to exceed sixty days, or such judge may again take bail for his*
22 *appearance and surrender, as provided in the preceding section, but within a period not to*
23 *exceed sixty days after the date of such new bond.*

24 § 19.2-104. *Forfeiture of bail.—If the prisoner is admitted to bail and fails to appear*
25 *and surrender himself according to the conditions of his bond, any judge of a circuit or*
26 *general district court by proper order, shall declare the bond forfeited and order his*
27 *immediate arrest without warrant if he be within this State. Recovery may be had on such*
28 *bond in the name of the State as in the case of other bonds given by the accused in*
29 *criminal proceedings within this State.*

30 § 19.2-105. *Persons under criminal prosecution in this State at time of requisition.—If*
31 *a criminal prosecution has been instituted against such person under the laws of this State*
32 *and is still pending, the Governor, in his discretion, either may surrender him on demand*
33 *of the executive authority of another state or hold him until he has been tried and*
34 *discharged or convicted and punished in this State.*

35 § 19.2-106. *Guilt or innocence of accused, when inquired into.—The guilt or*
36 *innocence of the accused as to the crime of which he is charged may not be inquired into*
37 *by the Governor or in any proceeding after the demand for extradition accompanied by a*

1 charge of crime in legal form as above provided shall have been presented to the Governor,
2 except as it may be involved in identifying the person held as the person charged with the
3 crime.

4 § 19.2-107. Governor may recall warrant or issue alias.—The Governor may recall his
5 warrant of arrest or may issue another warrant whenever he deems it proper.

6 § 19.2-108. Fugitives from this State; duty of Governor.—Whenever the Governor
7 shall demand a person charged with crime or with escaping from confinement or breaking
8 the terms of his bail, probation or parole in this State, from the executive authority of any
9 other state, or from the chief justice or an associate justice of the Supreme Court of the
10 District of Columbia authorized to receive such demand under the laws of the United
11 States, he shall issue a warrant under the seal of this State to some agent commanding
12 him to receive the person so charged if delivered to him and convey him to the proper
13 officer of the county or city in this State in which the offense was committed.

14 § 19.2-109. Application for requisition for return of person charged with crime.—
15 When the return to this State of a person charged with crime in this State is required, the
16 attorney for the Commonwealth shall present to the Governor his written application for a
17 requisition for the return of the person charged, in which application shall be stated the
18 name of the person so charged, the crime charged against him, the approximate time, place
19 and circumstances of its commission, the state in which he is believed to be, including the
20 location of the accused therein at the time the application is made, and certifying that, in
21 the opinion of the attorney for the Commonwealth, the ends of justice require the arrest
22 and return of the accused to this State for trial and that the proceeding is not instituted to
23 enforce a private claim.

24 § 19.2-110. Application for requisition for return of escaped convict, etc.—When the
25 return to this State is required of a person who has been convicted of a crime in this State
26 and has escaped from confinement or broken the terms of his bail, probation or parole, the
27 attorney for the Commonwealth, of the county or city in which the offense was committed,
28 or the warden of the institution or sheriff of the county or city from which the escape was
29 made, shall present to the Governor a written application for a requisition for the return of
30 such person, in which application shall be stated the name of the person, the crime of
31 which he was convicted, the circumstances of his escape from confinement or of the
32 breach of the terms of his bail, probation or parole and the state in which he is believed to
33 be, including the location of the person therein at the time application is made.

34 § 19.2-111. Form of such applications; copies, etc.—The application shall be verified
35 by affidavit, shall be executed in duplicate and shall be accompanied by two certified
36 copies of the indictment returned, or information and affidavit filed, or of the complaint
37 made to the judge of a circuit or general district court or other officer issuing the warrant

1 *stating the offense with which the accused is charged, or of the judgment of conviction or*
2 *of the sentence. The attorney for the Commonwealth, warden or sheriff may also attach*
3 *such further affidavits and other documents in duplicate as he shall deem proper to be*
4 *submitted with such application. One copy of the application, with the action of the*
5 *Governor indicated by endorsement thereon, and one of the certified copies of the*
6 *indictment, complaint, information, and affidavits, or of the judgment of conviction or of*
7 *the sentence shall be filed in the office of the Secretary of the Commonwealth, to remain*
8 *of record in that office. The other copies of all papers shall be forwarded with the*
9 *Governor's requisition.*

10 § 19.2-112. *Costs and expenses.—The expenses incident to the extradition of any*
11 *person under the four preceding sections shall be paid out of the State treasury, on*
12 *warrants of the Comptroller issued upon vouchers signed by the Governor, or such other*
13 *person as may be designated by him for such purpose.*

14 § 19.2-113. *Immunity from service of process in certain civil actions.—A person*
15 *brought into this State by, or after waiver of, extradition based on a criminal charge shall*
16 *not be subject to service of personal process in civil actions arising out of the same facts*
17 *as the criminal proceeding to answer which he is being or has been returned, until he has*
18 *been convicted in the criminal proceeding, or, if acquitted, until he has had reasonable*
19 *opportunity to return to the state from which he was extradited.*

20 § 19.2-114. *Written waiver of extradition proceedings.—Any person arrested in this*
21 *State charged with having committed any crime in another state or alleged to have*
22 *escaped from confinement, or broken the terms of his bail, probation or parole may waive*
23 *the issuance and service of the warrant provided for in §§ 19.2-92 and 19.2-93 and all other*
24 *procedure incidental to extradition proceedings by executing or subscribing in the presence*
25 *of a judge of a circuit or general district court within this State a writing which states that*
26 *he consents to return to the demanding state; provided, however, that before such waiver*
27 *shall be executed or subscribed by such person it shall be the duty of such judge to inform*
28 *such person of his rights to the issuance and service of a warrant of extradition and to*
29 *obtain a writ of habeas corpus as provided for in § 19.2-95.*

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

1 § 19.2-122. *Bail by arresting officer.—A person arrested on a capias to answer, or*
2 *hear judgment on, a presentment, indictment or information for a misdemeanor, or on an*
3 *attachment, other than an attachment to compel the performance of a judgment or of an*
4 *order or decree in a civil case, may be admitted to bail by the officer who arrests him, the*
5 *officer taking a recognizance in such sum, not being less than two hundred dollars unless*
6 *by general or special order of the court a less sum be authorized, as he, regarding the case*
7 *and estate of the accused, may deem sufficient to secure his appearance before the court*
8 *from which the process issued at the time required thereby. The officers shall return the*
9 *recognizance to the court on or before the return day of such process. If without sufficient*
10 *cause he fail to make such return, he shall forfeit twenty dollars.*

11 § 19.2-123. *Release of accused on unsecured bond or promise to appear; conditions of*
12 *release.—(a) If any judicial officer has brought before him any person held in custody and*
13 *charged with an offense, other than an offense punishable by death, said judicial officer*
14 *shall consider the release pending trial of the accused on his written promise to appear in*
15 *court as directed or upon the execution of an unsecured appearance bond in an amount*
16 *specified by the judicial officer. In determining whether or not to release the accused on*
17 *his written promise to appear or an unsecured bond the judicial officer shall take into*
18 *account the nature and circumstances of the offense charged, the accused's family ties,*
19 *employment, financial resources, the length of his residence in the community, his record*
20 *of convictions, and his record of appearance at court proceedings or of flight to avoid*
21 *prosecution or failure to appear at court proceedings, and any other information available*
22 *to him which he believes relevant to the determination of whether or not the defendant is*
23 *likely to absent himself from court proceedings.*

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

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

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

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

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

1 hours.

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

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

7 § 19.2-124. Appeal from an order denying bail or fixing the terms thereof or terms of
8 a recognizance.—If a magistrate or other judicial officer denies bail to an accused, or
9 requires excessive bail, or fixes unreasonable terms of a recognizance under § 19.2-123, the
10 accused may appeal therefrom successively to the next higher court or judge thereof up to
11 and including the Supreme Court of Virginia or any justice thereof.

12 § 19.2-125. Release pending appeal from conviction in court not of record.—A person
13 who has been convicted of an offense in a court not of record and who has noted an
14 appeal shall be given credit for any bond that he may have posted in the court from which
15 he appeals and shall be treated in accordance with the provisions of §§ 19.2-123 and 19.2-
16 124.

17 § 19.2-126. Release of person charged with capital offense.—A person who is charged
18 with an offense punishable by death shall be treated in accordance with the provisions of §
19 19.2-123 unless the court or judge thereof has reason to believe that no one or more
20 conditions of release will reasonably assure that the person will not flee or pose a danger
21 to any other person or to the community.

22 § 19.2-127. Conditions of release of material witness.—If it appears by affidavit that
23 the testimony of a person is material in any criminal proceeding, and it reasonably appears
24 that it will be impossible to secure his presence by a subpoena, a judge shall inquire into
25 the conditions of his release pursuant to § 19.2-123.

26 § 19.2-128. Penalties for failure to appear.—Whoever, having been released pursuant
27 to this chapter, willfully fails to appear before any court or judicial officer as required,
28 shall, after notice to all interested parties, incur a forfeiture of any security which was
29 given or pledged for his release, unless one of the parties can show good cause for
30 excusing the absence, or unless the court, in its sound discretion, shall determine that
31 neither the interests of justice nor the power of the court to conduct orderly proceedings
32 will be served by such forfeiture. In addition, he shall be guilty of a class 1 misdemeanor.

33 § 19.2-129. Power of court to punish for contempt.—Nothing in this chapter shall
34 interfere with or prevent the exercise by any court of the Commonwealth of its power to
35 punish for contempt, except that a person shall not be sentenced for contempt and under
36 the provisions of § 19.2-128 for the same absence.

37 § 19.2-130. Bail in subsequent proceeding arising out of initial arrest.—Any person

1 admitted to bail by a judge or clerk of a court not of record or by a magistrate shall not be
2 required to be admitted to bail in any subsequent proceeding arising out of the initial
3 arrest unless the court having jurisdiction of such subsequent proceeding deems the initial
4 amount of bail or security taken inadequate. When the court having jurisdiction of the
5 proceeding believes the amount of bail or security inadequate, it may increase the amount
6 of such bail or require new and additional sureties.

7 § 19.2-131. Bail for accused held in jurisdiction other than that of trial.—In any case
8 in which a person charged with a misdemeanor or felony is held in some county, city or
9 town other than that in which he is to be tried upon such charge, he may be admitted to
10 bail by any judicial officer of the county, city or town in which he is so held in accordance
11 with the provisions of law concerning the granting of bail in cases in which persons are so
12 admitted to bail or recognizance, when held in the county, city or town in which they are
13 to be tried.

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

22 § 19.2-132. Motion to increase amount of bail fixed by magistrate or clerk.—If the
23 amount of the bail fixed by a magistrate or clerk be deemed inadequate, the attorney for
24 the Commonwealth of the county or city in which the accused is held for trial may, on
25 reasonable notice to the accused, move the court, or the judge thereof to increase the
26 amount of such bail.

27 § 19.2-133. When bail may be increased, or new sureties required; surety may take
28 indemnity.—Although a party has been admitted to bail, if the amount thereof is
29 subsequently deemed insufficient, or the security taken inadequate, the court having
30 jurisdiction to try the case in which the bail was required, or the judge thereof, or the
31 officer before whom the bail was given, may increase the amount of such bail, or may
32 require new or additional sureties therefor, or both. Any surety in a bail bond or a
33 recognizance for the appearance of one charged with crime may take from his principal
34 collateral or other security to indemnify such surety against liability.

35 § 19.2-134. When bail piece to be delivered to bail.—In all cases in which
36 recognizances, at the suit of the Commonwealth, may have been, or shall hereafter be
37 entered into, it shall be the duty of the clerk of the court in which, or in the clerk's office

1 of which, any recognizance is filed, to deliver to the bail on his applying therefor, a bail
2 piece, in substance, as follows: "A. B. of the county (or corporation) of, is
3 delivered to bail, unto C. D. of the county (or corporation) of, at the suit of the
4 Commonwealth. Given under my hand, this day of, in the year
5"

6

Article 2.

7

Recognizances.

8 § 19.2-135. Commitment for trial; recognizance; notice to attorney for the
9 Commonwealth.—When a judge considers that there is sufficient cause for charging the
10 accused with a felony, unless it be a case wherein it is otherwise specially provided, the
11 commitment shall be for trial. Any recognizance taken of the accused shall be upon the
12 following conditions: (1) that he appear to answer for the offense with which he is charged
13 before the court or judge before whom the case will be tried at such time as may be stated
14 in the recognizance and at any time or times to which the proceedings may be continued
15 and before any court or judge thereafter in which proceedings on the charge are held; (2)
16 that he shall not depart from the Commonwealth without the leave of such court or judge;
17 and (3) that he shall keep the peace and be of good behavior until the case is finally
18 disposed of. Every such recognizance shall also include a waiver such as is required by §
19 49-12 in relation to the bonds therein mentioned and though such waiver be not expressed
20 in the recognizance it shall be deemed to be included therein in like manner and with the
21 same effect as if it was so expressed. The judge shall return to the clerk of the court
22 wherein the accused is to be tried, as soon as may be, a certificate of the nature of the
23 offense, showing whether the accused was committed to jail or recognized for his
24 appearance; and the clerk, as soon as may be, shall inform the attorney for the
25 Commonwealth of such certificate.

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

29 § 19.2-136. How recognizances payable; penalty.—Recognizances in criminal cases,
30 where the offense is charged to have been committed against the Commonwealth, shall be
31 payable to the Commonwealth of Virginia. Recognizances in criminal cases where the
32 offense charged is a violation of a county, city or town ordinance, shall be payable to such
33 county, city or town. Every recognizance under this title shall be in such sum as the court
34 or officer requiring it may direct.

35 § 19.2-137. Order of court on recognizance.—When such recognizance is taken by a
36 court of a person to answer a charge or of a witness to give evidence it shall be sufficient
37 for the order of the court taking the recognizance to state that the party or parties

1 *recognized were duly recognized in such sum as the court may have directed with such*
2 *surety as the court may have accepted for his or their appearance before such court at*
3 *such time as may have been prescribed by the court to answer for the offense with which*
4 *such person is charged or to give evidence, as the case may be.*

5 § 19.2-138. *Allowing cash deposits in lieu of recognizances with surety.—When a*
6 *person charged with a criminal offense is admitted to bail by a court or an officer*
7 *authorized by law so to do for his appearance before a court or judge having jurisdiction*
8 *of the case, for a hearing thereon, he may instead of entering into a recognizance with*
9 *surety give his personal recognizance and deposit, or cause to be deposited for him, in*
10 *cash, the amount of bail he is required to furnish, with such court or officer, who shall*
11 *give to the person whose funds are so deposited an official receipt therefor.*

12 § 19.2-139. *Form of receipt for same.—In order that officials may be able to give*
13 *such official receipts, it shall be the duty of the Auditor of Public Accounts to provide all*
14 *such officials with official prenumbered receipt books in quadruplicate, consisting of an*
15 *original and three carbon copies, the original receipt to go to the person whose funds are*
16 *deposited, the first carbon copy to go to the court or judge before whom the person*
17 *recognized is to appear, the second carbon copy to the Auditor of Public Accounts and the*
18 *other copy to remain in the receipt book; and the official with whom such cash was so*
19 *deposited shall deliver the same, along with the first carbon copy of the receipt, to the*
20 *court or judge before whom the person recognized is to appear or to the clerk of such*
21 *court or judge, if authorized by law to receive the same, who shall give him an official*
22 *receipt therefor.*

23 § 19.2-140. *Disposition of such money.—If there be no default in the observance of*
24 *the conditions of the recognizance, or if there be default and it be a case which may be*
25 *tried in the absence of the defendant and he is so tried, and if, upon the trial of the case,*
26 *the defendant be found not guilty, the money so deposited shall be refunded to the person*
27 *making such deposit, or upon his order, but if the defendant be found guilty, the court or*
28 *judge trying the case shall apply the money, or so much thereof as may be necessary, to*
29 *the payment of such fines and costs, or costs, as may be adjudged against the defendant,*
30 *and the residue thereof, if any, shall be paid over to the person making such deposit, or*
31 *upon his order; provided, that if there be an appeal from the judgment of a judge trying*
32 *any such case, or if it be a charge of felony and be sent on for investigation by a grand*
33 *jury, the money so deposited shall be paid over by such judge to the clerk of the court to*
34 *which such appeal is taken, or to which the case is sent on for investigation by a grand*
35 *jury thereof, who shall issue to such judge his official receipt therefor.*

36 *If there be default in any such recognizance, and if the case be not tried in the*
37 *absence of the defendant and the money disposed of as hereinabove provided for, the*

1 forfeiture thereof shall be noted of record and proceedings had thereon, as provided by
2 law, and the money so deposited shall be held subject to the order of the court upon the
3 final disposition of such proceedings.

4 § 19.2-141. How recognizance taken for insane person or one under disability.—A
5 recognizance which would be taken of a person but for his being a minor, insane or
6 otherwise mentally incompetent, may be taken of another person and without further
7 surety, if such other person be deemed sufficient, for the performance by such minor,
8 insane or otherwise mentally incompetent person, of the conditions of the recognizance.

9 § 19.2-142. Where recognizance taken out of court to be sent.—A person taking a
10 recognizance out of court shall forthwith transmit it to the clerk of the court for
11 appearance before which it is taken; or, if it be not for appearance before a court, to the
12 clerk of the circuit court of the county or city in which it is taken; and it shall remain filed
13 in the clerk's office.

14 § 19.2-143. Where default recorded; process on recognizance; when copy may be
15 used.—When a person, under recognizance in a criminal case, either as party or witness,
16 fails to perform the condition thereof, if it be to appear before a court of record, or court
17 not of record, a hearing shall be held upon reasonable notice to all parties affording them
18 opportunity to show cause why said recognizance should not be forfeited. If the court finds
19 the recognizance should be forfeited, the default shall be recorded therein, unless, the
20 defendant be brought before the court within thirty days of the findings of default. After
21 thirty days of the finding of default, his default shall be recorded therein, and if it be to
22 appear before a court not of record, his default shall be entered by the judge of such court,
23 on the page of his docket whereon the case is docketed unless the defendant has been
24 delivered or appeared before the court. The process on any such forfeited recognizance
25 shall be issued from the court before which the appearance was to be, and wherein such
26 forfeiture was recorded or entered. Any such process issued by a judge when the penalty
27 of the recognizance so forfeited is in excess of five thousand dollars shall be made
28 returnable to the circuit court of his county or city, and when not in excess of five
29 thousand dollars it shall be made returnable before, and tried by, such judge, who shall
30 promptly transmit to the clerk of the circuit court of his county or city wherein deeds are
31 recorded an abstract of such judgment as he may render thereon, which shall be forthwith
32 docketed by the clerk of such court.

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

36 Evidence that the defendant is incarcerated or subject to court process in another
37 jurisdiction on the day his appearance is required or a medical certificate from a duly

1 licensed physician that the defendant was physically unable to so appear may be
2 considered evidence of good cause why the recognizance should not be forfeited.

3 If such recognizance so forfeited be not for such appearance, process thereon shall be
4 issued from the court in which it was taken, or the court to which it was made returnable,
5 and in a proceeding in one court on a recognizance entered in another a copy thereof shall
6 be evidence in like manner as the original would be if it had been entered in the court
7 wherein the proceeding is being had thereon.

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

11 § 19.2-144. Forfeiture of recognizance while in military or naval service.—If in any
12 motion, action, suit or other proceeding made or taken in any court of this Commonwealth
13 on a forfeited bail bond or recognizance, or to enforce the payment of the same in any
14 manner or any judgment thereon, or to forfeit any bail bond or recognizance, it appear
15 that the person for whose alleged default such bail bond or recognizance was forfeited or
16 judgment rendered, or such motion is made or proceeding taken, was prevented from
17 complying with the condition of such bail bond or recognizance by reason of his having
18 enlisted or been drafted in the army or navy of the United States, then judgment or decree
19 on such motion, action, suit or other proceeding shall be given for the defendant.

20 § 19.2-145. How penalty remitted.—When in an action or scire facias on a
21 recognizance the penalty is adjudged to be forfeited the court may on an application of a
22 defendant remit the penalty or any part of it and render judgment on such terms and
23 conditions as it deems reasonable.

24 § 19.2-146. Defects in form of recognizance not to defeat action or judgment.—No
25 action or judgment on a recognizance shall be defeated or arrested by reason of any defect
26 in the form of the recognizance, if it appear to have been taken by a court or officer
27 authorized to take it and be substantially sufficient.

28 § 19.2-147. Docketing judgments on forfeited recognizances and bonds.—Whenever a
29 judgment is entered in any court of record in favor of the Commonwealth of Virginia upon
30 a forfeited recognizance or bond, the clerk of the court in which the judgment is rendered
31 shall certify an abstract of the same to the clerk of the circuit court of the county or city
32 wherein the judgment debtor resides or of any city or county in which he may own real
33 property, who shall thereupon enter the abstract of judgment upon his judgment docket,
34 for which service he shall be allowed the sum of fifty cents, payable out of the State
35 treasury.

36 § 19.2-148. Surety discharged on payment of amount, etc., into court.—A surety in a
37 recognizance may, after default, pay into the court from which the process has issued, or

1 may issue thereon, the amount for which he is bound, with such costs as the court may
2 direct, and be thereupon discharged.

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

18 § 19.2-150. The proceeding, when surety surrenders principal.—If the surrender be to
19 the court, it shall make such order as it deems proper; if the surrender be to a sheriff,
20 sergeant or jailer, the officer to whom the accused has been surrendered shall give the
21 surety a certificate of the fact. After such surrender the accused shall be treated in
22 accordance with the provisions of § 19.2-123 unless the court or judge thereof has reason
23 to believe that no one or more conditions of release will reasonably assure that the accused
24 will not flee or pose a danger to any other person or to the community.

25 Article 3.

26 Satisfaction and Discharge.

27 § 19.2-151. Satisfaction and discharge of assault and similar charges.—When a
28 person is in jail or under a recognizance to answer a charge of assault and battery or other
29 misdemeanor, or has been indicted for an assault and battery or other misdemeanor, for
30 which there is a remedy by civil action, unless the offense was committed by or upon any
31 law-enforcement officer or riotously in violation of §§ 18.2-404 to 18.2-407, or with intent
32 to commit a felony, if the party injured appear before the judge who made the
33 commitment or took the recognizance, or before the court in which the indictment is
34 pending, and acknowledge in writing that he has received satisfaction for the injury, such
35 judge, or court may, in his or its discretion, by an order, supersede the commitment,
36 discharge the recognizance, or dismiss the prosecution, upon payment by the defendant of
37 costs accrued to the Commonwealth or any of its officers.

1 § 19.2-152. *Order discharging recognizance, or superseding commitment; judgment*
2 *for costs.—Every order discharging a recognizance shall be filed with the clerk before the*
3 *session of the court at which the party was to appear. Where a person is held under a*
4 *commitment, any order superseding a commitment shall be delivered to the jailer, who*
5 *shall forthwith discharge the witnesses, if any, and the accused, and judgment against the*
6 *accused shall be entered in the court for the costs of the prosecution.*

7 CHAPTER 10.

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

11 Article 1.

12 Disability of Judge.

13 § 19.2-153. *When judge cannot sit on trial; how another judge procured to try the*
14 *case.*

15 § 19.2-154. *Death or disability of judge during trial; how another judge procured to*
16 *continue with trial.—If by reason of death, sickness or other disability the judge who*
17 *presided at a criminal jury trial is unable to proceed with and finish the trial, another*
18 *judge of that court or a judge designated by the Chief Justice of the Supreme Court or by*
19 *a justice designated by him for that purpose, may proceed with and finish the trial or, in*
20 *his discretion, may grant and preside at a new trial. If by reason of such disability, the*
21 *judge who presided at any trial is unable to perform the duties to be performed by the*
22 *court after a finding of guilty by the jury or the court, another judge of that court, or a*
23 *judge designated as provided in the preceding sentence, may perform those duties or, in*
24 *his discretion, may grant and preside at a new trial. Before proceeding with the trial or*
25 *performing such duties, such judge shall certify that he has familiarized himself with the*
26 *record of the trial.*

27 Article 2.

28 Disability of Attorney for Commonwealth.

29 § 19.2-155. *Disqualification or temporary disability of attorney for Commonwealth;*
30 *appointment of substitute powers, duties and compensation of such appointee.—If the*
31 *attorney for the Commonwealth of any county or city is connected by blood or marriage*
32 *with the accused, or is so situated with respect to such accused as to render it improper,*
33 *in his opinion, concurred in by the judge, for him to act, or if such attorney for the*
34 *Commonwealth of any county or city is unable to act, or to attend to his official duties as*
35 *attorney for the Commonwealth, due to sickness, disability or other reason of a temporary*
36 *nature, then upon notification by such attorney for the Commonwealth, or upon the*
37 *certificate of his attending physician, or the clerk of the court, which fact shall be entered*

1 of record, the judge of the circuit court shall appoint an attorney at law for such case or
2 cases, term or terms of court, or period or periods of time, as may be necessary or
3 desirable, and the same to be forthwith entered of record. Such attorney at law shall act in
4 place of, and otherwise perform the duties and exercise the powers of, such disqualified or
5 disabled attorney for the Commonwealth, in regard to such case or cases, for the term or
6 terms of the court, or the period or periods of time, for which the appointment and
7 designation is made, or until the disqualified or disabled attorney for the Commonwealth
8 shall again be able to attend to his duties as such.

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

13 § 19.2-156. Prolonged absence of attorney for Commonwealth.—If it shall be
14 necessary for the attorney for the Commonwealth of any county or city to absent himself
15 for a prolonged period of time from the performance of the duties of his office, then, upon
16 notification by such attorney for the Commonwealth, or by the court on its own motion,
17 and the facts being entered of record, the judge of the circuit court shall appoint an
18 attorney at law as acting attorney for the Commonwealth to serve for such length of time
19 as may be necessary. Such acting attorney for the Commonwealth shall act in place of and
20 otherwise perform the duties and exercise the powers of such regular attorney for the
21 Commonwealth, and while so acting shall receive the salary and allowance for expenses
22 fixed by the State Compensation Board for such regular attorney for the Commonwealth,
23 who during such length of time shall not receive any such salary or allowance.

24 Article 3.

25 Appointment of Attorney for Accused.

26 § 19.2-157. Duty of court to ascertain whether person charged with criminal offense
27 is represented by counsel.—Except as may otherwise be provided in § 16.1-173, whenever
28 a person charged with a criminal offense the penalty for which may be death or
29 confinement in the penitentiary or jail, including charges for revocation of suspension of
30 imposition or execution of sentence or probation, appears before any court without being
31 represented by counsel, the court shall inform him of his right to counsel. The accused
32 shall be allowed a reasonable opportunity to employ counsel of his own choice, or, if
33 appropriate, the statement of indigence provided for in § 19.2-159 may be executed.

34 § 19.2-158. When person not free on bail shall be informed of right to counsel and
35 amount of bail.—Every person charged with an offense described in § 19.2-157, who is not
36 free on bail or otherwise, shall be brought before the judge of a court not of record on the
37 first day on which such court sits after the person is charged, at which time the judge

1 shall inform the accused of the amount of his bail and his right to counsel.

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

6 § 19.2-159. Statement of indigence by person charged with felony; appointment of
7 counsel.—If the accused shall claim that he is indigent, and the charge against him is a
8 felony, the court shall ascertain by oral examination of the accused and other competent
9 evidence whether or not the accused is indigent within the contemplation of law; and if the
10 court thereby determines that such accused is indigent as contemplated by law, the court
11 shall provide the accused with a statement which shall contain the following:

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

16
17 (signature of accused)

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

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

23 § 19.2-160. Statement of indigence by person charged with nonfelonious offense;
24 appointment of counsel or waiver of right.—If the charge against the accused is a
25 misdemeanor the penalty for which may be by confinement in jail, and the accused is not
26 represented by counsel, the court shall ascertain by oral examination of the accused
27 whether or not the accused desires to waive his right to counsel.

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

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

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

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

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

18 § 19.2-166. Court reporter.—Each judge of a court of record having jurisdiction over
19 criminal proceedings shall be authorized, in all felony cases, to appoint a court reporter to
20 report proceedings or to operate mechanical or electrical devices for recording proceedings,
21 to transcribe the report or record of such proceedings, to perform any stenographic work
22 related to such report, record or transcript, and to perform stenographic work relating to
23 habeas corpus proceedings within such court's jurisdiction, including work pertinent to the
24 court's findings of fact and conclusions of law pertinent thereto. Such reporter shall be
25 paid by the Commonwealth on a per diem or work basis as appropriate out of the
26 appropriation for criminal charges.

27 CHAPTER 11.

28 Proceedings on Question of Insanity.

29 § 19.2-167. Accused while insane or feeble-minded not to be tried.—No person shall,
30 while he is insane or feeble-minded, be tried for a criminal offense.

31 § 19.2-168. Notice to Commonwealth of intention to present evidence of insanity;
32 continuance if notice not given.—In any case in which a person charged with a crime shall
33 plan to present psychiatric evidence of his insanity or feeble-mindedness at his trial, he, or
34 his counsel, shall give notice in writing to the attorney for the Commonwealth, at least ten
35 days prior to his trial, of his intention to present such evidence. In the event that such
36 notice is not given, and the person presents psychiatric evidence at his trial as a defense,
37 then the Commonwealth shall have the right of continuance for a reasonable period of

1 time.

2 § 19.2-169. Raising question of sanity; commitment before arraignment.—If, prior to
3 arraignment of any person charged with crime, either the court or attorney for the
4 Commonwealth or counsel for the accused has reason to believe that such person, because
5 of mental disease or defect, is in such mental condition that he lacks substantial capacity
6 to understand the proceedings against him or to assist in his own defense, and it is
7 necessary for evaluation and observation in order for the court to determine whether such
8 person is mentally competent to plead and stand trial or understand the proceedings
9 against him and assist in his own defense, the court or the judge thereof may, after
10 hearing evidence or the representations of counsel on the subject, commit the accused to a
11 State facility designated by the Commissioner of Mental Health and Mental Retardation for
12 examination, evaluation, observation, and report if it is felt by the court that temporary
13 hospitalization, not to exceed forty-five days, is required for such determination and such
14 commitment shall be under such limitations as the court may order, pending the
15 determination of his mental condition. However, if in the opinion of the court such
16 examination, evaluation and observation can be satisfactorily performed at some other
17 appropriate facility, the court, in its discretion, may order such examination, evaluation,
18 and observation to be performed at such facility other than a State facility designated by
19 the Commissioner of Mental Health and Mental Retardation, provided such facility is
20 designated by such Commissioner as being appropriate.

21 In any case where the court believes that temporary hospitalization of the accused at
22 a State facility designated by the Commissioner is necessary for detailed evaluation,
23 examination, and observation, in order for the court to determine whether such person,
24 because of mental disease or defect, is mentally competent to plead and stand trial or
25 assist in his own defense, the court shall appoint a psychiatric committee of one or more
26 physicians skilled in the diagnosis of insanity, and when any person is alleged to be
27 feeble-minded, the court may likewise appoint persons skilled in the diagnosis of
28 feeble-mindedness, not to exceed three, to examine, evaluate and observe the accused prior
29 to any order of temporary hospitalization as provided herein. The psychiatric committee
30 shall make such investigation of the case as it may deem necessary and shall reduce its
31 finding or findings to writing and report to the court, the attorney for the Commonwealth,
32 and counsel for the accused the mental condition of the defendant at the time of their
33 examination and their medical opinion as to whether more extensive examination,
34 evaluation, and observation is required. Thereafter, if the court, in its discretion,
35 determines that more thorough examination, evaluation, and observation is desirable, the
36 court may commit the accused to a designated State facility for additional examination,
37 evaluation, and observation as provided for herein.

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

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

32 *The fact that the defendant lacks capacity to understand the proceedings against him*
33 *or lacks capacity to assist in his own defense does not preclude any legal objection to the*
34 *prosecution which is susceptible of fair determination prior to trial and which may be*
35 *undertaken without the personal participation of the defendant. However, such proceedings*
36 *or pretrial hearing shall be granted only if counsel for the defendant satisfies the court by*
37 *affidavit or otherwise that as an attorney he has reasonable grounds for a good-faith belief*

1 that his client has, on the facts and the law, a defense to the charge other than mental
2 disease or defect excluding responsibility.

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

5 § 19.2-170. When question raised by court; commitment after arraignment.—If, at
6 any time after arraignment, the judge presiding at the trial shall find reasonable ground to
7 question the sanity or mentality of the accused, the court may suspend the trial, declare a
8 mistrial, and then proceed as prescribed in § 19.2-169, which action shall be without
9 prejudice to the right of the Commonwealth to retry the accused when his mentality has
10 been determined.

11 § 19.2-171. Return of accused from facility when sane or restored to sanity.—If any
12 such person committed for observation pursuant to § 19.2-169 or 19.2-170 is, in the opinion
13 of the superintendent, not insane or feeble-minded, or when such person, if insane, has been
14 restored to sanity, the superintendent shall give notice in writing to the clerk of the court
15 from which such person was committed, and such clerk shall forthwith issue a praecipe to
16 an officer of the court, directing him forthwith to bring the person from the facility and
17 commit him to the jail or custody from which he was removed, where he shall be held in
18 accordance with the terms of the process by which he was originally committed or
19 confined.

20 § 19.2-172. Superintendent of institution to report finding that accused is insane or
21 feeble-minded; commission to inquire into sanity or mentality.—If any person so committed
22 for observation pursuant to § 19.2-169 or 19.2-170 is, in the opinion of the superintendent,
23 insane or feeble-minded, the superintendent shall report such finding to the court from
24 which such person was committed but shall retain custody of such person subject to the
25 further order of the court. And upon receiving such report the court, after notice to the
26 attorney for the Commonwealth and counsel for the accused, shall appoint a commission
27 of not to exceed three physicians, skilled in the diagnosis of insanity and feeble-mindedness,
28 any or all of whom may be from the staff of the facility where the person is committed for
29 observation, who shall inquire into the fact as to the sanity or mentality of such person
30 and report their findings to the court.

31 § 19.2-173. Procedure on finding of sanity or insanity by commission.—If the
32 commission find the accused to be sane at the time of their examination, they shall make
33 no other inquiry and the superintendent of the facility where the accused is committed for
34 observation shall give notice in writing to the clerk of the court from which such person
35 was committed and such clerk shall forthwith issue a praecipe to the officer of the court,
36 requiring him to forthwith bring the prisoner from the facility and commit him to the jail
37 or custody from which he was removed, where he shall be held in accordance with the

1 *terms of the process by which he was originally committed or confined. If the commission*
2 *find that he is insane or feeble-minded at the time of their examination the court, after*
3 *notice to the attorney for the Commonwealth and counsel for the accused, shall order him*
4 *to be confined in the proper hospital until he has been restored to sanity.*

5 § 19.2-174. *Advice as to condition of person confined.—The superintendent shall from*
6 *time to time, or as often as the court may require, inform the court of the condition of*
7 *such person while confined in the hospital.*

8 § 19.2-175. *Expenses of physicians, etc.—Each expert or physician or clinical*
9 *psychologist skilled in the diagnosis of insanity or feeble-mindedness or other physician*
10 *appointed by the court to render professional service pursuant to § 19.2-169 or to*
11 *subparagraphs (1) and (2) of § 19.2-181, who is not regularly employed by the State of*
12 *Virginia, or, if regularly employed by the State of Virginia but on authorized leave*
13 *therefrom, shall receive a fee of fifty dollars for each examination and report thereof to the*
14 *court and, if he be required to appear as a witness in any hearing held pursuant to such*
15 *sections, shall receive mileage and a fee of fifty dollars for each day during which he is*
16 *required so to serve. Itemized account of expense, duly sworn to, must be presented to the*
17 *court, and when allowed shall be certified to the Comptroller for payment out of the State*
18 *treasury, and be by him charged against the appropriation made to pay criminal charges.*
19 *Allowance for the fee and for the per diem authorized shall also be made by order of the*
20 *court, duly certified to the Comptroller for payment out of the appropriation to pay*
21 *criminal charges.*

22 § 19.2-176. *Determination of insanity after conviction but before sentence.—If, after*
23 *conviction and before sentence of any person, the judge presiding at the trial shall find*
24 *reasonable ground to question his sanity or mentality, it may appoint a commission of not*
25 *to exceed three physicians to inquire into the fact as to his sanity or mentality and may*
26 *sentence him or commit him to jail or to the proper hospital as set forth in § 19.2-169*
27 *according as the commission may find him to be sane or insane or feeble-minded. If*
28 *committed to a proper hospital, he shall be retained until he is restored to sanity, or in the*
29 *case of one committed as feeble-minded, until he has adjusted to the point that he has*
30 *sufficient reason and judgment to live outside of an institution with safety to himself and*
31 *others, and the time such person is confined to such hospital shall be deducted from any*
32 *term for which he may be sentenced to any penal institution, reformatory or elsewhere.*

33 § 19.2-177. *Same; after sentence.—If any person, after conviction and sentencing for*
34 *any crime, and while serving such sentence in any penal institution is declared by a*
35 *commission of insanity to be insane or feeble-minded, he shall be committed by the court to*
36 *the proper hospital, and there kept until he is restored to sanity; and the time such person*
37 *is confined in the proper hospital shall be deducted from the term for which he was*

1 sentenced.

2 § 19.2-178. Where prisoner kept when no vacancy in facility or hospital.—When a
3 court shall have entered any of the orders provided for in § 19.2-169, 19.2-170, 19.2-173,
4 19.2-176 or 19.2-177, the sheriff of the county or city or the proper officer of the penal
5 institution shall immediately proceed to ascertain whether a vacancy exists at the proper
6 facility or hospital and until it is ascertained that there is a vacancy such person shall be
7 kept in the jail of such county or city or in such custody as the court may order, or in the
8 penal institution in which he is confined, until there is room in such facility or hospital.
9 Any person whose care and custody is herein provided for shall be taken to and from the
10 facility or hospital to which he was committed by an officer of the penal institution having
11 custody of him, or by the sheriff of the county or city whose court issued the order of
12 commitment, and the expenses incurred in such removals shall be paid by such penal
13 institution, county or city.

14 § 19.2-179. When accused to be taken from hospital and committed to jail.—When
15 the superintendent of a State hospital shall give notice to the clerk of the court, in
16 pursuance of § 37.1-102, such clerk forthwith shall issue a praecipe to an officer of the
17 court, requiring him forthwith to bring the prisoner from the hospital and commit him to
18 jail.

19 § 19.2-180. Sentence or trial of prisoner, when restored to sanity.—When a prisoner
20 whose trial or sentence was suspended by reason of his being found to be insane or feeble-
21 minded, has been found to be mentally competent and is brought from a hospital and
22 committed to jail, if already convicted, he shall be sentenced, and if not, the court shall
23 proceed to try him as if no delay had occurred on account of his insanity or feeble-
24 mindedness.

25 § 19.2-181. Verdict of acquittal by reason of insanity to state the fact; commitment;
26 release.—(1) When the defense is insanity or feeble-mindedness of the defendant at the time
27 the offense was committed, the jury shall be instructed, if they acquit him on that ground,
28 to state the fact with their verdict, and the court shall place him in temporary custody of
29 the Commissioner of Mental Health and Mental Retardation, hereinafter referred to as the
30 Commissioner, and appoint three physicians or two physicians and one clinical
31 psychologist, skilled in the diagnosis of insanity and feeble-mindedness, to examine the
32 defendant and make such investigation as they may deem necessary in order to determine
33 whether, at the time of their examination, he is insane or feeble-minded and to determine
34 whether his discharge would be dangerous to the public peace and safety or to himself and
35 to report their findings to the court. If the court is satisfied by the report, or such
36 testimony of the examining physicians or clinical psychologist as it deems necessary, that
37 the defendant is insane or feeble-minded or that his discharge would be dangerous to public

1 *peace and safety or to himself, the court shall order him to be committed to the custody of*
2 *the Commissioner. Otherwise, the defendant forthwith shall be discharged and released.*

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

17 *(3) If the court is satisfied by the application and report seeking the release or*
18 *discharge of the committed person filed pursuant to paragraph (2) of this section and by*
19 *the report or such testimony of the reporting psychiatrists, appointed pursuant to*
20 *paragraph (2) of this section, as the court deems necessary, that the committed person is*
21 *not insane or feebleminded and that his discharge or release will not be dangerous to the*
22 *public peace and safety or to himself, the court shall order his discharge or release. If the*
23 *court is not so satisfied, it shall promptly order a hearing to determine whether the*
24 *committed person is at that time insane or feebleminded and to determine whether his*
25 *discharge would be dangerous to the public peace and safety or to himself. Any such*
26 *hearing shall be deemed a civil proceeding and the burden shall be on the committed*
27 *person to prove that he is not insane or feebleminded and that his discharge would not be*
28 *dangerous to the public peace and safety or to himself. According to the determination of*
29 *the court upon such hearing, the committed person shall thereupon be discharged or*
30 *released or shall be recommitted to the custody of the Commissioner. It shall be the duty*
31 *of the superintendent of the institution in which such person is confined, at yearly intervals*
32 *commencing six months after the date of confinement, to make a report of such person's*
33 *condition to the court from which he was committed.*

34 *(4) At yearly intervals commencing six months after the date of confinement, and not*
35 *more frequently, a committed person may make application to the court by which he was*
36 *committed for his discharge or release and shall transmit a copy of such application and*
37 *report to the attorney for the Commonwealth for the city or county from which the*

1 defendant was committed and the procedure to be followed upon such application shall be
2 the same as that prescribed above in the case of an application by the superintendent of
3 the institution in which such person is confined. The attorney for the Commonwealth for
4 the city or county from which the defendant was committed shall represent the interests of
5 the Commonwealth in proceedings under subsections (3) and (4) of this section.

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

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

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

19 § 19.2-182. Representation by counsel in proceeding for commitment.—(a) In any
20 proceeding for commitment under this title, the judge before whom such proceeding is
21 being held, or upon whose order such proceeding is held, shall ascertain if the person
22 whose commitment is sought is represented by counsel. If such person is not represented
23 by counsel, the judge shall appoint an attorney at law to represent such person in such
24 proceeding. For his services rendered therein, the attorney shall receive a fee of twenty-five
25 dollars to be paid by the State.

26 (b) Any attorney representing any person in any proceeding for commitment under
27 this title shall, prior to such proceeding, personally consult with such person.

28 CHAPTER 12.

29 Hearing.

30 § 19.2-183. Examination of witnesses; assistance of counsel; power to adjourn case.—
31 The judge before whom any person is brought for an offense shall, as soon as may be, in
32 the presence of such person, examine on oath the witnesses for and against him. Before
33 conducting the hearing or accepting a waiver of the hearing, the judge shall advise the
34 accused of his right to counsel and, if the accused is indigent and the offense charged be
35 punishable by confinement in jail or the penitentiary, the judge shall appoint counsel as
36 provided by law.

37 At the hearing the judge shall, in the presence of the accused, hear testimony

1 *presented for and against the accused. In felony cases, the accused shall not be called upon*
2 *to plead, but he may cross-examine witnesses, introduce witnesses in his own behalf, and*
3 *testify in his own behalf.*

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

6 *§ 19.2-184. Witnesses may be separated.—While a witness is under such examination*
7 *all other witnesses may by order of the judge be excluded from the place of examination*
8 *and kept separate from each other.*

9 *§ 19.2-185. Testimony may be reduced to writing and subscribed.—When the judge*
10 *deems it proper the testimony of the witnesses may be reduced to writing, and, if required*
11 *by him, shall be signed by them respectively.*

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

14 *§ 19.2-186. When accused to be discharged, tried, committed or bailed by judge.—The*
15 *judge shall discharge the accused if he consider that there is not sufficient cause for*
16 *charging him with the offense.*

17 *If a judge consider that there is sufficient cause only to charge the accused with an*
18 *offense which the judge has jurisdiction to try, then he shall try the accused for such*
19 *offense and convict him if he deem him guilty and pass judgment upon him in accordance*
20 *with law just as if the accused had first been brought before him on a warrant charging*
21 *him with such offense.*

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

26 *§ 19.2-187. Admission into evidence of certain certificates of analysis.—In any*
27 *preliminary hearing of any criminal offense, a certificate of analysis of a person performing*
28 *an analysis or examination, performed in any laboratory operated by the Division of*
29 *Consolidated Laboratory Services or authorized by such Division to conduct such analysis*
30 *or examination, or performed by the Federal Bureau of Investigation, the federal Postal*
31 *Inspection Service, the federal Bureau of Alcohol, Tobacco and Firearms, or the federal*
32 *Drug Enforcement Administration when such certificate is duly attested by such person,*
33 *shall be admissible in evidence as evidence of the facts therein stated and the results of the*
34 *analysis or examination referred to therein, provided that the certificate of analysis shall be*
35 *filed with the clerk of the court hearing the case at least seven days prior to the*
36 *preliminary hearing.*

37 *Any such certificate of analysis purporting to be signed by any such person shall be*

1 admissible as evidence in such preliminary hearing without any proof of the seal or
2 signature or of the official character of the person whose name is signed to it.

3 § 19.2-188. Reports and records received as evidence.—Reports of investigations
4 made by the Chief Medical Examiner or his assistants or by medical examiners, and the
5 records and reports of autopsies made under the authority of Title 32 of this Code, shall be
6 received as evidence in any court or other proceeding, and copies of records, photographs,
7 laboratory findings and records in the office of the Chief Medical Examiner or any medical
8 examiner, when duly attested by the Chief Medical Examiner or one of his Assistant Chief
9 Medical Examiners, or the medical examiner in whose office the same are, shall be
10 received as evidence in any court or other proceeding for any purpose for which the
11 original could be received without any proof of the official character or the person whose
12 name is signed thereto.

13 § 19.2-189. Commitment of accused for further examination. If the accused be
14 committed, it shall be by an order of the judge stating that he is committed for further
15 examination on a day specified in the order. And on that day he may be brought before
16 such judge by his verbal order to the officer by whom he was committed, or by a written
17 order to a different person.

18 § 19.2-190. To whom, and when, examination and recognizance to be certified.—
19 Every examination and recognizance for a felony taken under this chapter, shall, by the
20 person taking it, be certified to the clerk of the circuit court of the county or city in which
21 the party charged is to be tried, or the witness is to appear, on or before the first day of its
22 next term. If he fail he may be compelled to do so by attachment as for a contempt.

23 CHAPTER 13.

24 Grand Juries.

25 Article 1.

26 In General.

27 § 19.2-191. Functions of a grand jury.—The functions of a grand jury are two-fold:

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

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

36 § 19.2-192. Secrecy in grand jury proceedings.—Except as otherwise provided in this
37 chapter, every member of a regular or special grand jury shall keep secret all proceedings

1 *which occurred during sessions of the grand jury; provided, however, in a prosecution for*
2 *perjury of a witness examined before a regular grand jury, a regular grand juror may be*
3 *required by the court to testify as to the testimony given by such witness before the*
4 *regular grand jury.*

5

Article 2.

6

Regular Grand Juries.

7 § 19.2-193. *Number of regular grand juries.—There shall be a regular grand jury at*
8 *each term of the circuit court of each county and city, unless the court, on the motion of*
9 *the attorney for the Commonwealth or with his concurrence, finds that it is unnecessary or*
10 *impractical to impanel a grand jury for the particular term and enters an order to that*
11 *effect.*

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

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

18 § 19.2-194. *When and how grand jurors to be selected and summoned; lists to be*
19 *delivered to clerk.—The judges of such courts shall annually, in the month of June, July, or*
20 *August, select from the citizens of each city and county of their respective circuits at least*
21 *sixty persons and not more than one hundred twenty persons eighteen years of age or*
22 *over, of honesty, intelligence and good demeanor and suitable in all respects to serve as*
23 *grand jurors, who, except as hereinafter provided, shall be the grand jurors for the county*
24 *or city from which they are selected for twelve months next thereafter. Such jurors shall*
25 *be selected in each county from the several magisterial districts of the county and in each*
26 *city from the several wards of the city in proportion to the population thereof. The judge*
27 *making the selection shall at once furnish to the clerk of his court in each county and city*
28 *of his circuit a list of those selected for that county or city. The clerk, not more than*
29 *twenty days before the commencement of each term of his court at which a regular grand*
30 *jury is required, shall issue a venire facias to the sheriff of his county or city, commanding*
31 *him to summon not less than five nor more than seven of the persons selected as aforesaid*
32 *(the number to be designated by the judge of the court by an order entered of record) to*
33 *be named in the writ to appear on the first day of the court to serve as grand jurors. No*
34 *such person shall be required to appear more than once until all the others have been*
35 *summoned once, nor more than twice until the others have been twice summoned, and so*
36 *on. The clerk, in issuing the venire facias shall apportion the grand jurors, as nearly as*
37 *may be, ratably among the magisterial districts or wards; but the Circuit Court of James*

1 City County, or the judge thereof in vacation, shall select the grand jurors for such court
2 from such county and the city of Williamsburg in such proportion from each as he may
3 think proper.

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

7 § 19.2-195. Number and qualifications of grand jurors.—A regular grand jury shall
8 consist of not less than five nor more than seven persons. Each grand juror shall be a
9 citizen of this State, eighteen years of age or over, and shall have been a resident of this
10 State one year and of the county or corporation in which the court is to be held six
11 months, and in other respects a qualified juror, and, when the grand juror is for a circuit
12 court of a county, not an inhabitant of a city, except in those cases in which the circuit
13 court of the county has jurisdiction in the city, in which case the city shall be considered
14 as a magisterial district, or the equivalent of a magisterial district, of the county for the
15 purpose of the jury lists.

16 § 19.2-196. How deficiency of jurors supplied.—If a sufficient number of grand jurors
17 do not appear, the court may order the deficiency to be supplied from the bystanders or
18 from a list furnished by the judge to the sheriff or sergeant.

19 § 19.2-197. Foreman of grand jury; oaths of jurors and witnesses.—From among the
20 persons summoned who attend the court shall select a foreman who shall be sworn as
21 follows: "You shall diligently inquire, and true presentment make, of all such matters as
22 may be given you in charge, or come to your knowledge, touching the present service. You
23 shall present no person through prejudice or ill-will, nor leave any unrepresented through
24 fear or favor, but in all your presentments you shall present the truth, the whole truth, and
25 nothing but the truth. So help you God". The other grand jurors shall afterwards be sworn
26 as follows: "The same oath that your foreman has taken on his part, you and each of you
27 shall observe and keep on your part. So help you God". Any witness testifying before the
28 grand jury may be sworn by the foreman.

29 § 19.2-198. When new foreman or juror may be sworn in.—If the foreman or any
30 grand juror, at any time after being sworn, fail or be unable to attend, another may be
31 sworn in his stead.

32 § 19.2-199. Judge to charge grand jury; persons summoned as petit jurors not to be
33 present when grand jury charged.—The grand jury, after being sworn, shall be charged by
34 the judge of the court and shall then be sent to their room. In the charge given by the
35 court to a regular grand jury, the court shall instruct it to advise the court after their
36 considerations of the bills of indictment whether it desires to be impanelled as a special
37 grand jury to consider any matters provided for in paragraph (2) of § 19.2-191.

1 § 19.2-200. *Duties of grand jury.*—*The grand jury shall inquire of and present all*
2 *felonies, misdemeanors and violations of penal laws committed within the jurisdiction of*
3 *the respective courts wherein it is sworn; except that no presentment shall be made of a*
4 *matter for which there is no corporal punishment, but only a fine, where the fine is limited*
5 *to an amount not exceeding five dollars. After a regular grand jury has concluded its*
6 *deliberation on bills of indictment and made its return thereon, the court shall inquire of it*
7 *whether it desires to perform any of the functions provided for in paragraph (2) of § 19.2-*
8 *191. If the jury or any member thereof responds in the affirmative, the court shall impanel*
9 *so many of that jury as answer in the affirmative, plus any additional members as may be*
10 *necessary to complete the panel, as a special grand jury.*

11 § 19.2-201. *Officers to give information of violation of penal laws to attorney for*
12 *Commonwealth.*—*Every commissioner of the revenue, sheriff, constable or other officer*
13 *shall promptly give information of the violation of any penal law to the attorney for the*
14 *Commonwealth, who shall forthwith institute and prosecute all necessary and proper*
15 *proceedings in such case, whether in the name of the Commonwealth or of a county or*
16 *corporation, and may in such case issue or cause to be issued a summons for any*
17 *witnesses he may deem material to give evidence before the court or grand jury. Except as*
18 *otherwise provided in this chapter, no attorney for the Commonwealth shall go before any*
19 *grand jury except when duly sworn to testify as a witness, but he may advise the foreman*
20 *of a regular grand jury or any member or members thereof in relation to the discharge of*
21 *their duties.*

22 § 19.2-202. *How indictments found and presentment made.*—*At least four of a regular*
23 *grand jury must concur in finding or making an indictment or presentment. It may make a*
24 *presentment or find an indictment upon the information of two or more of its own body, or*
25 *on the testimony of witnesses called on by the grand jury, or sent to it by the court. If only*
26 *one of their number can testify as to an offense, he shall be sworn as any other witness.*
27 *When a presentment or indictment is so made or found, the names of the grand jurors*
28 *giving the information, or of the witnesses, shall be written at the foot of the presentment*
29 *or indictment.*

30 § 19.2-203. *Indictments ignored may be sent to another grand jury; what irregularities*
31 *not to vitiate indictment, etc.*—*Although a bill of indictment be returned not a true bill the*
32 *same or another bill of indictment against the same person for the same offense may be*
33 *sent to, and acted on, by the same or another grand jury. No irregularity in the time or*
34 *manner of selecting the jurors, or in the writ of venire facias, or in the manner of*
35 *executing the same, shall vitiate any presentment, indictment or finding of a grand jury.*

36 § 19.2-204. *Penalties on officers and jurors for failure of duty.*—*A court whose officer*
37 *fails without good cause, when it is his duty, to summon a grand jury and return a list of*

1 *its names shall fine him twenty dollars. A person summoned and failing to attend a court*
2 *as a grand juror shall be fined by the court not less than five dollars nor more than twenty*
3 *dollars, unless, after being summoned to show cause against the fine, he give a reasonable*
4 *excuse for his failure.*

5 § 19.2-205. *Pay and mileage of grand jurors.—Every person who serves upon a grand*
6 *jury, regular or special, shall receive the same compensation and mileage allowed jurors in*
7 *civil cases by § 8-208.33 and the same shall be paid out of the county or corporation levy.*

8 *Article 3.*

9 *Special Grand Juries.*

10 § 19.2-206. *When impanelled.—Special grand juries may be impanelled by a circuit*
11 *court at any time to perform the functions provided for in paragraph (2) of § 19.2-191.*

12 § 19.2-207. *Composition of a special grand jury.—Special grand juries shall consist of*
13 *not less than seven and not more than eleven members, and shall be summoned from a list*
14 *prepared by the court. Members of a special grand jury shall possess the same*
15 *qualifications as those prescribed for members of a regular grand jury. The court shall*
16 *appoint one of the members as foreman.*

17 § 19.2-208. *Subpoena power of special grand jury.—The special grand jury may*
18 *subpoena persons to appear before it to testify and to produce specified records, papers*
19 *and documents, but before any witness testifies, he shall be warned by the foreman that he*
20 *need not answer any questions or produce any evidence that would tend to incriminate*
21 *him, and that the witness may have counsel of his own procurement present when he*
22 *appears to testify, and at the same time the foreman also shall warn each witness that he*
23 *may later be called upon to testify in any case that might grow out of the investigation and*
24 *report of the special grand jury. Notwithstanding the provisions of this section, all*
25 *provisions of this Code relative to immunity granted to witnesses who testify before a*
26 *grand jury shall remain applicable.*

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

29 § 19.2-209. *Presence of counsel for a witness.—Any witness appearing before a*
30 *special grand jury shall have the right to have counsel of his own procurement present*
31 *when he testifies. Such counsel shall have the right to consult with and advise the witness*
32 *during his examination, but shall not have the right to conduct an examination of his own*
33 *of the witness.*

34 § 19.2-210. *Presence of the attorney for the Commonwealth.—The attorney for the*
35 *Commonwealth shall not be present at any time while the special grand jury is in session*
36 *except that during the investigatory stage of its proceedings he may be present when his*
37 *presence is requested by the special grand jury or when the special grand jury was*

1 empanelled upon his motion. When present before the special grand jury he may
2 interrogate witnesses provided the special grand jury requests or consents to such
3 interrogation.

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

9 § 19.2-211. Provision for special counsel and other personnel.—At the request of the
10 special grand jury, the court may designate special counsel to assist it in its work, and
11 may also provide it with appropriate specialized personnel for investigative purposes.

12 § 19.2-212. Provision for a court reporter.—A court reporter shall be provided for a
13 special grand jury to record, manually or electronically, and transcribe all oral testimony
14 taken before a special grand jury, but such reporter shall not be present during any stage
15 of its deliberations. The notes, tapes and transcriptions of the reporter are for the sole use
16 of the special grand jury, and the contents thereof shall not be divulged by anyone except
17 as hereinafter provided. After the special grand jury has completed its use of the said
18 notes, tapes and transcriptions, the foreman shall cause them to be sealed, the container
19 dated, and delivered to the court.

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

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

27 § 19.2-213. Report by the special grand jury.—At the conclusion of its investigation
28 and deliberation, the special grand jury shall file a report of its findings with the court,
29 including therein any recommendations that it may deem appropriate, after which it shall
30 be discharged.

31 § 19.2-214. Subsequent prosecutions.—Any bill of indictment for alleged criminal
32 offenses, which may follow as a result of the report of the special grand jury, shall be
33 prepared by the attorney for the Commonwealth for presentation to a regular grand jury.

34 § 19.2-215. Costs of a special grand jury.—All costs incurred for services provided by
35 the court for a special grand jury shall be paid by the Commonwealth.

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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.

§ 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.*

§ 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.*

§ 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.*

Article 2.

Form and Requisites.

§ 19.2-220. *Contents of indictment in general.—The indictment or information shall*

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

§ 19.2-221. *Form of prosecutions generally; murder and manslaughter.—The*
 9 *prosecutions for offenses against the Commonwealth, unless otherwise provided, shall be*
 10 *by presentment, indictment or information. While any form of presentment, indictment or*
 11 *information which informs the accused of the nature and cause of the accusation against*
 12 *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
 14 *Virginia, in and for the body of the county (or city) of, upon their oaths present that*
 15 *A B, on the day of, nineteen, in the county (or city) of*
 16 *..... feloniously did kill and murder one C D against the peace and*
 17 *dignity of the Commonwealth.*

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

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

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

1 the defendant did corruptly swear falsely, or did, on the occasion mentioned in the
2 indictment, commit willful perjury, shall be a sufficient allegation of the falsity of the oath
3 alleged to have been taken.

4 In indictments or accusations under § 18.2-435 it shall be unnecessary to allege which
5 statement made by the accused was false, but the other requirements set forth in the
6 foregoing paragraph shall be followed as closely as consistency will permit, identifying
7 each of the circumstances under which the statements of the accused were made.

8 § 19.2-223. Charging several acts of embezzlement; description of money.—In a
9 prosecution against a person accused of embezzling or fraudulently converting to his own
10 use bullion, money, bank notes or other security for money it shall be lawful in the same
11 indictment or accusation to charge and thereon to proceed against the accused for any
12 number of distinct acts of such embezzlements or fraudulent conversions which may have
13 been committed by him within six months from the first to the last of the acts charged in
14 the indictment; and it shall be sufficient to allege the embezzlement or fraudulent
15 conversion to be of money without specifying any particular money, gold, silver, note or
16 security. Such allegation, so far as it regards the description of the property, shall be
17 sustained if the accused be proved to have embezzled any bullion, money, bank note or
18 other security for money although the particular species be not proved.

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

27 § 19.2-224. In prosecution for forgery, unnecessary to set forth copy of forged
28 instrument.—In a prosecution for forging or altering any instrument or other thing, or
29 attempting to employ as true any forged instrument or other thing, or for any of the
30 offenses mentioned in Article 1 (§ 18.2-168 et seq.) of Chapter 6 of Title 18.2, it shall not
31 be necessary to set forth any copy or facsimile of such instrument or other thing; but it
32 shall be sufficient to describe the same in such manner as would sustain an indictment for
33 stealing such instrument or other thing, supposing it to be the subject of larceny.

34 § 19.2-225. Allegation of intent.—Where an intent to injure, defraud or cheat is
35 required to constitute an offense, it shall be sufficient, in an indictment or accusation
36 therefor, to allege generally an intent to injure, defraud or cheat without naming the
37 person intended to be injured, defrauded or cheated; and it shall be sufficient, and not be

1 deemed a variance, if there appear to be an intent to injure, defraud or cheat the United
2 States, or any state, or any county, corporation, officer or person.

3 § 19.2-226. What defects in indictments not to vitiate them.—No indictment or other
4 accusation shall be quashed or deemed invalid:

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

7 (2) For the insertion of the words “upon their oath”, instead of “upon their oaths”;

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

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

13 (5) For omitting the words “with force and arms” or the statement of any particular
14 kind of force and arms;

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

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

19 (8) For omitting to charge the offense to be “against the form of the statute or
20 statutes”; or

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

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

25 § 19.2-227. When judgment not to be arrested or reversed.—Judgment in any
26 criminal case shall not be arrested or reversed upon any exception or objection made after
27 a verdict to the indictment or other accusation, unless it be so defective as to be in
28 violation of the Constitution.

29 § 19.2-228. Name and address of complaining witness to be written on indictment,
30 etc., for misdemeanor.—In a prosecution for a misdemeanor the name and address of the
31 complaining witness, if there be one, shall be written at the foot of the presentment,
32 indictment or information when it is made, found or filed. In case the grand jury that
33 brings in such presentment or indictment or the attorney for the Commonwealth who files
34 such information fail to write the name of a complaining witness at the foot of the
35 presentment, indictment or information, then the name of a complaining witness may be
36 entered of record as such by the court on the motion of the defendant or the attorney for
37 the Commonwealth at any time before the judgment.

1 *issuing such summons shall deliver or transmit therewith as many copies thereof as there*
2 *are persons named therein on whom it is to be served.*

3 § 19.2-234. *To whom person arrested may be delivered.—An officer who, under a*
4 *capias from a court, arrests a person accused of an offense not bailable or for which bail is*
5 *not given shall deliver the accused to such court, if sitting, or to the jailer thereof, who*
6 *shall receive and imprison him.*

7 § 19.2-235. *Clerks to mail process to officers in other counties, etc.—The clerk of*
8 *every court shall forward, by mail, all process issued for the Commonwealth, directed to*
9 *the officer of any county or city other than his own.*

10 § 19.2-236. *Where process of arrest issued may be executed.—When process of arrest*
11 *in a criminal prosecution is issued from a court, either against a party accused or a*
12 *witness, the officer to whom it is directed or delivered may execute it in any part of the*
13 *State.*

14 § 19.2-237. *Process on indictment or presentment for misdemeanor.—On any*
15 *indictment or presentment for a misdemeanor process shall be issued immediately. If the*
16 *accused appear and plead to the charge, the trial shall proceed without delay, unless good*
17 *cause for continuance be shown. If, being summoned in any case not requiring the*
18 *appointment of counsel, he fail to appear and plead, after the summons has been executed*
19 *ten days the court may either award a capias or proceed to trial in the same manner as if*
20 *the accused had appeared, plead not guilty and waived trial by jury. And any warrant*
21 *charging any misdemeanor not requiring the appointment of counsel and returnable before*
22 *a judge elected under Chapter 4.1 of Title 16.1 upon which the accused has been*
23 *summoned or recognized to appear before such judge and shall fail to appear in response*
24 *to such summons or recognizance, may be tried by such judge as if accused had appeared*
25 *and plead not guilty. The court may proceed to judgment in the absence of the accused*
26 *and may make such order as may be necessary for the execution of such judgment.*

27 § 19.2-238. *Summons against a corporation; proceedings; expense.—A summons*
28 *against a corporation to answer an indictment, presentment or information may be served*
29 *as provided in §§ 8-59 and 8-60; and if the defendant after being so served fail to appear,*
30 *the court may proceed to trial and judgment, without further process, as if the defendant*
31 *had appeared, plead not guilty and waived trial by jury. And when, in any such case,*
32 *publication of a copy of the process is required according to such sections, the expense of*
33 *such publication may be certified by the court to the Comptroller, and shall be paid out of*
34 *the State treasury; but the same shall be taxed with other costs and collected from the*
35 *defendant, if judgment be for the Commonwealth, and be paid into the State treasury by*
36 *the officer collecting the same.*

37

1 *Trial and Its Incidents.*

2 *Article 1.*

3 *Jurisdiction.*

4 § 19.2-239. *Jurisdiction in criminal cases.—The circuit courts, except where otherwise*
5 *provided, shall have exclusive original jurisdiction for the trial of all presentments,*
6 *indictments and informations for offenses committed within their respective circuits.*

7 § 19.2-240. *Clerks shall make out criminal docket.—Before every term of any court in*
8 *which criminal cases are to be tried the clerk of the court shall make out a separate docket*
9 *of criminal cases then pending, in the following order, numbering the same:*

10 (1) *Felony cases;*

11 (2) *Misdemeanor cases.*

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

17 § 19.2-241. *Time within which court to set criminal cases for trial.—The judge of*
18 *each circuit court shall fix a day of his court when the trial of criminal cases will*
19 *commence, and may make such general or special order in reference thereto, and to the*
20 *summoning of witnesses, as may seem proper, but all criminal cases shall be disposed of*
21 *before civil cases, unless the court shall direct otherwise.*

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

28 § 19.2-242. *Accused discharged from jail, if not indicted in time.—A person in jail on*
29 *a criminal charge shall be discharged from imprisonment if a presentment, indictment or*
30 *information be not found or filed against him before the end of the second term of the*
31 *court at which he is held to answer, unless it appear to the court that material witnesses*
32 *for the Commonwealth have been enticed or kept away or are prevented from attendance*
33 *by sickness or inevitable accident, and except, also, in the case provided in § 19.2-169. A*
34 *discharge under the provisions of this section shall not, however, prevent a reincarceration*
35 *after a presentment or indictment has been found.*

36 § 19.2-243. *Limitation on prosecution of felony due to lapse of time after finding of*
37 *probable cause; certain exceptions.—Where a general district court has found that there is*

1 probable cause to believe that the accused has committed a felony, the accused, if he is
2 held continuously in custody thereafter, shall be forever discharged from prosecution for
3 such offense if there be no trial commenced in the circuit court within five months from
4 the date such probable cause was found by the district court; and if the accused is not held
5 in custody but has been recognized for his appearance in the circuit court to answer for
6 such offense, he shall be forever discharged from prosecution therefor if there be no trial
7 commenced in the circuit court within nine months from the date such probable cause was
8 found.

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

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

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

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

20 (2) By the witnesses for the Commonwealth being enticed or kept away or prevented
21 from attending by sickness or inevitable accident,

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

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

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

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

30 **Article 2.**

31 **Venue.**

32 § 19.2-244. Venue in general.—Except as otherwise provided by law, the prosecution
33 of a criminal case shall be had in the county or city in which the offense was committed.
34 Except as to motions for a change of venue, all other questions of venue must be raised
35 before verdict in cases tried by a jury and before the finding of guilty in cases tried by the
36 court without a jury.

37 § 19.2-245. Offenses committed without and made punishable within the State and

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

12 *§ 19.2-246. Injury inflicted by a person within the State upon one outside the same.—*
13 *If a mortal wound or other violence or injury be inflicted by a person within this State*
14 *upon one outside of the same, or upon one in this State who afterwards dies from the*
15 *effect thereof out of the State, the offender shall be amenable to prosecution and*
16 *punishment for the offense in the courts of the county or city in which he was at the time*
17 *of the commission thereof as if the same had been committed in such county or city.*

18 *§ 19.2-247. Venue when it is not known where homicide was committed.—Where*
19 *evidence exists that a homicide has been committed either within or without this State,*
20 *under circumstances which make it unknown where such crime was committed, the*
21 *offense shall be amenable to prosecution in the courts of the county or city where the body*
22 *of the victim may be found, as if the offense has been committed in such county or city.*

23 *§ 19.2-248. Venue when mortal wound, etc., inflicted in one county and death ensues*
24 *in another.—If a mortal wound, or other violence or injury, be inflicted, or poison*
25 *administered in one county or city, and death ensue therefrom in another county or city,*
26 *the offense may be prosecuted in either.*

27 *§ 19.2-249. Offenses committed on boundary of two counties, etc.; where*
28 *prosecuted.—An offense committed on the boundary of two counties, or within three*
29 *hundred yards thereof, may be alleged to have been committed, and may be prosecuted*
30 *and punished, in either county, and any sheriff, deputy sheriff, or other police officer shall*
31 *have jurisdiction to make arrests and preserve the peace for a like distance on either side*
32 *of the boundary line between such counties.*

33 *§ 19.2-250. How far jurisdiction of corporate authorities extends.—The jurisdiction of*
34 *the corporate authorities of each town or city, in criminal cases involving offenses against*
35 *the Commonwealth, shall extend within the State one mile beyond the corporate limits of*
36 *such town or city; except that such jurisdiction of the corporate authorities of towns*
37 *situated in counties having a density of population in excess of three hundred inhabitants*

1 per square mile, or in counties adjacent to cities having a population of one hundred and
2 seventy thousand or more, shall extend only to the corporate limits of such town.

3 § 19.2-251. When and how venue may be changed.—A circuit court may, on motion
4 of the accused or of the Commonwealth, for good cause, order the venue for the trial of a
5 criminal case in such court to be changed to some other circuit court. Such motion when
6 made by the accused may be made in his absence upon a petition signed and sworn to by
7 him.

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

14 § 19.2-252. Court may admit accused to bail; if not bailed, what to be done with
15 him.—When the venue is so changed, the court making the order may admit the accused
16 to bail and shall recognize the witnesses and the accused if admitted to bail and the bail be
17 given, to appear on some certain day before the court to which the case is removed; if the
18 accused be not admitted to bail or the bail required be not given, the court shall remand
19 him to its own jail and order its officer to remove him thence to the jail of the court to
20 which the case is removed, so that he shall be there before the day for the appearance of
21 the witnesses.

22 § 19.2-253. Procedure upon and after change of venue.—The clerk of the court which
23 orders a change of venue shall certify copies of the recognizances aforesaid and of the
24 record of the case to the clerk of the court to which the case is removed, who shall
25 thereupon issue a venire facias, directed to the officer of such court; and such court shall
26 proceed with the case as if the prosecution had been originally therein; and for that
27 purpose the certified copies aforesaid shall be sufficient.

28 Article 3.

29 Arraignment; Pleas; Trial Without Jury.

30 § 19.2-254. Arraignment; pleas.—Arraignment shall be conducted in open court. It
31 shall consist of reading to the accused the charge on which he will be tried and calling on
32 him to plead thereto. In a felony case, arraignment is not necessary when waived by the
33 accused. In a misdemeanor case, arraignment is not necessary when waived by the accused
34 or his counsel, or when the accused fails to appear.

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

1 to accept a plea of *nolo contendere*.

2 § 19.2-255. Defendant allowed to plead several matters of law or fact.—The
3 defendant in any criminal prosecution may plead as many several matters, whether of law
4 or fact, as he shall think necessary, and he may file pleas in bar at the same time with
5 pleas in abatement, or within a reasonable time thereafter; but the issues on the pleas in
6 abatement shall be first tried.

7 § 19.2-256. Approvers.—Approvers shall not be admitted in any case.

8 § 19.2-257. Trial without a jury in felony cases; pleas.—Upon a plea of guilty in a
9 felony case, tendered in person by the accused after being advised by counsel, the court
10 shall hear and determine the case without the intervention of a jury; or if the accused
11 plead not guilty, with his consent after being advised by counsel and the concurrence of
12 the attorney for the Commonwealth and of the court entered of record, the court shall hear
13 and determine the case without the intervention of a jury. In such cases the court shall
14 have and exercise all the powers, privileges and duties given to juries by any statute
15 relating to crimes and punishments.

16 § 19.2-258. Trial of misdemeanors by court without jury; absence of defendant.—In
17 all cases of a misdemeanor upon a plea of guilty, tendered in person by the accused or his
18 counsel, the court shall hear and determine the case without the intervention of a jury. If
19 the accused plead not guilty, in person or by his counsel, the court, in its discretion, with
20 the concurrence of the accused and the attorney for the Commonwealth, may hear and
21 determine the case without the intervention of a jury. In each instance the court shall have
22 and exercise all the powers and duties vested in juries by any statute relating to crimes
23 and punishments.

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

29 § 19.2-259. On trial for felony, accused to be present; when court may enter plea for
30 him, and trial go on.—A person tried for felony shall be personally present during the trial.
31 If when arraigned he will not plead or answer and does not confess his guilt the court shall
32 have the plea of not guilty entered and the trial shall proceed as if the accused had put in
33 that plea. But for the purposes of this section a motion for a continuance, whether made
34 before or after arraignment, shall not be deemed to be part of the trial.

35 Article 4.

36 Trial by Jury.

37 § 19.2-260. Provisions of Title 8 apply except as provided in this article.—Except as

1 otherwise provided in this article, trial by jury in criminal cases shall be regulated as
2 provided for in Chapter 11.1 (§ 8-208.2 et seq.) of Title 8.

3 § 19.2-261. Charging grand jury in presence of person selected as juror.—The court
4 shall not charge the grand jury in the presence of any person selected as a juror to try any
5 person indicted by the said grand jury. A violation of this provision shall constitute
6 reversible error in any criminal case tried by a jury composed of one or more such
7 veniremen.

8 § 19.2-262. Waiver of jury trial; numbers of jurors in criminal cases; how jurors
9 selected from panel.—(1) In any criminal case in which trial by jury is dispensed with as
10 provided by law, the whole matter of law and fact shall be heard and judgment given by
11 the court. In appeals from juvenile and domestic relations district courts the infant,
12 through his guardian ad litem or counsel, may waive a jury.

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

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

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

26 § 19.2-263. Separate juries for separate trials of persons jointly indicted.—If a person,
27 indicted jointly with others for a felony, elects to be tried separately, the panel summoned
28 for their trial may be used for him who is first tried and the court shall cause to be
29 summoned a new panel for the trial of the others, jointly or separately, as they may elect.

30 § 19.2-264. When jury need not be kept together in felony case; sufficient compliance
31 with requirement.—In any case of a felony the jury shall not be kept together unless the
32 court otherwise directs. Whenever a jury is required to be kept together, it shall be deemed
33 sufficient compliance although the court for good cause permits one or more of such jurors
34 to be separated from the others; provided all such jurors, whether separated or not, be
35 kept in charge of officers provided therefor.

36

Article 5.

37

Miscellaneous Provisions.

1 judge at the hearing being satisfied of the desirability of such custody and delivery, for
2 which determination the certificate shall be prima facie proof of such desirability, may, in
3 lieu of issuing subpoena or summons, order that the witness be forthwith taken into
4 custody and delivered to an officer of the requesting state.

5 § 19.2-276. Penalty for failure to attend and testify.—If the witness who is summoned
6 as above provided, after being paid or tendered by some properly authorized person the
7 sum of ten cents a mile for each mile by the ordinary traveled route to and from the court
8 where the prosecution is pending and five dollars for each day that he is required to travel
9 and attend as a witness, fails without good cause to attend and testify as directed in the
10 summons, he shall be punished in the manner provided for the punishment of any witness
11 who disobeys a summons issued from a court of record in this State.

12 § 19.2-277. Summoning witnesses in another state to testify in this State.—If a
13 person in any state which by its laws has made provision for commanding persons within
14 its borders to attend and testify in criminal prosecutions or grand jury investigations
15 commenced or about to commence in this State is a material witness in a prosecution
16 pending in a court of record in this State, or in a grand jury investigation which has
17 commenced or is about to commence, a judge of such court may issue a certificate under
18 the seal of the court stating these facts and specifying the number of days the witness will
19 be required. The certificate may include a recommendation that the witness be taken into
20 immediate custody and delivered to an officer of this State to assure his attendance in this
21 State. This certificate shall be presented to a judge of a court of record in the county in
22 which the witness is found.

23 § 19.2-278. Tender of mileage and per diem to such witnesses; issuance of warrant
24 necessary to make tender.—If the witness is summoned to attend and testify in this State
25 he shall be tendered the sum of ten cents a mile for each mile by the ordinary traveled
26 route to and from the court where the prosecution is pending and five dollars for each day
27 that he is required to travel and attend as a witness. A witness who has appeared in
28 accordance with the provisions of the summons shall not be required to remain within this
29 State a longer period of time than the period mentioned in the certificate, unless otherwise
30 ordered by the court.

31 The judge issuing the certificate prescribed in § 19.2-277 may, by order, direct the
32 clerk of the court involved to issue such warrant or warrants payable out of the State
33 treasury, as may be necessary to make the tender hereinabove prescribed; and after the
34 entry of such order, such clerk, upon application of the attorney for the Commonwealth of
35 the county or city involved, or of the accused, if certificate for the attendance of witness
36 has been issued by such judge on his behalf as authorized by § 19.2-330, shall issue such
37 warrant or warrants and deliver them to the said attorney for the Commonwealth, who

1 shall, forthwith, cause such tender to be made. Upon issuance of any such warrant or
2 warrants said clerk shall deliver a certified copy of the court's order to the Comptroller,
3 and the said warrant or warrants shall be paid out of the State treasury upon presentation.

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

8 § 19.2-279. Penalty for failure of such witnesses to testify.—If such witness, after
9 coming into this State, fails without good cause to attend and testify as directed in the
10 summons, he shall be punished in the manner provided for the punishment of any witness
11 who disobeys a summons issued from a court of record in this State.

12 § 19.2-280. Exemption of such witnesses from arrest or service of process.—If a
13 person comes into this State in obedience to a summons directing him to attend and testify
14 in this State he shall not while in this State pursuant to such summons be subject to arrest
15 or the service of process, civil or criminal, in connection with matters which arose before
16 his entrance into this State under the summons.

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

22 § 19.2-281. Construction of article.—This article shall be so interpreted and construed
23 as to effectuate its general purpose to make uniform the law of the states which enact it.

24 § 19.2-282. How article cited.—This article may be cited as the "Uniform Act to
25 Secure the Attendance of Witnesses from without a State in Criminal Proceedings."

26 CHAPTER 17.

27 Convictions; Effect Thereof.

28 Article 1.

29 Proof and Verdicts.

30 § 19.2-283. How accused may be convicted of felony.—No person shall be convicted
31 of felony, unless by his confession of guilt in court, or by his plea, or by the verdict of a
32 jury, accepted and recorded by the court, or by judgment of the court trying the case
33 without a jury according to law.

34 § 19.2-284. Proof of ownership in offense relating to property.—In a prosecution for
35 an offense committed upon, relating to or affecting real estate, or for stealing, embezzling,
36 destroying, injuring or fraudulently receiving or concealing any personal estate it shall be
37 sufficient to prove that when the offense was committed the actual or constructive

1 possession, or a general or special property, in the whole or any part of such estate was in
2 the person or entity alleged in the indictment or other accusation to be the owner thereof.

3 § 19.2-285. Accused guilty of part of offense charged, sentence; on new trial what
4 tried.—If a person indicted of a felony be by the jury acquitted of part of the offense
5 charged, he shall be sentenced for such part as he is so convicted of, if the same be
6 substantially charged in the indictment, whether it be felony or misdemeanor. If the verdict
7 be set aside and a new trial granted the accused, he shall not be tried for any higher
8 offense than that of which he was convicted on the last trial.

9 § 19.2-286. Conviction of attempt or being accessory on indictment for felony; effect
10 of general verdict of not guilty.—On an indictment for felony the jury may find the
11 accused not guilty of the felony but guilty of an attempt to commit such felony, or of being
12 an accessory thereto; and a general verdict of not guilty, upon such indictment, shall be a
13 bar to a subsequent prosecution for an attempt to commit such felony, or of being an
14 accessory thereto.

15 § 19.2-287. Verdict and judgment, when jury agree as to some and disagree as to
16 others.—When two or more persons are charged and tried jointly, the jury may render a
17 verdict as to any of them as to whom they agree. Thereupon judgment shall be entered
18 according to the verdict; and as to the others the case shall be tried by another jury.

19 § 19.2-288. Verdict when accused found guilty of murder; if guilt confessed, duty of
20 the court.—If a person indicted for murder be found by the jury guilty of any punishable
21 homicide, they shall in their verdict fix the degree thereof and ascertain the extent of the
22 punishment to be inflicted within the bounds prescribed by §§ 18.2-30 to 18.2-36.

23 § 19.2-289. Conviction of petit larceny.—In a prosecution for grand larceny, if it be
24 found that the thing stolen is of less value than one hundred dollars, the jury may find the
25 accused guilty of petit larceny.

26 § 19.2-290. Conviction of petit larceny though thing stolen be worth more than one
27 hundred dollars.—In a prosecution for petit larceny, though the thing stolen be of the value
28 of one hundred dollars or more, the jury may find the accused guilty; and upon a
29 conviction under this or the preceding section (§ 19.2-289) the accused shall be sentenced
30 for petit larceny.

31 § 19.2-291. Faulty counts; motion to strike; general verdict of guilty.—When there are
32 several counts in the indictment one or more of which are faulty, the accused may move to
33 strike the faulty count or counts or move the court to instruct the jury to disregard them.
34 If he does neither and a general verdict of guilty is found, judgment shall be entered
35 against the accused, if any count be good, though others be faulty, unless the court can
36 plainly see that the verdict could not have been found on the good count. If the accused
37 demurs to the faulty count or moves the court to instruct the jury to disregard it and his

1 demurrer or motion is overruled and there is a general verdict of guilty and it cannot be
2 seen on which count the verdict was founded, if the jury has been discharged, it shall be
3 set aside; but if it is manifest that it could not have been found on the bad count, the
4 verdict shall be allowed to stand.

5 Article 2.

6 Former Jeopardy.

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

13 § 19.2-293. When acquittal not a bar to further prosecution for same offense.—A
14 person acquitted of an offense on the ground of a variance between the allegations and the
15 proof of the indictment or other accusation, or upon an exception to the form or substance
16 thereof, may be arraigned again on a new indictment or other proper accusation, and tried
17 and convicted for the same offense, notwithstanding such former acquittal.

18 § 19.2-294. Offense against two or more statutes or ordinances.—If the same act be a
19 violation of two or more statutes, or of two or more ordinances, or of one or more statutes
20 and also one or more ordinances, conviction under one of such statutes or ordinances shall
21 be a bar to a prosecution or proceeding under the other or others. Furthermore, if the
22 same act be a violation of both a State and a federal statute a prosecution or proceeding
23 under the federal statute shall be a bar to a prosecution or proceeding under the State
24 statute.

25 § 19.2-294.1. Dismissal of one of dual charges for driving while intoxicated and
26 reckless driving upon conviction of other charge.—Whenever any person is charged with a
27 violation of § 18.2-266 or any similar ordinances of any county, city, or town and reckless
28 driving growing out of the same act or acts and is convicted of one of these charges, the
29 court shall dismiss the remaining charge.

30 CHAPTER 18.

31 Sentence; Judgment; Execution of Sentence.

32 Article 1.

33 General Provisions.

34 § 19.2-295. Ascertainment of punishment in criminal cases.—Within the limits
35 prescribed by law, the term of confinement in the penitentiary or in jail and the amount of
36 fine, if any, of a person convicted of a criminal offense, shall be ascertained by the jury, or
37 by the court in cases tried without a jury.

1 § 19.2-296. *Withdrawal of plea of guilty.*—A motion to withdraw a plea of guilty or
2 *nolo contendere* may be made only before sentence is imposed or imposition of a sentence
3 is suspended; but to correct manifest injustice, the court within twenty-one days after
4 entry of a final order may set aside the judgment of conviction and permit the defendant to
5 withdraw his plea.

6 § 19.2-297. *Confinement of person convicted of petit larceny previously sentenced for*
7 *like offenses.*—When a person is convicted of petit larceny, and it is alleged in the
8 indictment on which he is convicted, and admitted, or found by the jury or judge before
9 whom he is tried, that he has been before sentenced in the United States for the like
10 offense, he shall be confined in jail not less than thirty days nor more than twelve months;
11 and for a third, or any subsequent offense, he shall be confined in the penitentiary not less
12 than one nor more than two years.

13 § 19.2-298. *Pronouncement of sentence.*—After a finding of guilty, sentence shall be
14 pronounced, or decision to suspend the imposition of sentence shall be announced, without
15 unreasonable delay. Pending pronouncement, the court may commit the accused to jail or
16 may continue or alter the bail. Before pronouncing the sentence, the court shall inquire of
17 the accused if he desires to make a statement and if he desires to advance any reason why
18 judgment should not be pronounced against him.

19 § 19.2-299. *Presentence investigation and report.*—(a) After a finding of guilty, a
20 court of record may direct a probation officer to make a presentence investigation and a
21 written report in any case. The accused may demand and be entitled to such investigation
22 and report after he has pleaded guilty to, or has been convicted in a trial without a jury of,
23 a felony punishable by death or confinement for more than ten years.

24 (b) The written report of the presentence investigation shall contain any prior
25 criminal record of the accused and such additional information as the court may desire or
26 the probation officer may deem helpful to the court in imposing sentence or in granting
27 probation. The probation officer shall file his written report with the judge and shall
28 furnish copies to the attorney for the Commonwealth and defense counsel after entry of a
29 guilty plea or conviction and within a reasonable time before the day of sentencing. The
30 probation officer shall present his report in open court in the presence of the accused, who
31 shall be advised of its contents and given the right to cross-examine the probation officer
32 as to any matter contained therein and to present additional facts bearing upon a proper
33 sentence.

34 § 19.2-300. *Deferring for mental examination sentence of person convicted of offense*
35 *indicating sexual abnormality.*—In the case of the conviction in any court of record of any
36 person for any criminal offense which indicates sexual abnormality, the trial judge may on
37 his own initiative, or shall upon application of the attorney for the Commonwealth, the

1 defendant, or counsel for defendant or other person acting for the defendant, defer
2 sentence until the report of a mental examination of the defendant can be secured to guide
3 the judge in determining what disposition shall be made of the defendant.

4 § 19.2-301. Judge shall require examination; by whom made; report; expenses of
5 psychiatrist.—The trial judge shall require the Department of Mental Health and Mental
6 Retardation to have a mental examination made in accord with § 19.2-300, and report
7 thereon, unless a prior report on such person has been submitted to the court by the
8 Department during the proceedings, to be made by a psychiatrist employed in any State
9 hospital or in any mental hospital maintained by the State. Such report shall be furnished
10 to the judge and shall be available to the counsel for defendant and to the attorney for the
11 Commonwealth. The psychiatrist making the examination shall not be entitled to any
12 compensation for making the examination and the report but shall be paid his actual
13 expenses on vouchers approved by the trial judge, out of funds appropriated for criminal
14 expenses.

15 § 19.2-302. Construction and administration of §§ 19.2-300 and 19.2-301.—Nothing
16 contained in § 19.2-300 or 19.2-301 shall be construed to conflict with or repeal any statute
17 in regard to the Department of Mental Health and Mental Retardation, and such sections
18 shall be administered with due regard to the authority of, and in cooperation with, the
19 Commissioner of Mental Health and Mental Retardation.

20 § 19.2-303. Suspension of sentence; probation.—After conviction, whether with or
21 without jury, the court, unless prohibited by statute, may suspend imposition of sentence
22 or suspend the sentence in whole or part and in addition may place the accused on
23 probation.

24 § 19.2-304. Increasing or decreasing probation period and modification of
25 conditions.—The court may subsequently increase or decrease the probation period and
26 may revoke or modify any condition of probation, but only upon a hearing after reasonable
27 notice to both the defendant and the attorney for the Commonwealth.

28 § 19.2-305. Requiring fines, costs, restitution for damages or support from
29 probationer.—While on probation the defendant may be required to pay in one or several
30 sums a fine and costs imposed at the time of being placed on probation as a condition of
31 such probation, and the failure of the defendant to pay such fine and costs at the
32 prescribed time or times may be deemed a breach of such probation. Such defendant may
33 be required to make restitution or reparation to the aggrieved party or parties for actual
34 damages or loss caused by the offense for which conviction was had, or may be required
35 to provide for the support of his wife or others for whose support he may be legally
36 responsible.

37 § 19.2-306. Revocation of suspension of sentence and probation.—The court may, for

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

21 § 19.2-307. Contents of judgment order.—The judgment order shall set forth the plea,
22 the verdict or findings and the adjudication and sentence, whether or not the case was
23 tried by jury, and if not, whether the consent of the accused was concurred in by the court
24 and the attorney for the Commonwealth. If the accused is found not guilty, or for any
25 other reason is entitled to be discharged, judgment shall be entered accordingly. If an
26 accused is tried at one time for two or more offenses, the court may enter one judgment
27 order respecting all such offenses.

28 § 19.2-308. When two or more sentences run concurrently.—When any person is
29 convicted of two or more offenses, and sentenced to confinement, such sentences shall not
30 run concurrently, unless expressly ordered by the court.

31 § 19.2-309. Sentence of confinement for conviction of a combination of felony and
32 misdemeanor offenses.—When any person is convicted of a combination of felony and
33 misdemeanor offenses and sentenced to confinement therefor, in determining the sequence
34 of confinement, the felony sentence and commitment shall take precedence and such
35 person shall first be committed to serve the felony sentence.

36 § 19.2-310. Transportation of convicts to the penitentiary.—Every person sentenced
37 by a court to confinement in the State penal system upon conviction of a felony shall be

1 conveyed to an appropriate receiving unit operated by the Department of Corrections in
2 the manner hereinafter provided. The clerk of the court in which the person is sentenced
3 shall forthwith transmit to the Director of the Department of Corrections an abstract of
4 the judgment and within thirty days from the date of the judgment shall forthwith transmit
5 to the Director a certified copy or copies of the order of trial and a certified copy of the
6 complete final order, and if he fail to do so he shall forfeit one hundred dollars. Such
7 abstract and copy or copies shall contain, as nearly as ascertainable, the birth date of the
8 person sentenced. The city sergeant, jailor, or sheriff shall certify to the Superintendent of
9 the Virginia State Penitentiary any jail credits to which the person to be confined is
10 entitled at such time as that person is transferred to the custody of the Superintendent of
11 the Virginia State Penitentiary.

12 Following receipt of such abstract the Director or his designee shall dispatch a guard
13 to the county or corporation with a warrant directed to the sheriff authorizing him to
14 deliver the convict to the guard whose duty it shall be to take charge of the person and
15 convey him to an appropriate receiving unit designated by the Director or his designee.
16 Under no circumstances shall persons be conveyed to the receiving unit or units of the
17 State penal system beyond the maximum capacity of the unit or units as established by the
18 Director; in this regard, the Director or his designee shall allocate space available in the
19 receiving unit or units by giving first priority to the transportation, as the transportation
20 facilities of the Department of Corrections may permit, of those persons held in jails who
21 in the opinion of the Director or his designee require immediate transportation to a
22 receiving unit.

23 Article 2.

24 Indeterminate Commitment.

25 § 19.2-311. Commitment to Department of Corrections in certain cases; duration and
26 character of commitment.—(a) The judge or jury, as the case may be, when fixing
27 punishment in those cases specifically enumerated in subsection (b) of this section, may, in
28 their discretion, in lieu of imposing any other penalty provided by law, commit persons
29 convicted in such cases for a period of four years, which commitment shall be
30 indeterminate in character. Such persons shall be committed to the Department of
31 Corrections for initial confinement for a period not to exceed three years, when funds and
32 facilities are provided by the General Assembly. Such confinement shall be followed by at
33 least one year of supervisory parole, conditioned on good behavior, but such parole period
34 shall not, in any case, continue beyond the four-year period.

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

37 (1) Committed the offense of which convicted after becoming eighteen but before

1 *becoming twenty-one years of age; or was a juvenile certified for trial as an adult under*
2 *the provisions of § 16.1-176 or 16.1-177; and*

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

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

11 § 19.2-312. *Same; initial study, etc., and ultimate confinement.—Every person*
12 *committed to the Department under § 19.2-311 shall be confined first at the institution*
13 *established under the provisions of Chapter 5.1 (§ 53-128.1 et seq.) of Title 53 of the Code*
14 *of Virginia for fully adequate study, testing and diagnosis prior to a determination by the*
15 *Department as to where such person shall be confined; provided, however, that any such*
16 *person may be committed to a mental hospital or like institution, as provided by law*
17 *during such period or transferred thereto; and provided, further, that females so committed*
18 *shall be confined at the State Industrial Farm for Women for purposes of both initial study*
19 *and ultimate confinement.*

20 § 19.2-313. *Same; eligibility for release.—Any person committed under the provisions*
21 *of § 19.2-311 shall be eligible for release following initial study, testing and diagnosis at*
22 *any time prior to the completion of three years in confinement. The Virginia Parole Board*
23 *shall have discretion to release such person upon a determination that he or she has*
24 *demonstrated that such release is compatible with the interests of society and of such*
25 *person and his or her successful rehabilitation to that extent. The Department and Parole*
26 *Board shall make continuous evaluation of their progress to determine their readiness for*
27 *release. All such persons, in any event, shall be released by the Parole Board after three*
28 *years' confinement.*

29 § 19.2-314. *Same; supervision of persons released.—The Virginia Parole Board shall*
30 *supervise every person released under § 19.2-313 for a period of at least one year and may*
31 *continue such supervised parole for a longer period, if it deems such advisable, provided*
32 *such initial parole period shall not extend beyond the termination of the four-year period.*

33 § 19.2-315. *Same; compliance with terms and conditions of parole; time on parole not*
34 *counted as part of commitment period.—Every person on parole under § 19.2-314 shall*
35 *comply with such terms and conditions as may be prescribed by the Board according to §*
36 *53-257 and shall be subject to the penalties imposed by law for a violation of such terms*
37 *and conditions; provided, however, such person shall in no case be returned to the*

1 institution established under Chapter 5.1 (§ 53-128.1 et seq.) of Title 53. Time on parole
2 shall not be counted as part of the four-year period of commitment under this section.

3 § 19.2-316. Same; evaluation and report prior to determining punishment.—The court,
4 in its discretion, may prior to determining punishment as provided for in § 19.2-311 or
5 other applicable provisions of law, commit, for a period not to exceed sixty days, the
6 person convicted to the diagnostic facilities of the institution established under Chapter 5.1
7 (§ 53-128.1 et seq.) of Title 53 for evaluation and report. If additional evaluation is deemed
8 advisable, the Department of Corrections may apply to the court for an extension of such
9 commitment for a period of up to sixty days. The court shall not be bound by such report
10 in the matter of determining punishment.

11 CHAPTER 19.

12 Exceptions and Writs of Error.

13 § 19.2-317. When writ of error lies in criminal case for accused; when for
14 Commonwealth; when for city or town.—A writ of error shall lie in a criminal case to the
15 judgment of a circuit court or the judge thereof, from the Supreme Court. It shall lie in any
16 such case for the accused and if the case be for the violation of any law relating to the
17 State revenue it shall lie also for the Commonwealth. And a writ of error shall also lie for
18 any city or town from the Supreme Court to the judgment of any circuit court declaring
19 any ordinance of such city or town to be unconstitutional or otherwise invalid, except
20 when the violation of any such ordinance is made a misdemeanor by State statute.

21 § 19.2-318. Writ of error to judgment for contempt.—To a judgment for a contempt
22 of court a writ of error shall lie from the Supreme Court. This section shall also be
23 construed to authorize a writ of error to a judgment of a circuit court rendered on appeal
24 from a judgment of a court not of record for contempt.

25 § 19.2-319. When execution of sentence to be suspended.—If a person sentenced by a
26 circuit court to death or confinement in the penitentiary indicates an intention to apply for
27 a writ of error, the court shall postpone the execution of its sentence for such time as it
28 may deem proper.

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

37 § 19.2-320. Appeal in criminal cases to comply with Rules of Court.—Any party for

1 whom a writ of error lies may apply therefor by complying with the provisions of the
2 Rules of the Supreme Court of Virginia relative to the appeal of criminal cases.

3 § 19.2-321. To whom petition presented.—The petition in a case wherein a writ of
4 error lies from the Supreme Court may be presented to the Court, or, in the vacation of
5 the Court, to any justice thereof.

6 § 19.2-322. When writ of error allowed, and to operate as supersedeas.—The Court or
7 any justice to whom a petition is duly presented, if of opinion that the judgment
8 complained of ought to be reviewed, may allow a writ of error, which may operate as a
9 supersedeas thereto if the Court or justice awarding it so direct, on such terms and
10 conditions as the Court or justice may prescribe.

11 § 19.2-323. Denial by justice no bar to allowance by Court.—The denial of a writ of
12 error by a justice of the Supreme Court, in the vacation of the Court on petition presented
13 to him, shall not prevent the allowance of the writ by the Court, if by it deemed proper, on
14 presentation of the petition to the Court at its next term.

15 § 19.2-324. Decision of appellate court.—The court from which a writ of error lies
16 shall affirm the judgment, if there be no error therein, and reverse the same in whole or in
17 part, if erroneous, and enter such judgment as the court whose error is sought to be
18 corrected ought to have entered; or remand the cause and direct a new trial; affirming in
19 those cases where the voices on both sides are equal.

20 § 19.2-325. Provisions which apply to criminal as well as civil cases; when plaintiff in
21 error unable to pay printing costs.—Sections 8-482, 8-497.1, 8-499, 8-500 and 14.1-120 shall
22 apply as well to criminal cases as to civil cases; provided, that in a felony case in the
23 Supreme Court, if the plaintiff in error file with the clerk of the Court an affidavit that he
24 is unable to pay or secure to be paid the costs of printing the record in the case, together
25 with a certificate of the judge of the trial court to the effect that he has investigated the
26 matter and is of opinion that the plaintiff in error is unable to pay, or secure to be paid,
27 such costs, the printing shall be done as if the costs had been paid and the clerk shall not
28 be required to account for and pay the same into the State treasury; but if the costs be not
29 paid or secured to be paid and upon the hearing of the case the judgment of the court
30 below be wholly affirmed by the Supreme Court, the Court in affirming shall also give
31 judgment in behalf of the Commonwealth against the plaintiff in error for the amount of
32 the costs to be taxed by its clerk.

33 § 19.2-326. Payment of expenses of appeals of indigent defendants.—In any felony
34 case wherein the judge of the court of record, from the affidavit of the defendant or any
35 other evidence certifies that the defendant is financially unable to pay his attorneys' fees,
36 costs and expenses incident to an appeal, the Supreme Court shall order the payment of
37 such attorneys' fees, costs or necessary expenses of such attorneys in an amount deemed

1 reasonable by the court, by the Commonwealth out of the appropriation for criminal
2 charges; provided that if the conviction is upheld on appeal, the attorney's fees, costs and
3 necessary expenses of such attorney paid by the Commonwealth under the provisions
4 hereof shall be assessed against the defendant.

5 § 19.2-327. How judgment of appellate court certified and entered.—The judgment of
6 the Supreme Court shall be certified to the court to whose judgment the writ of error was
7 allowed, which court, or the clerk thereof in vacation, shall cause the same to be entered
8 on its order book as its own judgment.

9 CHAPTER 20.

10 Taxation and Allowance of Costs.

11 § 19.2-328. When jailers and sheriffs to summon or employ guards and other persons;
12 allowances therefor.—Whenever in the discretion of the court it is necessary for the
13 safekeeping of a prisoner under charge of, or sentence for, crime, whether the prisoner be
14 in jail, hospital, court or elsewhere, the court may order the jailer to summon a sufficient
15 guard, and whenever ordered by the court to do so, the sheriff of any county or city shall
16 summon or employ temporarily such person or persons as may be needed to preserve
17 proper order or otherwise to aid the court in its proper operation and functioning, and for
18 such guard or other service the court may allow therefor so much as it deems proper, not
19 exceeding twenty dollars per day for each person, the same to be paid out of the State
20 treasury, except when payment for such guard is otherwise provided under the provisions
21 of § 53-183.3 of the Code of Virginia.

22 § 19.2-329. Allowance to witnesses.—Sections 14.1-190 to 14.1-194, inclusive, shall
23 apply to a person attending as a witness, under a recognizance or summons in a criminal
24 case, as well as to a person attending under a summons in a civil case, except that in a
25 criminal case a witness who travels over fifty miles to the place of attendance shall have
26 for each day's attendance one dollar, instead of fifty cents; and a person residing out of
27 this State, who attends a court therein as a witness, shall be allowed by the court a proper
28 compensation for attendance and travel to and from the place of his abode, the amount of
29 the same to be fixed by the court.

30 § 19.2-330. Compensation to witnesses from out of the State.—Any witness from
31 without the State whose attendance is compelled under the provisions of Chapter 16,
32 Article 2 (§ 19.2-272 et seq.) of this title shall be deemed to render a service within the
33 meaning of § 19.2-332 and the compensation and expenses of such witness, whether on
34 behalf of the Commonwealth or the accused, may be paid out of the State treasury in
35 accordance with the provisions of such section. But the compensation and expenses of any
36 witness summoned on behalf of an accused shall not be certified to the State treasury as a
37 compensation under such section except in cases when the court or judge thereof is

1 satisfied that the defendant is without means to pay same and is unable to provide the
2 costs incident thereto.

3 § 19.2-331. When Commonwealth pays witnesses in case of misdemeanor.—Payment
4 shall not be made out of the State treasury to a witness attending for the Commonwealth
5 in any prosecution for a misdemeanor unless it appears that the sum to which the witness
6 is entitled cannot be obtained:

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

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

11 § 19.2-332. Compensation to officer or other person for services not otherwise
12 compensable.—Whenever in a criminal case an officer or other person renders any service
13 required by law for which no specific compensation is provided, or whenever any other
14 service has been rendered pursuant to the request or prior approval of the court, the court
15 shall allow therefor such sum as it deems reasonable, including mileage at a rate provided
16 by law, and such allowance shall be paid out of the State treasury from the appropriation
17 for criminal charges on the certificate of the court stating the nature of the service. This
18 section shall not prevent any payment under § 2.1-223.6, which could have been made if
19 this section had not been enacted.

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

23 § 19.2-333. No State fees to attorney for the Commonwealth.—No fee to an attorney
24 for the Commonwealth shall be payable out of the State treasury, unless it be expressly so
25 provided.

26 § 19.2-334. By whom certificate of allowance to be made; vouchers to accompany
27 it.—The certificate required by § 14.1-85, shall, when the payment is to be to a clerk, be
28 from the court whereof he is clerk, and when it is to be to a sheriff or other officer, from
29 the court in which the prosecution is, or to which a judge of a court not of record shall
30 certify such expense, as hereinafter mentioned. Any other expense incident to a proceeding
31 in a criminal case which is payable out of the State treasury otherwise than under § 2.1-
32 223.6, 19.2-330 or 19.2-332 shall be certified by the court. If it be a judge of a court not of
33 record exercising jurisdiction, it shall be certified by such judge to the circuit court before
34 which he qualified, which court shall certify the same, if it appears to be correct, to the
35 Comptroller. With the certificate of allowance there shall be transmitted to the Comptroller
36 the vouchers on which it is made. The court, in passing upon any account for fees or
37 expenses required to be certified by it under this section, before certifying the account,

1 may, in its discretion, require proof of the correctness of any item thereof, notwithstanding
2 the affidavit of the party in whose favor such account is. In all cases the judge of a court
3 not of record shall file with his account a copy of the warrant on which his proceedings
4 were had.

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

7 § 19.2-335. Judges of courts not of record to certify to clerk costs of proceedings in
8 criminal cases before them.—A judge of a court not of record before whom there is any
9 proceeding in a criminal case shall certify to the clerk of the circuit court of his county or
10 city, and a judge or court before whom there is, in a criminal case, any proceeding
11 preliminary to conviction in another court, upon receiving information of the conviction
12 from the clerk of the court wherein it is, shall certify to such clerk all the expenses
13 incident to such proceedings which are payable out of the State treasury.

14 § 19.2-336. Clerk to make up statement of whole cost, and issue execution therefor.—
15 In every criminal case the clerk of the circuit court in which the accused is convicted, or, if
16 the conviction be before a court not of record, the clerk to which the judge thereof certifies
17 as aforesaid, shall, as soon as may be, make up a statement of all the expenses incident to
18 the prosecution, including such as are certified under § 19.2-335, and execution for the
19 amount of such expenses shall be issued and proceeded with; and Chapter 21 (§ 19.2-339
20 et seq.) of this title shall apply thereto in like manner as if, on the day of completing the
21 statement, there was a judgment in such court in favor of the Commonwealth against the
22 accused for such amount as a fine; provided, however, that in any case in which an
23 accused waives trial by jury, at least ten days before trial, but the Commonwealth or the
24 court trying the case refuses to so waive, then the cost of the jury shall not be included in
25 such statement or judgment.

26 § 19.2-337. Claims not presented in time, to be disallowed.—If by reason of the
27 failure of a person to present his claim in due time a sum be not included in such
28 execution which would have been included if so presented, such claim, unless there be
29 good cause for the failure, shall be disallowed.

30 § 19.2-338. Collection by town of cost of transporting prisoners.—(1) Notwithstanding
31 any provision of any charter or any law to the contrary, any town may provide that any
32 person convicted of violating any ordinance of the town may be charged, in addition to all
33 other costs, fines, fees and charges, the costs of transporting such person so convicted to
34 and from a jail or other penal institution outside the corporate limits of such town
35 designated by the town as a place of confinement for persons arrested for violating the
36 ordinances of the town and required to be held in jail pending trial upon such charge. The
37 cost of such transportation shall be taxed as a part of the costs payable by persons

1 convicted of violating such ordinances and the costs shall be taxed in accordance with the
2 schedules provided in §§ 14.1-105 and 14.1-111 of the Code of Virginia.

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

7 CHAPTER 21.

8 Recovery of Fines and Penalties.

9 Article 1.

10 Proceedings to Recover.

11 § 19.2-339. Word "fine" construed.—Whenever the word "fine" is used in this
12 chapter, it shall be construed to refer solely to the pecuniary penalty imposed by a court or
13 jury upon a defendant who has been found guilty of a crime. The word "fine" shall not
14 include other forfeitures, penalties, costs, amercements or the like, even though they follow
15 as a consequence of conviction of crime.

16 § 19.2-340. Fines to be to State; how recovered; in what name.—When any statute
17 prescribes a fine, unless it be otherwise expressly provided or would be inconsistent with
18 the manifest intention of the General Assembly, it shall be to the Commonwealth and
19 recoverable by presentment, indictment, information or warrant. Fines imposed and costs
20 taxed in a criminal prosecution for committing an offense against the State shall constitute
21 a judgment in favor of the Commonwealth, and, if not paid at the time they are imposed,
22 execution may issue thereon in the same manner as upon any other monetary judgment.

23 § 19.2-341. Penalties other than fines; how recovered; in what name; limitation of
24 actions.—When any statute prescribes a monetary penalty other than a fine, unless it be
25 otherwise expressly provided or would be inconsistent with the manifest intention of the
26 General Assembly, it shall be to the Commonwealth and recoverable by warrant,
27 presentment, indictment, or information. Penalties imposed and costs taxed in any such
28 proceeding shall constitute a judgment in favor of the Commonwealth, and, if not paid at
29 the time they are imposed, execution may issue thereon in the same manner as upon any
30 other monetary judgment. No such proceeding of any nature, however, shall be brought or
31 had for the recovery of such a penalty or costs due the Commonwealth or any political
32 subdivision thereof, unless within twenty years from the date of the offense or delinquency
33 giving rise to imposition of such penalty.

34 § 19.2-342. Where and in what court proceeding to be.—In a proceeding under § 19.2-
35 341, such warrant, presentment, indictment or information shall be in the county or city
36 wherein the offense was committed or the delinquency occurred.

37 § 19.2-343. (Reserved)

1 § 19.2-344. (Reserved)

2

Article 2.

3

Reports, etc., of Fines and Costs.

4 § 19.2-345. District courts to return warrants with itemized fines and costs, and pay
5 to clerk.—Between the first and tenth day of each month every district court shall make
6 return of the warrants in all criminal cases finally disposed of by such court in the
7 preceding month. Such return shall be made to the clerk of the circuit court of the county
8 or city within which such district court is located. Upon every such return shall be
9 itemized the fine and costs, or costs, if there be no fine, imposed in each case, or other
10 disposition thereof. Every such district court shall, at the time of making said return, pay
11 to the clerk to whom the return is made any fines and costs shown by the return to be due
12 to the Commonwealth, for which the receiving clerk shall issue his receipt on the official
13 form. When the judge of any district court acquits the accused he shall certify the costs of
14 the trial and to whom due; and if he returns judgment against the prosecuting witness for
15 costs he shall so state.

16 § 19.2-346. Clerks to file and index such warrants and issue execution upon unpaid
17 fines; when destroyed.—Upon receipt of the warrants under § 19.2-345, the clerk of the
18 circuit court shall file and properly index the same and, when necessary, issue execution or
19 other proper process upon those fines and costs, or costs, remaining unpaid as though
20 such fines and costs had been imposed in his court. Such warrants shall be maintained as
21 public records for a period of twenty years, after which they may be destroyed.

22 § 19.2-347. Clerks' fees.—The clerk's fee for his services under §§ 19.2-345 and 19.2-
23 346 shall be one dollar and twenty-five cents upon every such fine and costs, or costs,
24 which fee shall be taxed and collected as a part of the costs in each case. In cases wherein
25 the accused is acquitted, or wherein the costs are not collected from the accused in
26 Commonwealth cases, the clerk's fee shall be twenty-five cents only, to be paid out of the
27 State treasury on proper accounts. The clerk's fee for filing warrants and summonses for
28 violations of local ordinances shall be taxed as a part of the costs and paid in conformity
29 with § 14.1-123 of this Code.

30

Article 3.

31

Collection and Disposition of Fines.

32 § 19.2-348. Attorneys for the Commonwealth to superintend issue of executions,
33 etc.—The attorney for the Commonwealth shall superintend the issuing of all executions or
34 judgments for fines and penalties going wholly or in part to the Commonwealth in the
35 circuit court of his county or city.

36 § 19.2-349. Clerks to report unsatisfied fines, etc.; duty of attorneys for the
37 Commonwealth.—The clerk of the circuit court of every county and city shall, on or before

1 *the thirtieth day of January and the thirtieth day of July of each year, submit to the judge*
2 *of his court and to the attorney for the Commonwealth of his county or city a report of all*
3 *finer, costs, forfeitures and penalties imposed in his court which remain unsatisfied as of*
4 *the last day of the month preceding the month in which such report is made. And it shall*
5 *be the duty of the attorney for the Commonwealth to make inquiries into the reasons why*
6 *such fines, costs, forfeitures and penalties remain unsatisfied; and if it appears from such*
7 *inquiries that any such fines, costs, forfeitures or penalties may be satisfied, the attorney*
8 *for the Commonwealth forthwith shall cause proper proceedings to be instituted for the*
9 *collection and satisfaction thereof.*

10 § 19.2-350. *When sheriff not to receive fines.—No sheriff or other law-enforcement*
11 *officer shall receive any fine, penalty or costs imposed by a court not of record, except*
12 *under process duly issued.*

13 § 19.2-351. *How fines disposed of; informer.—Although a law may allow an informer*
14 *or person prosecuting to have part of a fine or penalty, the whole thereof shall go to the*
15 *Commonwealth, unless the name of such informer or prosecutor be endorsed on, or written*
16 *at the foot of, the presentment at the time it is made, or of the indictment before it is*
17 *presented to the grand jury, or of the information before it is filed, or of the writ issued in*
18 *the action, or the process on the warrant, or the notice of the motion before service of*
19 *such writ, process, or notice.*

20 § 19.2-352. *Officers to pay fines to clerks; default; forfeiture, etc.—Every sheriff or*
21 *other officer receiving money under a writ of fieri facias or capias pro fine shall pay the*
22 *same to the clerk of the court from which such process issued, on or before the return day*
23 *of such process; and if such sheriff or other officer fail to pay the money, or fail to return*
24 *such writ of fieri facias or capias pro fine, he shall, for every such failure, unless good*
25 *cause be shown therefor, forfeit twenty dollars; and the clerk shall, within ten days from*
26 *the return day of such process, report the failure to pay such money, or to return such*
27 *process, to the attorney for the Commonwealth, who shall proceed at once against such*
28 *officer in default to recover such money and the forfeiture aforesaid.*

29 § 19.2-353. *Certain fines paid into the Literary Fund.—The proceeds of all fines and*
30 *penalties collected for offenses committed against the State, and directed by Article VIII, §*
31 *8 of the Constitution of Virginia to be set apart as a part of a perpetual and permanent*
32 *literary fund, shall be paid and collected only in lawful money of the United States, and*
33 *shall be paid into the State treasury to the credit of the Literary Fund, and shall be used*
34 *for no other purpose whatsoever.*

35 § 19.2-353.1. *Fieri facias, and proceedings thereon.—Any writ of fieri facias issued*
36 *under this chapter and the proceedings on the same shall conform to the writ of fieri facias*
37 *and proceedings thereon under chapter 35 (§ 8-758 et seq.) of Title 8.*

1

Article 4.

2

Payment of Fines and Costs on Installment Basis, etc.

3

§ 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.

12

§ 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.

16

(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.

33

(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.

36

§ 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

37

1 *Comptroller shall prescribe and prepare forms of official receipts for fines and distribute*
2 *them to the clerks of the circuit courts and to the clerks of the courts not of record for*
3 *their use.*

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

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

11 *§ 19.2-361. Misuse, misappropriation or wilful failure to account for fines is*
12 *embezzlement.—If any officer misuse, misappropriate, or wilfully fail to return or account*
13 *for, a fine collected by him he shall be deemed guilty of embezzlement and shall be*
14 *punished as for the embezzlement of public funds and the failure, without good cause, to*
15 *produce or account for any receipt form received by him shall be prima facie evidence of*
16 *his embezzlement of the amount represented thereby.*

17 *Article 6.*

18 *Relief from Fines and Penalties.*

19 *§ 19.2-362. Court not to remit fine or penalty except for contempt or as provided in §*
20 *19.2-358.—No court shall remit any fine or penalty, except for a contempt, which the court*
21 *during the same term may remit either wholly or in part, and except as provided in § 19.2-*
22 *358. This section shall not impair the judicial power of the court to set aside a verdict or*
23 *judgment, or to grant a new trial.*

24 *§ 19.2-363. Relief from fines and penalties.—The Governor shall have power, in his*
25 *discretion, to remit, in whole or in part, fines and penalties, in all cases of felony or*
26 *misdemeanor, after conviction, whether paid into the State treasury or not, except when*
27 *judgment shall have been rendered against any person for contempt of court, for*
28 *nonperformance of or disobedience to some order, decree or judgment of such court, or*
29 *when the fine or penalty has been imposed by the State Corporation Commission, or when*
30 *the prosecution has been carried on by the House of Delegates. The Governor may, in his*
31 *discretion, remit, refund or release, in whole or in part, any forfeited recognizance or any*
32 *judgment rendered thereon, provided, in the opinion of the Governor, the evidence*
33 *accompanying such application warrants the granting of the relief asked for. But the*
34 *provisions of the three following sections and § 19.2-368 shall be complied with as a*
35 *condition precedent to such action by the Governor; provided, that when the party against*
36 *whom the fine or penalty has been imposed and judgment rendered therefor has departed*
37 *this life leaving a spouse or children surviving, the Governor may remit such fine or*

1 penalty upon the certificate of the judge of the circuit court of the county or city wherein
2 such fine or penalty was imposed and judgment rendered, that to enforce the same against
3 the estate, real or personal, of the decedent, would impose hardship upon the spouse or
4 children. In any case when the Governor remits, in whole or in part, a fine or penalty, if
5 the same has been paid into the State treasury, on the order of the Governor such fine or
6 penalty or so much thereof as is remitted shall be paid by the State Treasurer, on the
7 warrant of the Comptroller, out of the fund into which the fine or penalty was paid.

8 § 19.2-364. The proceedings therefor; in what court.—Such person or his personal
9 representative, as the case may be, shall file a petition in the clerk's office of the circuit
10 court of the county or city wherein such fine or penalty was imposed, or such liability
11 established, at least fifteen days before the term of the court at which the same is to be
12 heard, and shall set forth the grounds upon which relief is asked. Ten days' notice thereof
13 in writing shall be given to the attorney for the Commonwealth of the county or city.

14 § 19.2-365. Duties of attorneys for the Commonwealth.—The attorney for the
15 Commonwealth, at or before the hearing of such petition, shall file an answer to the same.
16 He shall cause to be summoned such witnesses and shall introduce all such testimony as
17 may be necessary and proper to protect the interest of the Commonwealth; and the
18 petitioner may cause to be summoned such witnesses and shall introduce all such
19 testimony as may be necessary and proper to protect his interest.

20 § 19.2-366. Duty of court; certificate and opinion.—The court wherein such petition is
21 filed shall hear all such testimony as may be offered, either by the petitioner or attorney
22 for the Commonwealth, and after the evidence has been heard shall cause to be made out
23 by the clerk of the court a certificate of the facts proved, and file with the same an
24 opinion, in writing, as to the propriety of granting the relief prayed for.

25 § 19.2-367. Proceedings to be according to the common law.—All proceedings had
26 before the court under the provisions of the three preceding sections shall be according to
27 the course of the common-law practice, except that no formal pleadings shall be necessary.

28 § 19.2-368. Course of proceeding when relief asked of the Governor.—Whenever
29 application shall be made to the Governor by or on behalf of any person desiring to be
30 relieved, in whole or in part, of any such fine or penalty, the petition, answer, certificate of
31 facts, and opinion of the court provided for in §§ 19.2-364, 19.2-365 and 19.2-366, duly
32 authenticated by the clerk of the court, shall accompany the application, which shall be in
33 writing. In all cases in which the Governor shall remit a fine or penalty he shall issue his
34 order to the clerk of the court by which such fine or penalty was imposed; or if such fine
35 or penalty was imposed by a court not of record, to the clerk of the circuit court of the
36 county or city in which the judge of such court not of record holds office, and such court
37 shall, at its next term, or immediately, if then in session, cause such order to be spread

1 upon the law order book of its court; and the clerk of such court shall immediately, upon
2 the receipt of such order, mark the judgment for such fine or penalty, and costs, or so
3 much thereof as the person may have been relieved of, "remitted by the Governor," upon
4 the judgment lien docket of the court of the county or city in which it may have been
5 recorded. The Governor shall communicate to the General Assembly at each session the
6 particulars of every case of fine or penalty remitted, with his reason for remitting the
7 same.

8 **CHAPTER 22.**

9 **Enforcement of Forfeitures.**

10 § 19.2-369. *Information to be filed by attorney for the Commonwealth.*—If any
11 statute provides for the forfeiture of any property or money, or if any property or money
12 be seized as forfeited for a violation of any of the provisions of this Code, and a different
13 mode of enforcing the forfeiture is not prescribed, in order to enforce the same the
14 attorney for the Commonwealth for the county or city wherein the forfeiture was incurred
15 shall file in the clerk's office of the circuit court of his county or city an information in the
16 name of the Commonwealth against such property or money by name or general
17 designation.

18 § 19.2-370. *Contents of information.*—The information shall allege the seizure, and set
19 forth in general terms the causes or grounds of forfeiture. It shall also pray that the
20 property be condemned as forfeited to the Commonwealth and be sold and the proceeds of
21 sale disposed of according to law, and that all persons concerned in interest be cited to
22 appear and show cause why the property should not be condemned and sold to enforce the
23 forfeiture.

24 § 19.2-371. *Signing and swearing to information.*—If the proceeding be instituted by
25 an informer, he shall sign and swear to the information. The attorney for the
26 Commonwealth also shall sign it, but if the law on which the proceeding is based contains
27 no provisions as to informers, the signature of the attorney for the Commonwealth alone
28 shall be sufficient.

29 § 19.2-372. *Issuance of warrant.*—Upon the filing of the information, the clerk shall
30 forthwith issue a warrant directed to the sheriff or other law-enforcement officer of the
31 county or city, commanding him to take the property into his possession and hold the
32 same subject to further proceedings in the cause. If from any cause the warrant be not
33 executed, other like warrants may be successively issued until one be executed.

34 § 19.2-373. *Execution and return of warrant.*—The officer serving the warrant shall
35 take the property into his possession and forthwith return the warrant and report to the
36 clerk in writing thereon his action thereunder.

37 § 19.2-374. *Notice issued by clerk.*—As soon as the warrant has been executed and

1 returned, the clerk shall issue a notice reciting briefly the filing of the information, the
2 object thereof, the issuing of the warrant and the seizure of the property thereunder, and
3 citing all persons concerned in interest to appear on a day fixed on said notice which date
4 shall not be less than ten days from the date of such notice, and show cause why the
5 prayer of the information for condemnation and sale should not be granted. He shall, at
6 least ten days before the day fixed by the notice for appearance, post a copy of the notice
7 at the front door of the courthouse of his county or city. Such posting shall be sufficient
8 service of the notice on all persons concerned in interest, except as provided in §§ 19.2-375
9 and 19.2-376.

10 § 19.2-375. Notice to Commissioner of Division of Motor Vehicles; duties of
11 Commissioner.—If the property so seized be a motor vehicle required by the motor vehicle
12 laws of Virginia to be registered, the attorney for the Commonwealth shall forthwith notify
13 the Commissioner of the Division of Motor Vehicles, by certified mail, of such seizure and
14 the motor number of the vehicle so seized, and the Commissioner shall promptly certify to
15 such attorney for the Commonwealth the name and address of the person in whose name
16 such vehicle is registered, together with the name and address of any person holding a lien
17 thereon, and the amount thereof. The Commissioner shall also forthwith notify such
18 registered owner and lienor, in writing, of the reported seizure and the county or city
19 wherein such seizure was made.

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

23 § 19.2-376. Owners, purchasers and lienors of vehicles to be made parties defendant;
24 notice of hearing.—The owner of and all persons in any manner then indebted or liable for
25 the purchase price of the property, if such property be a conveyance or vehicle of any
26 kind, and any person having a lien thereon, if they be known to the attorney who files the
27 information, shall be made parties defendant thereto, and shall be served with notice in the
28 manner provided by law for serving a notice, at least ten days before the date therein
29 specified for the hearing on the information, if they be residents of this State; and if they
30 be unknown or nonresidents, or cannot with reasonable diligence be found in this State,
31 they shall be deemed sufficiently served by publication of the notice once a week for two
32 successive weeks in some newspaper published in such county or city, or if none be
33 published therein, then in some newspaper having general circulation therein, and a notice
34 shall be sent by registered mail of such seizure to the last known address of the owner of
35 such conveyance or vehicle.

36 § 19.2-377. Bond by owner or lienor to secure possession.—If the owner or lienor of
37 the seized property shall desire to obtain possession thereof before the hearing on the

1 information filed against the same, such property shall be appraised by the sheriff of the
2 county or city in which the court where such information is filed is located, who shall
3 promptly inspect and appraise the property, under oath, at its fair cash value, and
4 forthwith make return thereof in writing, to the clerk's office of the court in which the
5 proceedings are pending. Upon the return, the owner or lienor may give a bond payable to
6 the Commonwealth, in a penalty of the amount equal to the appraised value of the
7 property plus the court costs which may accrue, with security to be approved by the clerk,
8 and conditioned for the performance of the final judgment of the court, on the trial of the
9 information, and with a further condition to the effect that, if upon the hearing on the
10 information, the judgment of the court be that such property, or any part thereof, or such
11 interest and equity as the owner or lienor may have therein, be forfeited, judgment may
12 thereupon be entered against the obligors on such bond for the penalty thereof, without
13 further or other proceedings against them thereon, to be discharged by the payment of the
14 appraised value of the property so seized and forfeited and costs, upon which judgment,
15 execution may issue, on which the clerk shall endorse, "no security to be taken." Upon
16 giving of the bond, the property shall be delivered to the owner or lienor.

17 § 19.2-378. Sale of property liable to injury.—If the property seized under the
18 warrant be perishable or liable to deterioration, decay, or injury by being detained in
19 custody pending the proceedings the court or the judge thereof may order the same to be
20 sold upon such notice as he in his discretion may deem proper and hold the proceeds of
21 sale to abide the event of such proceedings, or if such property may be stored without
22 deterioration, decay or injury, the court in its discretion may order the same to be stored
23 pending final outcome of the proceedings.

24 § 19.2-379. Defense to information; rights of owners or lienors without knowledge of
25 illegal use.—Any person concerned in interest may appear and make defense to the
26 information, which may be done by answer on oath. The fact that the person by whom the
27 property was used in violating the law has not been convicted of such violation shall be no
28 defense. The information shall be independent of any proceeding against such person or
29 any other for violation of law. Unless otherwise specifically provided by law, no forfeiture
30 shall extinguish the rights of any person without knowledge of the illegal use of such
31 property who is the lawful owner or who has a lien on the same which has been perfected
32 in the manner provided by law.

33 § 19.2-380. Trial of issues of fact.—When the case is ready for trial, such issues of
34 fact as are made by the pleadings, or as the court may direct, shall be tried by a jury,
35 unless a trial by jury be dispensed with by consent of parties, in which case, the court
36 shall determine the whole matter of law and fact.

37 § 19.2-381. Judgment of condemnation and sale of property; when judgment given on

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

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

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

14 § 19.2-382. Sale to be for cash; title of purchaser.—Any sale ordered in the cause
15 shall be made for cash, after due advertisement, and shall vest in the purchaser a clear and
16 absolute title to the property sold.

17 § 19.2-383. Disposition of proceeds of sale.—The proceeds of sale, and whatever may
18 be realized on any bond given under § 19.2-377, and any money forfeited, shall be disposed
19 of by the court according to the rights of the parties.

20 § 19.2-384. Payment of expenses and costs.—Expenses and costs incurred in the
21 proceedings shall be paid as the court, in its discretion, shall determine; except that no
22 costs shall be adjudged against the Commonwealth.

23 § 19.2-385. Writ of error and supersedeas.—For the purpose of review on a writ of
24 error or supersedeas, a final judgment or order in the cause shall be deemed a final
25 judgment or order in a civil case (not in chancery) within the meaning of § 8-462.

26 § 19.2-386. How forfeitures of property not otherwise provided for are enforced.—
27 Except as otherwise specifically provided by law, whenever any property is forfeited to the
28 Commonwealth by reason of the violation of any law, the court before which the offender
29 is convicted shall order sale or other disposition of the property and proceeds of any such
30 sale as provided for in §§ 19.2-381 through 19.2-384.

31 CHAPTER 23.

32 Central Criminal Records Exchange.

33 § 19.2-387. Exchange to operate as a division of Department of State Police; authority
34 of Superintendent of State Police.—(a) The Central Criminal Records Exchange shall
35 operate as a separate division within the Department of State Police and shall be the sole
36 criminal record keeping agency of the State, except for the Division of Motor Vehicles.

37 (b) The Superintendent of State Police is hereby authorized to employ such

1 *personnel, establish such offices and acquire such equipment as shall be necessary to carry*
2 *out the purposes of this chapter and is also authorized to enter into agreements with other*
3 *State agencies for services to be performed for it by employees of such other agencies.*

4 § 19.2-388. *Duties and authority of Exchange.—It shall be the duty of the Central*
5 *Criminal Records Exchange to receive, classify and file records required to be reported to*
6 *it by § 19.2-390. The Exchange shall also receive, record, and file the F.B.I. record of any*
7 *person as furnished by the Federal Bureau of Investigation. Such records may also contain*
8 *any information made available to the Exchange by any law-enforcement agency or any*
9 *State official or agency prior to March fifteen, nineteen hundred sixty-eight. The Exchange*
10 *is authorized to prepare and furnish to all State and local law-enforcement officials and*
11 *agencies, and to clerks of circuit courts and courts not of record, forms which shall be*
12 *used for the making of such reports.*

13 § 19.2-389. *Furnishing copies of records.—The Central Criminal Records Exchange*
14 *shall furnish copies of the records in its files respecting any person concerning whom a*
15 *report has been made under the provisions of this chapter, to any of the following persons*
16 *or agencies upon the request of such person, agency or authorized representative thereof:*
17 *(i) the person concerning whom such a report has been made; and (ii) any official or*
18 *agency required to make reports to it, or any federal law-enforcement agency, or the*
19 *armed forces of the United States, or any State or local probation or parole officer or*
20 *similar federal officer employed by any federal court in this State, or any official of any*
21 *penal institution of this State, or any agency of any other state which maintains a*
22 *repository of criminal records, or the chief law-enforcement officer or agency of any other*
23 *state. Such records shall not be made available to the public.*

24 § 19.2-390. *Reports to be made by local law-enforcement officers, conservators of the*
25 *peace and clerks of court.—(a) Every State official or agency having the power to arrest,*
26 *the sheriffs of counties, the police officials of cities and towns, and any other local law-*
27 *enforcement officer or conservator of the peace having the power to arrest for a felony*
28 *shall make a report to the Central Criminal Records Exchange, on forms provided by it, of*
29 *any arrest on a charge of treason or of any felony or of any offense punishable as a*
30 *misdemeanor under Title 54, under Title 18.2 except a violation of Chapter 7, Article 2 (§*
31 *18.2-266 et seq.) of this latter title and except drunkenness and disorderly conduct. Such*
32 *reports shall contain such information as shall be required by the Exchange and shall be*
33 *accompanied by fingerprints of the individual arrested and information as to whether a*
34 *photograph of the individual is available.*

35 **(b)** *The clerk of each court of record and court not of record shall make a report to*
36 *the Central Criminal Records Exchange of any dismissal, nolle prosequi, acquittal, or*
37 *conviction of, or failure of a grand jury, to return a true bill as to, any person charged with*

1 an offense listed in subsection (a) of this section. No such report of conviction shall be
2 made by the clerk of a court not of record unless the period allowed for an appeal has
3 elapsed and no appeal has been perfected. In the event that the records in the office of any
4 clerk show that any conviction has been nullified in any manner, he shall also make a
5 report of that fact, and each clerk of a court of record, upon receipt of certification thereof
6 from the Supreme Court, shall report to the Exchange, on forms provided by it, any
7 reversal or other amendment to a prior sentence reported to the Exchange. For each such
8 report made by a clerk of a court of record, he shall be allowed a fee of fifty cents to be
9 paid from the appropriation for criminal charges.

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

14 § 19.2-391. Records to be made available to Exchange by State officials and agencies;
15 duplication of records.—Each State official and agency shall make available to the Central
16 Criminal Records Exchange such of their records as are pertinent to its functions and shall
17 cooperate with the Exchange in the development and use of equipment and facilities on a
18 joint basis, where feasible. No State official or agency shall maintain records which are a
19 duplication of the records on deposit in the Central Criminal Records Exchange, except to
20 the extent necessary for efficient internal administration of such agency.

21 § 19.2-392. Fingerprints and photographs by police authorities.—All duly constituted
22 police authorities having the power of arrest may take the fingerprints and photographs of
23 any person arrested by them and charged with a felony or with any misdemeanor an arrest
24 for which is to be reported by them to the Central Criminal Records Exchange. Such
25 authorities shall make such records available to the Central Criminal Records Exchange.
26 Such authorities are authorized to provide, on the request of duly appointed law-
27 enforcement officers, copies of any fingerprint records they may have, and to furnish
28 services and technical advice in connection with the taking, classifying and preserving of
29 fingerprints and fingerprint records.

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

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