CHAPTER 2 - CRIMINAL CASE PROCEDURES

I. INTRODUCTION

Criminal cases are proceedings brought by the Commonwealth (or a locality) for offenses violating state law or local ordinances. The two categories of crimes are felonies and misdemeanors.

Felonies, which can only be tried in circuit court, are punishable by fine or imprisonment in a penitentiary for one year or more or both a fine and term of imprisonment. Examples of felonies include murder, malicious or unlawful wounding (felonious assault), grand larceny, and rape. The district courts do not have jurisdiction to adjudicate felony cases, but they do have jurisdiction to conduct preliminary hearings in felony cases, in order to determine whether there is sufficient evidence to justify holding the defendant for a grand jury hearing and trial in circuit court.

Misdemeanors are punishable by a fine of up to $2,500 or a sentence not exceeding twelve months in jail, or a combination of a fine and a jail sentence. Examples of misdemeanors include simple assault, public intoxication, petit larceny, and shoplifting.

The burden of proof in all criminal cases is “beyond a reasonable doubt;” that is, the evidence must be so completely convincing toward the guilt of the defendant that there is no reasonable doubt of the defendant’s guilt.

The district courts do not conduct jury trials; all cases are heard by a judge. Jury trials are held only in circuit court, as provided by the Virginia Constitution.

These procedures apply to cases in which adults are charged with committing criminal offenses, regardless of whether the case is tried in a general district court or in a juvenile and domestic relations district court. Normally, these provisions do not govern trials of juveniles charged with being delinquent unless the juvenile was previously tried and convicted in a circuit court as an adult under Va. Code §§ 16.1-269.1 *et seq.*, and commits a subsequent criminal offense. Va. Code § 16.1-271.

Of special consideration in criminal cases are the defendant's rights under the Sixth Amendment to the Constitution of the United States. The Sixth Amendment ensures the right to a speedy trial, to trial by jury, to be informed of the charge, to confront one’s accuser, to subpoena witnesses in one’s favor, and to have the assistance of a lawyer.

The presentation of criminal case procedures begins with a narrative description of the basic criminal case process. The narrative describes the flowchart of the criminal case process in Part C, Exhibits II-C-1 and II-C-2. Following the narrative, the detailed procedures are presented beginning with case initiation and ending with case closure.

II. NARRATIVE DESCRIPTION

The criminal case process is generally initiated when a criminal offense is committed and reported to the police. The police or other law officer conducts an investigation to determine the facts of the case, identify likely suspects, and locate witnesses to the crime. In the course of the investigation, the officer may request issuance of a SEARCH WARRANT, DC-339, by presenting an AFFIDAVIT FOR SEARCH WARRANT, DC-338, to a judge, clerk, or magistrate, who then conducts a probable cause hearing on the request and will issue the search warrant if probable cause is found.

When the officer has identified the probable offender(s), the officer either issues a VIRGINIA UNIFORM SUMMONS or requests a WARRANT OF ARREST, DC-312, DC-314, DC-315, or SUMMONS, DC-319, from a judicial officer, usually a magistrate. A VIRGINIA UNIFORM SUMMONS is issued whenever a criminal misdemeanor occurs in the officer's presence, unless the defendant is charged with a jailable misdemeanor and the arresting officer believes that the defendant will disregard the summons or is likely to cause harm to himself or refuses to discontinue the unlawful act, or the defendant is charged with violating Va. Code § 18.2-407 (failing to disperse at the scene of a riot) or 18.2-388 (drunk in public). If a VIRGINIA UNIFORM SUMMONS is issued, the officer takes the defendant into custody. The officer will release him if he signs the promise to appear section on the VIRGINIA UNIFORM SUMMONS. If a VIRGINIA UNIFORM SUMMONS is not issued or the defendant refuses to sign the promise to appear, the officer takes the defendant before the magistrate who determines whether there is probable cause to believe that the defendant committed the offense. The judicial officer determines whether there is probable cause to believe that the individual may have committed the offense before issuing the WARRANT OF ARREST or SUMMONS.

If probable cause is found, a WARRANT OF ARREST, DC-312, DC-314, or DC-315, or, in misdemeanor cases, a SUMMONS, DC-319, is issued by the magistrate, who then proceeds to set the date for the first court appearance. If not released on a SUMMONS, the magistrate determines bail, after which the defendant is released on recognizance, with or without additional terms. If the defendant is unable to meet the terms set for release, the defendant is committed to jail, pending the first court appearance.

If a WARRANT OF ARREST was initially issued, the officer arrests the defendant and brings him before a magistrate to set the date for first court appearance and to determine bail, after which the defendant is released on bail or is committed to jail. If authorized by the magistrate issuing a misdemeanor warrant, the arresting officer may release the defendant pursuant to the Summons section of a WARRANT OF ARREST or on a VIRGINIA UNIFORM SUMMONS. All case-related papers are sent to the clerk's office.

Processing by the clerk's office begins with the receipt of the WARRANT OF ARREST, SUMMONS or VIRGINIA UNIFORM SUMMONS. The clerk's office assigns a case number to the warrant or summons, and indexes the case in the automated system. The clerk's office assembles all case-related documents, which are filed by court appearance date. Prior to the court date, the clerk's office retrieves all of the cases from the pending file for that court

date and prints a docket via CMS, which contains all cases scheduled for a given day. The docket and cases are sent to court on the scheduled trial date.

For any defendant held in jail, the district court conducts an arraignment hearing on the next court day after arrest. At the arraignment, the court determines the status of the defendant's right to representation by an attorney, calls the defendant by name, reads the charges, asks for the defendant's plea, reviews the bail determination and sets the next court date, if he is not tried after arraignment.

For those not arraigned on the next court date, the court must determine the status of the defendant's right to representation by an attorney. If the defendant wishes the judge to appoint an attorney at public expense to represent him or her, the defendant must make a written request for such appointment and file a FINANCIAL STATEMENT--ELIGIBILITY DETERMINATION FOR INDIGENT DEFENSE SERVICES, DC-333, with such request. In the alternative, the defendant may hire his own attorney or waive his right to be represented by an attorney. The court may try the defendant even if he or she has neither waived his or her right to legal representation nor hired an attorney, if the defendant is charged with a misdemeanor not punishable by a jail sentence, or if the judge states in writing before trial that, if the defendant is convicted, no jail sentence will be imposed. (*See* CERTIFICATE OF REFUSAL/TRIAL WITHOUT CONSIDERING APPOINTMENT OF COUNSEL, DC-337.)

Preliminary hearings are held in all cases where the defendant is charged with a felony, unless the defendant waives the hearing. These hearings are conducted to determine if there is probable cause to believe that the defendant committed the felony charged. If so, the case is certified to the grand jury. If probable cause is not found, but probable cause is found to believe that a misdemeanor, rather than a felony, has been committed, then the felony charges may be reduced to a misdemeanor and, after arraignment on the misdemeanor, may be disposed of in district court. If no probable cause is found, the case is dismissed.

On the scheduled trial date, the judge hears the case of the defendant who appears in court or, when permitted by law and the circumstances so warrant, tries the case in the absence of the defendant. Dispositions are reached based on the evidence presented and such dispositions are recorded on the docket and on the summons, warrant, or in a separate order. Continuances may be granted, in the judge's discretion, for cases not ready for trial. Should a defendant fail to appear at trial, the judge may order the issuance of a CAPIAS, DC-361, SHOW CAUSE SUMMONS, DC-360, or WARRANT OF ARREST--STATE MISDEMEANOR, DC-314, for failure to appear. If released on bond, the judge may initiate bond forfeiture proceedings. Continued cases are returned to the clerk's office for filing by new appearance date.

The return of the case file from the court initiates the disposition activities of the clerk's office. The clerk's office collects all fines and court costs required or prepares a commitment card to be transmitted to the jail or does both. If the defendant is found guilty and is fined, but is unable to pay this fine within fifteen days of trial, the court shall place him on a deferred payment plan or installment payment plan. The clerk may set the terms

and conditions of installment or deferred payment plans, if authorized by and within guidelines set by the court. Va. Code § 19.2 -354.

Alternatively, the judge may suspend the imposition of the sentence or fine in whole or in part, but he may also require the use of probation after serving a portion of the sentence or the performance of community service to discharge the fine and/or sentence. If the case is dismissed or the court finds the defendant not guilty, the defendant is released and any bond security or other bail is returned.

For all disposed cases, the clerk's office updates CMS, and enters the disposition in the automated system. Ensure that all required reports statutorily required to be sealed have been sealed and placed in an envelope in the file.

The case may be appealed within the ten days allowed by law, For appealed cases, all fines and court costs are refunded, the defendant is required to enter into an appearance or recognizance bond (new or continuation of earlier bail), and the CCRE and all case-related materials are sent to the circuit court.

All case files are retained in the Court Date Disposed Filing System in the district court where the case was tried. Statistical reports of court activity are prepared monthly and electronically transmitted to the Office of the Executive Secretary.

Copies of the forms and data elements are included in DISTRICT COURT MANUAL: FORMS.

The flow chart and remaining portions of this section describe the existing procedures used by the court for processing criminal cases.

III. FLOW CHART

EXHIBIT II-C-1

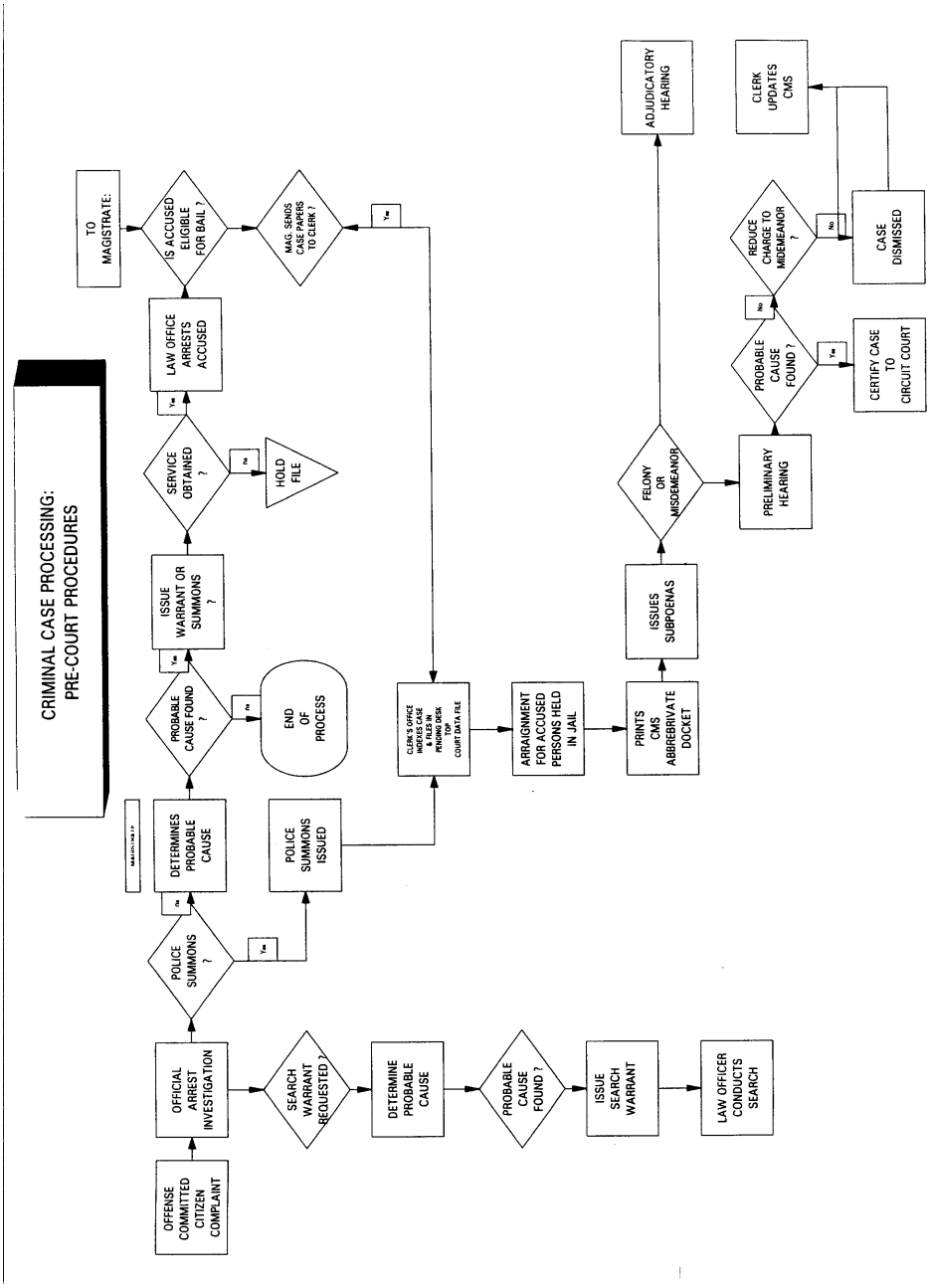
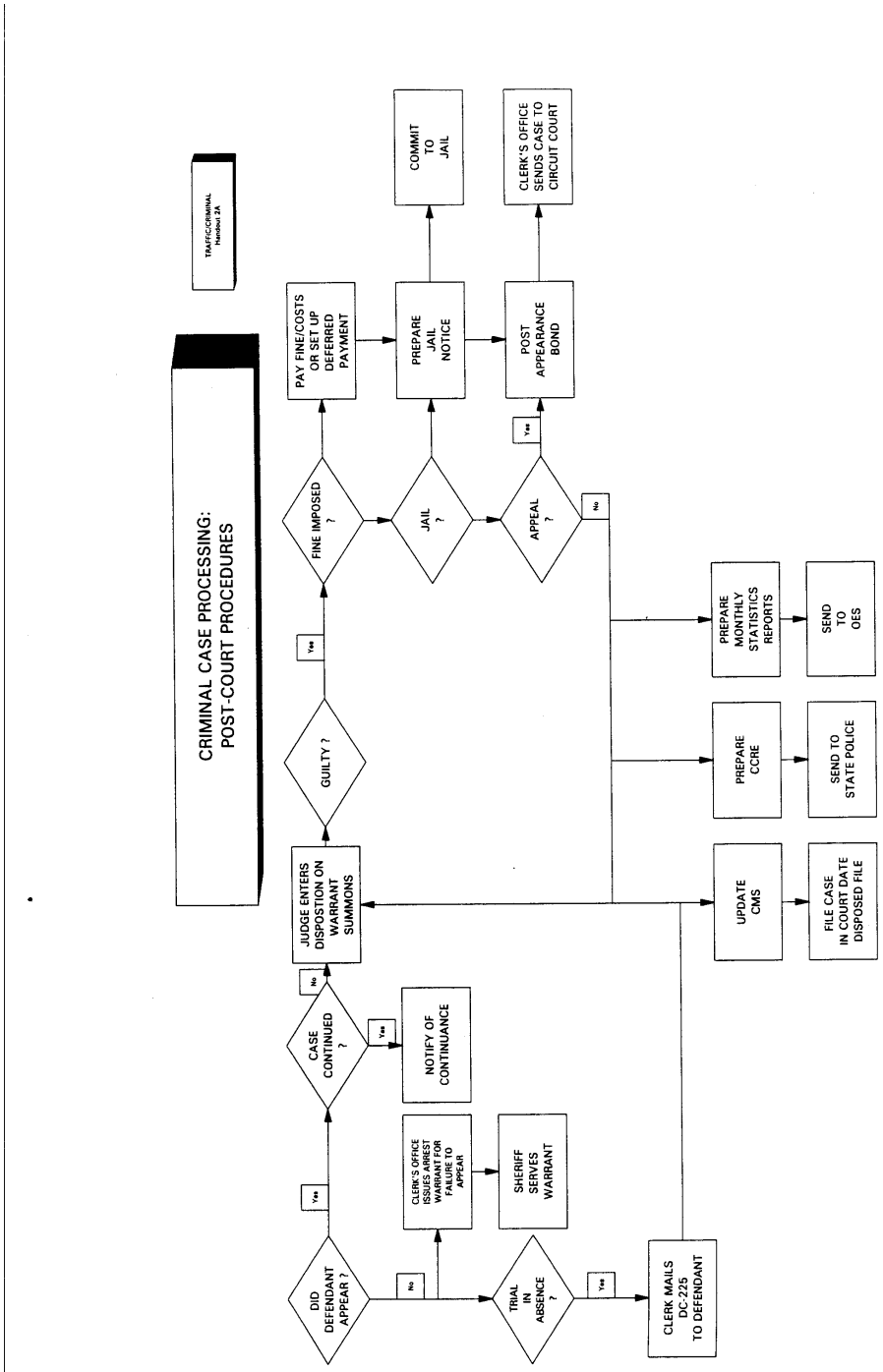


EXHIBIT VI-C-2



IV. CASE INITIATION

A criminal case is initiated by citizen complaint of a criminal offense or by a law enforcement officer's observation of an offense in progress. As a result, there are two primary ways that a case is initiated in the court system:

- Arrest prior to the filing of a complaint.
- Pre-arrest issuance of a summons or warrant.

In each situation, there will be some form of official investigation to determine the facts of the case. A search warrant may be requested to search for evidence relating to the case such as stolen property. There are variations on the two ways of initiating a case, which are listed below.

A. Venue

Generally, a criminal case is prosecuted in the county or city in which the offense charged was committed. Va. Code § 19.2-244. Venue for the trial of a case may be changed upon motion of the accused or the Commonwealth based on a finding of good cause. Va. Code § 19.2-251.

There are provisions creating special rules for venue for certain other offenses. For example, venue for trial of a person who is charged with committing or attempting to commit criminal assault (offenses contained in Article 7 of Chapter 4 of Title 18.2) against a person under the age of 18 may be had in the county or city in which the offense is alleged to have occurred or if the place of occurrence cannot be determined, in the county or city where the person under the age of 18 resided at the time of the offense. In addition, venue for the trial of an offense under the Virginia Computer Crimes Act may be had in a number of jurisdictions based on the circumstances of the individual case. Va. Code § 19.2-249.2. For other special venue provisions, see the specific offense in question.

B. Arrest Prior to the Filing of a Complaint

To initiate a criminal case prior to the filing of a complaint, the law enforcement officer will:

- Make an arrest.
- Issue a VIRGINIA UNIFORM SUMMONS, if the offense is committed in his presence or is for shoplifting, or take the defendant before a judicial officer (usually a magistrate) for issuance of a SUMMONS, DC-319, or WARRANT OF ARREST, DC-312, DC-314, or DC-315.

- Return the executed summons to the clerk's office or return the executed warrant to the magistrate, who forwards it to the clerk's office after the bail hearing.

C. Pre-Arrest Issuance of a Summons or Warrant

- To initiate a criminal case by a summons or warrant prior to arrest:

- The complainant goes in person or, pursuant to Va. Code § 19.2-3.1, by two-way electronic video and audio communication, to a judicial officer (usually a magistrate) to swear out a CRIMINAL COMPLAINT, DC-310 or DC-311.

- The judicial officer conducts a probable cause hearing and, *if probable cause is found*, issues the SUMMONS or WARRANT OF ARREST.

- A SUMMONS, DC-319, is issued in misdemeanor cases when the judicial officer has no reason to believe that the defendant will not appear for trial or that he will cause harm to himself or others. If a SUMMONS is issued, it must be served in person or by two-way electronic video and audio communication on the defendant, except for a SUMMONS for trash violations served by mail pursuant to Va. Code § 19.2-76.2. In certain counties, the county manager or his designee must send a specific type of notice by first class mail before a summons charging a violation of litter control ordinances may be issued. Va. Code § 15.2-733.

- An arrest warrant is mandatory in all felony cases and is issued in misdemeanor cases when a SUMMONS is not issued. If a warrant is issued, the officer arrests the defendant and takes him before a judicial officer to set bail (determine type of pre-trial release if eligible) or commit him to jail; if authorized by the magistrate issuing a misdemeanor warrant, the arresting officer may release the defendant on the summons section of a WARRANT OF ARREST.

NOTE: Following issuance of a warrant for stalking, a petitioner may seek a protective order. Since this order is a civil remedy, this process is described in Chapter IV, CIVIL CASE PROCEDURES, subsection 14.

- Law enforcement officers may issue witness subpoenas in the investigation of Class 3 or 4 misdemeanors. The return of service shall be made within 72 hours after service to the appropriate court clerk. Va. Code § 19.2-73.2.

D. Arrest of an Illegal Alien

Under Va. Code § 19.2-82 (B), an arrest warrant can be issued for an illegal alien who has been arrested under Va. Code § 19.2-81.6, if the issuing authority finds probable cause that the person (i) is an alien illegally present in the United States and (ii) has previously been convicted of a felony in the United States and

deported or left the United States after such conviction. The warrant issued should cite Va. Code § 19.2-81.6 and the applicable violation of federal criminal law. A warrant so issued will expire within 72 hours of issuance or when the person is taken into federal custody. Only one warrant for an individual may be issued under these circumstances in a six-month period. The WARRANT OF ARREST – ILLEGAL ALIEN PURSUANT TO § 19.2-81.6, DC-320, is available for use in these circumstances.

E. Release on Bail

A RECOGNIZANCE, DC-330, should be used to admit a person to bail. A bail hearing is conducted before a judicial officer either in person or by two-way electronic video and audio communication.

In bail proceedings, the following definitions are used:

"Bail" means the pretrial release of a person from custody upon those terms and conditions specified by order of an appropriate judicial officer.

"Bond" means the posting by a person or his surety of a written promise to pay a specific sum, secured or unsecured, ordered by an appropriate judicial officer as a condition of bail to assure performance of the terms and conditions contained in the recognizance.

"Criminal history" means records and data collected by criminal justice agencies or persons consisting of identifiable descriptions and notations of arrests, detentions, indictments, information's or other formal charges, and any deposition arising there from.

"Judicial Officer" means, unless otherwise indicated, any magistrate within his jurisdiction, any judge of a district court and the clerk or deputy clerk of any district court or circuit court within their respective cities and counties, any judge of a circuit court, any judge of the Court of Appeals and any justice of the Supreme Court of Virginia.

"Person" means any accused, or any juvenile taken into custody pursuant to Va. Code § 16.1-246.

"Recognizance" means a signed commitment by a person to appear in court as directed and to adhere to any other terms ordered by an appropriate judicial officer as a condition of bail. Va. Code § 19.2-119.

Prior to conducting a bail hearing, the judicial officer shall obtain the person's criminal history to the extent feasible. The defendant shall be admitted to bail unless there is probable cause to believe that:

- the defendant will not appear at trial or hearing or such other time and place as directed, or

- the defendant will constitute an unreasonable danger to himself or the public if released on bail.

If the person is denied bail, the judicial officer shall inform the person of his right to appeal from the order denying bail or fixing terms of bond or recognizance. Va. Code § 19.2-120.

If the defendant is eligible for bail, the judicial officer decides what terms are to be required which will be reasonably calculated to assure the presence of the defendant and to assure his good behavior pending trial. The judicial officer shall presume, subject to rebuttal, that no condition or combination of conditions will reasonably assure the appearance of the person or the safety of the public if the person is currently charged with:

- An act of violence as defined in § 19.2-297.1

- Capital murder (§§ 18.2-31)

- First and second degree murder (§§ 18.2-32)

- Felony murder (§§ 18.2-33)

- Voluntary manslaughter (§§ 18.2-35)

- Lynching (§ 18.2-40)

- Unlawful or malicious wounding by a mob (§§ 18.2-41)

- Abduction and kidnapping (§§ 18.2-47)

- Abduction with the intent to extort money or to defile, etc. (§ 18.2-48)

- Abduction by a prisoner (§ 18.2-48.1)

- Threatening, attempting, or assisting an abduction (§ 18.2-49)

- Withholding child out of state in violation of court order [§ 18.2-49.1(A)] Malicious wounding or malicious bodily injury (§§ 18.2-51)

- Malicious wounding or malicious bodily injury to a law enforcement officer or a firefighter (§ 18.2-51.1)

- Aggravated malicious wounding or bodily injury (§ 18.2-51.2)

- Malicious bodily injury by means of a caustic substance (§ 18.2-52)

- Destroying or damaging a facility or equipment dealing with infectious biological substances with the intent of injuring another (§§18.2-52.1)
- Administering poison with the intent to kill or injure another person (§ 18.2-54.1)
- Adulterating food, drink, prescription, or over-the-counter medicine or cosmetic with the intent to kill or injure (§ 18.2-54.2)
- Robbery (§ 18.2-58)
- Carjacking (§ 18.2-58.1)
- Rape (§ 18.2-61)
- Forcible sodomy (§ 18.2-67.1)
- Object sexual penetration (§ 18.2-67.2)
- Aggravated sexual battery (§ 18.2-67.3)
- Marital sexual assault (§ 18.2-67.2:1)
- Attempted rape, forcible sodomy, object sexual penetration, aggravated sexual battery (§ 18.2-67.5)
- Third conviction of sexual battery, attempted sexual battery, consensual intercourse with a child, or indecent exposure (§ 18.2-67.5:1)
- Arson when the structure, boat, etc., burned was occupied (§ 18.2-77)
- Arson when meeting house, church, etc. was occupied (§ 18.2-79)
- Conspiracy to commit any of the above felonies (§ 18.2-22)

An offense for which the maximum sentence is life imprisonment or death: [Crimes that already have been listed under another heading will not be included under this subparagraph]:

- Attempted capital murder (§18.2-25)
- Burglary of dwelling house while armed with a deadly weapon (§ 18.2-89)
- Burglary with the intent to commit murder, rape, robbery or arson while armed with a deadly weapon (§ 18.2-90)

- Burglary with the intent to commit larceny, a felony other than murder, rape, robbery or arson, or assault and battery while armed with a deadly weapon (§ 18.2-91)

- Burglary with the intent to commit a misdemeanor other than assault and battery or trespass while armed with a deadly weapon (§18.2-92).

- Bank robbery while armed with a deadly weapon (§ 18.2-93)

- Forgery or falsification of a do-not-resuscitate order of another causing the withholding of life support (§ 54.1-2989)

- Concealment of the revocation of a do-not-resuscitate order of another causing the withholding of life support (§ 54.1-2989)

- Damaging a utility facility causing the release of radioactive materials or ionizing radiation that results in the death of another from such exposure (§ 18.2-162)

- Treason against the Commonwealth (§ 18.2-481)

- Possession or use of a machine gun in the perpetration or attempted perpetration of a crime of violence (§ 18.2-289)

- Possession or use of a sawed-off shotgun in the perpetration or attempted perpetration of a crime of violence (§ 18.2-300)

A violation of §§ 18.2-248 (possessing with the intent to distribute, etc.), 18.2-248.01 (transporting controlled substance into the Commonwealth), 18.2-255 (distributing drugs to minors) or §18.2-255.2 (distributing drugs on school property, school bus community center, library, etc.) involving a Schedule I or II controlled substance if:

- the maximum term of imprisonment is ten years or more and the person was previously convicted of a like offense, or

- the person was previously convicted as a "drug kingpin" as defined in § 18.2-248.

A violation of §§ 18.2-308.1, 18.2-308.2, or § 18.2-308.4 and which relates to a firearm and provides for a minimum, mandatory sentence.

Any felony, if the defendant has been convicted of two or more offenses considered acts of violence or offenses for which the maximum sentence is life imprisonment or death whether under the laws of the Commonwealth or substantially similar laws of the United States

Any felony committed while the defendant is on release pending trial for a prior felony under federal or state law or on release pending imposition or execution of sentence or appeal of sentence or conviction.

An offense listed in subsection B of § 18.2-67.5:2; the person has previously been convicted of an offense listed in § 18.2-67.5:2 or a substantially similar offense under the laws of any state or the United States and the judicial officer finds probable cause that the person committed the offense charged. The offenses listed in subsection B of § 18.2-67.5:2 are:

- carnal knowledge of a child between thirteen and fifteen years of age in violation of § 18.2-63 if the offense was committed by the accused when the accused was over the age of eighteen; or
- carnal knowledge of minors as specified in § 18.2-64.1; or
- aggravated sexual battery in violation of § 18.2-67.3; or
- carnal knowledge of one's daughter, granddaughter, son, grandson, brother, sister, father, or mother by the anus or by or with the mouth in violation of subsection B of § 18.2-361; or
- adultery or fornication with one's child or grandchild in violation of § 18.2-366; or
- taking indecent liberties with a child in violation of § 18.2-370 or § 18.2-370.1; or
- conspiracy to commit any of these sexual offenses in violation of § 18.2-22

A violation of § 18.2-374.1 or § 18.2-374.3 where the offender has reason to believe that the solicited person is under 15 years of age and that the offender is at least 5 years older than the solicited person.

A violation of § 18.2-46.2 (participation in street gangs), § 18.2-46.3 (recruitment of street gang members), § 18.2-46.5 (committing, conspiring and aiding and abetting acts of terrorism) or § 18.2-46.7 (bioterrorism against agricultural crops or animals).

A violation of §§ 18.2-36.1 (involuntary manslaughter due to driving under the influence), 18.2-51.4 (maiming resulting from driving while intoxicated), 18.2-266 (driving while intoxicated), or § 46.2-341.24 (commercial driver driving while intoxicated) and the person has been convicted three times previously of any combination of these offenses in the previous five years.

A second or subsequent violation of § 16.1-253.2 or a substantially similar offense under the laws of any state or the United States.

A violation of subsection B of § 18.2-57.2.

The judicial officer shall presume, subject to rebuttal, that no condition or combination of conditions will reasonable assure the appearance of a person identified by the United States Immigration and Customs Enforcement as illegally present in the United States if such person is charged with:

- an offense listed under subsection C of § 17.1-805 (acts of violence);
- an offense listed under subsection A of § 19.2-297.1 (acts of violence);
- an offense listed under Chapter 4 (§ 18.2-30 et seq.) of Title 18.2 (crimes against the person) except any offense listed under subsection A of § 18.2-57.2;
- a felony offense under Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 (drug offenses); or
- an offense under Article 2 (§ 18.2-266 et seq.) or any local ordinance substantially similar thereto, Article 4 (§ 18.2-279 et seq.), Article 5 (§ 18.2-288 et seq.), Article 6 (§ 18.2-299 et seq.) or Article 7 (§ 18.2-308 et seq.) of Chapter 7 of Title 18.2 (crimes involving safety)

The presumption shall not exist unless the United States Immigration and Customs Enforcement has guaranteed that, in all such cases in the Commonwealth, it will issue a detainer for the initiation of removal proceedings and agrees to reimburse for the cost of incarceration from the time of the issuance of the detainer.

The court shall consider the following factors, as well as any other the court deems appropriate, for the purpose of rebutting this presumption against bail and determining whether there are conditions of release that will reasonably assure public safety and the appearance of the defendant:

- the nature and the circumstances of the offense charged;
- the history and characteristics of the person, including his character, mental and physical condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, membership in a criminal street gang, and record concerning appearance at court proceedings; and
- the nature and seriousness of the danger to any person or the community that would be posed by the person's release. Va. Code § 19.2-120.

In fixing the terms of bail, the judicial officer shall take into account the following factors specified in Va. Code § 19.2-121:

- the nature and circumstances of the offense;
- whether a firearm is alleged to have been used in the offense;
- the weight of the evidence;
- the financial resources of the accused or juvenile and his ability to pay bond;
- the character of the accused or juvenile including his family ties, employment or involvement in education;
- his record of convictions;
- his appearance at prior court proceedings or flight to avoid prosecution or failure to appear at prior court proceedings;
- his length of residence in the community;
- whether the person is likely to obstruct or attempt to obstruct justice or threaten, injure or intimidate or attempt to threaten, injure or intimidate a prospective witness, juror or victim; and
- any other information available which the court considers is relevant to the determination of whether the accused or juvenile is unlikely to appear for court proceedings.

The judicial officer may impose one or more of the following conditions of release:

- Place the person in the custody and supervision of a designated person, organization or pretrial services agency which, for the purposes of this section, shall not include a court services unit established pursuant to Va. Code § 16.1-233. Va. Code § 19.2-123.
- Place restrictions on the travel, association or place of abode of the person during the period of release and restrict contacts with household members for a period not to exceed 72 hours.
- Require the execution of an unsecured bond.
- Require the execution of a secure bond, which, at the option of the accused, shall be satisfied with sufficient solvent sureties, or the deposit of cash in lieu thereof. Only the actual value of the interest in real or personal property owned by the proposed surety must be used in determining the surety's solvency. The surety is deemed to be solvent if the actual value of the surety's equity in real or personal property meets or exceeds the bond amount. Bondsmen (who charge fees for acting as sureties) must have a Property Bondsman Certificate or Surety Bondsman Certificate from any circuit court

judge. Property bondsmen must also execute and Surety bondsmen should execute an AFFIDAVIT OF PROFESSIONAL BONDSMAN.

- If the person is arrested for a felony and (i) has been previously convicted of a felony, (ii) is on bond for an unrelated arrest in another jurisdiction or (iii) is on probation or parole, then he may be released only on a secured bond. This requirement may be waived only with the concurrence of the Commonwealth's Attorney (or the city, town or county attorney) and the judicial officer. Va. Code § 19.2-123.

  - Require that the person do any or all of the following:

  - maintain employment or, if unemployed, actively seek employment;

  - maintain or commence an educational program;

  - avoid all contact with an alleged victim of the crime and with any potential witness who may testify concerning the offense;

  - comply with a specified curfew;

  - refrain from possessing a firearm, destructive device, or other dangerous weapon;

  - refrain from excessive use of alcohol, or use of any illegal drug or any controlled substance not prescribed by a health care provider;

  - submit to testing for drugs and alcohol until the final disposition of the case.

Impose any other condition deemed reasonably necessary to assure appearance as required, including a condition that the person return to custody after specified hours or be placed on home electronic incarceration.

The bail provisions also apply to individuals arrested pursuant to a CAPIAS, DC-361.

If a person admitted to bail is currently in jail, then the RELEASE ORDER, DC-353, also should be issued and should be delivered to the jailer. Otherwise, upon satisfaction of the terms, the defendant shall be released forthwith.

A defendant previously admitted to bail shall not be required to be admitted to bail in any subsequent proceeding arising out of the initial arrest unless the court having jurisdiction of such subsequent proceedings deems that the initial amount of bond or security taken is inadequate or excessive. The court may change the amount of such bond or security, require new and additional sureties, or set other terms of bail as are appropriate to the case, including, but not limited to drug and alcohol monitoring.

The court may, after notice to the parties, initiate a proceeding to alter the terms and conditions of bail on its own motion.

NOTE: A defendant generally may not be incarcerated for failure to meet bail terms, if charged only with offenses not punishable by incarceration. *See Pulliam v. Allen*, 466 U.S. 522 (1984).

The clerk may issue a bail piece pursuant to Va. Code § 19.2-134 to the defendant or to the sureties. In practice, the bail piece is almost always requested together with a surety's capias pursuant to Va. Code § 19.2-149 so that the surety can surrender the defendant to the sheriff and be relieved from further liability. When such a request is made by the surety, a SURETY'S CAPIAS AND BAILPIECE RELEASE, DC-331, should be prepared and issued. It is recommended that the clerk write the underlying Offense Tracking Number (OTN) on the SURETY'S CAPIAS AND BAILPIECE RELEASE, DC-331.

F. Commitment to Jail

A person who is arrested may be committed to jail for any one of the following reasons:

- There is probable cause to believe he will not appear for trial.
- His liberty is thought to constitute an unreasonable risk to himself or the public.
- He is unable either to provide surety for or post his bond, if a bond is required, or to meet other bail conditions.

The DC-352, COMMITMENT ORDER should be used to commit a defendant to jail or home/electronic incarceration. The form contains a written order addressed to the jailer stating the date, name of the defendant, the offense charged, the amount of bail, if any, and should be signed by the judicial officer indicating his jurisdiction.

When requested by the chief judge of the circuit court, general district court, or juvenile and domestic relations district court, the sheriffs and jail superintendents are required to provide to all trial courts a semi-monthly list of jailed persons awaiting trial in that trial court. The list should be used to assist the trial court in expediting trials of persons in jail and in avoiding problems with speedy trial requirements.

G. Search Warrants

In the process of investigating a case, law enforcement officers frequently must obtain a DC-339, SEARCH WARRANT to search for and seize specific physical evidence related to a criminal offense or to search for a defendant who is charged with an offense and who is hiding in a place controlled by a third party. Any

clerk, magistrate or judge within the proper jurisdiction may be called on to issue a SEARCH WARRANT. The clerk, judge or magistrate, when issuing a SEARCH WARRANT will:

- Request that the officer seeking the warrant make a complaint under oath, stating the purpose of the search.
- Request that the officer support the complaint with a written AFFIDAVIT FOR SEARCH WARRANT, DC-338, or a videotaped affidavit containing:
    - o A statement of the offense involved.
    - o Description of the place, thing or person to be searched.
    - o Description of items or persons to be seized.
    - o Facts detailed to constitute probable cause.
    - o A statement that the object, thing or person searched for constitutes evidence of the crime.

The statement of the offense involved must define a specific criminal offense and tell how the items to be seized (tool, weapon, instrumentality or evidence of the crime or stolen property or contraband) relate to the crime. The description of the place, thing or persons to be searched must be detailed enough to provide the searching officer with sufficient information to specifically identify the place to be searched, without confusion or excessive effort. The description of items or persons to be searched for must identify all property (except contraband) and people to be seized as clearly and distinctly as possible, including serial numbers, identification marks or a general physical description when possible. The statement of facts detailed to constitute probable cause must set out facts (*not* opinions, conclusions or suspicions) sufficient to establish probable cause (a reasonable determination that seizable items are located in the place to be searched). Absolute certainty is not required, only a reasonable belief is demanded.

The United States Supreme Court has held that a determination of probable cause for issuance of a search warrant involves a two-step process with two distinct determinations:

- That the facts in the affidavit *logically* indicate the presence of seizable items.
- That the facts in the affidavit are *reliable*.

A determination of what facts indicate reliability will vary with each situation. The following factors correspond to general principles that are typically applied in a determination of reliability:

- The source (or observer) of the facts is a police officer.
- The source (or observer) of the facts has been reliable in the past.
- The source (or observer) of the facts has committed a crime and reveals his information in the form of a confession.
- The source (or observer) of the facts is an eyewitness of the crime.
- The source (or observer) of the facts personally appears before the judicial officer.
- The source (or observer) of the facts has been corroborated as to some of the facts he reports.

If the judicial officer has assured himself that the affidavit contains all of the necessary information, then execution of the warrant should not require the setting forth of added details.

NOTE: Only a circuit court judge may issue a search warrant for the search of premises, or its contents, belonging to or under the control of any licensed attorney-at-law in order to search for evidence of a crime solely involving a client of such attorney. Va. Code § 19.2-56.1.

The SEARCH WARRANT must include:

- the name of the affiant
- the offense in relation to which the search is to be made
- the name or a description of the place to be searched.
- a description of the property or person to be searched for a recitation that the magistrate has found probable cause to believe that the property or person constitutes evidence of a crime (identified in the warrant) or tends to show that a person (named or described therein) has committed or is committing a crime
- date and time of issuance

In addition, the SEARCH WARRANT requires that an inventory of the property, persons and/or objects seized be filedin the circuit court of the county or city where the search was conducted. The officer, or his designee or agent, may file the warrant, inventory, and accompanying affidavit by delivering them in person, or by mailing them certified mail, return receipt requested, or delivering them by electronically transmitted facsimile process. Unlike the SUBPOENA DUCES TECUM

which may require that the items be delivered to the court or clerk's office and/or the custodian of such items appear before the court.

Any search warrant not executed within 15 days of issuance must be returned to and voided by the officer who issued the search warrant.

Under federal law, substance abuse treatment records are confidential and may not be disclosed except under certain circumstances. The four exceptions outlined in 42 U.S.C. 290dd-2 are (1) consent of the patient; (2) disclosure to medical personnel to the extent necessary to meet a bona fide medical emergency; (3) disclosure of records, with non-patient-identifying information to qualified personnel for the purpose of research, audits, or program evaluation; and (4) if authorized by an appropriate order of a court of competent jurisdiction, granted after application showing good cause therefore, including the need to avert a substantial risk of death or serious bodily harm. In deciding whether to authorize disclosure under exception (4), a court of competent jurisdiction must weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient privilege, and to the treatment services. Further information on the requirements for disclosure can be found in 42 C.F.R. Part 2.

Although magistrates are authorized to issue search warrants, a magistrate does not qualify as a "court of competent jurisdiction" under 42 U.S.C. 290dd-2 to issue search warrants for substance abuse treatment records. Therefore, only a judge may issue a search warrant for these types of records.

The VIRGINIA MAGISTRATE'S MANUAL describes the procedures for the two-step determination described above and provides examples to illustrate the procedures. Clerks who issue Search Warrants should obtain a copy of this MAGISTRATE'S MANUAL from the Office of the Executive Secretary.

For fire inspection warrants and building inspection warrants, *see* CIVIL CASE PROCEDURES.

H. Request for Victim Confidentiality

For the purposes of this section, the Code of Virginia defines a "victim" as "(i) a person who has suffered physical, psychological or economic harm as a direct result of the commission of a felony or of assault and battery in violation of §§ 18.2-57, 18.2-57.1 or § 18.2-57.2, stalking in violation of § 18.2-60.3, sexual battery in violation of § 18.2-67.4, attempted sexual battery in violation of § 18.2-67.5, maiming or driving while intoxicated in violation of § 18.2-51.4 or § 18.2-266, (ii) a spouse or child of such a person, (iii) a parent or legal guardian of such a person who is a minor, or (iv) a spouse, parent, sibling or legal guardian of such a person who is physically or mentally incapacitated or was the victim of a homicide; however, "victim" does not mean a parent, child, spouse, sibling or legal guardian who commits a felony or other enumerated criminal offense

against a victim as defined in clause (i) of this subsection." Va. Code § 19.2-11.01 (B).

Crime victims have the right to request that law enforcement agencies, the Department of Corrections, the Commonwealth's Attorney and the court not disclose, except among themselves, the residential address, telephone number, or place of employment of the victim or a member of the victim's family. Va. Code § 19.2-11.2. There are exceptions to this right of non-disclosure when the disclosure is (i) of the crime site, (ii) required by law or the Rules of the Supreme Court of Virginia, (iii) necessary for law-enforcement purposes or preparation for court proceedings, or (iv) permitted by the court for good cause. Witnesses in criminal prosecutions under Va. Code § 18.2-46.2 (participation in criminal street gang) or § 18.2-46.3 (recruitment of criminal street gang members) are also entitled to request confidentiality under these provisions.

The REQUEST FOR CONFIDENTIALITY BY CRIME VICTIM, DC-301, may be filed by a crime victim with either the magistrate or the clerk. If filed with the magistrate, the magistrate records the time/date filed, attaches DC-301 to the unexecuted warrant or summons to be delivered to the clerk when executed. If DC-301 is filed with the court, the clerk attaches it to the case papers and updates CMS to indicate filing of DC-301.

The clerk should place any court paper containing protected information regarding the crime victim or a member of the victim's family in a 7" x 10" envelope. It is recommended that the document placed in the envelope should be folded only once and the envelope attached to the warrant or summons.

It is extremely important that the clerk and the chief magistrate implement the following routine procedures in *all* cases:

Magistrate should not list residential address, telephone number, or place of employment of any victim on the WARRANT OF ARREST, SUMMONS, or CRIMINAL COMPLAINT.

When a warrant or summons is issued, the Magistrate should request that the complainant complete (1) a REQUEST FOR WITNESS SUBPOENA, DC-325, for the victim and any family member witnesses and (2) a separate REQUEST FOR WITNESS SUBPOENA, DC-325, for all other witnesses.

All REQUEST FOR WITNESS SUBPOENA forms should be attached to the unexecuted warrant or summons and delivered to the clerk after the warrant or summons has been served on the defendant.

Clerks should issue separate SUBPOENA FOR WITNESS, DC-326, processes for victim/family members and non-victim/non-family member witnesses.

The reverse of the SUBPOENA FOR WITNESS, DC-326, contains information about services which may be available to victims of certain crimes.

The clerk maintains the warrant/summons with an attached envelope containing any court documents with protected information itemized above in the:

- Pending Court Date Desk Top File System,
- General District Disposed Court Date Gusset/Lateral File System or
- J & DR Juvenile or Adult Disposed File System.

Once REQUEST FOR CONFIDENTIALITY, DC-301, has been filed, the clerk shall not disclose the documents containing protected information, which are located in the envelope, except upon order of the court. The filing of DC-301 is an administrative action by the clerk and is not docketed.

The clerk should stamp the front of the envelope as shown:

CONFIDENTIAL "Pursuant to Va. Code § 19.2-11.2, the information contained herein is not subject to disclosure and you are therefore forbidden to inspect the contents contained herein." Date/time/signature

V. PROCEDURE TO BE USED FOR AN INDIVIDUAL REQUESTING ACCESS TO SEALED DOCUMENTS CONTAINING PROTECTED INFORMATION

- Once information that is to be sealed pursuant to statue has been filed with the clerk, any person requesting access to documents containing protected information may file a request for release of information with the clerk of the court who acted upon the request and sealed the documents. Only a court order will allow such information to be released or inspected.
- In most cases in the General District Courts and Juvenile and Domestic Relations District Courts, a request for information is not indexed. If a hearing on the request is necessary, it will be docketed as a hearing in the underlying case. No civil fees should be assessed for the filing of the case. Disposition of the request may be appealed pursuant to Va. Code § 16.1-132.

The clerk of the court wherein the request for information is filed should issue a NOTICE OF HEARING, DC-512, to the victim who filed the REQUEST FOR CONFIDENTIALITY, DC-301.

VI. CASE PRE-TRIAL PROCEDURES

This portion of the Criminal Case Procedures section describes functions or activities that are completed after case initiation, but before the actual trial date. Pre-trial proceedings in which the defendant is required to appear may be conducted either with the defendant appearing personally in court, or by two-way electronic video and audio communication. Va. Code § 19.2-3.1.

A. Case Indexing and Filing

- Upon receipt of the executed summons or warrant, the clerk's office of the district court must perform a number of functions prior to the court date to prepare the case for court. To prepare the case for court the clerk's office will:

- Assign a case number by utilizing a numbering stamp or automated case number generated through CMS. Enter the number and the hearing date on the summons or warrant.

- File the case papers in a desktop file by hearing date (all case-related papers should be filed with the summons or warrant).

- Request printing of the docket of pending cases prior to the respective court date.

B. Docket Preparation

The DOCKETING MANUAL should be referred to for detailed questions concerning indexing, filing or docketing procedures. It describes the recommended procedure for indexing cases, filing reports prior to court, and preparing the docket.

In general, to prepare for a pending court date, the clerk's office will:

- Retrieve all cases from the files for a given hearing date.

- Request printing of docket via CMS. Place the cases in the order in which they appear on the docket.

- Include additional cases on the docket as they come to the clerk's office.

C. Prepayment Processing

For certain misdemeanors punishable by a fine not to exceed $500 and which are not punishable by incarceration, or equivalent local offenses, a court appearance can be waived provided the defendant reads, or is read, and signs a NOTICE-APPEARANCE, WAIVER AND PLEA, DC-324, or a similar waiver on the defendant's copy of the VIRGINIA UNIFORM SUMMONS and prepays the appropriate fine and costs. The list of applicable local offenses is prepared by the chief circuit court judge and a list of

applicable state offenses is found in Supreme Court Rule 3C: 2. The prepayment procedures described in the Traffic Pre-Trial Procedures section also apply to prepayment of criminal offenses, except that a different fine schedule applies: Criminal Court Prepayment Schedule (Appendix C). Localities may have their own prepayment schedules. Va. Code §§ 3.1-796.94; 15.2-730; 15.2-2209; 36-106.

D. Advisement of Right to Counsel/Review of Bail Determination

Whenever a person who is charged with an offense which may result in death or confinement is not free on bail, the person shall be brought before the judge of a court not of record on the next court date after the defendant is charged and held in jail unless the circuit court issues process commanding the presence of the person. In which case the person shall be brought before the circuit court on the first day on which the courts sits. If the court not of records sits on a day prior to the scheduled sitting of the circuit court which issued process, the person shall be brought before the court not of record. (*see* Crossover Arraignments for details). At this hearing, the defendant is informed of the amount of his bail and his right to counsel. Va. Code § 19.2-158. Although a defendant may be represented by counsel whom he has chosen and paid whenever he appears before a court, a defendant who is charged with an offense that may result in death or confinement has a legal right to representation. The defendant should be advised of this right the first time he appears in court if he is not accompanied by counsel. Courts have implemented a number of different mechanisms for handling the advisement and appointment of counsel to avoid last minute postponement of trials due to the need to appoint an attorney. *See* COURT-APPOINTED COUNSEL PROCEDURES AND GUIDELINES MANUAL, Section II for details.

Following advisement of the right to counsel, the defendant may:

- hire his own attorney
- waive his right to legal representation
- have an attorney appointed by the judge to represent the defendant at public expense if:
  - the defendant meets the statutory eligibility requirements, and
  - the defendant files a written request together with a financial statement, and
  - the judge has not decided to try the eligible defendant charged with a misdemeanor without an attorney by stating in writing prior to trial that, if convicted, no jail sentence will be imposed.

If the defendant expresses the desire to hire his own attorney, tell the defendant to have his attorney notify the clerk's office that the attorney will be representing the defendant. The defendant also should be told that if an attorney is not retained by a

particular date (which should be before the trial date), the defendant should return to the court to tell the judge what efforts have been made to retain a lawyer so that the judge can decide what should be done regarding the defendant's right to counsel.

If the defendant wishes to waive the right to legal representation, the defendant and the judge execute the waiver section of TRIAL WITHOUT A LAWYER, DC-335, after conducting a hearing and making the findings required by the waiver form. Va. Code § 19.2-160.

A defendant who has neither retained counsel, requested the appointment of counsel nor waived counsel may nonetheless be tried for a misdemeanor punishable by incarceration if the court, upon the motion of the Commonwealth's Attorney or its own motion, states in writing prior to the commencement of the trial that a sentence of incarceration will not be imposed upon conviction. Va. Code § 19.2-160. DC-337, CERTIFICATE OF REFUSAL/TRIAL WITHOUT CONSIDERING APPOINTMENT OF COUNSEL, should be used to record this. In this context, the bar on the imposition of a jail sentence on this uncounseled defendant means that the court cannot impose either an active jail sentence or a suspended jail sentence. *See Alabama v. Shelton,* 122 S.Ct. 1764, 152 L.Ed. 2d 888, 2002 U.S. LEXIS 3564 (May 20, 2002).

If the defendant asks for a court-appointed attorney:

- determine if the defendant *may* be eligible for representation by a court-appointed attorney. To be potentially eligible for a court-appointed attorney, the defendant:
  - must be charged either with a felony or with a misdemeanor for which a jail sentence *may* be imposed, *AND*
  - must not have hired his/her own attorney, *AND*
  - has not waived his/her right to legal representation by an attorney, *AND*
  - is claiming to be indigent. An indigent person is one who, at the time of requesting a court-appointed attorney, is unable to provide for full payment of an attorney's fee without undue financial hardship.

NOTE: Some defendants may experience a measure of difficulty in completing the latter form. The chief judge should determine who will provide assistance to such defendants and how and when such assistance will be delivered. See COURT APPOINTED COUNSEL PROCEDURES AND GUIDELINES MANUAL for details.

If potentially eligible, ask the defendant to prepare and sign:

- Right to Representation by a Lawyer, DC-334, *and*

- Financial Statement--Eligibility Determination for Indigent Defense Services, DC-333

- determine if the defendant meets statutory eligibility requirements through judicial review of:

  - documents provided by the defendant, and/or

  - information from other sources, including optional oral examination of the defendant. In-person examination is no longer mandatory. Va. Code § 19.2-159. *See* COURT APPOINTED COUNSEL PROCEDURES AND GUIDELINES MANUAL for details.

  - decide whether to appoint counsel.

If "yes," notify the defendant that counsel will be appointed and notify the attorney appointed. The defendant should also be advised that the costs of such court-appointed counsel may have to be paid by the defendant if convicted. After July 1, 2005, an attorney appointed to represent a defendant must be from the appropriate list of qualified attorneys maintained by the Indigent Defense Commission. If no attorney who is on the list maintained by the Indigent Defense Commission is reasonably available, the court may appoint as counsel an attorney not on the list who has otherwise demonstrated to the court's satisfaction an appropriate level of training and experience. The court shall provide notice to the Commission of such appointment by sending a copy of the ADVISEMENT AND REQUEST FOR APPOINTMENT OF COUNSEL, DC-334. There is no statutory requirement as to the frequency of mailing such notices, therefore: it is recommended to send in copies at least once a month. Copies may be mailed to VIRGINIA DEFENSE COMMISSION, ADMINSTRATION OFFICE, 1604 Santa Rosa Road, Suite 109, Richmond, VA 23229, Attn: ATTORNEY CERTIFICATION SECTION. The defendant should be instructed that the defendant should promptly contact his court-appointed attorney. A copy of the RIGHT TO REPRESENTATION BY A LAWYER, DC+-334, with the order of appointment portion completed should be transmitted to the court-appointed counsel together with the forms that counsel will need to prepare (time sheet, etc.). Public defenders may be appointed only for cases in the courts of the jurisdictions set out in Va. Code § 19.2-163.2.

If "no," advise the defendant of the decision and allow the defendant to hire his or her own attorney or waive his right of legal representation.

If the defendant refuses to indicate whether he or she will hire an attorney, waive the right to representation, or ask the judge to appoint an attorney and, after being offered an opportunity to rescind the refusal, continues to do so, the judge then executes the "Certificate of Refusal" section of TRIAL WITHOUT A LAWYER, DC-337.

On occasion, an attorney will be appointed to represent a defendant who claims to be indigent, and after the attorney is appointed, a change of circumstances will cause the defendant to be indigent no longer. The defendant should then notify the court of the change, whereupon the defendant will be granted a reasonable continuance to employ an attorney with private funds. Once an attorney has been retained, the court-appointed attorney is relieved of further responsibility and is compensated for his services, on a *pro rata* basis, according to the statutory allowance of costs of court-appointed attorneys.

E. Arraignment

The arraignment hearing in district court is used to notify the defendant of the charges against him and to determine how the defendant will plead. The hearing must be held in open court. The Virginia Code does not require that this hearing be held at a particular time. Therefore, the time at which this hearing is held varies by court. The arraignment may be waived by:

- The defendant
- The defendant's counsel in misdemeanor cases
- Failure of the defendant to appear at the arraignment in misdemeanor cases.

F. Crossover Arraignments

1. Overview

Va. Code § 19.2-158. When person not free on bail shall be informed of right to counsel and amount of bail. - Every person charged with an offense described in § 19.2-157, who is not free on bail or otherwise, shall be brought before the judge of a court not of record, unless the circuit court issues process commanding the presence of the person, in which case the person shall be brought before the circuit court, on the first day on which such court sits after the person is charged, at which time the judge shall inform the accused of the amount of his bail and his right to counsel. The court shall also hear and consider motions by the person or Commonwealth relating to bail or conditions of release pursuant to Article 1 (§ 19.1-119 et seq.) of Chapter 9 of this title. If the court not of record sits on a day prior to the scheduled sitting of the court which issued process, the person shall be brought before the court not of record. No hearing on the charges against the accused shall be had until the foregoing conditions have been complied with, and the accused shall be allowed a reasonable opportunity to employ counsel of his own choice, or, if appropriate, the statement of indigence provided for in § 19.2-159 may be executed.

Note: Judicial designation is not required for crossover arraignments.

2. Clerk's Procedures

PROCEDURES		**COMMENTS**
Step 1	Clerk obtains original warrant or other pertinent case information	In accordance with Va. Code § 19.2-158, the lower courts may handle arraignments for circuit court when the circuit court is not in session.
Step 2	Indexes a new case in appropriate division criminal/traffic and places case on docket	Note: The defendant name should be entered as "Arraignment", complainant would be the Court's name for which you are performing the arraignment, and in the charge field enter the defendant's name.
Step 3	Update case in CMS with F in the F/W/C field and TR (transferred) in the final disposition field.	
Step 4	Notify attorney of appointment if so appointed. Forward original warrant, attorney forms, waiver and continuance order, etc. to the appropriate court for which the arraignment was performed.	Note: If the defendant is incarcerated, a DC-355 should be completed and forwarded to the jail with notation of the next court date and which court the defendant will need to appear. The court may wish to make a copy of the arraignment for their record, please follow the local practice.

3. Forms:

Various Numbers	Original Warrant
DC-335	Trial Without a Lawyer
DC-333	Financial Statement – Eligibility Determination for Indigent Defense Services
DC-334	Request for Appointment of Lawyer
DC-355	Order for Continued Custody

4. References:

19.2-158	When person not free on bail shall be informed of right to counsel and amount of bail.

G. Preliminary Hearings

Preliminary hearings, unless waived, are held in all cases where the defendant is charged with a felony. In preliminary hearings for offenses charged under Va. Code §§ 18.2-361, 18.2-366, 18.2-370 or 18.2-370.1 (crimes involving sexual misbehavior with children), the court may, on its own motion or at the request of the Commonwealth, the complaining witness, the defendant, or their counsel, exclude from the courtroom all persons except officers of the court and persons whose presence, in the judgment of the court, would be supportive of the complaining witness or the defendant and would not impair the conduct of a fair hearing. Va. Code § 18.2-67.8.

Before conducting the hearing, the court must determine whether the defendant will be represented by an attorney. *See* Right of Representation by an Attorney, of this Criminal Case Procedures section. If charged with capital murder, *see* also the COURT-APPOINTED COUNSEL PROCEDURES AND GUIDELINES MANUAL and Va. Code §§ 19.2-163.7 and 19.2-163.8.

The preliminary hearing may be waived by the defendant in writing using the back of the WARRANT OF ARREST-FELONY, DC-312. Preliminary hearings may also be continued to another date. At the preliminary hearing, the court will:

- Determine if there is probable cause to believe the defendant committed the felony charged; if probable cause is found or if the defendant has waived the preliminary hearing, the case is then certified to the grand jury using the back of the WARRANT OF ARREST-FELONY, DC-312.

- Reduce the charge to a misdemeanor, if probable cause is not found on the felony charge but the evidence will support a probable cause finding on a misdemeanor.

- Dismiss the case if probable cause is not found as to any charge.

H. Subpoenas, Witness Summoning

The Sixth Amendment to the United States Constitution provides for the right to subpoena witnesses on one's behalf. The procedures used by the clerk's office for issuing and processing subpoenas for witnesses and other parties to a case are described below. When following the procedures described below, it is important to keep in mind the procedures necessary when a crime victim has requested nondisclosure of certain protected information. Va. Code § 19.2-11.2. *See* Request for Victim Confidentiality, of this Criminal Case Procedures section.

When reviewing a REQUEST FOR WITNESS SUBPOENA, DC-325, the clerk's office will:

- Verify that a form has been correctly completed for each action.

- Review the REQUEST FOR WITNESS SUBPOENA to assure that the proper court and court division is noted (*i.e.*, the same as the court appearance location) and that the court date is correct.

- Obtain telephone numbers, where possible, to aid the clerk or parties in contacting witnesses in the event of a pre-trial resolution of the case or a continuance.

- Note date of filing of request and issuance of subpoenas. Rule 7A:12(a) provides that requests for subpoenas should be filed at least ten days prior to trial; requests not timely filed may not be honored except when authorized by the court for good cause. These rules impose time restrictions on filing requests for subpoenas and subpoena duces tecum. Clerks may not impose their own time restrictions on requests for witness subpoenas. Va. Code § 8.01-407. Magistrates receiving a REQUEST FOR WITNESS SUBPOENA, DC-325, may issue subpoenas or forward the REQUEST FOR WITNESS SUBPOENA to the clerk's office for issuance.

Subpoenas can only be issued by a clerk or magistrate (or by a Commonwealth's Attorney, City or County Attorney, or defense attorney, in certain cases, by the arresting law enforcement officer in criminal cases), but the SUBPOENA FOR WITNESS, DC-326, may be prepared for issuance by the party requesting issuance.

For issuance of a subpoena, the clerk's office will:

- Require that subpoenas be prepared as per instructions for completing SUBPOENA FOR WITNESS, DC-326 (*see* DISTRICT COURT MANUAL, FORMS VOLUME), including requirement that a separate set of forms for each witness be prepared unless the same officer will serve multiple witnesses living at the same address.

- Distribute copies of the subpoenas to the sheriff for service with sufficient time being allowed for return of service of process.

- Attach copies of the REQUEST FOR WITNESS SUBPOENA, DC-325 (if used), and the return copy of the SUBPOENA FOR WITNESS, DC-326, to the originating case papers.

I. Subpoena Duces Tecum

A subpoena duces tecum orders a person who is not a party to the litigation to produce at the trial any evidence in his possession that is pertinent to the issues of a pending controversy. For issuance of a SUBPOENA DUCES TECUM, DC-336, the clerk's office will:

- Require the person requesting the subpoena to complete, under oath, the request portion of a SUBPOENA DUCES TECUM, DC-336, specifying the items

to be produced pursuant to Supreme Court Rule 3A:12. *See* Va. Code § 16.1-131.

- Note date of filing the request and the issuance of the subpoenas duces tecum. Supreme Court Rule 7A:12(b) provides that requests for subpoenas duces tecum should be filed at least 15 days prior to trial.

- Complete the remainder of the SUBPOENA DUCES TECUM following the instructions for completing the form in the FORMS volume of this manual.

When a subpoena has been served on a non-party requiring the production of information stored in an electronic format, the subject of the subpoena shall produce a tangible copy of the information. If a tangible copy cannot be produced, then that person shall permit the parties to review the information on a computer or by electronic means during normal business hours, provided that the information can be accessed and isolated. If a tangible copy cannot reasonably be produced and the information is commingled with information other than that requested in the subpoena and cannot reasonably be isolated, that person may file a motion for a protective order or a motion to quash.

J. Subpoena Duces Tecum For Financial Records

A subpoena duces tecum for the records of a financial institution or credit card issuer that is requested prior to the filing of criminal charges may be granted only by order of court. Va. Code § 19.2-10.1. The court may grant such a subpoena only if it finds probable cause to believe that a crime has been committed and that the records sought are relevant to that offense. Circuit Court form CC-1336, SUBPOENA DUCES TECUM – FINANCIAL RECORDS has been produced for use in these proceedings.

K. Extradition Hearing

If a person is arrested on a warrant issued by a magistrate or judge in which the defendant is charged with being a fugitive from justice in another state, he may be held for up to 30 days pending the arrival of a Governor's Warrant of Extradition requested through the judge by the Commonwealth's Attorney, warden or sheriff. At arraignment, the defendant may be released on bail or kept in jail through the use of the same bail criteria that is applied in other criminal cases. In the event that the Governor's Warrant of Extradition does not arrive within the time limit set in the warrant or bond (up to 30 days), the judge may discharge the defendant or either release the defendant on bail or recommit the defendant for up to 60 additional days pending the arrival of the Governor's Warrant of Extradition. Any electronically transmitted facsimile of a Governor's Warrant shall be treated as an original document provided the original is received within four (4) days of receipt of the facsimile.

In all extradition cases, the defendant is brought before a judge for an arraignment hearing, even if the defendant wishes to waive the extradition proceedings. If the defendant wishes to waive the extradition proceedings as provided in Va. Code § 19.2-114, he must be advised by the district court judge prior to execution of the waiver that he has the right to the issuance and service of a Governor's Warrant of Extradition and a right to challenge extradition through a writ of habeas corpus. If the defendant still wishes to waive the extradition proceedings, then the waiver and consent to extradition on the WAIVER OF EXTRADITION, DC-375, are executed before the judge, after which a copy of the waiver and consent to extradition is sent to the Governor, and the defendant is held for delivery to an authorized agent of the demanding state.

If the defendant does not waive extradition proceedings, the court advises him of his right to counsel, his right to the issuance and service of a Governor's Warrant of Extradition, and his right to seek a Writ of Habeas Corpus to test the legality of the arrest (which is tried in circuit court). If the above rights are not exercised, the court shall re-bail or recommit the defendant pending arrival and service of the Governor's Warrant of Extradition.

Upon service of the Governor's Warrant of Extradition on the defendant, another hearing is held. If no Writ of Habeas Corpus is filed and the judge finds that the defendant is the person identified in the Governor's Warrant of Extradition, the judge orders that the defendant be held for delivery to the authorized officer from the demanding state.

L. Request For A Reduction Or Change Of Bail

A defendant held in jail, or his attorney, may make a motion for reduction of the amount of bail set by the magistrate. The Commonwealth may request a change or revocation of bail and the Commonwealth (not the court) is required to notify the defendant and any surety on the bond of such a request (but failure to notify the surety will not prohibit the court from proceeding with the bond hearing). *See* Va. Code § 19.2-132. The judge considers the motion and may order that bail be reduced, increased (subject to limitations in Va. Code § 19.2-132(B)), remain unchanged, or be revoked. After the judge's decision, if the defendant can immediately meet the terms of bail, the clerk's office (not the magistrate) should take the following action:

- If bail is reduced or changed and the defendant can meet its conditions, prepare the RECOGNIZANCE, DC-330, for completion by the defendant and his sureties. In addition, if the defendant was being held in jail, complete a RELEASE ORDER, DC-353, for the defendant to take back to jail to effect his release.

- If bail is changed and the defendant cannot meet its new conditions, return the defendant to jail using a CONTINUANCE ORDER, DC-355, or, if the defendant was not in jail, commit the defendant to jail using a COMMITMENT ORDER,

DC-352. After the COMMITMENT ORDER is issued by the clerk, when the defendant is able to meet the bail terms, the magistrate should process the defendant's release. Subject to approval by the sheriff, the judge (but not the magistrate) may assign the defendant to home/electronic incarceration pending trial.

If the defendant fails to appear at the hearing, a SHOW CAUSE SUMMONS, DC-360, a CAPIAS, DC-361, or a WARRANT OF ARREST charging the defendant with failure to appear, in violation of Va. Code § 19.2-128, may be issued. The court will determine whether to forfeit the bond.

Prior to trial, the bail decision may be appealed to circuit court. *See* Post-trial Procedures, Appeal.

M. Mental Condition of Defendant

The Code of Virginia provides for mental evaluation and/or treatment of the defendant, including:

1. Emergency Mental Treatment Prior to Trial, Va. Code §§ 19.2-169.6.

   - Prior to trial, the judge may order the defendant to be hospitalized for psychiatric *treatment* for up to 30 days pursuant to Va. Code § 19.2-169.6 (A) (1) <u>if</u>:

     - the defendant has <u>not</u> already been found incompetent to stand trial (if previously found incompetent to stand trial, *see* competency to stand trial evaluation, *below*);

     - there is clear and convincing evidence that the defendant is:

       – properly detained in jail (is not eligible for pre-trial release) and

       – in the opinion of a qualified mental health professional, is mentally ill and imminently dangerous to himself or others and

       – requires treatment in a hospital rather than in the jail, <u>and</u>

       – the defendant's attorney has had an opportunity (after notice of the proposed action) to challenge the findings of the qualified mental health professional prior to the judge's decision in this matter.

If the judge finds that the defendant should be hospitalized under this subsection, then the clerk:

- contacts the Department of Mental Health, Mental Retardation, and Substance Abuse Services to determine to which facility the defendant should be transported.

- prepares an ORDER FOR EMERGENCY TREATMENT PENDING TRIAL, DC-340, for the judge's signature, and attaches the report of the mental health professional and, if applicable, an ORDER FOR PSYCHOLOGICAL EVALUATION, DC-342 (which is described below).

- prepares and signs a CUSTODIAL TRANSPORTATION ORDER, DC-354.

- arranges for sheriff or other official to pick up the court documents and to transport the defendant. The following documents and information should be provided: (i) the commitment order (ii) the names and addresses of the attorneys and the judge (iii) a copy of the warrant or indictment and (iv) the criminal incident information, the arrest report, or a summary of the facts relating to the crime. Va. Code § 19.2-174.1.

Alternatively, a judge, special justice or magistrate may order the temporary commitment of the defendant pursuant to Va. Code § 19.2-169.6(A)(2) if the person having custody over a defendant awaiting trial has reasonable cause to believe that:

- the defendant is mentally ill and imminently dangerous to himself or others, and

- requires treatment in a hospital rather than jail, and

- arranges for an evaluation of the defendant by a person skilled in the diagnosis or treatment of mental illness.

If the person having custody of the defendant complies with these provisions, then:

- a judge, special justice or magistrate may then determine if probable cause exists for the issuance of a TEMPORARY DETENTION ORDER, DC-494, in the same manner as proceedings for involuntary civil mental commitments. Va. Code §§ 19.2-169.6(A)(2) and 37.2-809. *See also*: Procedures in Involuntary Admissions of Mentally Ill/Mentally Retarded.

NOTE: Whenever a proceeding for emergency mental treatment prior to trial is commenced, the local community services board should be contacted to start working with the Department of Mental Health, Mental Retardation and Substance Abuse Services to arrange for hospital bed space in the event an order for hospitalization is entered.

If probable cause is found, then:

- the Department of Mental Health, Mental Retardation and Substance Abuse Services is contacted to determine to which facility the defendant is to be transported.

- a TEMPORARY DETENTION ORDER, DC- 494, is prepared and issued.

- the sheriff or other transporting official is contacted to pick up the TEMPORARY DETENTION ORDER, DC-494, and transport the defendant to the hospital.

- A hearing must be held, following notice to the defendant's attorney, before the court having jurisdiction over the defendant's case or before a judge or special justice in the county or city in which the institution is located. The defendant must be represented by counsel, and the judge must make the findings specified in subsection (A) (1) of Va. Code § 19.2-169.6 (detailed above), based upon clear and convincing evidence. The hearing must be held:

  - within forty-eight hours of execution of the TEMPORARY DETENTION ORDER, or

  - if forty-eight hours terminates on a Saturday, Sunday or legal holiday, the next day which is not a Saturday, Sunday or legal holiday.

2. Evaluation of Competency to Stand Trial, Va. Code § 19.2-169.1.

   At any time between appointment or retention of an attorney and the end of trial, on motion of either the Commonwealth's Attorney or the attorney for the defendant or on its own motion, the judge may hear evidence to determine whether there is probable cause to believe that the defendant lacks substantial capacity to understand the proceedings against him or to assist in his own defense. If probable cause is found, then:

   - The judge orders a competency evaluation to be performed on a local outpatient basis, unless outpatient evaluation services are unavailable, in which case a competency evaluation on an inpatient basis is ordered. Also, the judge may order an inpatient evaluation where an outpatient evaluator recommends hospitalization of the defendant for further evaluation.

   - If an outpatient evaluator is to be used, then the judge selects an evaluator who must be a psychiatrist, a clinical psychologist or a master's level psychologist who is qualified in forensic evaluation. A resource for choosing an appropriate evaluator is the DIRECTORY OF MENTAL HEALTH PROFESSIONALS WITH TRAINING IN FORENSIC EVALUATION that is

distributed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

- If inpatient evaluation is to be used, the evaluating facility is selected by the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services (whose designee at the Office of Forensic Services may be contacted at (804) 786-4837 to ascertain to which hospital the defendant should be transported). The length of stay is determined by the director of the hospital based on the director's determination of the time necessary to perform an adequate evaluation, but not to exceed thirty days.

- The judge shall require the Commonwealth's Attorney to provide the evaluator with (1) a copy of the warrant, (2) the names and addresses of the attorney for the Commonwealth, the attorney for the defendant and the judge ordering the evaluation, (3) information about the alleged crime, and (4) a summary of the reasons for the evaluation request. The defendant's attorney must provide the evaluator with any available psychiatric records or other information that is deemed relevant. The Commonwealth's Attorney and the defendant's attorney have 96 hours in which to submit information to a competency evaluator following the court order for evaluation.

- The clerk will prepare and (after signature by the judge) distribute an ORDER FOR PSYCHOLOGICAL EVALUATION, DC-342, and, if needed, a CUSTODIAL TRANSPORTATION ORDER, DC-354, after which the sheriff will be notified of the need for transporting the defendant.

After receiving the evaluation report, the judge must determine whether the defendant is competent to stand trial. A hearing is not required unless the Commonwealth or the attorney for the defendant requests it or the court has reasonable cause to believe that the defendant will be hospitalized for treatment to restore his competency under Va. Code § 19.2-169.2. If a hearing is held, the defendant has a right to notice of the hearing, the right to counsel and the right to personally participate and introduce evidence. The party alleging that the defendant is incompetent bears the burden of proving by a preponderance of the evidence the defendant's incompetency.

If the judge finds that the defendant is incompetent to stand trial and that treatment is required to restore the defendant to competency, then the judge shall enter an ORDER FOR TREATMENT OF INCOMPETENT DEFENDANT, DC-345. If inpatient treatment is ordered and the defendant has not already been hospitalized, the Department of Mental Health, Mental Retardation and Substance Abuse Services, Office of Forensic Services should be contacted at (804) 786-4837 to ascertain to which hospital the defendant is to be transported, a CUSTODIAL TRANSPORTATION ORDER is prepared, and the sheriff is notified of the need for transporting the defendant.

If the defendant has been charged with a misdemeanor under Article 3 (§ 18.2-95 et seq.) of Chapter 5 of Title 18.2 (larceny and receiving stolen goods), Article 5 (§

18.2-119 et seq.) of Chapter 5 of Title 18.2 (trespass to realty) except an offense under § 18.2-130 (peeping or spying into dwelling or enclosure), or Article 2 (§ 18.2-415 et seq.) of Chapter 9 of Title 18.2 (disorderly conduct), and is being treated in an effort to restore his capacity, then after 45 days, if his capacity has not been restored, the court shall decide whether he should be released, committed, or certified and the court may dismiss the charges.

3. Sanity at the Time of the Offense, Va. Code § 19.2-169.5.

   Prior to trial, on motion of the defendant's attorney, the court may hear evidence to determine if there is probable cause to believe that the sanity of the defendant at the time of the offense may be a significant factor in his defense and that the defendant is financially unable to pay for expert assistance. If probable cause is found, then the judge shall appoint one or more qualified mental health experts to evaluate the defendant's sanity at the time of the offense and to assist in developing the defendant's insanity defense. The mental health expert appointed shall be

   - A psychiatrist, licensed clinical psychologist, a licensed psychologist registered with the Board of Psychology with a specialty in clinical services or an individual with a doctorate degree in clinical psychology who has successfully completed forensic evaluation training approved by the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services; and

   - Qualified by specialized training and experience to perform forensic evaluations.

   The procedures for evaluation of the defendant, i.e. whether the evaluation should be outpatient or inpatient, the orders required to be issued and the information to be provided to the evaluator, are the same as those used in ordering a competency evaluation (see discussion above).

   The report is submitted only to the attorney for the defendant and is protected by the attorney-client privilege. However, in all felony cases, once the attorney for the defendant gives notice of an intent to present psychiatric or psychological evidence pursuant to Va. Code § 19.2-168, the report, the results of any other evaluation of the defendant's sanity at the time of the offense and copies of psychiatric, psychological, medical or other records obtained during the course of any evaluation must be provided to the Commonwealth. These disclosure provisions also apply when the defendant obtains his own expert to evaluate the defendant's sanity. *See* discussion of the insanity defense below.

4. Insanity Defense, Va. Code §§ 19.2-168 and -168.1

The defendant, pursuant to Va. Code § 19.2-168, is required to give notice at least 21 days prior to trial of an intent to assert a defense of insanity or mental retardation; otherwise, the judge may allow the Commonwealth a continuance or, under appropriate circumstances, bar the defendant from presenting such evidence. Such a continuance period shall not be counted against the speedy trial limits of Va. Code § 19.2-243 (felonies), but shall be counted against the speedy trial limits of Va. Code § 19.2-8 (misdemeanors).

Should the Commonwealth subsequently request its own evaluation of the defendant's sanity, the court shall order such evaluation and advise the defendant in open court that if he fails to cooperate with the Commonwealth's expert, the defendant's expert evidence may be excluded. Va. Code § 19.2-168.1. The procedures for evaluation of the defendant, i.e. whether the evaluation should be outpatient or inpatient, the orders required to be issued and the information to be provided to the evaluator, are the same as those used in ordering a competency evaluation (see discussion above).

If the defendant refuses to cooperate with such evaluators, the court may admit evidence of the refusal or bar the defendant's presentation of certain expert evidence at trial on the issue of sanity at the time of the offense.

The evaluators must provide copies of their evaluation with its findings and opinions plus copies of the psychiatric, psychological, medical and other records obtained during the evaluation to the attorneys for both the Commonwealth and the defendant.

N. Interpreters for Deaf and Non-English Speaking Persons

1. Interpreters for the Deaf

   If a defendant is deaf, he or she is entitled to a court-appointed interpreter at state expense, regardless of financial status. If the victim or a witness is deaf, an interpreter shall be appointed by the trial judge unless the court finds that the victim or witness does not require the services of a court-appointed interpreter, and that the deaf person has waived his or her right to an interpreter. Va. Code § 19.2-164.1. If a deaf person wishes to retain his own interpreter at his own expense, court approval of the interpreter is not required. A deaf person may waive the appointment of an interpreter. Interpreters for the deaf shall be procured through the Virginia Department for the Deaf and Hard of Hearing.

2. Interpreters for Non-English Speaking Persons

   If a defendant does not speak English, he or she is entitled to a court-appointed interpreter at state expense, regardless of financial status. If the victim or a witness does not speak English, an interpreter shall be appointed by the trial judge unless the court finds that the victim or witness does not require the services of a

court appointed interpreter. Va. Code § 19.2-164. If the non-English speaking defendant, victim or witness wishes to retain an interpreter at state expense, the court must determine that such interpreter is competent.

The compensation of an interpreter shall be fixed by the court in accordance with the guidelines established by the Judicial Council of Virginia. Va. Code § 19.2-164. The guidelines can be found on the court systems website at: www.courts.state.va.us. The interpreter should submit form DC-44 LIST OF ALLOWANCES - INTERPRETER to claim compensation.

All foreign language interpreters must be located by the court directly. The Office of the Executive Secretary of the Supreme Court of Virginia offers a voluntary program to certify Spanish language interpreters. A list of certified Spanish language interpreters is provided to all courts on an annual basis and is also available on the Virginia judiciary's homepage at: www.courts.state.va.us. The Office of the Executive Secretary does not maintain the names of any foreign language interpreters other than those certified for Spanish language interpretation. Suggested resources for locating interpreters include foreign language departments of colleges and universities, federal courts or private sector interpreter firms. However, when utilizing interpreters from such sources, the judge should determine the competency of the person to interpret court proceedings.

While all courts are encouraged to utilize certified Spanish language interpreters who have proven competencies and skill levels, there is no requirement that only certified interpreters be used in courts. However, judges are encouraged to inquire about the qualifications of an interpreter to perform such services in a court environment. This is particularly important given the experience of courts in recent years that mere fluency in a foreign language does not equate to competence in court interpretation. Inquiry may take the form of the suggested "*voir dire*" of foreign language interpreters which can be found in the "Guide to Foreign Language Interpreter Usage and Certification in Virginia's Courts" (this guide accompanies the Certified Spanish Language Interpreter List distributed by OES and can also be found the court system's website at www.courts.state.va.us when qualifying on-certified interpreters of any language).

O. Certificate of Analysis

The court can admit as evidence properly certified certificates of analysis of any examination or analysis performed by certain testing facilities without requiring the person performing the test or analysis to appear and testify. Va. Code § 19.2-187. These testing facilities are:

- Laboratories operated by the Division of Consolidated State Laboratories or the Department of Forensic Science or authorized by such Department to conduct such examinations or analyses;

- Federal Bureau of Investigation;
- Federal Postal Inspection Service;
- Federal Bureau of Alcohol, Tobacco and Firearms;
- Naval Criminal Investigative Service;
- Federal Drug Enforcement Administration;
- National Fish and Wildlife Forensics Laboratory; and
- United States Secret Service Laboratory

Before such certificates of analysis may be admitted as evidence pursuant to Va. Code § 19.2-187, the following events must occur:

- The certificate must be received and filed at least seven (7) days prior to the hearing or trial date. "Filed" should be stamped or written on the certificate of analysis, along with the name of the court and date and time of filing. The person who received and dated the certificate of analysis should then authenticate the date stamp by entering the term "*TESTE*," signing, inserting his or her title, and dating the authentication.

Examples of the date and authentication stamp include:

FILED/2:30 p.m./September 9, 1998/Powhatan Circuit Court/TESTE/*(Signature)*/Deputy Clerk/October 9, 2006

RECEIVED AND FILED/9:30 a.m./September 10, 2006/Henrico General District Court/TESTE/*(Signature)*/Clerk/October 10, 2006

- If requested by counsel of record for the defendant, the clerk or Commonwealth's Attorney must mail or deliver a copy of the certificate to such attorney at least seven days prior to the hearing or trial date. Va. Code § 19.2-187. The request must be made in writing on a form prescribed by the Supreme Court at least 10 days before trial. DC-302, REQUEST FOR COPY OF CERTIFICATE OF ANALYSIS has been created for use in requesting a copy of the certificate of analysis.
- When a request for a copy of the certificate of analysis is made to the clerk, a copy of the request must be sent to the Commonwealth's Attorney. The date

of receipt of the request must be documented. A notation should be placed on the written request documenting date of delivery or mailing. If a request is filed in a case that is not yet before the court, the clerk shall advise the requester that he or she must resubmit the request once the case is properly before the court. DC-302, REQUEST FOR COPY OF CERTIFICATE OF ANALYSIS can be used for this purpose

The Commonwealth's Attorney may later request by motion that the original certificate of analysis for drugs prepared pursuant to Va. Code § 19.2-187 be sent to the circuit court for use in forfeiture cases in which the original certificate must be filed in order to be introduced into evidence. If so requested, the following steps should be taken:

Accept the motion and index it as subsequent action of the original case.

If the motion is granted by the judge, the clerk should:

- complete form DC-372, AUTHENTICATION OF RECORD. Va. Code § 8.01-391(C).
- Make a copy for the district court records and authenticate it. *See* Case Post-trial Procedures, Records Management regarding the authentication of copies of records.
- Create a certificate authenticating and certifying the original certificate as a "true record." Va. Code § 8.01-389(A). An example of such a certificate would be:

Authentication of Order - Attach DC-372 to Order
or
Stamp on order as follows:
(Court Name)

I, the undersigned clerk or deputy clerk of the above-named court, authenticate pursuant to Virginia Code § 8.01-391(C), on this date that the document to which this authentication is affixed is a true copy of a record in the above-named court, made in performance of my official duties.

. . . . . _____
DATE CLERK/DEPUTY CLERK
(Do not use the term "Combined Court" - use specific court type, i.e. General District Court or Juvenile and Domestic Relations District Court.)

- Attach the original certificate of analysis to your executed certificate.
- Prepare a transmittal "cover."

- Transmit the papers to the circuit court, retaining a copy of the transmittal "cover," signed by the circuit court indicating receipt of the certificate for the district court files.

P. Notice, Motion and Order for Chemical Analysis of Alleged Plant Material

Pursuant to Va. Code §19.2-188.1, a law enforcement officer shall be permitted to testify as to the results of any field test approved by the Department of Forensic Science regarding whether or not any plant material, the identity of which is at issue, is marijuana. The bill also provides an opportunity for defense counsel to require full laboratory analysis. It is suggested that the NOTICE, MOTION AND ORDER FOR CHEMICAL ANALYSIS OF ALLEGED PLANT MATERIAL, DC-304, be given to the defendant a time of arraignment, and if the defendant or their counsel wish to file the NOTICE, MOTION AND ORDER FOR CHEMICAL ANALYSIS OF ALLEGED PLANT MATERIAL, DC-340, it should be filed prior to trial before the court in which the charge is pending.

Q. Custody of Evidence

While the parties to the case or the appropriate law-enforcement entity usually have custody of evidence, clerk's offices sometimes become a repository for evidence in a criminal case either through the voluntary deposit of evidence by a party or a law-enforcement entity or upon production of evidence in the clerk's office for examination as required by a subpoena duces tecum. Va. Code §§ 16.1-89 and 16.1-131; Supreme Court Rule 3A:12(b). The judge may order the appropriate law enforcement entity to take into custody or maintain custody of substantial quantities of any controlled substances, imitation controlled substances, chemicals, marijuana or paraphernalia used or to be used in a criminal case. Va. Code § 18.2-253.2. The order may make provisions for ensuring the integrity of these items until further order of the judge.

R. Recall of Process

On occasion, it becomes necessary for the judge to order the immediate return of process to the court even though the law enforcement entity possessing the document has not served it. Examples include:

- the defendant was arrested on a facsimile or "teletype" copy of the warrant.

- the defendant voluntarily appeared in court after a capias for contempt or for failure to appear had been issued.

In every such instance, the law enforcement entity possessing the document must be telephoned promptly to return the process without further attempt to serve it. This call should be documented with a subsequent written notification to protect the court from

claims that notification was not given. To this end, the RECALL OF PROCESS, DC-323, should be used whenever process is recalled prior to its being served.

S. Photographing and Broadcasting Judicial Proceedings

A court, solely in its discretion, may permit many, but not all, types of judicial proceedings to be photographed or broadcast. Such coverage is governed and limited by the provisions of Va. Code § 19.2-266.

T. Transfer of Jurisdiction

On occasion, the judge determines that a case being handled in general district court actually should be tried in juvenile and domestic relations district court, or *vice versa*. Once such a determination is made, the following steps should be taken:

- Upon receipt of the case papers that require transfer to a court of another jurisdiction, the case papers should be given to the judge to sign the ORDER OF TRANSFER OF JURISDICTION, DC-322 to include all charges being transferred.

- If the defendant is in custody or incarcerated, in addition to the DC-322, the clerk prepares an ORDER OF CONTINUED CUSTODY, DC-355. In bold type "**TRANSFER CASE"** next to the name of the defendant (in the accused field) and mark the name of the transferee court as the court for which the case is continued.

- The clerk attaches all case papers to the ORDER--TRANSFER OF JURISDICTION, DC-322 and issues a check for any cash bond to the transfer court.

- The clerk transmits the case to the transfer court and retains a copy of the ORDER-TRANSFER OF JURISDICTION, DC-322. Retaining a copy of the original warrant is optional.

- The clerk updates the case in CMS with an F in F/W/C field and TR (transfer) in the final disposition field.

Special Note: If a General District Court receives a case which involves a juvenile, the General District Court should make sure the name of the juvenile and address of the juvenile are altered in CMS to protect the identity of the juvenile. It is recommended that the name of the case simply state juvenile, and enter n/a in the address fields to protect the identity of the juvenile. These steps are recommended as General District cases appear on the Internet for public viewing.

U. Confidentiality of Certain Pretrial Reports

Pretrial investigation reports and any report of a local community-based probation agency are not subject to disclosure under the Virginia Freedom of Information Act.

These reports are filed as part of the case records. Such reports must be sealed upon entry of the court's final order. Upon request, such a report may be available to counsel for the person who is the subject of the report, to an agency to which the person has been referred for assessment of treatment and to a "criminal justice agency" (as defined in § 9.1-101). Va. Code §§ 9.1-177.1, 19.2-152.4:2.

The Trial Procedures portion of the Criminal Case Process section describes the functions or activities performed at trial and the procedures for processing and completing these activities.

VII. CASE TRIAL PROCEDURES

A. Adjudicatory Hearing

For cases heard in court, the clerk's office must perform several functions to assure that cases are processed efficiently. The clerk's office is responsible for assuring that:

- All case-related paperwork is complete and accounted for in the case files, which may include:
  - original summons or warrant
  - either the defendant's copy of the VIRGINIA UNIFORM SUMMONS or an APPEARANCE, WAIVER AND PLEA, DC-324, if prepayment has been made
  - original complaint
  - Search Warrant, DC-339, and Affidavit for Search Warrant, DC-338
  - Request for Witness Subpoena, DC-325, and subsequent Subpoena for Witness, DC-326
  - Recognizance, DC-330
  - other pleadings and documentary evidence filed with the court

Prepayments are recorded on the docket.

- The docket and all of the case papers for the cases on the docket are transferred to the judge on the morning of trial.
- If there is a continuance or pretrial resolution of a case, witnesses should be notified. If a case is continued, several different mechanisms exist for notifying and/or reminding witnesses and the parties of the continuance date.
  - If all parties have consented to the continuance, the moving party should be reminded that he is responsible for assuring that the witnesses are

notified of the continuance in the manner provided in Rule 7A:14 of the Rules of the Virginia Supreme Court.

- o If a party is represented by an attorney, then the attorney (including the Commonwealth's Attorney) should be required to notify his or her client and witnesses.

- o Parties not represented by a lawyer and their witnesses should be notified in court, if they are in court; otherwise, the clerk or judge may require the party to notify his witness(es) of the continuance date or the clerk may complete and mail a NOTICE OF NEW TRIAL DATE, DC-346, to such party and his or her witnesses. If the witnesses are in court, the judge may use an oral recognizance of the witnesses or a written WITNESS RECOGNIZANCE, DC-329.

- The disposition is recorded correctly in the CMS system and on the back of the warrant, except on the VIRGINIA UNIFORM SUMMONS, where it is recorded on the front.

- All other court actions are recorded in the CMS system and on the warrant or summons, such as:

  - o Dismissal on "accord and satisfaction" conditioned on payment of costs. Va. Code § 19.2-151.

  - o Deferred disposition in drug cases, domestic violence cases and certain property offenses. Va. Code §§ 18.2-251, 18.2-57.3 and 19.2-303.2

  - o Guilty plea to reduced charges

  - o Continuance

  - o Waiver of court appearance, guilty plea, and prepayment of fine/costs

The CCRE report is completed after the ten-day appeal period expires or, if appealed, after the appeal is withdrawn prior to trial in circuit court or, if deferred, after deferral of the case, but no later than 30 days after disposition.

B. Failure to Appear and Bond Forfeiture

When a defendant fails to appear in court on a traffic misdemeanor or criminal case, the court may conduct a trial in the defendant's absence or continue the case and issue a SHOW CAUSE SUMMONS, DC-360, or CAPIAS, DC-361, if the defendant is to be charged with contempt; or a WARRANT OF ARREST (FELONY), DC-312, or WARRANT OF ARREST (STATE MISDEMEANOR), DC-314, if the defendant is to be charged with failure to appear. A trial in the defendant's absence may be conducted for misdemeanors when no jail sentence is possible or when the court notes beforehand

that no jail sentence will be imposed upon conviction. Following the entry of a judgment in a trial in absentia, the clerk's office will:

- Record the disposition in CMS
- Ensure that the judge has recorded the disposition on the summons or warrant
- Issue a SHOW CAUSE SUMMONS (BAIL FORFEITURE-CIVIL), DC-482, for a defendant who was admitted to bail and who failed to appear in court, and for the surety or sureties.
- Apply cash posted by the defendant to secure bail as payment of fine and costs.
- Prepare a FINAL NOTICE TO PAY, DC-225, as per the instructions in the FORMS volume of this manual and send it to the defendant, if the defendant was tried in his absence and convicted.

A case will be continued when the defendant fails to appear, if a jail sentence is possible, and the judge does not wish to restrict the maximum sentence to a fine, should the defendant be found guilty. The judge may order issuance of a SHOW CAUSE SUMMONS, DC-360, or CAPIAS, DC-361 if the defendant is to be charged with contempt; or a WARRANT OF ARREST (FELONY), DC-312, or WARRANT OF ARREST (STATE MISDEMEANOR), DC-314, if the defendant is to be charged with failure to appear. If the defendant is returned to custody prior to commencement of bond forfeiture proceedings, the surety is discharged from liability on the bond and is entitled to a return of his security if the bail bond was secured.

However, if the *defendant* posted a cash bond and failed to appear and

- was tried in his absence *and* is convicted, the cash bond is applied first to any fine or cost imposed, with the balance forfeited without further notice. If a rehearing is granted, the court, for good cause shown, may remit part or all of such bond not applied ultimately to fine and costs and order a refund by the State Treasurer.
- was *not* tried in his absence, the cash bond shall be forfeited promptly without further notice. If the defendant appears in court within 60 days of forfeiture, the judge may remit all or part of the bond and order a refund by the State Treasurer. This provision does not apply to a cash bond posted by a third-party surety.

NOTE: Bond Forfeitures are civil in nature, please see Civil Proceedings, Chapter 4, for detailed procedures on Bond Forfeitures

C. Trial Provisions

Both the prosecuting attorney and the defendant's attorney (or, if unrepresented, the defendant) may make opening statements. A *nolle prosequi* is a request by the prosecution not to try the case; it is entered, in the judge's discretion, only for good cause shown. Va. Code § 19.2-265.3.

"Exclusion of witnesses" pursuant to Va. Code § 19.2-265.1 is the process by which all witnesses in a case, including but not limited to police officers and other investigators, must leave the courtroom and may return only while testifying. The judge may exclude witnesses on his own motion and must do so if requested by the prosecuting attorney or the defendant's attorney (or, if unrepresented, by the defendant). This provision does not apply to:

- a defendant.
- one officer or agent of any defendant that is a corporation or association. Va. Code § 19.2-265.1.
- the complaining witness, *if* there is no prosecuting attorney and if necessary for the orderly presentation of prosecution witness.
- the *victim*, unless the court determines that the presence of the victim would substantially impair the conduct of a fair trial.
- any minor victim and an adult chosen by the minor in addition to or in lieu of the minor's parent or guardian. Va. Code § 19.2-265.01.

The judge, pursuant to Va. Code § 19.2-269.2, on motion of the defendant or the Commonwealth's Attorney, may prohibit testimony as to the current residential or business address of a victim or witness, if it is not material in the case. *See also* Va. Code § 19.2-11.2.

If the charge is dismissed because the court finds that the person arrested or charged is not the person named in the warrant or summons, the court shall, upon motion of the person improperly arrested or charged, enter an EXPUNGEMENT ORDER, DC-365, requiring expungement of the police and court record relating to the charge and stating that dismissal and expungement are conducted pursuant to Va. Code § 19.2-392.2. The motion is treated as a subsequent action of the underlying case, and the motion and EXPUNGEMENT ORDER should be attached to the original case. *See* ADULT EXPUNGEMENT PROCEDURES in Appendix B.

D. Pre-Conviction Probation For "First-Time Offenders

In cases involving certain offenses, a person who is deemed by statute to be a "first-time" offender may be eligible for probation and, if probation is successfully

completed, dismissal of the case. The situations involve a person who pleads guilty or not guilty to:

- possession of a controlled substance (Va. Code § 18.2-250) or possession of marijuana (Va. Code § 18.2-250.1) *and* who has never been convicted of drug offenses and who has not had a proceeding dismissed against him under the first offender statute, Va. Code § 18.2-251, *or*

- a misdemeanor crime against property under articles 5, 6, 7 and 8 of chapter 5 of Title 18.2 (Va. Code § 18.2-119 et seq.) *and* who has not previously been convicted of a felony (*see* Va. Code § 19.2-303.2) *or*

- assault and battery against a family or household member under Va. Code § 18.2-57.2 *and* who (i) has not been previously convicted of any offense of assault or bodily wounding under Article 4 of Chapter 4 of Title 18.2 (Va. Code §§ 18.2-51 through 18.2-57.3) or under any statute of the United States or of any state or any ordinance relating to assault and battery against a family or household member or (ii) has not had a proceeding against him for such offense dismissed under the first offender statute, Va. Code § 18.2-57.3, *or*

- underage possession or purchase of alcohol. Va. Code § 4.1-305(f). This provision is directly applicable to adults under 21. For a juvenile who has violated § 4.1-305, see Va. Code § 16.1-278.9.

In each of these situations, the judge must first find facts sufficient to justify a finding of guilt (to avoid retrial of the case if the defendant fails to successfully complete probation). If the judge chooses this option, then the consenting defendant is placed on probation without the entry of a judgment of guilt. Costs are assessed when the defendant is placed on probation.

Some specific statutory provisions apply to each type of probation.

- In a domestic violence case, as a condition of probation, the court may order that the defendant be evaluated and enter an appropriate treatment and/or education program, if available. The court shall, unless done at arrest, order the accused to report to the original arresting law-enforcement agency to submit to fingerprinting. Va. Code § 18.2-57.3.

- For probation under Va. Code § 18.2-251, the driver's license of the defendant is suspended for six months, as required by Va. Code § 18.2-259.1. Where there are compelling circumstances warranting an exception, the court may authorize the issuance of a restricted license containing the statutory options. Va. Code § 18.2-259.1. The RESTRICTED LICENSE ORDER-DRUG VIOLATION, DC-359, is used for reporting to the Department of Motor Vehicles the license suspension and, if so ordered, the issuance of a restricted license. Va. Code § 18.2-259.1. The court must order the accused to undergo a substance abuse assessment and enter a treatment and/or education program. The Department

of Motor Vehicles requires that the program to which the defendant was referred endorse the back of the order before the Department will issue a restricted license to the defendant. Va. Code § 18.2-259.1. The court shall, unless done at arrest, order the accused to report to the original arresting law-enforcement agency to submit to fingerprinting.

- In cases involving possession or purchase of alcohol by an adult under 21, the court must require the defendant to enter a treatment or education program, or both, which the court determines best suits the needs of the defendant. The defendant may be granted a restricted license.

E. Accord and Satisfaction

When a defendant is charged with assault and battery, or another misdemeanor not specifically excluded by statute, for which there is a civil remedy, the judge has the discretion to dismiss the case conditioned upon the defendant's payment of costs when the injured party appears in court and acknowledges in writing that the injured party has received satisfaction for the injury. *See* Va. Code § 19.2-151. The charges cannot be dismissed upon a satisfaction and discharge if the offenses were committed by or upon a law enforcement officer, riotously in violation of Va. Code §§ 18.2-404 to 18.2-407, against a family or household member in violation of § 18.2-57.2 or with the intent to commit a felony.

F. Sentencing

The maximum punishment in district court for misdemeanors is confinement in jail for twelve months and/or a $2,500 fine. A matrix of offenses and the potential penalties associated with each is included in Appendix D with misdemeanors separated by class of misdemeanor, I, II, III or IV, or unclassified, and the corresponding ranges of penalties and statutory references are listed with them.

In addition to the specific penalties shown in Appendix D, the sentencing judge has certain statutory sentencing alternatives including:

- Suspension of imposition of sentence or fine or suspension of all or part of sentence or fine, including requirement of probation after serving a portion of the sentence, paying at least partial restitution, or performance of community service to discharge the fine and/or sentence. (Va. Code §§ 18.2-163, 18.2-187.1; 19.2-303 and 19.2-354) *See also* restitution for investigative costs under Va. Code §§ 18.2-163 and 18.2-187.1.

- Probation. Va. Code §§ 19.2-303, 19.2-305.

- Placement in a local community-based probation program. Va. Code § 19.2-303.3.

- Placement on probation or suspension of imposition or execution of "sentence" (incarceration) conditioned upon payment of fines and/or costs either on a date certain or on an installment plan. Va. Code § 19.2-356.

- Commitment to the Department of Corrections (only for certain offenses or contagious diseases). Va. Code §§ 53.1-21, 53.1-22.

- Jails or jail farms. Va. Code § 53.1-105.

- Local government work force. Va. Code §§ 53.1-128 and 53.1-129. If the defendant was permitted to participate in the jail work force prior to trial, the defendant gets credit towards completing his sentence for such work. A specific order authorizing participation in a local government work force must be entered for each individual defendant. An entry for this order has been placed on the reverse of the warrants.

- Work/Education/Rehabilitation treatment release. Va. Code § 53.1-131. This option is available for any person who has been convicted and (i) sentenced to jail or (ii) is being held pending completion of a presentence report pursuant to Va. Code § 19.2-299. If placed on work release under Va. Code § 53.1-131 and the defendant is to serve time on weekends or on nonconsecutive days to permit the defendant to retain gainful employment, the judge shall require the defendant to pay the clerk an amount to defray his jail costs which shall not exceed the amount specified by the Compensation Board. Va. Code § 53.1-131.1. If the defendant fails to report at the times specified by the judge, the sentence imposed pursuant to Va. Code § 53.1-131.1 shall be revoked and a "straight" jail sentence imposed.

- Home electronic incarceration program. Va. Code § 53.1-131.2. The court may assign the defendant to such a program as a condition of probation.

- Referral to community-based probation program. *See* Va. Code § 53.1-181 *et seq.*

- Commitment for treatment of drug or alcohol abuse. Va. Code § 18.2-254.

- Posting of a RECOGNIZANCE AND BOND TO KEEP THE PEACE, DC-364, if the judge finds good cause for the complaint that the defendant breached the peace.

- Order the defendant not to operate a motorboat or watercraft after conviction for boating while intoxicated, Va. Code § 29.1-738.4, and to participate in VASAP, Va. Code § 29.1-738.5.

- Order the defendant's license to drive a motor vehicle suspended for the unlawful purchase or possession of alcohol beverages. Va. Code § 4.1-305.

Any person who is convicted of a misdemeanor and who is sentenced to incarceration in a local correctional facility, or who is granted suspension of sentence and probation or who is participating in a community corrections program or who is participating in a home/electronic incarceration programs is required to pay a fee of $50.00 towards the cost of confinement, supervision or participation. The court may find that the defendant is exempt from paying this fee due to unreasonable hardship. In this case, the defendant will be required to perform community service as an alternative to paying the fee. Such monies are paid to the court. Va. Code § 53.1-150.

G. Substance Abuse Screening, Assessment and Treatment

In cases involving drug offenses committed after January 1, 2000, the court is required to order persons to undergo a substance abuse screening and, based on the results possibly an assessment and treatment. This process is discretionary for other types of misdemeanors. Specifically, if a person is:

- convicted of a drug offense under Article 1 or Article 1.1 of Chapter 7 of Title 18.2 (§§ 18.2-247 through 18.2-265.5), *and*
- the offense was committed on or after January 1, 2000, *and*
- the offense is Class 1 misdemeanor, or
- the conviction is for a second offense of petit larceny, and
- the defendant's sentence includes
- probation supervision by a community corrections program, *or*
- participation in a local alcohol safety action program,

The court must order that the person undergo a substance abuse screening as part of the sentence. The court may order a substance abuse screening upon conviction as part of the sentence if:

- the offense is a Class 1 misdemeanor, *and*
- the court has reason to believe that the defendant has a substance abuse or dependence problem, *and*
- the defendant's sentence includes
- probation supervision by a community corrections program, *or*
- participation in a local alcohol safety action program, *or*
- any other sanction.

If the person is ordered to enter a program administered under the community corrections program, the local community corrections program is responsible for conducting the screening. Otherwise the local alcohol safety action program shall conduct the screening.

If the screening indicates that the person has a substance abuse or dependence problem, an assessment shall be completed by the program that conducted the screening. If the assessment confirms that the person has a substance abuse or dependence problem, the court shall order, as a condition of a suspended sentence or probation, that the person complete a substance abuse education and intervention component of the local alcohol safety action program or such other available treatment program that in the opinion of the court would be best suited to the needs of the person. If the person is referred to the local alcohol safety action program, the program may charge a fee not to exceed $300 based on the person's ability to pay.

H. Restitution

When a defendant is convicted of committing certain crimes that result in property damage or loss, he must enter into a restitution plan if his sentence is suspended or he is placed on probation. The plan shall include the defendant's home address, place of employment and address, social security number and bank information. Va. Code § 19.2-305.1. Restitution also may be used in other instances as a part of the sentence. *See* Va. Code §§ 18.2-163, 18.2-187.1, 19.2-303.2, 19.2-305.1 and 19.2-305.2. Where property damage, loss or destruction occurred, the court may require the return of the property; if return is impractical or impossible, then payment equal to the greater of the value of the property at the time of the offense or of sentencing may be ordered. The victim may enforce the restitution order in the same manner as a civil judgment. The court, when ordering restitution pursuant to § 19.2-305 or § 19.2-305.1, may provide that interest on the amount so ordered shall accrue at the rate specified in Va. Code § 6.1-330.54. Va. Code § 19.2-305.4. If the order requires interest, it shall accrue from the date of loss or damage unless otherwise specified in the order. The ACCOUNTING MANUAL describes the clerical procedures for handling funds collected through restitution. If the defendant is ordered to pay restitution to a crime victim and that victim cannot be located or identified, the clerk shall deposit the restitution collected in the Criminal Injuries Compensation Fund.

I. Costs

Costs are automatically imposed by statute upon conviction in any case and also on dismissal of a case under Va. Code § 16.1-69.48:1 (traffic school), § 19.2-151 (accord and satisfaction), § 18.2-57.3 (first time assault and battery against a family or household member), § 18.2-251 (first time drug offense) and § 19.2-303.2 (first time property offense) and pursuant to Va. Code § 19.2-303.4 deferred dispositions under §§ 18.2-57.3, 18.2-61, 18.2-67.1, 18.2-67.2, 18.2-251 and 19.2-303.2).

When the defendant is represented by an attorney appointed by the court to represent the defendant or by the Public Defender's office, the same procedures apply, other than the Public Defender's office is not entitled to fees, only to payment of expenses. The court must:

- determine the appropriate fee, including submission of time sheets, and expenses incurred in defending the defendant. Court appointed counsel should make a written request within 30 days of trial or preliminary hearing for payment of fees.
- collect the fee and expenses from the appropriate locality for local offenses.
- tax the fee and expenses as costs in the case.
- collect the fee and expenses from the defendant and, for local offenses, reimburse the locality for fees and expenses recovered on local cases.

A person who is sentenced to incarceration in a local correctional facility, or who is granted suspension of sentence and probation, or who is participating in a community-based corrections program or who is participating in a home/electronic incarceration program must pay a supervision fee or, if not gainfully employed, perform community service as an alternative to paying a supervisory fee. *See* Va. Code § 53.1-150.

If an appeal is withdrawn after ten days from the date of conviction in district court, the judgment is affirmed in circuit court as a judgment of the circuit court and the circuit court clerk collects all fines and costs imposed in the case. If an appeal is withdrawn within ten days from the date of conviction in district court, the sentence is reinstated in district court and the district court clerk collects all fines and costs imposed on the case.

See the APPENDIX B of this manual for type and assessment of costs. The imposition of costs may not be suspended or the amount reduced, since costs are to reimburse the public treasury for the expenses of prosecution and is not a part of the penalty.

Localities may adopt an ordinance authorizing a processing fee not to exceed $25 to be charged as part of court costs for any individual admitted to jail following conviction. The fee is collected only once for an admission to jail, even if admission is for multiple convictions. Va. Code § 15.2-1613.1. This fee is sent to the locality.

J. Cash Bond Used to Pay Fines and Costs

Except when the defendant is tried in his absence and convicted, cash bonds cannot be applied to fines and costs, without the consent of the person who posted the cash bond. Va. Code §§ 19.2-143; 19.2-121. The RECOGNIZANCE, DC-330, contains a preprinted consent if the defendant posts a cash bond. If a third-party surety consents

to the cash bond being applied to fines and costs, such consent should be written and should be signed by such surety.

K. Not Guilty by Reason of Insanity

A defendant who is found not guilty of a misdemeanor by reason of insanity on or after July 1, 2002, shall remain in the custody of the Department of Mental Health, Mental Retardation and Substance Abuse Services for a period not to exceed one year from the date of acquittal. During that year, if it is determined that the person meets the criteria for conditional release or release without conditions (§ 19.2-182.7), emergency custody (§ 37.2-808), temporary detention (§ 37.2-809), or involuntary commitment (§§ 37.2-814 to 37.2-820), the Department of Mental Health, Mental Retardation and Substance Abuse Services shall petition the court which committed the person. The Department's duty to file a petition during that year shall not preclude the ability of any other person meeting the requirements of § 37.2-808 to file such a petition. Va. Code § 19.2-182.5.

L. Insanity After Conviction (Adjudication)

On occasion, a defendant who has been convicted but not yet sentenced may be of uncertain mental state.

- Va. Code § 19.2-176(B) provides for emergency temporary detention in the situation where the defendant is mentally ill and poses an imminent danger to himself or to others if not immediately hospitalized. The procedure to be followed in these cases is the same as that for a pre-conviction defendant whose custodian seeks temporary mental detention under Va. Code § 19.2-169.6 A 2. *See* Mental condition of defendant (pre-adjudication) (*above*). As in the pre-conviction procedure, a hearing must be held within forty-eight hours of execution of the Temporary Detention Order, or if forty-eight hours terminates on a Saturday, Sunday or legal holiday, the next day which is not a Saturday, Sunday or legal holiday.

If the judge presiding at the trial finds reasonable grounds to question the defendant's mental state but the defendant does not require immediate hospitalization, the judge may order an evaluation by at least one psychiatrist or clinical psychologist who is qualified by training and experience to perform such evaluations. If, after review of the evaluation and hearing from the defendant's counsel, the judge finds clear and convincing evidence that the defendant is

  - mentally ill, and
  - requires treatment in a mental hospital rather than the jail,

- the judge may order the defendant hospitalized in a facility designated by the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services as appropriate for treatment of persons convicted of

a crime. The time the defendant is confined to a hospital shall be deducted from any term for which he may be sentenced to confinement. Va. Code § 19.2-176 (A).

- The defendant may not be hospitalized for more than 30 days unless the court holds a hearing, at which the defendant is represented by an attorney, and finds by clear and convincing evidence that the defendant continues to be

    - mentally ill;
    - imminently dangerous to self or others; and
    - in need of psychiatric treatment in a hospital.

Thereafter, a hearing must be held every 180 days and the defendant may remain hospitalized as long as the above findings are made, but in no event should the hospitalization continue beyond the date upon which the defendant's sentence would have ended if he had received the maximum sentence for the crime charged. Va. Code § 19.2-176 (C).

After sentencing, a defendant may be in need of mental commitment.

- If the defendant is incarcerated in a local correctional facility (such as a jail) and emergency mental detention is required, the same procedures as apply to emergency detention in pre-conviction or emergency commitment between conviction and sentencing apply. Va. Code § 19.2-177.1. The involuntary civil detention and commitment procedures as specified under Article 5 of Title 37.2 apply, other than the defendant must be committed to a facility which treats persons convicted of crimes; that prisoner does not have a right to apply for voluntary admission or treatment; the time the prisoner is confined to a hospital is deducted from any term for which he may be sentenced; and if the prisoner is discharged prior to completion of his term he shall serve the remainder of his sentence. The proceeding for civil commitment may be commenced upon a petition filed only by the person having custody over the defendant.

- A different procedure applies to prisoners in state correctional facilities (such as a prison or camp operated by the Virginia Department of Corrections) under Va. Code §§ 53.1-40.2 to 53.1-40.8. A temporary detention order is not specifically required by statute; however, a petition is filed with the court for a commitment proceeding. The case shall be scheduled as soon as possible in any available courtroom in the prisoner's locality or in a facility provided by the Department of Corrections and approved by the judge. These statutes provide in detail the pre-hearing notice requirements, the procedure required for examination of the prisoner, the findings required for commitment, and other similar details.

M. Revocation of Driver's License

For certain convictions, a revocation of a defendant's driver's license is required, including:

- Drug violations, Va. Code § 18.2-259.1 -- if convicted or if facts are found sufficient to convict of violations of drug statutes described in Va. Code § 18.2-259.1, the driver's license of the defendant is suspended for six months by operation of the judgment of conviction. The court may determine that there are compelling circumstances to warrant the issuance of a restricted license. Va. Code § 18.2-259.1(C). Use FORFEITURE OF DRIVER'S LICENSE AND RESTRICTED LICENSE ORDER-DRUG VIOLATION, DC-359 and RESTRICTED DRIVER'S LICENSE, DC Form-261 (second page to DC-359), to manually report the license suspension to the Department of Motor Vehicles if the case is evidence sufficient--deferred disposition. If the drug case is indexed and docketed in the CMS Traffic Division, and the defendant is convicted, a copy of DC-359 is not required for DMV.

- Alcohol violations -- if convicted of refusing to submit to a breath test, the defendant will lose his driver's license for one year (Va. Code §§ 18.2- 268.3, - 268.4), and if convicted of driving while intoxicated, the defendant will lose his driver's license for at least one year (Va. Code § 18.2-271). One may use the RESTRICTED DRIVER'S LICENSE ORDER AND ENTRY INTO ALCOHOL SAFETY ACTION PROGRAM, DC-265, to report the license suspension or terms of a restricted driver's license, if applicable, to the Department of Motor Vehicles. If the breath test refusal case is indexed and docketed in CMS Traffic Division and the defendant is convicted, a copy of DC-265 is not required for DMV.

- Underage alcohol consumption -- There are also situations in which a defendant's driver's license may be revoked. For example, the defendant may lose his driver's license for one year and may receive a restricted driver's license if convicted of the illegal consumption, purchase or possession of alcohol. Va. Code § 4.1-305. The court may require that the defendant be monitored by Alcohol Safety Action Program (ASAP) or supervised by a local community-based probation program during the period of license suspension. ASAP or the local community-based probation program shall report any violation of the conditions of the restricted permit. In that instance, one may use the DRIVER'S LICENSE DENIAL ORDER (JUVENILE)/DRIVER'S LICENSE SUSPENSION ORDER (UNDERAGE ALCOHOL VIOLATIONS), DC-576 and RESTRICTED DRIVER'S LICENSE, DC Form 261 (second page to DC-576), to report the license suspension or terms of restricted driver's license, if applicable, to the Department of Motor Vehicles. If the underage alcohol violation case is indexed and docketed in CMS Traffic Division, and the defendant is convicted, a copy of DC-576 is not required for DMV. If there is

a deferred disposition and the court suspends the defendant's license and/or issues a restricted license, a copy of DC-576 must be provided to DMV.

- Alcohol purchase for persons who may not purchase alcohol -- The driver's license of a person convicted under Va. Code § 4.1-306 of purchasing alcohol for someone who is under the age of twenty-one, interdicted, or intoxicated may be suspended for up to one year. In this instance, the court may authorize a restricted driver's license. One may use the DRIVER'S LICENSE DENIAL ORDER (JUVENILE)/DRIVER'S LICENSE SUSPENSION ORDER (UNDERAGE ALCOHOL VIOLATIONS), DC-576 and RESTRICTED DRIVER'S LICENSE, DC Form 261 (second page to DC-576), to report the license suspension or terms of restricted driver's license, if applicable, to the Department of Motor Vehicles.

N. Revocation of Other Licenses and Permits

- **Concealed Handgun Permit. Va. Code § 18.2-308J1.** Revocation of concealed handgun permit when permit holder is convicted of carrying a concealed handgun in public while under the influence of alcohol or illegal drugs. The circuit court that issued the permit must be promptly notified of the revocation.

- **Hunting or trapping license. Va. Code § 18.2-56.1.** Revocation of hunting or trapping license for reckless handling of a firearm while hunting.

- **Hunting, trapping and fishing licenses. Va. Code § 29.1-338.** Revocation of hunting, trapping and fishing licenses is required upon conviction for certain offenses.

- **License for stationary blind. Va. Code § 29.1-349.** Revocation of blind owner's license for stationary blind when blind erected within 50 yards of any other licensed blind without consent.

- **Hunting license. Va. Code § 29.1-521.2.** Revocation of hunting license if licensee hunts game in a manner that violates Va. Code § 18.2-286 (shooting in and across a road or in a street).

- **Hunting license. Va. Code §§ 29.1-523 and 525.** Revocation of hunting license of person convicted of killing or attempting to kill deer by use of certain lights and of employment of certain lights upon places used by deer.

- **Pawnbroker's license. Va. Code § 54.1-4014.** Revocation of pawnbroker's license for second or subsequent violation of Chapter 40 of Title 54.1, the chapter regulating pawnbrokers.

- **Business license. Va. Code § 18.2-246.2.** Revocation of business license of a person, firm or corporation upon conviction of a violation of Va. Code §

18.2-248 relating to imitation controlled substances or Va. Code § 18.2-246.2 relating to money laundering.

O. Central Criminal Records Exchange (CCRE) Procedures

All duly constituted police authorities having the power of arrest shall take fingerprints and photographs of any adult who is taken into custody and charged with an act for which is required to be reported to the Central Criminal Records Exchange (CCRE), pursuant to subsection A of Va. Code §19.2-390. The preparation of fingerprint forms is done on all felonies, treason, Title 54.1 violations punishable as a Class 1 or Class 2 misdemeanor, and any misdemeanors punishable by confinement in jail under Title 18.2, Title 19.2, or similar local ordinances. Exceptions are: disorderly conduct (Va. Code §18.2-415) trespass (Va. Code §18.2-119), and family desertion or nonsupport (Va. Code §20-61).

This preparation is the responsibility of the chief law enforcement officer or designee, who may be the arresting officer. It is the court's responsibility to inform the appropriate law enforcement officer, upon conviction of applicable charges, that fingerprinting and photographs are required.

1. Clerk's Procedure

   The following procedures are recommended when a **fingerprint form is received** without charging documents.

PROCEDURES		**COMMENTS**
Step 1	The fingerprint form, all copies of the fingerprints, and all photographs shall be destroyed by the clerk sixty (60) days after fingerprints were taken if a warrant is not filed against the adult. Va. Code §19.2-390.	To prevent destruction of any fingerprint forms and/or photographs that may have been sent in error to the Court, the Clerk may choose to return the form and/or photographs to the issuing agency for corrected distribution.

The following procedures are recommended when the fingerprint form is received at the time of the charging documents.

PROCEDURES		**COMMENTS**
Step 1	If fingerprint form is attached to the charging document, enter fingerprint form number in CMS in DOC# field upon data entry of charge.	For manual fingerprint forms, court should receive entire State Police form SP180.

Step 2	Upon adjudication, of an adult whose case is being transferred to another court for disposition, the clerk enters the appropriate disposition code, and forwards the fingerprint form with the case papers.	Clerk enters "TR" for transfers to another court or "GJ" for cases where the defendant's case is to be tried in Circuit Court.
Step 3	Upon a finding of guilt and disposition, and expiration of appeal time, clerk completes disposition code and no further action is required. Cases with final dispositions "OT" will not transmit to State Police. Upon a finding of not guilty or in any case resulting in a disposition for a charge for which fingerprints are not required, the clerk completes the disposition code, and the court will destroy all court copies (of the fingerprint form) within 6 months of disposition of a case. (Va. Code §19.2-390.)	For finalized cases transferred as part of disposition to another court, clerk shall forward fingerprint form with transferred case papers. For manual fingerprint forms, court shall retain yellow copy for file.
Step 4	For an adult case that has a "fugitive" status, the clerk enters a "FF" disposition code, and retains the fingerprint form with the case papers	If defendant does not appear on charge, no further action is required.

The following procedures are recommended when the fingerprint form is not received at the time of the charging documents. In cases where DOC# and AGENCY# are required for case entry, then clerk may use "999999" until fingerprint form is received.

PROCEDURES		**COMMENTS**
Step 1	Upon adjudication of guilt of the charge, the clerk may issue the ORDER FOR DNA OR HIV TESTING, CC-1390 to facilitate fingerprinting and photographing of the defendant	The recommended procedure is to issue the ORDER FOR DNA OR HIV TESTING, CC-1390 to facilitate fingerprinting and photographing of adults; however, courts may have developed other locally used forms or procedures to facilitate fingerprinting and photographing

Step 2	Upon receipt of the ORDER FOR DNA OR HIV TESTING, CC-1390 showing compliance with court order, the clerk may file form with case papers. Upon notice of noncompliance with court order, the clerk shall notify the judge for further action required	If upon the request of the Judge, the clerk shall issue a SHOW CAUSE, DC-360 against the defendant for non-compliance with a court order under the summary contempt section, Va. Code §18.2-456.
Step 3	Upon adjudication, for an adult whose case is being transferred to another court for disposition, the clerk enters the appropriate disposition code, and forwards the fingerprint form with the case papers	Clerk enters "TR" for transfers to another court or "GJ" for cases where the defendant's case is to be tried in Circuit Court
Step 4	Upon a finding of guilt and disposition, and expiration of appeal time, clerk completes disposition code and no further action is required by the clerk. Cases with final disposition "OT" will not transmit to CCRE Upon a finding of not guilty or in any case resulting in a disposition for a charge for which fingerprints are not required, the clerk completes the disposition code, and the court will destroy all court copies of the fingerprint form within six (6) months of disposition of case pursuant to §19.2-390.	For finalized cases transferred as part of disposition to another court, clerk shall complete and forward fingerprint form to CCRE before transferring case papers. For manual fingerprint forms, court shall retain yellow copy for file.
Step 5	For an adult case that has a "fugitive" status, the clerk enters a "FF" disposition code, and retains the fingerprint form with the case papers	If defendant does not appear on charge no further action is required.
Step 6	If fingerprint form is received more than twenty (20) days after disposition, then the clerk shall enter the DOC# in CMS, and forward the fingerprint form manually to CCRE by mail or to appropriate Court.	**Note:** If multiple charges have been placed against a defendant, and the Clerk's Office receives multiple copies of the same DOC#, they should be returned to the arresting agency to correct.

Each Friday, the Office of the Executive Secretary of the Supreme Court of Virginia compiles and extracts eligible records and electronically processes them for the Interface. Reports are generated and placed in the courts print file. The

JA40 report has three parts: the Preview Report, Transmit Report, and Hold Report. The JA41 report is a listing of all cases rejected by the State Police.

Preview Report:

Cases are listed on this report when the Hearing/Disposition Update screen has been completed to show a case has been finalized. All cases appear on this report before transmission to state police to allow the court to compare the 30-byte CMS charge description with the 48-byte State Police description of each charge. A discrepancy in the descriptions will alert the clerk an error has occurred and should be corrected before the case transmits to the State Police. CMS will insert a "B" in the CCRE field on the Hearing/Disposition Update screen, to show the case appeared on the Preview Report. The date of the report will also display.

Hold Report:

Cases are listed on this report after they have printed on the Preview Report and have "9999999" in the DOC# field. This is indicated with an "0" in the "HLD" field on the report. If possible, the cases should be updated with a valid "DOC.". The following week if the case still has "9s" in the DOC# field it will appear on the report again, as indicated with a "1" in the "HLD" field. If not updated with a valid "DOC" number by the next week, the case will appear on the report a final time, as indicated with a "2" in the "HLD" field. If the case is updated during this process, it will be removed from the Hold Report. If not updated with a valid "DOC" number, it will be transmitted to State Police with the 9's. State Police will send a letter to the appropriate agency, using the agency number supplied by the court on the Hearing/Disposition Update screen. The letter will advise the arresting agency a CCRE is needed for the case. If no valid agency number was supplied by the court, State Police will send the record to the court on the Exceptions Report, requiring the court to send a manual CCRE.

Note: If the yellow copy of the fingerprint form is not available, no further action is required of the court**.**

The arresting agency may be given a copy of the Hold report. If possible the CCRE should be completed by the arresting agency and yellow copy given to the Clerk's office. The case should be updated in CMS with a valid DOC# which will be transmitted via the interface to State Police.

Transmit Report:

Cases listed on this report have been transmitted to State Police. CMS will insert a "T" in the CCRE field on the Hearing/Disposition Update screen, to show the transmission has occurred. The date of transmission will also display. The cases listed on this report with all 9's in the document control number have been on the Hold report for two weeks prior to being transmitted. They may appear on the

Exceptions report in a few weeks. If this is the case, and the court has received the CCRE form in the interim, it should be completed and sent to State Police in the designated envelopes provided by State Police. If the court has not received the CCRE form, no further action is required.

State Police Exceptions Report:

It will be necessary to forward the completed "yellow" copy of the CCRE (if available) of all cases listed on the Exceptions Report. Court personnel should make a photocopy of the fingerprint form and send the original to State Police in the specially designated envelope within five days. If no fingerprint form is received from the arresting agency, State Police will assume no fingerprint form exists (this would be the case if "9999999" were originally entered in the "DOC" field on a reportable offense and a fingerprint form has not been received by the court).

Upon receipt of WO94-P4 - Request for fingerprint forms from VSP/CCRE, clerk shall check the file for the fingerprint form in case DOC# was not entered. Manually complete and mail to CCRE. Copy fingerprint form to attach to court file marking date mailed. Upon verification that no fingerprint form is available, no action is taken by the clerk.

2. Forms

CC-1390	Order for Withdrawal of Blood Samples and/or For Preparation of Reports to Central Criminal Records Exchange Police
SP 180	Manual fingerprint form
SP 222	Automated fingerprint form
DC-360	(Optional) Show Cause Reference DMV/State Police pre-payable table (current version 7-1-05)

3. Code References

§ 19.2-390	Reports to be made by local law-enforcement officers…when authorized to take prints…
§ 19.2-392.01	Judges may require taking of fingerprints and photographs in certain misdemeanor cases.

P. Constitutionality of Statues Va. Code § 16.1-131.1

In any criminal or traffic case in a court not of record, if the court rules that a statute or local ordinance is unconstitutional, it shall upon motion of the Commonwealth,

stay the proceedings and issue a written statement of its findings of law and relevant facts, if any, in support of its ruling, and shall transmit the case, together with all papers, documents and evidence connected therewith, to the circuit court for a determination of constitutionality. If the Circuit court rules that the statute or local ordinance is constitutional; it shall remand the case to the court not of record for trial.

CMS UPDATE:

The Clerk should update the case using F as hearing result and TR as final disposition. In remarks it is suggested to put "appealed pursuant to Va. Code § 16.1-131.1. DO NOT PUT DATE IN THE APPEAL DATE FIELD. Keep copy of the original summons or warrant. Immediately transfer original to Circuit court along with ORDER-TRANSFER OF JURISDICTION, DC-322.

VIII. TRIAL PROCEDURES FOR MISDEMEANOR DRUG CASES:

A. Pre-Conviction Probation For "First-Time Offenders" Drug Charges

In cases involving possession of a controlled substance (Va. Code § 18.2-250) or possession of marijuana (Va. Code § 18.2-250.1) a person who is deemed by statute to be a "first-time" offender may be eligible for probation if the defendant has not previously been convicted of drug offenses and has not had a proceeding dismissed against him/her under the first offender statute, Va. Code § 18.2-251. If probation is successfully completed in this type of case, the case may be dismissed.

The judge must first find facts sufficient to justify a finding of guilt (to avoid retrial of the case if the defendant fails to successfully complete probation). If the judge chooses this option, then the consenting defendant is placed on probation without the entry of a judgment of guilt. Costs are assessed when the defendant is placed on probation. The defendant should also be fingerprinted at this time if he/she was released on summons.

For probation under Va. Code § 18.2-251, the driver's license of the defendant is suspended for 6 months, as required by Va. Code § 18.2-259.1. Where there are compelling circumstances warranting an exception, the court may authorize the issuance of a restricted license containing the statutory options. The RESTRICTED DRIVER'S LICENSE ORDER - DRUG VIOLATION, District Court form DC-359, is used for reporting to the Department of Motor Vehicles the license suspension and, if so ordered, the issuance of a restricted license. The court must first order the accused to undergo a substance abuse assessment and enter a treatment and/or education program. The Department of Motor Vehicles requires that the program to which the defendant was referred endorse the back of the order before the Department will issue a restricted license to the defendant.

B. Convictions On Drug Cases

In cases involving possession of a controlled substance (Va. Code § 18.2-250) or possession of marijuana (Va. Code § 18.2-250.1), when a person is convicted, the judge should write the disposition on the warrant. Since the defendant's driver's license is suspended for 6 months, as required by Va. Code § 18.2-259.1, where there are compelling circumstances warranting an exception, the court may authorize the issuance of a restricted license containing the statutory options (Va. Code § 18.2-259.1). The court may require community service and/or order the accused to undergo a substance abuse assessment and enter a treatment and/or education program. The Department of Motor Vehicles requires that the program to which the defendant was referred endorse the back of the order before the Department will issue a restricted license to the defendant.

C. Clerk's Procedures-Deferred Disposition

The following procedures are recommended in processing a marijuana case resulting in the first-offender deferred disposition in the General District Court.

PROCEDURE		**COMMENTS**
Step 1	The Clerk's office receives a summons or warrant	It is recommended that you enter the case in the traffic division as a misdemeanor with an arraignment date. However, based on local policy, the case may be entered as criminal with a manual abstract or copy of the DC-359 sent to DMV
Step 2	Enter the summons or warrant as a new case number in CMS and schedule the attorney advisement	Index in CMS using the following codes: Case type: CM – criminal misd. Hearing types: AA – advisement
Step 3	After arraignment, set the case for trial. Update the trial date and time in CMS, along with the attorney or waiver information. All witnesses should be subpoenaed.	Use DC-344, Request for Appointment of a Lawyer or DC-355, Trial without a Lawyer

Step 4	On the trial date: If the defendant is found not guilty, finalize the case in CMS If the defendant is given first-offender status, continue the case in CMS for the amount of time of probation based on local policy and recognized the defendant back for the review date if he/she is required to appear.	The court may use the DC-570, Order or a locally developed form for adjudication. Case finalized as NG – not guilty The local policy may be to prepare a separate order or note the conditions of probation on the back of the warrant. The defendant should be required: · To successfully complete the treatment or education program · To remain drug and alcohol free during the period of probation and submit to such tests during that period as may be necessary and appropriate to determine if the accused is drug and alcohol free · To make reasonable efforts to secure and maintain employment · To comply with a plan of at least 24 hours of community service **Note:** There should also be an endorsement or notation on the order or warrant that the defendant is requesting probation
Step 5	Complete a DC-359 with the following information (even if a restricted license is not granted): · In CMS forms, choose the DC-359, Restricted License for "Drug Facts" · Enter any defendant data that does not automatically display · Enter that the license expiration date is "6 months" away · Check that this is the "original order" and to "print DMV copy" · Enter that the license is suspended for "six months" · Check box "2" and enter the name, address, and fee for the probation agency	Have the defendant sign a DC-210 acknowledging that his/her driver's license has been suspended for 6 months and indicate whether his/her license was surrendered. Mail a copy of this form to DMV with the DC-359. **Note:** Be sure to tell the defendant that he/she must report to the probation agency within 15 days and to DMV within 60 days (if a restricted license is granted).

- Check the "Other conditions" box and put the amount of community service hours that were ordered
- Check whether a restricted license was "Granted" or "Not Granted"
- Enter the information pertaining to the restricted license (if granted)
- Print the form
- Mail the DC-359 copies to DMV and the probation agency

Step 6 Write the court costs on the summons or warrant (see the fee schedule for the amount that should be charged for Acct. 462 and Acct. 244), plus the court-appointed attorney's fee, if applicable. If the costs are not paid on the trial date, use the DC-210 to acknowledge this too. Based on local policy, the defendant may be given until the end of the probationary period to pay the costs at no additional charge or may be required to pay according to the court's time-to-pay guidelines.

Step 7 When updating the case in CMS, enter the following information:

- The CCRE number in the "DOC" field (if not previously entered)
- A "Y" in the PRSNT" field
- A "C" in the "F/W/C" field and "DD" in the "CONT" field on the trial date line
- The new court date and time (at the end of the probation period) on the next line
- An "X" in the appropriate boxes for the costs (Acct. 462 and Acct. 244), plus the court appointed attorney's fee, if applicable
- In the "OL SUSP" field, type "06M" and a "0" or "1" in the "OL SUR" field indicating whether or not the license was surrendered
- An "M" in the "DMV: field (since the DC-359 will be mailed in)

- A "Y" in the "DC210" field
- A "Y" in the "VASAP" field
- The restricted license information (if granted) in the "OL RES" field
- The "START DATE" (trial date) and "END DATE" (6 months away) (if granted)
- Based on local policy, type an "S" in the "PROB TYPE" field if the probation is supervised or a "U" if the probation is unsupervised
- Type "12M" or the amount of the time ordered in the PROB TIME" field
- The amount of community service hours required in the "REMARKS" field

Step 8 If the defendant decides to appeal after the case has been deferred, he/she should be sentenced and then the appeal can be noted.

If the costs have been paid, a refund must be issued to the defendant.

Step 9 At the end of the probation period, the probation agency should report on the defendant's status:

If probation is successfully completed and the costs are paid, the case should be dismissed.

If probation is not successfully completed and/or the cots are not paid, the case should not be dismissed.

When the case is dismissed after the probation period, it will not be eligible for expungement VA. Code § 19.2-392-2 pursuant to Commonwealth vs. Jackson 255 VA 552, which states, "A person against whom judgment is deferred after a determination that the evidence is sufficient to support conviction is not "innocent" of the offense regardless of the pleas entered, and hence an order of the trial court directing expungement of court records is reversed."

During the probation period, if the probation agency reports that the defendant has a violation, issue a show cause for the defendant to show cause why he/she should not be sentenced on the marijuana charge.

Step 10	If the restricted license is revoked and the defendant is convicted, update CMS with the fine amount, jail sentenced imposed, etc. You should also prepare an amended DC-359 that should be faxed or mailed to DMV. To do this, make a copy of the DC-359 and place a label on the copy that states, "Restricted privileges rescinded as a result of the conviction of the original charge." Date and sign the label.	DMV's fax number is: 804-367-2027 and/or the address is: Court Suspension Work Center, Room 412, P.O. box 27412, Richmond, VA 23269-001. For deferred cases without a restricted driver's license, no additional record transmittal to DMV is necessary upon conviction.

D. Clerk's Procedures-Convicition

The following procedures are recommended in processing a marijuana case resulting in conviction in the General District Court**.**

PROCEDURES		**COMMENTS**
Step 1	The Clerk's office receives a summons or warrant.	It is recommended that you enter the case in the traffic division as a misdemeanor with an arraignment date. However, based on local policy, the case may be entered as criminal with a manual abstract or a copy of the DC-359 sent to DMV.
Step 2	Enter the summons or warrant as new case number in CMS and schedule attorney advisement.	Index in CMS using the following codes: Case type: CM – criminal misd. Hearing types: AA – advisement
Step 3	After arraignment, set the case for trial. Update the trial date and time in CMS, along with the attorney or waiver information. All witnesses should be subpoenaed.	Use DC 334 – Request for Appointment of a Lawyer or DC 335 – Trial without a Lawyer.

Step 4

On the trial date:

If the defendant is found not guilty, finalize the case in CMS.

If the defendant is found guilty, finalize the CMS. Prepare a disposition notice if jail time is ordered

The Court may use the DC 570-Order or a locally developed form for adjudication.

Case finalized as NG – not guilty

Case finalized as G – guilty.
Use DC 356 Disposition Notice.
The local policy may be to prepare a separate order or note the conditions of probation on the back of the warrant.
The defendant should be required:

- To successfully complete the treatment or education program
-
- To remain drug and alcohol free during the period of probation and submit to such tests during that period as may be necessary and appropriate to determine if the accused is drug and alcohol free
- To make reasonable efforts to secure and maintain employment
- To comply with a plan of at least 24 hours of community service

Note: There should also be an endorsement or notation on the order or warrant that the defendant is requesting probation.

Step 5

Complete a DC-359 with the following information only if a restricted license is granted:

- In CMS forms, choose the DC-359 restricted license for "drug facts"
- Enter any defendant data that does not automatically display
- Enter that the license expiration date is "6 months" away
- Check that this is the "original order"
- Enter that the license is suspended for "six months"
- Check box "2" and enter the name, address, and fee for the probation agency
- Check the "Other conditions" box and put the amount of community service hours that were ordered
- Check that the restricted license was "Granted"
- Enter the information pertaining to the restricted license
- Print the form
- Have the defendant and judge sign the form
- If ordered to complete a program, mail the DC-359 copies to the program

Have the defendant sign a DC-210 acknowledging that his/her driver's license has been suspended for 6 months.

If entered as a traffic case, do not mail the DC 359 to DMV. The conviction and restricted license information will automatically transmit.

Note: Be sure to tell the defendant that he/she must report to the probation agency within 15 days and to DMV within 60 days (if a restricted license is granted)

Step 6

Write the fine and court costs on the summons or warrant (see the fee schedule for the correct amount that should be charged for Acct. 462 and Acct. 244), use Acct. 110 or local account for the fine amount, plus the court-appointed attorney's fee and sentencing fee, if applicable. If the costs are not paid on the court date, follow the court's time-to- pay policy and use the DC-210 to acknowledge this too.

Step 7 When updating the case in CMS, enter the following information:

- The CCRE number in the "DOC" field (if not previously entered)
- A "Y" in the "PRSNT" field
- An "F" in the "F/W/C" field on the trial date line (this will allow the abstract to transmit correctly to DMV)
- If community service is ordered, put the review date and time that the community service is to be competed by on the next line. On this same line, enter an "AH" in the "TYPE" field
- A "G" in the "F DISP" field
- An "X" in the appropriate boxes for the costs (Acct. 462 and Acct. 244), plus the court-appointed attorney's fee, if applicable, and the fine amount in Acct. 110 or correct local account
- Enter any jail time ordered in the "SENTENCE" field and any jail time suspended in the "SENT SUSP" field
- In the "OL SUSP" field, type "06M" and a "0" or "1" in the "OL SUR" field indicating whether or not the license was surrendered
- A "Y" in the "DC210" space
- A "Y" in the "VASAP" field if VASAP or a local program is used
- Enter the restricted license information (if granted) in the "OL RES" field
- The "START DATE" (trial date) AND "END DATE" (6 months away)
- (if granted)

When the case is concluded, remember to file the case in the "trial date" folder and not the "administrative hearing date" folder. The administrative hearing date will eventually drop off in CMS.

If community service hours are required, enter this information in the "REMARKS" field. If community service is ordered, recognize the defendant back for the administrative hearing date for review.

Step 8 Upon conviction, the defendant may note an appeal within ten (10) calendar days of the trial.

If the costs have been paid, a refund must be issued to the defendant.

E. Authority

§ 18.2-250.1. Possession of marijuana unlawful.
§ 18.2-251 Persons charged with first offense may be placed on probation; conditions; screening, assessment and education programs; drug tests; costs and fees; violations; discharge.

F. Case Payment Procedures

When a defendant is convicted of a criminal offense, the fines and court costs imposed become due. A defendant may also be required to pay costs when the defendant is placed on probation with further proceedings deferred. Va. Code § 19.2-303.4. When a defendant has been charged with multiple offenses arising out of the same incident, he or she pays the fixed fee only once. However, if a defendant has been assessed a fixed fee after conviction for one offense and is then convicted of a second offense that has a higher fixed fee, the defendant will be required to pay the difference between the two fees upon conviction for the second offense. Va. Code § 16.1-69.48:1.

The range of fines permitted by statute is summarized by criminal offense in Appendix D. This table may also be used to determine the appropriate fine. If the defendant is unable to make payment within 15 days of sentencing, the court shall order the defendant to make deferred or installment payments. Interest must be imposed on unpaid fines beginning on the 41st day after final judgment, except while the defendant is making full and timely payments on a deferred or installment payment plan pursuant to an order of the court or is incarcerated as a result of that case. Interest on any unpaid fines or costs shall accrue at the judgment rate. Va. Code § 19.2-353.5.

The **FMS USER'S GUIDE** and **APPENDIX B** of this manual describes detailed procedures for assessing and collecting the fines and costs ordered by the court and should be referred to for answers to questions concerning specific procedures.

1. Payment within 15 Days of Sentencing

   Where the defendant is able to pay his fine and costs, the clerk's office will:

   - Determine the amount of fine and costs from the order.
   - Assist the defendant in preparing the ACKNOWLEDGMENT OF SUSPENSION OR REVOCATION OF DRIVER'S LICENSE, DC-210 (top portion), when defendant does not pay immediately upon leaving the courtroom.
   - Determine if there are restrictions on personal checks or credit cards established by the court, such as:

- Personal checks not taken for certain offenses (*e.g.*, passing worthless checks).
- Only certain credit cards may be accepted.

- If restriction applies, require cash, a money order, or a cashier's check.
  - Collect fines and court costs.
  - Prepare and issue a receipt.
  - Deposit and account for money collected (*see* ACCOUNTING MANUAL for details).

2. Deferred or Installment Payment

Frequently, the defendant alleges after being convicted and fined or put on probation that he is unable to pay the fine and costs within 15 days of sentencing. In such cases, the court should:

- Require the defendant to execute an ACKNOWLEDGMENT OF SUSPENSION OR REVOCATION OF DRIVER'S LICENSE, DC-210, if defendant wishes to pay the entire sum on a later date, *or* for periodic payments.
- Examine the defendant to determine his financial ability to pay. If desired, the court may also require the defendant to provide a financial statement. Va. Code § 19.2-355. When previously prepared for use in determining eligibility for a court-appointed lawyer, the judge may use the FINANCIAL STATEMENT -- ELIGIBILITY DETERMINATION FOR INDIGENT DEFENSE SERVICES, DC-333. The defendant's social security number, if not previously provided, must be obtained in all cases in the event that it becomes necessary to use the Set-Off Debt Collection Act.

The court may assess a one-time fee of $10.00 for each account which is subject to a deferred or installment payment plan. This fee is charged for each separate payment plan.

In deferred or installment payment cases, the court may impose additional terms and conditions as may enable the defendant to pay his fine and costs. The clerical procedures for establishing and maintaining deferred and installment payment systems are:

- Assist the defendant in preparing the ACKNOWLEDGMENT OF SUSPENSION OR REVOCATION OF DRIVER'S LICENSE, DC-210, including the section for deferred or partial payments.
- Set up account receivable for deferred or installment payments.

- Record installment payments on the F.M.S. as received and issue a receipt.

3. Nondisclosure

   The court clerk or agency shall not disclose the SSN or other ID numbers appearing on driver's licenses or information appearing on credit cards, debit cards, bank accounts or other electronic billing and payment systems that was supplied to a court clerk for the purposes of paying fees, fines, taxes, or other charges collected by a court clerk, unless required to complete transaction or by other law as court order.

4. Bankruptcy

   The court clerk may receive a notice of filing Bankruptcy petition. Notice may be in the form of a bankruptcy court form notice or petitioner or petitioner's counsel may tell the clerk verbally about the filing. If verbal notice is received, the clerk should require the petitioner to provide a copy of the bankruptcy.

For Step-by-Step Procedures on how Bankruptcy is to be handled see CIVIL PROCEDURES, Chapter IV.

G. Case Post-Trial Procedures

The Post-trial Procedures portion of the Criminal Case Process section describes the functions performed after trial and the procedures for processing and completing these activities.

1. Failure to Pay Fines and Costs

   Persons who have had their driver's licenses suspended for the failure to pay fines and costs may seek to have their licenses reinstated if they enter into a deferred or installment payment agreement which is acceptable to the court and pay the reinstatement fee to DMV. They must enter into agreements with every court that suspended their license for the failure to pay fines and costs. Also, their license will not be reinstated if it has also been suspended for reasons in addition to the failure to pay fines and costs (e.g., as a result of a conviction for certain offenses).

   If a person is otherwise eligible for a restricted license, he may petition each court that suspended his license for failure to pay fine(s) and costs, for authorization for a restricted license. Upon written verification of employment and for good cause shown, the court may authorize DMV to issue a restricted license for any of the purposes set forth in Va. Code § 18.2-271.1 (E). No restricted license may be issued unless each court which suspended the defendant's license pursuant to Va. Code § 46.2-395 provides authorization for a restricted license. The restricted license shall not be issued for more than a six-month period, or permit a person to operate a commercial motor vehicles as defined in the Commercial Driver's

License Act (§ 46.2-341.1 et seq) When a defendant pays by check or credit card and the financial institution or credit card issuer dishonored the payment, the clerk must send written notice to the defendant that the check or credit card was dishonored. The notice should also provide that the defendant's driver's license will be suspended effective 10 days from the date of the notice if the defendant does not pay the full amount owed by cash, cashier's check or certified check. Va. Code § 46.2-395(C1). Use a NOTICE OF DISHONORED CHECK OR CREDIT CARD CHARGE, DC-215.

When a defendant sets up a deferred or installment agreement to pay the fine and costs ordered by the court but then does not meet the terms of the agreement, the court may issue a SHOW CAUSE SUMMONS, DC-360, or a CAPIAS, DC-361, to obtain his compliance with the court order. The defendant shall also have his privilege to operate a motor vehicle suspended for the failure to pay his fines and costs in a timely manner. *See* Va. Code §§ 19.2-354; 46.2-395. Procedures for issuance of the respective process and for the subsequent treatment of the case are as follows:

- The court orders issuance of a SHOW CAUSE SUMMONS or CAPIAS. A show cause proceeding shall not be required prior to issuance of a capias if an order to appear on a date certain in the event of nonpayment was issued pursuant to subsection A of Va. Code § 19.2-354 and the defendant failed to appear. Va. Code § 19.2-358.

- The clerk's office prepares and issues the SHOW CAUSE SUMMONS or CAPIAS, enters the process in CMS, and sets an initial court date for return of the process.

- The sheriff or police officer serves the process on the defendant.

- For a SHOW CAUSE SUMMONS, the sheriff or police officer serves it as a summons is served.

NOTE: If brought before the court promptly after arrest on a capias, the defendant must be granted a bail hearing or, if the defendant charged with a misdemeanor consents and the Commonwealth does not object, the defendant may be tried at once.

- For a CAPIAS, the sheriff or police officer takes the defendant into custody and takes the defendant before a magistrate for a bail hearing.

- The court holds a hearing on the allegation of the failure of the defendant to make payment as scheduled. Because of a potential jail sentence, the defendant may need a court-appointed lawyer.

- If excusable, the court may grant further extension or reduce the amount of the fine or remit the unpaid portion of the fine.

- If default is due to intentional refusal to pay the fine, the court may order imprisonment for contempt of court for up to 60 days, or impose a fine not to exceed $500. The court may provide for release from jail upon satisfaction of fines.

An alternative procedure which may be utilized by the court to obtain payment of unpaid criminal fines and costs is to use the civil enforcement procedures presented in the Civil Case Procedures section of this manual, such as a lien on the defendant's property. This action is handled by the Commonwealth's Attorney, who may request assistance from the Attorney General or who may contract with a lawyer, a collection agency, or a local treasurer to collect such unpaid fines and costs pursuant to guidelines developed by the Office of the Executive Secretary and the Attorney General. Another alternative procedure is to use the "Set-Off Debt Collection Act," as described in the ACCOUNTING MANUAL.

2. Failure to Comply with Conditional Release

   When a defendant willfully fails to comply with a conditional release, usually a suspended sentence entered by the court, the court may order issuance of a SHOW CAUSE SUMMONS, DC-360, or CAPIAS, DC-361, to the defendant to show cause why he should not be ordered to serve the original sentence imposed by the court. In such cases, the clerk's office prepares the SHOW CAUSE SUMMONS or CAPIAS and the sheriff serves the respective process on the defendant for return on the date specified on the Summons or Capias. Subsequent procedures are the same as for failure to pay fine and costs, except that the objective is not to collect fines but rather to obtain compliance with the court order or to punish the defendant for failing to comply with the order.

3. Notices to Jail

   There are several situations where the jail must be notified when a defendant is to be incarcerated or is being held in jail pending further action:

   - The defendant has been sentenced to jail as a result of a conviction.
   - The defendant is incarcerated pending trial or an appeal because he cannot meet bond.
   - The defendant is incarcerated because he cannot obtain bail after being taken into custody on a SURETY'S CAPIAS AND BAILPIECE RELEASE, DC-331, which may be issued by a clerk or magistrate.
   - The defendant is not eligible for bail (pending trial or appeal).
   - A juvenile is being held pursuant to a DETENTION ORDER, DC-529, attached to a COMMITMENT ORDER, DC-352, where the confinement is authorized under Va. Code § 16.1-249.

The COMMITMENT ORDER, DC-352, may be prepared by a clerk, magistrate, or judge when a defendant is to be incarcerated prior to the defendant's first appearance in court. If the defendant is returned to jail prior to trial in this case, use a CONTINUANCE ORDER, DC-355. If the defendant is incarcerated after conviction in district court, use a DISPOSITION NOTICE, DC-356. Instructions for preparing these s are given in the DISTRICT COURT MANUAL, FORMS VOLUME.

The RELEASE ORDER, DC-353, is prepared by a clerk, magistrate, or judge when a defendant is to be released. Situations where this may occur include:

- A defendant, who was initially committed to jail because he was unable to make bail, later secures bail.
- The sentence shown on the DISPOSITION NOTICE, DC-356, is reduced by the judge, and the defendant has served the reduced sentence.
- Defendant, held in jail for willful failure to pay a fine, pays the fine.
- A defendant, held in jail pending trial, is released when found not guilty.

Details of how and when to prepare the RELEASE ORDER, DC-352, are given in the DISTRICT COURT MANUAL, FORMS VOLUME.

The CUSTODIAL TRANSPORTATION ORDER, DC-354, is used to instruct the sheriff or jailor to transport a defendant in custody to court. The form may be completed by a clerk or judge. The form instructions in the DISTRICT COURT MANUAL, FORMS VOLUME describes procedures for preparing the CUSTODIAL TRANSPORTATION ORDER, DC-354.

The sheriff or jail superintendent or his designee, upon the discovery of an improper release or discharge of a prisoner from custody, shall report the release to the sentencing court, which shall issue a capias for the arrest of the prisoner, upon good cause shown. Va. Code § 53.1-116.3.

4. Appeals

   A person convicted of a misdemeanor in district court may appeal the conviction to the circuit court within ten days of the conviction date. Va. Code § 16.1-132. The ten day period begins to run on the day following the conviction. If the tenth day falls on a Saturday, Sunday or legal holiday or any day on which the clerk's office is closed as authorized by statute, the appeal may be noted on the next day that the clerk's office is authorized to be open. *See* Va. Code § 1-13.3:1. The appeal may be noted by the defendant or his attorney.

   Two exceptions to this ten-day limitation apply. First, it does not apply to pre-trial appeals of bail decisions pursuant to Va. Code § 19.2-124. Second, if a defendant

prepays the fine and costs on a prepayable misdemeanor and then advises the court of a desire to "appeal" prior to the return day (date of court appearance on summons), the request should be treated as a request to withdraw the guilty plea and is tried as if there had been no prepayment.

Note: For details and step-by-step instructions for handling appeals, *See* Appendix C-Appeals.

5. Motion to Rehear

   A defendant convicted of a criminal offense may file a MOTION TO REHEAR, DC-369, in district court, within 60 days of the conviction date. There is no refund of fines or court costs as there is for an appeal. If the motion is granted by the judge, the clerk's office reopens the case removing all final disposition codes in CMS, inserts the court date, prepares the Notice of Hearing portion of the MOTION TO REHEAR AND NOTICE OF HEARING, DC-369, and attaches the motion to the original case.

6. Testing for HIV (Human Immunodeficiency Virus) or Hepatitis B or C

   At any point following indictment or arrest by warrant, of any crime involving sex offenses described in Va. Code § 18.2-62(B) and upon the request of the Commonwealth's attorney, or after consultation with a complaining witness and, upon the request of the complaining witness, the court shall order the defendant to submit to testing for the HIV or hepatitis B or C virus within 48 hours, and follow up testing as may be medically appropriate. Va. Code § 18.2-62(B). The court may use the ORDER FOR WITHDRAWAL OF BLOOD SAMPLES AND/OR PREPARATION OF REPORTS TO CENTRAL CRIMINAL RECORDS EXCHANGE, circuit court form CC-1390, for this purpose.

   A person who is a victim of or witness to a crime may later petition the court for testing of an individual for HIV or hepatitis B or C virus. *See* Section XIII, CIVIL CASE PROCEDURES.

7. Administrative Procedures

   As criminal cases are completed in district court, certain administrative tasks must be completed to assure that cases are properly recorded and disposed of. The administrative tasks that the clerk's office performs include:

   - Record the disposition on the docket.
   - Record the disposition on the back of the summons or warrant in the space provided.

- Prepare and send to the Department of State Police the CCRE report. Va. Code § 19.2-390. The Virginia Code provides for the transfer of information to the State Police electronically, if possible. See offenses for which reporting is required above under item 15 in Case Trial Procedures.

- For game and fish violations, prepare an abstract of disposition within five days from trial and

- If arresting officer is a state game warden, return abstract to him or her for transmission to the Department of Game and Inland Fisheries, or

- If the arresting officer is *not* a state game warden, send abstract directly to the Department of Game and Inland Fisheries.

- Prepare and send to State Board of Medicine information concerning conviction of health care practitioners for any misdemeanor involving a controlled substance, marijuana or substance abuse or involving an act of moral turpitude. Va. Code § 54.1-2909.

8. Records Management

The records of a case must be properly handled after close of court and all orders issued as a result of jurisdiction in the case must be maintained with the case initiation document. To properly prepare the case records, the clerk's office will:

- Prepare orders committing a defendant to jail, where applicable, and forward them to the jail.

- Determine witness expenses and send information on LIST OF ALLOWANCES, DC-40, to the Office of the Executive Secretary of the Supreme Court.

- After the appeal period has expired, send the CCRE to the State Police.

- Provide certified copies of sentencing documents without charge to the Department of Corrections within 30 days after request. Va. Code § 19.2-310.01. A clerk or deputy clerk may do so by making an authenticated copy pursuant to Va. Code § 8.01-391(C) and may use AUTHENTICATION OF RECORD, DC-372, for this purpose, as discussed above.

On occasion, a request will be received to provide an authenticated copy of a case record. The following procedure should be employed:

- Make a copy of the entire document or documents requested. Include copies of backs of documents if the back is not blank.

- Prepare and execute an AUTHENTICATION OF RECORD (IN-STATE USAGE), DC-372, if being used in Virginia or stamp the back of each copy with

authentication language. Otherwise, prepare and execute an EXEMPLIFICATION OF RECORD, DC-619. Carefully follow the instructions in the s portion of this Manual because the failure to follow all of the technical requirements may result in the rejection of the copies by other courts as true copies.

9. Disposition of Property

The ORDER AND CERTIFICATE OF DESTRUCTION OF CONTROLLED/CONFISCATED ITEMS, DC-367, should be used when the court, after trial, wishes to dispose of drugs or drug paraphernalia or other tangible property introduced as evidence. Pursuant to Va. Code § 19.2-270.4, unless objection with sufficient cause is made, the trial court in any criminal case may order the donation or destruction of any or all exhibits received in evidence during the course of the trial (i) at any time after the expiration of the time for filing an appeal from the final judgment of the court if no appeal is taken or (ii) if an appeal is taken, at any time after exhaustion of all appellate remedies.

The order of donation or destruction may require that photographs be made of all exhibits ordered to be donated or destroyed and that such photographs be appropriately labeled for future identification. In addition, the order shall state the nature of the exhibit subject to donation or destruction, identify the case in which such exhibit was received and from whom such exhibit was received, if known, and the manner by which the exhibit is to be destroyed or to whom donated.

Any photographs taken pursuant to an order of donation or destruction or an order returning exhibits to the owners shall be retained with the record in the case and, if necessary, shall be admissible in any subsequent trial of the same cause, subject to all other rules of evidence.

Upon petition of any organization which is exempt from taxation under § 501 (c) (3) of the Internal Revenue Code, the court in its sound discretion may order the donation of an exhibit to such charitable organization.

Exceptions to the provision for donation or destruction of exhibits are provided in Va. Code § 18.2-310.
The court may permit the seizing law enforcement agency to use confiscated weapons for a period of time as specified in a court order, after which their disposition shall be as otherwise provided in Va. Code § 18.2-310.

Upon petition and notice to the court and to the Commonwealth's Attorney, the court, for good cause shown, shall return the weapon to the lawful owner at the conclusion of the case if the court finds that the owner did not know and had no reason to know of the conduct giving rise to the forfeiture, and is not otherwise prohibited by law from possessing the weapon. The owner shall acknowledge in a sworn affidavit to be filed in the case papers that he or she has retaken possession of the weapon.

IX. MISCELLANEOUS CASE TYPES

A. Underage Purchase/Possession Of Alcohol

1. Overview

Va. Code § 4.1-305 – No person under the age of 21 shall consume purchase or possess, or attempt to consume, purchase or possess, any alcoholic beverage. This code allows for deferred proceedings, without entering the judgment of guilt.

2. Clerk's Procedures

The following procedures are recommended when processing a case against an adult under the age of 21 for alcohol related offenses.

	PROCEDURES	**COMMENTS**
Step 1	The clerk's office receives a charging document. Case is enter in CMS, index in traffic or criminal. Case type M, class 1.	Please follow you local policy as to which division (traffic/criminal) to enter the case. If received on a warrant utilize the offense tracking number (OTN).
Step 2	Set case for arraignment as prescribed by you local policy.	Some courts may not arraign on this offense as it does not carry a possible jail sentence.
Step 3	If the defendant is found guilty and is not adjudicated as first offender, fine and costs (misdemeanor) to be imposed or the defendant may be ordered to perform a mandatory minimum of 50 hours of community service as a condition of probation supervision. Mandatory license suspension is imposed and option of restricted operators license may be issued.	

Step 4	Clerk updates case in CMS and enters F in the F/W/C field, G in the disposition, costs (misdemeanor), fine and/or community service. Clerk prepares DC-210 for license suspension or time to pay if requested. If time to pay is requested clerk must enter X in the TTP field and appropriate date in the F/C due field.	Clerk should forward appropriate document to community service agency.
Step 5	Clerk accepts the DC-263 Restricted License Application. The clerk then prepares and issues an DC-576 Adult Suspended Convicted visual basic form. Once the order is prepared should be signed by Judge. Disperse copies as designated by the form. The defendant's license is surrendered to the court.	The DC-263 application may be accepted or refer to your local procedure for application. If case was entered in the criminal division, a manual abstract must be sent to DMV. Clerk's office is to send the surrendered license to DMV, after the appropriate appeal time has expired, in an envelope marked to be destroyed. ASAP may be ordered due to issuance of restricted operators license.
Step 6	Optional deferred dispositions: If the defendant qualifies for first offender status, the case is continued in CMS or a minimum of 6 months but no longer than one year as ordered by the Judge. CMS is updated with a C in the F/W/C field, DD is entered in the continuance field, and case is updated with the next court date, along with hearing type DS (optional). Enter costs (misdemeanor), license suspension, M in the DMV field. Issue restricted license (see Step 5). The clerk issues the DC-576 Adult Suspension Facts visual basic form. Defendant is ordered to attend ASAP or other local community-based program or possibly both.	The DMV manual abstract must be transmitted manually for this deferred disposition at the time of the deferral. Clerk should forward appropriate documents to the agency. Note: Upon notice of violation from the agency, the court may enter a subsequent action, show cause or capias. The original charging document should be advanced on the docket with the show cause or capias. The court may proceed with a finding of guilt or may dismiss or defer the proceeding again.

Step 7	Case may be appealed within 10 calendar days of final judgment upon a finding of guilt. **Note:** Deferred cases may not be appealed. Forward case papers to Circuit Court, retain copies for files as required by local policy.	Clerk prepares DC-370 Criminal appeal form.

3. Forms

Application for Restricted Driver's License	DC-263
Driver's License Denial Order (Juvenile)/Driver's License Suspension Order (underage Alcohol Violations	DC-576
Acknowledgement of Suspension or revocation of Driver's License	DC-210
Notice of Appeal – Criminal	DC-370
Show Cause Summons	DC-360
Capias: Attachment of the body	DC-361

4. Code References

4.1-305- Purchasing or possessing alcoholic beverage unlawful in certain cases; venue; exceptions; penalty; forfeiture; deferred proceedings; treatment and education programs

B. Purchase Alcohol for Underage

1. Overview

Va. Code § 4.1-305 – No person under the age of 21 shall consume purchase or possess, or attempt to consume, purchase or possess, any alcoholic beverage. This code allows for deferred proceedings, without entering the judgment of guilt.

2. Clerk's Procedures

The following procedures are recommended when processing a case against an adult under the age of 21 for alcohol related offenses.

PROCEDURES		**COMMENTS**
Step 1	The clerk's office receives a charging document. Case is enter in CMS, index in traffic or criminal. Case type M, class 1.	Please follow you local policy as to which division (traffic/criminal) to enter the case. If received on a warrant utilize the offense tracking number (OTN).

Step 2	Set case for arraignment as prescribed by you local policy.	Some courts may not arraign on this offense as it does not carry a possible jail sentence.
Step 3	If the defendant is found guilty and is not adjudicated as first offender, fine and costs (misdemeanor) to be imposed or the defendant may be ordered to perform a mandatory minimum of 50 hours of community service as a condition of probation supervision. Mandatory license suspension is imposed and option of restricted operators license may be issued.	
Step 4	Clerk updates case in CMS and enters F in the F/W/C field, G in the disposition, costs (misdemeanor), fine and/or community service. Clerk prepares DC-210 for license suspension or time to pay if requested. If time to pay is requested clerk must enter X in the TTP field and appropriate date in the F/C due field.	Clerk should forward appropriate document to community service agency.
Step 5	Clerk accepts the DC-263 Restricted License Application. The clerk then prepares and issues and DC-576 Adult Suspended Convicted visual basic form. Once the order is prepared should be signed by Judge. Disperse copies as designated by the form. The defendant's license is surrendered to the court.	The DC-263 application may be accepted or refer to your local procedure for application. If case was entered in the criminal division, a manual abstract must be sent to DMV. Clerk's office is to send the surrendered license to DMV, after the appropriate appeal time has expired, in an envelope marked to be destroyed. ASAP may be ordered due to issuance of restricted operators license.

Step 6 Optional deferred dispositions:
If the defendant qualifies for first offender status, the case is continued in CMS or a minimum of 6 months but no longer than one year as ordered by the Judge.

CMS is updated with a C in the F/W/C field, DD is entered in the continuance field, and case is updated with the next court date, along with hearing type DS (optional). Enter costs (misdemeanor), license suspension, M in the DMV field. Issue restricted license (see Step 5). The clerk issues the DC-576 Adult Suspension Facts visual basic form.

The DMV manual abstract must be transmitted manually for this deferred disposition at the time of the deferral.

Defendant is ordered to attend ASAP or other local community-based program or possibly both.

Clerk should forward appropriate documents to the agency.

Note: Upon notice of violation from the agency, the court may enter a subsequent action, show cause or capias. The original charging document should be advanced on the docket with the show cause or capias. The court may proceed with a finding of guilt or may dismiss or defer the proceeding again.

Step 7 Case may be appealed within 10 calendar days of final judgment upon a finding of guilt.

Clerk prepares DC-370, CRIMINAL APPEAL FORM.

Note: Deferred cases may not be appealed.

Forward case papers to Circuit Court, retain copies for files as required by local policy.

3. Forms

Application for Restricted Driver's License	DC-263
Driver's License Denial Order (Juvenile)/Driver's License Suspension Order (underage Alcohol Violations	DC-576

Acknowledgement of Suspension or revocation of Driver's License	DC-210
Notice of Appeal – Criminal	DC-370
Show Cause Summons	DC-360
Capias: Attachment of the body	DC-361

4. Code References

4.1-305- Purchasing or possessing alcoholic beverage unlawful in certain cases; venue; exceptions; penalty; forfeiture; deferred proceedings; treatment and education programs.