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# **HANDBOOK ON WEST VIRGINIA CRIMINAL PROCEDURE**

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Publication 60852

Release 11

May 2022

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## **HIGHLIGHTS**

- Chapter 1—RIGHT TO COUNSEL
- Chapter 3—ARREST, EXTRADITION AND DETAINER
- Chapter 4—SEARCH AND SEIZURE
- Chapter 8—INSANITY AND MENTAL COMPETENCY
- Chapter 9—PRELIMINARY HEARINGS
- Chapter 10—GRAND JURY AND INDICTMENTS
- Chapter 12—DISCOVERY
- Chapter 23—PAROLE AND PARDON

### **Chapter 1—RIGHT TO COUNSEL**

In a child abuse and neglect civil proceeding, statutory due process protections entitle the child's parent to have notice of hearing, W. Va. Code § 49-4-601(e), right to counsel, W. Va. Code § 49-4-601(f), and a meaningful opportunity to be heard, including the opportunity to testify and to present and cross-examine witnesses. W. Va. Code § 49-4-601(h). A parent enjoys constitutional due process protections in these proceedings. W. Va. Code § 49-4-601 (2015), as amended, and the Due Process Clauses of the West Virginia and United States Constitutions prohibit a court or other arm of the State from terminating the paren-

tal rights of a natural parent having legal custody of his child, without notice and the opportunity for a meaningful hearing. *In re S.C.*, 865 S.E.2d 79 (W. Va. 2021).

### **Chapter 3—ARREST, EXTRA-DITION AND DETAINER**

The Fourth Amendment guarantees the right of the people to be secure in their persons, houses, paper, and effects, against unreasonable searches and seizures. A temporary detention of a citizen during a traffic stop, even if it is limited in time and scope, is a seizure of that citizen within the meaning of the Fourth Amendment. However, because an ordinary traffic stop is a limited seizure more like an investigative detention than a custodial arrest, courts employ the U.S. Supreme Court’s analysis for investigative detention in *Terry v. Ohio* to determine the limits of police conduct in routine traffic stops. When an officer observes a traffic offense—however minor—he has probable cause to stop the driver of the vehicle. Any ulterior motive a police officer may have for making the traffic stop is irrelevant. *United States v. Hall*, No. 20-4618, 2021 U.S. App. LEXIS 35822 (4th Cir. Dec. 3, 2021)

The objectively reasonable standard requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight. *W. Va. State Police v. Walker*,

No. 20-0558, 2021 W. Va. LEXIS 644 (Nov. 19, 2021).

### **Chapter 4—SEARCH AND SEIZURE**

Warrantless searches are per se unreasonable under the Fourth Amendment, subject only to a few specifically established and well-delineated exceptions. One exception to the warrant requirement concerns automobiles because of their inherent mobility and the risk that contraband inside the vehicle could disappear while officers obtain a search warrant. If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment permits police to search the vehicle without more. Probable cause to search exists if, in light of the totality of the circumstances, there is a fair probability that contraband or evidence of a crime will be found in a particular place. Importantly, probable cause exists when a police officer lawfully searches a vehicle’s recent occupant and finds contraband on his or her person. *United States v. Wimer*, No. 20-4423, 2021 U.S. App. LEXIS 37218 (4th Cir. Dec. 16, 2021).

### **Chapter 8—JURISDICTION AND VENUE**

The State of West Virginia may petition the Supreme Court of Appeals for a writ of prohibition because the State generally cannot appeal a criminal matter: The State may seek a writ of prohibition in the Court in a criminal case where the trial court has exceeded or acted outside of its jurisdiction. Where the State

claims that the trial court abused its legitimate powers, the State must demonstrate that the court's action was so flagrant that it was deprived of its right to prosecute the case or deprived of a valid conviction. In any event, the prohibition proceeding must offend neither the Double Jeopardy Clause nor the defendant's right to a speedy trial. Furthermore, the application for a writ of prohibition must be promptly presented. *State v. Hummel*, No. 21-0401, 2021 W. Va. LEXIS 632 (Nov. 16, 2021).

### **Chapter 9—PRELIMINARY HEARINGS**

It is the policy of the law, in the interest of justice, that the preliminary hearing should be conducted with closed doors. This secrecy is not only consistent with, but essential to, the nature of the institution. The sufficiency of the proof cannot be inquired into to invalidate an indictment found by a lawfully constituted grand jury. The presumption is that every indictment is found upon proper evidence. If anything improper is given in evidence before a grand jury, it can be corrected on the trial before the petit jury. *State v. Hummel*, No. 21-0401, 2021 W. Va. LEXIS 632 (Nov. 16, 2021).

### **Chapter 10—GRAND JURY AND INDICTMENTS**

Except in very limited circumstances involving willful and intentional fraud, a circuit court exceeds its lawful authority when it goes behind the four corners of an indictment: It is not usual, under practice in West Virginia, to challenge an indict-

ment on either the ground of want of sufficient evidence to sustain it or even the incompetency of evidence before the grand jury. Very plainly a court cannot go into the question of the weight and sufficiency of the evidence to sustain the indictment, and thus review the action of the grand jury. When once an indictment is returned a true bill, it has legal force. It is not void, and it only remains to try its truth. An indictment cannot be quashed because it rests in whole or part on incompetent evidence. However, in rare instances a court may delve further into what transpired in the grand jury. In those cases, the Supreme Court of Appeals has established a very narrow path for circuit courts to follow, so as not to usurp the grand jury's role in our justice system, except for willful, intentional fraud, the law of this State does not permit the court to go behind an indictment to inquire into the evidence considered by the grand jury, either to determine its legality or its sufficiency. *State v. Hummel*, No. 21-0401, 2021 W. Va. LEXIS 632 (Nov. 16, 2021).

### **Chapter 12—DISCOVERY**

W. Va. R. Crim. P. 16(d)(2) states that If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the cir-

cumstances. The court may specify the time, place and manner of making the discovery and inspection and may prescribe such terms and conditions as are just. It is necessary in most criminal cases for the State to share its information with the defendant if a fair trial is to result. Furthermore, complete and reasonable discovery is normally in the best interest of the public. Rule 16 does not provide a bright-line rule for courts to use when dealing with discovery violations. While Rule 16 contains some examples of potential sanctions, the rule also includes a vague phrase giving circuit courts broad latitude: may enter such other order as it deems just under the circumstances. *State ex rel. Smith v. Olejasz*, 865 S.E.2d 820 (W.Va. 2021).

## **Chapter 23—PAROLE AND PARDON**

As a general rule, the law in effect at the time of a defendant's commission of a criminal offense or conviction ordinarily remains the law that governs questions relating to the defendant's parole or probation. However, there is an exception to the general rule: If a person is convicted and sentenced to serve a term of probation, and a statute is subsequently passed that adversely affects probation rights in general, it cannot be applied to the original conviction, but it can be applied to probation violations that occur after the effective date of the statute. *State v. Metheny*, 865 S.E.2d 461 (W. Va. 2021).

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Publication 60852 Release 11

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