

PUBLICATION UPDATE

Route to: _____ _____ _____ _____
 _____ _____ _____ _____

HANDBOOK ON WEST VIRGINIA CRIMINAL PROCEDURE

Publication 60852

Release 10

November 2021

HIGHLIGHTS

- Chapter 1—RIGHT TO COUNSEL
- Chapter 3—ARREST, EXTRADITION AND DETAINER
- Chapter 5—CONFESSIONS
- Chapter 6—PRETRIAL IDENTIFICATION
- Chapter 7—ENTRAPMENT
- Chapter 8—JURISDICTION AND VENUE
- Chapter 16—INSANITY AND MENTAL COMPETENCY
- Chapter 18—INSTRUCTIONS TO THE JURY
- Chapter 22—APPEALS

AND COLLATERAL ATTACKS

- Chapter 24—JUDICIAL DISQUALIFICATION AND DISABILITY
- Chapter 26—CONTEMPT OF COURT

Chapter 1—RIGHT TO COUNSEL

We have never held that prisoners have a constitutional right to counsel when mounting collateral attacks upon their convictions, and we decline to so hold today. Our cases establish that the right to appointed counsel extends to the first appeal of right, and no further. *White v. Ames*, No. 2:19-cv-00121, 2021 U.S. Dist. LEXIS 63796 (S.D. W. Va. Feb. 9, 2021).

Chapter 3—ARREST, EXTRADI-

TION AND DETAINER

The Fourth Amendment safeguards inherent in a Terry stop likewise constrain an officer's authority to compel disclosure of someone's identity. A individual's concerns are met by the requirement that a Terry stop must be justified at its inception and reasonably related in scope to the circumstances which justified the initial stop. For example, an officer may not arrest a suspect for failure to identify himself if the request for identification is not reasonably related to the circumstances justifying the stop. Nor may the request impermissibly extend the stop, suggesting an effort to obtain an arrest for failure to identify after a Terry stop yielded insufficient evidence. *Wingate v. Fulford*, 987 F.3d 299, 302 (4th Cir. 2021).

Chapter 5—CONFESSIONS

The use of an involuntary statement or confession by a defendant in a criminal trial is a violation of the Fourteenth Amendment to the United States Constitution and W. Va. Const. art. III, § 10. The State must prove, at least by a preponderance of the evidence, that confessions or statements of an accused which amount to admissions of part or all of an offense were voluntary before such may be admitted into the evidence of a criminal case. Coercive police activity is a necessary predicate to the finding that a confession is not "voluntary" within the meaning of the Due Process Clause of the Fourteenth Amendment. Police coer-

cion includes not only physical abuse or threats directed at a suspect but also forms of psychological coercion. *State ex rel. DeChristopher v. Gaujot*, 856 S.E.2d 223, 226 (W. Va. 2021).

Chapter 6—PRETRIAL IDENTIFICATION

Due process principles prohibit the admission at trial of an out-of-court identification obtained through procedures so impermissibly suggestive as to give rise to a very substantial likelihood of misidentification. Yet even where unnecessarily suggestive procedures are used, due process does not require exclusion of the evidence if the identification was sufficiently reliable to preclude the substantial likelihood of misidentification. *United States v. Parks*, No. 19-4922, 2021 U.S. App. LEXIS 6983 (4th Cir. Mar. 10, 2021).

Chapter 7—ENTRAPMENT

Entrapment is an affirmative defense consisting of two related elements: government inducement of the crime, and a lack of predisposition on the part of the defendant to engage in the criminal conduct. To establish entrapment, a defendant must first demonstrate the government induced him to engage in the criminal activity. Inducement is a term of art: it involves elements of governmental overreaching and conduct sufficiently excessive to implant a criminal design in the mind of an otherwise innocent party. *United States v. Davis*, 839 F. App'x 796,

796 (4th Cir. 2021).

Chapter 8—JURISDICTION AND VENUE

Personal jurisdiction over a criminal defendant is established by the presence of the defendant before the court. Personal jurisdiction in a criminal case is still based on physical presence. Physical presence in the United States usually supplies the only necessary prerequisite for personal jurisdiction in a federal criminal prosecution. *United States v. Harris*, 991 F.3d 552, 554 (4th Cir. 2021).

Chapter 16—INSANITY AND MENTAL COMPETENCY

Where defendant was deemed incompetent to stand trial and Government's motion seeking permission to forcibly medicate defendant was granted, remand was warranted because district court did not acknowledge requirement that it must consider less intrusive means for administering defendant medication such as court order backed by contempt sanctions, and court was required to explain why less intrusive means would prove ineffectual. *United States v. Chatmon*, 718 F.3d 369, 2013 U.S. App. LEXIS 11644 (4th Cir. 2013), writ denied, 832 Fed. Appx. 237, 2021 U.S. App. LEXIS 138 (4th Cir. 2021).

Chapter 18—INSTRUCTIONS TO THE JURY

An inquiry in the harmless error test is to examine the impact of the error on the jury verdict. In any inquiry into the prejudicial impact of

the error, the supreme court of appeals will be guided by whether the record reveals that the error was repeated or singled out for special emphasis in the State's argument. It will scrutinize the record to determine if the error became the subject of a special instruction to the jury, or produced question from the jury. Also of importance is the overall quality of the State's proof. *State v. Costello*, 857 S.E.2d 51, 54 (W. Va. 2021).

Chapter 22—APPEALS AND COLLATERAL ATTACKS

The appellate standard of review of questions of law and certified by a circuit court is de novo. Similarly, the constitutionality of a statute is a question of law which the Supreme Court of Appeals of West Virginia reviews de novo. The supreme court of appeals evaluates the certified questions with caution, keeping in mind the importance of judicial restraint because a statute is presumed to be constitutional. When the constitutionality of a statute is questioned every reasonable construction of the statute must be resorted to by a court in order to sustain constitutionality, and any doubt must be resolved in favor of the constitutionality of the legislative enactment. *State v. Conner*, 855 S.E.2d 902, 905 (W. Va. 2021).

Chapter 24—JUDICIAL DISQUALIFICATION AND DISABILITY

The matter of judicial recusal and disqualification is a matter of discretion reposed solely in the presiding

judge and the Chief Justice of the West Virginia Supreme Court of Appeals. *David C. v. Tammy S.*, 855 S.E.2d 885, 886 (W. Va. 2021).

Chapter 26—CONTEMPT OF COURT

The contempt is civil where the purpose to be served by imposing a sanction for contempt is to compel compliance with a court order by the contemner so as to benefit the party bringing the contempt action by enforcing, protecting, or assuring the right of that party under the order. The appropriate sanction in a civil contempt case is an order that incarcerates a contemner for an indefinite term and that also specifies a reasonable manner in which the contempt may be purged thereby securing the

immediate release of the contemner, or an order requiring the payment of a fine in the nature of compensation or damages to the party aggrieved by the failure of the contemner to comply with the order. The contempt is criminal where the purpose to be served by imposing a sanction for contempt is to punish the contemner for an affront to the dignity or authority of the court, or to preserve or restore order in the court or respect for the court. The appropriate sanction in a criminal contempt case is an order sentencing the contemner to a definite term of imprisonment or an order requiring the contemner to pay a fine in a determined amount. *Rector v. Ross*, No. 19-1037, 2021 W. Va. LEXIS 312 (June 10, 2021).

Matthew Bender provides continuing customer support for all its products:

- Editorial assistance—please consult the “Questions About This Publication” directory printed on the copyright page;
- Customer Service—missing pages, shipments, billing or other customer

service matters, +1.800.833.9844.

- Outside the United States and Canada, +1.937.247.0293, or fax (+1.800.828.8341) or email (international@bender.com);
- Toll-free ordering (+1.800.223.1940) or visit www.lexisnexis.com/BrowseUs.



www.lexis.com

Copyright © 2021 Matthew Bender & Company, Inc., a member of the LexisNexis Group.
Publication 60852, Release 10, November 2021

LexisNexis, the knowledge burst logo, and Michie are trademarks of Reed Elsevier Properties Inc., used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc.

FILING INSTRUCTIONS

Handbook on West Virginia Criminal Procedure

Publication 60852 Release 10

November 2021

Check As Done

- 1. Check the Title page in the front of your present Volume 1. It should indicate that your set is filed through Release Number 9. If the set is current, proceed with the filing of this release. If your set is not filed through Release Number 9, DO NOT file this release. Please call Customer Services at 1-800-833-9844 for assistance in bringing your set up to date.
- 2. This Release Number 10 contains only White Revision pages.
- 3. Circulate the "Publication Update" among those individuals interested in the contents of this release.

**Check
As
Done** Remove Old
Pages Numbered

Insert New
Pages Numbered

For faster and easier filing, all references are to right-hand pages only.

VOLUME 1

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	1-9.	1-9 thru 1-10.1
<input type="checkbox"/>	1-19 thru 1-27	1-19 thru 1-28.1
<input type="checkbox"/>	1-39 thru 1-44.5.	1-39 thru 1-44.5
<input type="checkbox"/>	1-61 thru 1-73	1-61 thru 1-74.1
<input type="checkbox"/>	1-87 thru 1-95	1-87 thru 1-95
<input type="checkbox"/>	1-123 thru 1-127	1-123 thru 1-128.1
<input type="checkbox"/>	1-141 thru 1-146.1	1-141 thru 1-146.1
<input type="checkbox"/>	2-21 thru 2-38.1.	2-21 thru 2-38.1
<input type="checkbox"/>	2-55 thru 2-58.1.	2-55 thru 2-58.1
<input type="checkbox"/>	2-69	2-69 thru 2-70.1
<input type="checkbox"/>	3-3 thru 3-4.1.	3-3 thru 3-4.1
<input type="checkbox"/>	3-13 thru 3-21	3-13 thru 3-22.1
<input type="checkbox"/>	3-33 thru 3-43	3-33 thru 3-44.1
<input type="checkbox"/>	3-75 thru 3-81	3-75 thru 3-82.1
<input type="checkbox"/>	3-88.1 thru 3-89.	3-89 thru 3-90.1
<input type="checkbox"/>	4-2.1 thru 4-9.	4-3 thru 4-10.5
<input type="checkbox"/>	4-35 thru 4-41	4-35 thru 4-42.1
<input type="checkbox"/>	4-55 thru 4-71	4-55 thru 4-71
<input type="checkbox"/>	4-113.	4-113
<input type="checkbox"/>	4-132.1 thru 4-134.3.	4-133 thru 4-134.7
<input type="checkbox"/>	4-169.	4-169 thru 4-170.1
<input type="checkbox"/>	4-187.	4-187
<input type="checkbox"/>	4-263.	4-263
<input type="checkbox"/>	5-25	5-25 thru 5-26.1
<input type="checkbox"/>	5-155 thru 5-157	5-155 thru 5-157
<input type="checkbox"/>	5-175 thru 5-179	5-175 thru 5-179
<input type="checkbox"/>	6-3 thru 6-12.1	6-3 thru 6-12.1
<input type="checkbox"/>	7-1 thru 7-31	7-1 thru 7-27
<input type="checkbox"/>	8-11	8-11 thru 8-12.1
<input type="checkbox"/>	8-25 thru 8-37	8-25 thru 8-38.1
<input type="checkbox"/>	9-13 thru 9-19	9-13 thru 9-20.1
<input type="checkbox"/>	10-14.1.	10-14.1
<input type="checkbox"/>	10-35 thru 10-36.1	10-35 thru 10-36.1
<input type="checkbox"/>	10-47 thru 10-48.1	10-47 thru 10-48.1
<input type="checkbox"/>	10-71.	10-71 thru 10-72.1
<input type="checkbox"/>	10-85 thru 10-93	10-85 thru 10-94.1

**Check
As
Done**

*Remove Old
Pages Numbered*

*Insert New
Pages Numbered*

<input type="checkbox"/>	10-107	10-107
<input type="checkbox"/>	11-5 thru 11-22.1	11-5 thru 11-22.1
<input type="checkbox"/>	11-40.1	11-40.1 thru 11-40.3
<input type="checkbox"/>	11-51 thru 11-54.1	11-51 thru 11-54.1
<input type="checkbox"/>	11-63 thru 11-67	11-63 thru 11-68.1
<input type="checkbox"/>	12-1 thru 12-12.1	12-1 thru 12-12.1
<input type="checkbox"/>	12-23 thru 12-25	12-23 thru 12-26.1
<input type="checkbox"/>	12-48.1 thru 12-48.5	12-48.1 thru 12-48.5
<input type="checkbox"/>	12-64.1 thru 12-67	12-65 thru 12-68.1
<input type="checkbox"/>	12-75 thru 12-83	12-75 thru 12-83
<input type="checkbox"/>	13-10.1 thru 13-11	13-11 thru 13-12.1
<input type="checkbox"/>	13-31.	13-31 thru 13-32.1
<input type="checkbox"/>	13-45 thru 13-60.1	13-45 thru 13-60.5
<input type="checkbox"/>	13-89 thru 13-101	13-89 thru 13-102.1
<input type="checkbox"/>	13-116.1 thru 13-117	13-117 thru 13-118.3
<input type="checkbox"/>	14-7 thru 14-15	14-7 thru 14-15
<input type="checkbox"/>	14-25.	14-25
<input type="checkbox"/>	14-39 thru 14-47	14-39 thru 14-48.1
<input type="checkbox"/>	14-85.	14-85

VOLUME 2

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	15-11 thru 15-13	15-11 thru 15-13
<input type="checkbox"/>	15-25.	15-25 thru 15-26.1
<input type="checkbox"/>	15-35 thru 15-39	15-35 thru 15-39
<input type="checkbox"/>	15-55.	15-55 thru 15-56.1
<input type="checkbox"/>	15-75.	15-75
<input type="checkbox"/>	15-167 thru 15-173	15-167 thru 15-173
<input type="checkbox"/>	16-21.	16-21 thru 16-22.1
<input type="checkbox"/>	16-39 thru 16-43	16-39 thru 16-44.1
<input type="checkbox"/>	16-55 thru 16-75	16-55 thru 16-77
<input type="checkbox"/>	17-1 thru 17-7	17-1 thru 17-8.1
<input type="checkbox"/>	17-56.5.	17-56.5 thru 17-56.6(1)
<input type="checkbox"/>	18-14.1 thru 18-15	18-15 thru 18-16.1
<input type="checkbox"/>	19-39 thru 19-49	19-39 thru 19-49
<input type="checkbox"/>	20-37.	20-37 thru 20-38.1
<input type="checkbox"/>	21-11.	21-11
<input type="checkbox"/>	21-39.	21-39 thru 21-40.1
<input type="checkbox"/>	21-71 thru 21-74.1	21-71 thru 21-73
<input type="checkbox"/>	21-109 thru 21-127	21-109 thru 21-128.1

Check As Done	<i><u>Remove Old Pages Numbered</u></i>	<i><u>Insert New Pages Numbered</u></i>
<input type="checkbox"/>	21-168.9	21-168.9 thru 21-168.10(1)
<input type="checkbox"/>	21-230.9 thru 21-233	21-231 thru 21-233
<input type="checkbox"/>	21-251 thru 21-273	21-251 thru 21-274.1
<input type="checkbox"/>	21-293 thru 21-301	21-293 thru 21-301
<input type="checkbox"/>	21-313	21-313
<input type="checkbox"/>	22-2.1 thru 22-6.1	22-3 thru 22-6.5
<input type="checkbox"/>	22-15.	22-15
<input type="checkbox"/>	22-29 thru 22-33	22-29 thru 22-34.1
<input type="checkbox"/>	22-51 thru 22-87	22-51 thru 22-83
<input type="checkbox"/>	22-100.1	22-100.1
<input type="checkbox"/>	22-143 thru 22-145	22-143 thru 22-145
<input type="checkbox"/>	22-195	22-195 thru 22-196.1
<input type="checkbox"/>	22-209 thru 22-215	22-209 thru 22-213
<input type="checkbox"/>	23-7 thru 23-13	23-7 thru 23-15
<input type="checkbox"/>	24-1 thru 24-21	24-1 thru 24-22.1
<input type="checkbox"/>	25-9 thru 25-17	25-9 thru 25-17
<input type="checkbox"/>	25-42.1 thru 25-45	25-43 thru 25-45
<input type="checkbox"/>	25-54.1 thru 25-55	25-55 thru 25-56.1
<input type="checkbox"/>	26-7 thru 26-21	26-7 thru 26-22.1
<input type="checkbox"/>	27-31.	27-31 thru 27-32.1
<input type="checkbox"/>	28-25 thru 28-27	28-25 thru 28-28.1
<input type="checkbox"/>	28-41.	28-41 thru 28-42.1
<input type="checkbox"/>	28-51 thru 28-59	28-51 thru 28-59
<input type="checkbox"/>	TC-1 thru TC-183.	TC-1 thru TC-189
<input type="checkbox"/>	I-1 thru I-7	I-1 thru I-7

FILE IN THE FRONT OF THE FIRST VOLUME
OF YOUR SET

To order missing pages log on to our self service center, www.lexisnexis.com/printcdsc or call Customer Services at 1 (800) 833-9844 and have the following information ready:

- (1) the publication title;
- (2) specific volume, chapter and page numbers; and
- (3) your name, phone number, and Matthew Bender account number.

Please recycle removed pages.

MISSING FILING INSTRUCTIONS?
FIND THEM AT www.lexisnexis.com/printcdsc

Use the search tool provided to find and download missing filing instructions, or sign on to the Print & CD Service Center to order missing pages or replacement materials. Visit us soon to see what else the Print & CD Service Center can do for you!



www.lexis.com

**Copyright © 2021 Matthew Bender & Company, Inc., a member of the LexisNexis Group.
Publication 60852, Release 10, November 2021**

LexisNexis, the knowledge burst logo, and Michie are trademarks of Reed Elsevier Properties Inc., used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc.

