

TABLE OF CONTENTS

Volume I: Criminal and Traffic

	Page
CR 1 Victims' Rights	
1. Selected Definitions.....	CR 1-3
2. Consultation Requirements.....	CR 1-3
3. Court Action.....	CR 1-4
4. Standing.....	CR 1-4
CR 2 Interpreters	
1. When Should an Interpreter Be Appointed?	CR 2-3
2. Suggested Voir Dire to Establish Need for an Interpreter.....	CR 2-4
3. Who Is a Qualified Interpreter?	CR 2-5
4. Interpreter Oaths	CR 2-6
5. Costs of Interpreters	CR 2-6
6. Use of Interpreters	CR 2-8
7. Introducing Recorded Evidence in English or Non-English Language	CR 2-10
8. Court Interpreter Code of Ethics.....	CR 2-10
9. Suggested Voir Dire of Interpreter Qualifications	CR 2-12
10. Jury Instructions.....	CR 2-13
CR 3 Counsel	
1. Right to Counsel	CR 3-3
2. Appointment of Counsel.....	CR 3-5
3. SPD Appointment of Counsel.....	CR 3-6
4. Judicial Appointment of Counsel	CR 3-6
5. Managing Conflict of Interest.....	CR 3-8
6. Procedure for Ct Determination of Indigency	CR 3-9
7. Substitution or Discharge of Counsel	CR 3-11
8. Waiver of Right to Counsel	CR 3-12
9. Standby Counsel.....	CR 3-15
10. Out-of-State Counsel.....	CR 3-16

CR 4	Telephonic Hearings
1.	Telephonic Proceedings.....CR 4-3
2.	Defendant's Consent Not Required.....CR 4-3
3.	Defendant's Consent RequiredCR 4-4
CR 5	Public Trial
1.	Open Court in General.....CR 5-3
2.	Right to AttendCR 5-3
3.	Motion to Close Pretrial Proceedings.....CR 5-4
4.	Restriction of Extrajudicial StatementsCR 5-7
5.	Cameras in Courtroom.....CR 5-8
6.	Sealing Court Records.....CR 5-11
CR 6	Issuing Warrants/Subpoenas
Warrants	
1.	Arrest WarrantCR 6-3
2.	Search WarrantCR 6-5
3.	Probable Cause Necessary for Arrest or Search WarrantCR 6-9
Subpoenas	
1.	DefinitionCR 6-10
2.	Statutory Authority.....CR 6-11
3.	Constitutional Compulsory ProcessCR 6-12
4.	Subpoena <i>Duces Tecum</i>CR 6-13
5.	Subpoena for DocumentsCR 6-14
6.	Electronic Records and DevicesCR 6-15
CR 7	Initial Appearance
1.	Probable Cause Finding Before Initial Appearance— <i>Riverside</i> ReviewCR 7-3
2.	Conducting the Initial AppearanceCR 7-4
3.	DNA at Arrest Violations.....CR 7-7
CR 8	Bail/Bond/Conditions of Release
1.	Setting Bail/BondCR 8-3
2.	Reviewing Bail.....CR 8-8
3.	Revocation of Bail for Commission of Serious CrimeCR 8-8
4.	Revocation of Bail for Victim/Witness IntimidationCR 8-9
5.	Forfeiture of BailCR 8-10
6.	Denial of Bail (Preventative Detention).....CR 8-11

7.	Bail After Conviction.....	CR 8-13
8.	Disbursement of Bail After Conviction	CR 8-15

CR 9 Prelim/Arraignment

Preliminary Examination

1.	Nature of Preliminary Examination	CR 9-3
2.	Waiver	CR 9-5
3.	Time Limitations.....	CR 9-5
4.	Conduct of Hearing	CR 9-6
5.	Conclusion of Hearing.....	CR 9-13
6.	Juveniles	CR 9-14
7.	Review	CR 9-14
8.	Errors	CR 9-14

Arraignment

1.	Information Filed	CR 9-14
2.	“Instant Arraignments”	CR 9-15
3.	Duties of Judge at Arraignment.....	CR 9-15
4.	Presence of Defendant.....	CR 9-16

CR 10 Discovery and Inspection

1.	General.....	CR 10-3
2.	Timing of Statutory Discovery Motions	CR 10-4
3.	Types of Statutory Discovery Provided.....	CR 10-4
4.	Other Specific Discovery Rights	CR 10-11
5.	Exculpatory Information.....	CR 10-14
6.	Preservation of Exculpatory Evidence	CR 10-19
7.	Postconviction Discovery Issues	CR 10-20

CR 11 Depositions of Witnesses

1.	Adult Witnesses.....	CR 11-3
2.	Child Witness—Audiovisually Recorded Depositions.....	CR 11-3
3.	Audiovisually Recorded Statements of Children.....	CR 11-8
4.	Confrontation.....	CR 11-8

CR 12 Competency to Proceed

1.	Definitions	CR 12-3
2.	Raising Issue of Competency to Proceed.....	CR 12-4
3.	Determination of Probable Cause	CR 12-5

4.	Examinations.....	CR 12-6
5.	Competency Hearing.....	CR 12-11
6.	Competency Hearing Disposition (For Postconviction, See Sec. 10)	CR 12-12
7.	Subsequent Hearings to Reevaluate Def's Competency	CR 12-16
8.	Discharge from Criminal Commitment	CR 12-18
9.	Transfer to Civil Proceedings	CR 12-18
10.	Postconviction Relief Proceedings	CR 12-20
11.	Probation Revocation Proceeding.....	CR 12-21
CR 13	Taking a Plea	
1.	Procedure for Taking a Plea	CR 13-3
2.	Vacating Plea After Acceptance	CR 13-14
3.	Effects of Pleas.....	CR 13-15
4.	General Rule: Guilty, No Contest, and <i>Alford</i> Pleas Waive All Nonjurisdictional Defects	CR 13-17
CR 14	Substitution of Judge/Recusal	
1.	Substitution of Prelim Judge.....	CR 14-3
2.	Substitution of Trial Judge.....	CR 14-4
3.	Sua Sponte Recusal by Judge	CR 14-9
4.	Recusal for Prejudice.....	CR 14-11
CR 15	Challenges to Sufficiency of Complaint/Double Jeopardy	
1.	Timeliness of Motion Challenging Complaint	CR 15-3
2.	Standards for Review of Sufficiency of Complaint	CR 15-3
3.	Specific Challenges to Complaint.....	CR 15-6
4.	Motion to Dismiss Based on Critical Misstatements or Omissions in Complaint.....	CR 15-13
5.	Double Jeopardy	CR 15-14
CR 16	Speedy Trial	
1.	Constitutional Protection.....	CR 16-3
2.	Statutory Protection.....	CR 16-5
3.	Interstate Detainers.....	CR 16-6

CR 17	Personal Jurisdiction/Place of Trial
Personal Jurisdiction	
1.	Personal Jurisdiction Depends on Physical Presence Before Court..... CR 17-3
2.	Challenge to Personal Jurisdiction of Court..... CR 17-5
Place of Trial	
1.	Venue CR 17-6
2.	Change of Place of Trial..... CR 17-7
3.	Factors to Be Considered by Court When Motion for Change of Place of Trial Made..... CR 17-9
4.	Consequences of Granting Motion CR 17-11
5.	Renewing Motion for Change of Place of Trial CR 17-12
CR 18	Motion for Joinder (Consolidation) or Severance
1.	General Principles of Joinder and Severance Essentially the Same..... CR 18-3
2.	Joinder of Crimes CR 18-3
3.	Severance of Crimes..... CR 18-5
4.	Joinder of Defendants CR 18-7
5.	Severance of Defendants..... CR 18-8
6.	Trial Practice Option..... CR 18-10
CR 19	Suppression—Search and Seizure
1.	Warrant Requirement..... CR 19-3
2.	Procedure CR 19-5
3.	Expectation of Privacy (Standing)..... CR 19-6
4.	Challenges to Warrants CR 19-12
5.	Warrant Execution Issues CR 19-15
6.	Searches Pursuant to Arrest Warrants CR 19-18
7.	Exceptions to Warrant Requirement CR 19-19
CR 20	Suppression—Identification
1.	General..... CR 20-3
2.	Right to Counsel CR 20-3
3.	Procedure on Suppression Motion..... CR 20-4
4.	One-on-One Show-Ups CR 20-7
5.	Other Identification..... CR 20-8
6.	Jury Instruction..... CR 20-8

CR 21	Suppression—Confessions/Witness Statements	
1.	Suppression Motion Procedure.....	CR 21-3
2.	Voluntariness Standards Generally.....	CR 21-6
3.	Involuntary Confessions—Police Tactics	CR 21-7
4.	Involuntary Confessions—Suspect's Personal Characteristics.....	CR 21-10
5.	Involuntary Statements of Witnesses, Not Suspects	CR 21-11
6.	<i>Miranda</i> Rights Generally.....	CR 21-11
7.	<i>Miranda</i> Rights Inapplicable—Suspect Not in Custody	CR 21-13
8.	<i>Miranda</i> Rights Inapplicable— Suspect Not Being Interrogated	CR 21-17
9.	Determining Whether Suspect Effectively Invoked <i>Miranda</i> Rights	CR 21-19
10.	When Police May Reinitiate Interrogation	CR 21-22
11.	Other Grounds for Suppression.....	CR 21-23
CR 22	Jury Waiver	
1.	Waiver of Jury	CR 22-3
2.	Withdrawal of Waiver of Jury	CR 22-6
3.	Trial by Jury of Less Than Twelve.....	CR 22-7
CR 23	Selection of Jury	
1.	Challenge to the Array	CR 23-3
2.	Role of Court and Parties.....	CR 23-4
3.	Form and Extent of Questions.....	CR 23-5
4.	Judge's Voir Dire—Suggested Script	CR 23-7
5.	Individual Voir Dire	CR 23-8
6.	Challenges for Cause.....	CR 23-9
7.	Purposeful Discrimination Against Jurors	CR 23-13
8.	Peremptory Challenges	CR 23-16
9.	Additional Jurors.....	CR 23-18
CR 24	Jury Management	
1.	Swearing in Jury	CR 24-3
2.	Jury Sequestration	CR 24-3
3.	Postsentencing Questions About Juror Qualifications	CR 24-3
4.	Juror Conduct	CR 24-4
5.	Jury View	CR 24-5

6.	Note-Taking by Jurors	CR 24-6
7.	Jurors' Questions.....	CR 24-7
8.	Jury Deliberations.....	CR 24-7
9.	Hung Jury	CR 24-10
10.	Discharge of Jurors	CR 24-11

CR 25 Preliminary Instructions/Opening Statements

Preliminary Instructions

1.	Procedure	CR 25-3
2.	Standard Preliminary Instructions.....	CR 25-3
3.	Common Preliminary Instructions.....	CR 25-4

Opening Statements

1.	Manner and Purpose	CR 25-5
2.	Scope	CR 25-5
3.	Interruption of Opening Statements and Curative Instructions.....	CR 25-6

CR 26 Witnesses

1.	Oaths.....	CR 26-3
2.	Competency of Witnesses.....	CR 26-4
3.	Compulsory Process/Right to Present a Defense (See also CR 11)	CR 26-4
4.	Exclusion of Witnesses from Hearing or Trial	CR 26-8
5.	Compelling Testimony—No 5th Amendment Privilege.....	CR 26-9
6.	Compelling Testimony—5th Amendment Privilege.....	CR 26-10
7.	Plea Bargains and Testimony.....	CR 26-13
8.	Confrontation.....	CR 26-13
9.	Child's and Child-Victim's Statements	CR 26-18
10.	Use of Former Testimony.....	CR 26-23
11.	Out-of-Court Translators	CR 26-23
12.	Privileges	CR 26-24
13.	Rape Shield Statute: § 972.11	CR 26-27
14.	Attorney as Witness	CR 26-32
15.	Defendant Perjury.....	CR 26-34
16.	Rebuttal Witness	CR 26-34

CR 27 Expert Witnesses

1.	Expert Witnesses.....	CR 27-3
2.	Opinion Concerning Witness's Credibility or State of Mind ...	CR 27-10

3.	Expert Testimony on Capacity to Form Intent	CR 27-12
4.	Expert Testimony on Intoxication.....	CR 27-13
5.	Expert Testimony on Post-assault Conduct (Syndrome Testimony)	CR 27-14
6.	Expert Testimony on Character	CR 27-15
7.	Procedure If Challenge Raised	CR 27-15

CR 28 Hypnosis/Polygraph/DNA

Hypnosis

1.	Per Se Ban Unwarranted in Criminal Trials	CR 28-3
2.	Procedure for Determining Admissibility	CR 28-3
3.	Procedure When Testimony Found Admissible.....	CR 28-6

Polygraph

1.	Discovery of Polygraph Results	CR 28-7
2.	Polygraph Results Not Admissible in Any Criminal Proceeding.....	CR 28-8
3.	Postpolygraph Statements.....	CR 28-9
4.	Offer to Take Polygraph Examination	CR 28-10

DNA

1.	Definition	CR 28-11
2.	Introduction of DNA Evidence at Trial.....	CR 28-11
3.	Offer to Undergo DNA Testing	CR 28-12
4.	DNA Sampling at Arrest.....	CR 28-13

Volume IA: Criminal and Traffic

CR 29 Closing Arguments

1.	Purpose.....	CR 29-3
2.	Order of Argument	CR 29-3
3.	Scope of Argument	CR 29-3
4.	Improper Argument	CR 29-8

CR 30 Jury Instructions

1.	General Principles Governing Giving of Instructions.....	CR 30-3
2.	Instructions Conference	CR 30-4
3.	Defense-Requested Instructions.....	CR 30-5
4.	Lesser Included Offenses	CR 30-6

5.	Instructions re: Presumptions	CR 30-9
6.	Party to Crime Instruction	CR 30-10
7.	<i>Falsus in Uno</i>	CR 30-10
8.	Venue	CR 30-10
9.	Multiple Counts.....	CR 30-11
10.	Instructions Following Final Argument	CR 30-11
11.	Instructions After Commencement of Jury Deliberations.....	CR 30-12
12.	Discharge of Jury on Deadlock	CR 30-13

CR 31 Verdicts

1.	Verdict Conference	CR 31-3
2.	Form of Verdict.....	CR 31-3
3.	Return of Verdict	CR 31-5
4.	Jury Nullification	CR 31-8

CR 32 Impeaching Jury Verdict

1.	General Rules	CR 32-3
2.	Evidentiary Hearing	CR 32-5
3.	Instances of Misconduct.....	CR 32-6

CR 33 Defendant Presence/Appearance by Video/Disruption

1.	Presence of Defendant.....	CR 33-3
2.	Physical Restraints	CR 33-8
3.	Uniformed Security Personnel	CR 33-10

CR 34 Mental Disease or Defect

1.	Pretrial Procedure	CR 34-3
2.	Trial Procedure.....	CR 34-5
3.	Commitment If Defendant Found NGI.....	CR 34-8
4.	Defendant Committed to Institutional Care	CR 34-11
5.	Commitment on Conditional Release.....	CR 34-17
6.	Violation/Revocation of Conditional Release, Recommitment for Defendants Adjudicated NGI on or After January 1, 1991	CR 34-18
7.	Nonfulfillment of Conditional Release, Recommitment for Defendants Adjudicated NGI Before January 1, 1991.....	CR 34-19
8.	Reexamination of Defendants Adjudicated NGI for Offenses Committed on or After January 1, 1991.....	CR 34-20

9.	Reexamination of Defendants Adjudicated NGI for Offenses Committed Before January 1, 1991	CR 34-24
10.	Expiration of Commitment Orders	CR 34-26
CR 35	Mistrial	
1.	Motion Directed to Sound Discretion of Court	CR 35-3
2.	Before Declaring a Mistrial, Consider Alternatives.....	CR 35-3
3.	Grounds for Mistrial.....	CR 35-3
4.	Before Granting Mistrial, Consider Whether Double Jeopardy Will Bar State from Retrying the Case.....	CR 35-4
CR 36	Other Trial Problems	
1.	Last-Minute Motions for Adjournment.....	CR 36-3
2.	Motion to Dismiss at Close of State's Case.....	CR 36-3
3.	Colloquy with Def about Testifying or Not Testifying	CR 36-4
4.	Motion to Dismiss at Conclusion of All the Evidence	CR 36-4
5.	Questioning by the Court.....	CR 36-5
6.	Sidebar Conferences.....	CR 36-5
CR 37	The Sentencing Hearing	
1.	Conducting the Hearing.....	CR 37-3
2.	Habitual Criminality (Repeater) Penalties	CR 37-5
3.	Exercising Sentencing Discretion.....	CR 37-7
4.	Read-Ins	CR 37-14
5.	Presentence Reports.....	CR 37-15
6.	Pronouncing Sentence.....	CR 37-16
7.	Pronouncing Sentence for Felonies Committed After 12/31/99 and Misdemeanors Committed After 2/1/03	CR 37-18
8.	Sentence Credit	CR 37-20
9.	Restitution	CR 37-23
10.	Judgment of Conviction	CR 37-30
11.	Notice of Right to Appeal	CR 37-30
12.	Stay of Execution.....	CR 37-31
13.	Return of Seized Property.....	CR 37-31
14.	Reconfinement	CR 37-32
CR 38	Options for Sentencing	
1.	Deferred Prosecution.....	CR 38-3
2.	Expunction	CR 38-4

3.	Fines.....	CR 38-6
4.	Probation.....	CR 38-7
5.	Electronic Monitoring	CR 38-14
6.	Confinement	CR 38-15
7.	Sex Offender Registry	CR 38-17
CR 39	Modification of Sentence/Resentencing	
1.	Time Constraints for Motion to Modify Sentence	CR 39-3
2.	Motions Filed After Time Expires	CR 39-4
3.	Grounds for Motion to Modify Sentence	CR 39-5
4.	Standards of Review.....	CR 39-8
5.	Resentencing.....	CR 39-9
6.	Sentencing Adjustment—Truth in Sentencing	CR 39-11
CR 40	Motion for a New Trial	
1.	Time Constraints for Motion	CR 40-3
2.	Trial Court's Duty at Sentencing as to Postconviction Relief	CR 40-4
3.	Appeal May Be Taken Without Filing of Postconviction Relief by Defendant.....	CR 40-5
4.	Defendant's Right to Be Present at Motion Hearing	CR 40-5
5.	Issue of Competency Raised When Postconviction Relief Sought	CR 40-6
6.	Standards of Review for Motion Based on Claim of Error.....	CR 40-6
7.	Motion Based on Claim of Newly Discovered Evidence.....	CR 40-11
8.	Motion Based on Claim of Denial of Fair Trial	CR 40-12
9.	Postconviction Discovery.....	CR 40-15
10.	Granting New Trial in Interests of Justice.....	CR 40-16
11.	Procedure When Transcripts Are Missing.....	CR 40-17
CR 41	Ineffective Assistance of Counsel	
1.	Constitutional Right to Counsel Means Effective Assistance of Counsel.....	CR 41-3
2.	Specific Areas of Attorney Performance	CR 41-8
3.	Disciplinary Implications of Finding Attorney Ineffective	CR 41-16
4.	Ineffective Assistance of Appellate Counsel	CR 41-17
CR 42	§ 974.06 Motions	
1.	Nature of Motion	CR 42-3
2.	Conditions Precedent	CR 42-6

3.	Authorized Grounds for Motion.....	CR 42-8
4.	Form of Motion	CR 42-11
5.	Preliminary Procedure for Examining Petition.....	CR 42-12
6.	Summary Dismissal	CR 42-13
7.	Granting a Hearing.....	CR 42-19
8.	Hearing Procedure	CR 42-21
9.	Appeal	CR 42-24

CR 43 Withdrawal of Plea

1.	Withdrawal of Plea Based on Breach of Plea Agreement.....	CR 43-3
2.	Withdrawal of Plea Before Sentencing or After Sentence Vacated	CR 43-5
3.	Withdrawal of Plea of Guilty or No Contest After Sentencing	CR 43-6

CR 44 Extradition/Detainers

Extradition

1.	Nature and Purpose of Proceedings	CR 44-3
2.	Controlled by Federal Law	CR 44-3
3.	Arrest Before Governor's Warrant or Requisition.....	CR 44-4
4.	Arrest Under Governor's Warrant or Requisition.....	CR 44-6
5.	Scope of Habeas Corpus Review	CR 44-8
6.	Findings	CR 44-11

Detainers

1.	Definition	CR 44-11
2.	Interstate Procedure	CR 44-12
3.	Intrastate Detainer Procedure	CR 44-14

CR 45 Electronic Surveillance

1.	Constitutionality	CR 45-3
2.	Procedure	CR 45-3
3.	Recording Interceptions	CR 45-7
4.	Inventory (Notice) to Person Monitored.....	CR 45-8
5.	Pretrial Use of Intercepted Communications	CR 45-9
6.	Trial Use of Intercepted Communications.....	CR 45-9
7.	Effect of Consent of One Party to the Communication	CR 45-10

CR 46	Writs	
1.	Certiorari: <i>See Civil Benchbook CV 26</i>	CR 46-3
2.	Habeas Corpus: <i>See Civil Benchbook CV 27</i>	CR 46-3
CR 47	Contempt of Court	
1.	Power of Court	CR 47-3
2.	Definition of Contempt.....	CR 47-4
3.	Summary Proceedings	CR 47-6
4.	Non-Summary Proceedings	CR 47-8
CR 48	Grand Jury/John Doe Proceedings	
Grand Jury		
1.	Purpose	CR 48-3
2.	Powers.....	CR 48-3
3.	Convening	CR 48-3
4.	Participants	CR 48-4
5.	Secrecy	CR 48-5
6.	Witnesses	CR 48-6
7.	Indictment	CR 48-9
John Doe Proceedings		
1.	Definition and Initiation	CR 48-10
2.	Role of Judge in John Doe Proceedings	CR 48-11
3.	Disposition	CR 48-16
4.	John Doe Problems.....	CR 48-17
CR 49	Inquests	
1.	Purpose and Venue	CR 49-3
2.	Who May Order	CR 49-3
3.	Hearing Procedure	CR 49-3
4.	Juror Selection.....	CR 49-4
5.	Inquest Witnesses	CR 49-5
6.	Compelled Testimony.....	CR 49-5
7.	Jury Instructions	CR 49-6
8.	Verdict.....	CR 49-6
9.	Confidentiality of Record	CR 49-6
CR 50	Sexually Violent Person Commitment	
1.	General Provisions	CR 50-3
2.	Procedure	CR 50-5

3.	Petition for Supervised Release.....	CR 50-18
4.	Petition for Discharge	CR 50-21
5.	Collateral Attack	CR 50-24
6.	Notice Concerning Release or Discharge	CR 50-24

CR 51 Juvenile/Adult Matters

1.	Original Jurisdiction of Adult Court.....	CR 51-3
2.	Jurisdiction by Waiver from Juvenile Court to Adult Court	CR 51-4
3.	Reverse Waiver of Jurisdiction from Adult Court to Juvenile Court	CR 51-5
4.	Adult Court Options for Sentencing Under Juvenile Justice Code.....	CR 51-6
5.	Expunction.....	CR 51-7

TR 1 Pretrial Proceedings

1.	Jurisdiction	TR 1-3
2.	Venue	TR 1-4
3.	Criminal Traffic Violations.....	TR 1-5
4.	Initial Appearance—Defendant Appears.....	TR 1-5
5.	Initial Appearance—Defendant Does Not Appear	TR 1-7
6.	Juveniles in Traffic Court.....	TR 1-9
7.	Substitution of Judge	TR 1-9
8.	Discovery Motions	TR 1-11
9.	Operating a Motor Vehicle While Intoxicated.....	TR 1-12
10.	Motions: In General.....	TR 1-15
11.	Motions Challenging Elements of “Operation,” “Operating on Premises Held out to the Public,” and “Motor Vehicle”	TR 1-17
12.	Suppression Motions	TR 1-18
13.	Motions: Relating to “Informing the Accused” Form	TR 1-23
14.	Implied Consent and Refusals.....	TR 1-24
15.	Administrative Suspension.....	TR 1-27
16.	Commercial Motor Vehicle Law	TR 1-31

TR 2 Trial Procedures

1.	Motions.....	TR 2-3
2.	Civil Forfeiture Trials	TR 2-5
3.	Criminal Traffic Trials	TR 2-7
4.	Admissibility of Driver Records.....	TR 2-8

5.	Forms of Verdict	TR 2-8
6.	Municipal Court Appeals	TR 2-8

TR 3 Sentencing—Postconviction Issues

1.	Civil Traffic Forfeitures	TR 3-3
2.	OWI	TR 3-6
3.	Operating Without a Valid License (OWL)	TR 3-16
4.	Operating While Suspended (OWS).....	TR 3-17
5.	Operating After Revocation (OAR).....	TR 3-18
6.	Criminal—Habitual Traffic Offender (HTO).....	TR 3-19
7.	Civil Postconviction Motions	TR 3-20

