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WEST VIRGINIA MUNICIPAL LEAGUE

ANNUAL MUNICIPAL JUDGE TRAINING

Floyd M. Sayre, III, Esq.
November 5, 2020
Charleston, WV

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Agenda

- Welcome - Overview of Training Session
- Session I – Update of law
- Session II – Criminal Procedure/Constitutional Protections
- Session III – Evidence
- Session IV – Granting and Revoking Bonds
- Session V - Roundtable Discussion and Wrap up

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A WORD OF CAUTION

These materials are presented with the understanding that the information provided is not legal advice. Due to the rapidly changing nature of the law, information contained in this presentation may become outdated. Anyone using information contained in this presentation should always research original sources of authority and update this information to ensure accuracy when dealing with a specific matter. No person should act or rely upon the information contained in this presentation without seeking the advice of an attorney.

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WEST VIRGINIA MUNICIPAL LEAGUE

Update of Law

Floyd M. Sayre, III, Esq.
2020

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HB 4715

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HB 4715

- Municipalities to grant certain fire department employees limited powers of arrest in relation to their duties; setting the limits of their power to arrest; authorizing designated fire department employees to file complaints with appropriate courts; requiring initial and annual training of designated fire department employees as established by the State Fire Commission and the State Fire Marshal.

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HB 4715

- The chief and any member of the police force or department of a municipality, any municipal sergeant, and any municipal fire marshal shall have all of the powers, authority, rights, and privileges within the corporate limits of the municipality with regard to the arrest of persons,

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HB 4715

- the collection of claims, and the execution and return of any search warrant, warrant of arrest, or other process, which can legally be exercised or discharged by a deputy sheriff of a county:
- That any municipal fire marshal granted authority under this section shall have these powers, authority, rights, and privileges only to the limits described in §8-15-1 of this code.

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HB 4715

- In order to arrest for the violation of municipal ordinances and as to all matters arising within the corporate limits and coming within the scope of his or her official duties, the powers of any chief, policeman, municipal fire marshal, or sergeant shall extend anywhere within the county or counties in which the municipality is located.

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HB 4715

- For an offense committed in his or her presence, any such officer may arrest the offender without a warrant and take the offender before the mayor or police court or municipal court to be dealt with according to law.

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HB 4715

- In addition to the mayor, or police court judge or municipal court judge, if any, of a city, the chief of police of any municipality and in the absence from the station house of the chief of police the captains of police and lieutenants of police shall each have authority to administer oaths to complainants and to issue arrest warrants thereon for all violations of the ordinances of the municipality.

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HB 4715

- The mayor and police officers of every municipality and any municipal sergeant shall aid in the enforcement of the criminal laws of the state within the municipality, independently of any charter provision or any ordinance or lack of an ordinance with respect thereto, and to cause the arrest of, or arrest, any offender and take him or her before a magistrate to be dealt with according to the law.

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HB 4715

- Failure on the part of any such official or officer to discharge any duty imposed by the provisions of this section is official misconduct for which he or she may be removed from office.
- An officer or member of the police force or department of a municipality may not aid or assist either party in any labor trouble or dispute between employer and employee.

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HB 4715

- The governing body of every municipality shall have plenary power and authority to provide for the prevention and extinguishment of fires and, for this purpose,
- It may, among other things, regulate how buildings shall be constructed, procure proper engines and implements, provide for the organization, equipment, and government of volunteer fire companies or of a paid fire department.

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HB 4715

- It may give authority to any the officer or officers to direct the pulling down or destroying of any fence, house, building, or other thing, if determined necessary to prevent the spreading of a fire.

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HB 4715

- It may give authority to municipal fire marshals to
  - (1) arrest individual disobeying lawful orders at the scene of a fire,
  - (2) arrest any individual who violatesprohibitions against arson and explosives offenses, malicious burning, obstructing a fire marshal, or failing to obey lawful orders,
  - (3) arrest without a warrant, if the unlawful conduct occurs in their presence, and
  - (4) file criminal complaints with the municipal court or other appropriate judicial

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HB 4715

- Any officer given this authority shall receive initial and annual training that complies with Law Enforcement Core Training Standards of the West Virginia State Fire Commission and the West Virginia State Fire Marshal.

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Com Sub HB 4717

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Com Sub HB 4717

- Bookkeeping procedures and internal controls for seized or forfeited property under the West Virginia Contraband Forfeiture Act; providing for record keeping and accounting procedures; providing for a report to the State Auditor from law enforcement agencies excluding prosecuting attorneys; requiring the State Auditor establish a public website for reporting information; providing the State Auditor prepare and disseminate a yearly report.

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Com Sub HB 4717

- Any law-enforcement agency or office in this state who receives forfeited moneys, securities, negotiable instruments, items subject to forfeiture shall account for the same in the following manner:

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Com Sub HB 4717

- (1) Maintain any items of property subject to forfeiture including, but not limited to, moneys, securities, negotiable instruments, or other items and property identified in the same manner as the agency's appropriated funds. Bank accounts, checkbooks, purchase cards, and other financial instruments or documents must be maintained in the same manner as appropriated funds;

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Com Sub HB 4717

- (2) Establish a segregated account or accounting codes to track both revenues and expenditures for each respective program. No other funds may be commingled in these accounts or with these accounting codes;

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Com Sub HB 4717

- (3) Process all expenditures and payments in the same manner as appropriated funds, including procurement and payment transactions;
- (4) In the case of seized moneys, securities, or other negotiable instruments, place the assets in an interest-bearing depository insured by an agency of the federal government.

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Com Sub HB 4717

- (5) Deposit all interest earned on equitable sharing funds into the respective account or accounting code.
- (6) Develop, maintain, and follow written policies for accounting, bookkeeping, inventory control, and procurement that comply with the applicable jurisdiction policies. Ensure distribution of relevant policies to all appropriate personnel;

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Com Sub HB 4717

- (7) Maintain records of all revenue and expenditures posted to the account or accounting code, to include bank/ledger statements, invoices, receipts, required jurisdiction approvals, or any other documents used or created during the procurement and disposition process;
- (8) Report all transactions using cash-based accounting methods66

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Com Sub HB 4946

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Com Sub HB 4946

- Eliminating the requirement that municipal police civil service commissions certify a list of at least one but no more than three individuals for every position vacancy in a municipal police department not filled by promotion, reinstatement, or reduction

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Com Sub HB 4946

- Every position, unless filled by promotion, reinstatement or reduction, shall be filled only in the manner specified in this section.
- The appointing officer shall notify the policemen's Civil Service Commission of any vacancy or vacancies in a position or positions which he or she desires to fill and shall request the certification of eligibles.

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Com Sub HB 4946

- The commission shall forthwith certify the names of at least one but no more than three eligible individuals ranked according to their averages at preceding competitive examinations held under the civil service provisions of this article within a period of three years next preceding the date of the prospective appointment.

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Com Sub HB 4946

- The appointing officer shall, thereupon, with sole reference to the relative merit and fitness of the candidates, make an appointment or appointments from the names so certified:

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Com Sub HB 4946

- Provided, That should he make objection, to the commission, to one or more of these individuals, for any of the reasons stated in section fourteen of this article, and should such objection be sustained by the commission, after a public hearing, the commission shall thereupon strike the name of any such individual from the eligible list, and certify the next highest name for each

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Com Sub HB 4946

- Provided, however, That after any name has been three times rejected for the same or another position in favor of a name or names below it on the same list, the said name shall be stricken from the list.

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Com Sub SB 46

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Com Sub SB 46

- Exempting pepper spray from definition of "deadly weapons"; providing that persons over 16 years of age may carry pepper spray for the purpose of self-defense; and providing that such persons may carry pepper spray in the State Capitol Complex.

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Com Sub SB 46

- If any person willfully interrupts or molests the orderly and peaceful process of any department, division, agency, or branch of state government or of its political subdivisions, he or she is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100, or confined in jail not more than six months, or both fined and confined:

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Com Sub SB 46

- Provided, That any assembly in a peaceable, lawful, and orderly manner for a redress of grievances is not a violation of this section.

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Com Sub SB 46

- It is unlawful for any person to bring upon the State Capitol Complex any deadly weapon as defined in §61-7-2 of this code:
- Provided, That a person who may lawfully possess a firearm may keep a firearm in his or her motor vehicle upon the State Capitol Complex if the vehicle is locked and the weapon is out of normal view:

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Com Sub SB 46

- Provided, however, That a person may not carry upon the State Capitol Complex, a cannister of pepper spray that exceeds one ounce.

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Com Sub SB 46

- It is unlawful for any person to willfully deface any trees, wall, floor, stairs, ceiling, column, statue, monument, structure, surface, artwork, or adornment in the State Capitol Complex. It is unlawful for any person or persons to willfully block or otherwise willfully obstruct any public access, stair, or elevator in the State Capitol Complex after being asked by a law-enforcement officer acting in his or her official capacity to desist:

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Com Sub SB 46

- Provided further, That in order to preserve the constitutional right of the people to assemble, it is not willful blocking or willful obstruction for persons gathered in a group or crowd if the persons move to the side or part to allow other persons to pass by the group or crowd to gain ingress or egress:

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Com Sub SB 46

- That this subsection does not apply to a law-enforcement officer acting in his or her official capacity. Any person who violates this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100, or confined in jail not more than six months, or both fined and confined.

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Com Sub SB 46

- "Pepper spray" means a temporarily disabling aerosol that is composed partly of capsicum oleoresin and causes irritation, blinding of the eyes, and inflammation of the nose, throat, and skin that is intended for self-defense use.

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Com Sub SB 46

- "Pepper spray" means a temporarily disabling aerosol that is composed partly of capsicum oleoresin and causes irritation, blinding of the eyes, and inflammation of the nose, throat, and skin that is intended for self-defense use.

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Com Sub SB 96

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Com Sub SB 96

- Prohibiting municipalities from limiting in any manner inconsistent with or in conflict with state law, the rights of persons to purchase, possess, transfer, own, carry, transport, sell, or store deadly weapons, firearms, or pepper spray;
- Extending restrictions on municipal regulation of firearms to pepper spray and deadly weapons; removing authority of municipalities to prohibit possession of deadly weapons or pepper spray in areas where temporary events are held; and limiting award of attorney's fees.

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Com Sub SB 96

- Neither a municipality nor the governing body of any municipality may, by ordinance or otherwise, limit the right of any person to purchase, possess, transfer, own, carry, transport, sell, or store any deadly weapon, firearm, or pepper spray, or any ammunition or ammunition components to be used therewith nor to so regulate the keeping of gunpowder so as to directly or indirectly prohibit the ownership of the ammunition in any manner inconsistent with or in conflict with state law.

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Com Sub SB 96

- A municipality may enact and enforce an ordinance or ordinances that prohibit or regulate the carrying or possessing of a deadly weapon, firearm, or pepper spray in municipally owned or operated buildings.
- A municipality may enact and enforce an ordinance or ordinances that prohibit a person from carrying or possessing a deadly weapon, firearm, or pepper spray openly or that is not lawfully concealed in a municipally owned recreation facility:

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Com Sub SB 96

- Provided, That a municipality may not prohibit a person with a valid concealed handgun license from carrying an otherwise lawfully possessed firearm into a municipally owned recreation facility and securely storing the firearm out of view and access to others during their time at the municipally owned recreation facility.

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Com Sub SB 96

- A person may keep an otherwise lawfully possessed deadly weapon, firearm, or pepper spray in a motor vehicle in municipal public parking facilities if the vehicle is locked and the deadly weapon, firearm, or pepper spray is out of view.

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Com Sub SB 96

- A municipality may not prohibit or regulate the carrying or possessing of a deadly weapon, firearm, or pepper spray on municipally owned or operated property other than municipally owned or operated buildings and municipally owned recreation facilities pursuant to subdivisions (1) and (2) of this section:

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Com Sub SB 96

- That a municipality may prohibit persons who do not have a valid concealed handgun license from carrying or possessing a firearm on municipally owned or operated property.

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Com Sub SB 96

- It shall be an absolute defense to an action for an alleged violation of an ordinance authorized by this section prohibiting or regulating the possession of a deadly weapon, firearm, or pepper spray that the person:

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Com Sub SB 96

- (1) Upon being requested to do so, left the premises with the deadly weapon, firearm, or pepper spray or temporarily relinquished the deadly weapon, firearm, or pepper spray in response to being informed that his or her possession of the deadly weapon, firearm, or pepper spray was contrary to municipal ordinance; **and**
- (2) but for the municipal ordinance the person was lawfully in possession of the deadly weapon, firearm, or pepper spray.

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Com Sub SB 96

- Any municipality that enacts an ordinance regulating or prohibiting the carrying or possessing of a deadly weapon, firearm, or pepper spray pursuant to subsection (c) of this section shall prominently post a clear statement at each entrance to all applicable municipally owned or operated buildings or municipally owned recreation facilities setting forth the terms of the regulation or prohibition.

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Com Sub SB 96

- Redress for an alleged violation of this section may be sought through the provisions of §53-1-1 et seq. of this code, which may include the awarding of reasonable attorney's fees and costs, if the petitioner prevails.
- For the purposes of §61-7-14 of this code, municipalities may not be considered a person charged with the care, custody, and control of real property.

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Com Sub SB 96

- This section does not:
  - (1) Authorize municipalities to restrict the carrying or possessing of deadly weapons, firearm, or pepper spray, which are otherwise lawfully possessed, on public streets and sidewalks of the municipality; or
  - (2) Limit the authority of a municipality to restrict the commercial use of real estate in designated areas through planning or zoning ordinances.

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Com Sub SB 144

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Com Sub SB 144

- Precluding the charge of making a materially false statement in the investigation of a misdemeanor offense serving as the basis for a secured bond or pre-trial incarceration; establishing a criminal offense in certain circumstances for initiating a false complaint or report against a law-enforcement officer, k the information is false; and providing misdemeanor criminal penalties for a false report.

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Com Sub SB 144

- (a) A person who by threats, menaces, acts, or otherwise forcibly or illegally hinders or obstructs or attempts to hinder or obstruct a law-enforcement officer, probation officer, parole officer, courthouse security officer, correctional officer, the State Fire Marshal, or a full-time deputy or assistant fire marshal acting in his or her official capacity is guilty of a misdemeanor

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Com Sub SB 144

- Shall be fined not less than $50 nor more than $500 or confined in jail not more than one year, or both fined and confined.

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Com Sub SB 144

- A person who intentionally disarms or attempts to disarm a law-enforcement officer, correctional officer, probation officer, parole officer, courthouse security officer, the State Fire Marshal, or a full-time deputy or assistant fire marshal acting in his or her official capacity is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than five years.

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Com Sub SB 144

- A person who, with intent to impede or obstruct a law-enforcement officer, the State Fire Marshal or a full-time deputy or assistant fire marshal in the conduct of an investigation of a misdemeanor or felony offense, knowingly and willfully makes a materially false statement is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $25 nor more than $200, or confined in jail for five days, or both fined and confined.

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Com Sub SB 144

- The provisions of this section do not apply to statements made by a spouse, parent, stepparent, grandparent, sibling, half-sibling, child, stepchild or grandchild, whether related by blood or marriage, of the person under investigation. Statements made by the person under investigation may not be used as the basis for prosecution under this subsection.

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Com Sub SB 144

- For purposes of this subsection, "law-enforcement officer" does not include a watchman, a member of the West Virginia State Police or college security personnel who is not a certified law-enforcement officer.

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Com Sub SB 144

- A criminal charge under this subsection relating to the investigation of a misdemeanor offense may not be used to seek or support a secured bond or pre-trial incarceration.

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Com Sub SB 144

- (d) A person who intentionally flees or attempts to flee by any means other than the use of a vehicle from a law-enforcement officer, probation officer, parole officer, courthouse security officer, correctional officer, the State Fire Marshal, or a full-time deputy or assistant fire marshal acting in his or her official capacity who is attempting to make a lawful arrest of or to lawfully detain the person, and who knows or reasonably believes that the officer is attempting to arrest or lawfully detain him or her, is guilty of a misdemeanor

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Com Sub SB 144

- Shall be fined not less than $50 nor more than $500 or confined in jail not more than one year, or both fined and confined.

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Com Sub SB 144

- A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer, or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop is guilty of a misdemeanor
- Shall be fined not less than $500 nor more than $1,000 and shall be confined in jail not more than one year.

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Com Sub SB 144

- A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer, or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who operates the vehicle . in a manner showing a reckless indifference to the safety of others, is guilty of a felony.

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Com Sub SB 144

- A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer, or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who causes damage to the real or personal property of a person during or resulting from his or her flight, is guilty of a misdemeanor.

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Com Sub SB 144

- Shall be fined not less than $1,000 nor more than $3,000 and shall be confined in jail for not less than six months nor more than one year.

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Com Sub SB 144

- A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer, or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who causes bodily injury to a person during or resulting from his or her flight, is guilty of a felony.

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Com Sub SB 144

- A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer, or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who causes death to a person during or resulting from his or her flight, is guilty of a felony.

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Com Sub SB 144

- A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer, or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who is under the influence of alcohol, controlled substances, or drugs, is guilty of a felony.

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SB 180

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SB 180

- The Second Chance Driver's License Program;

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SB 180

- A person wishing to participate in the Second Chance Driver's License Program shall complete an application form prepared by the director.
- Upon receipt of a person's application, the director shall coordinate with the courts and the commissioner to verify the total amount of the applicant's unpaid court costs in the state of West Virginia at the time of the application.

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SB 180

- All courts shall provide a full accounting of all unpaid court costs assignable to the applicant within 30 days of the request of the director.
- The accounting shall separately identify the portion of the court costs that constitute a fine, forfeiture, penalty, or the amount due as restitution to a crime victim or costs to be credited to the Crime Victims Compensation Fund remaining unpaid by the applicant for each order of the court

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SB 180

- Any unpaid court costs not reported to the director by a court may not be collected separately by the court during the time in which the applicant is a participant in the program.

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SB 180

- If a participant completes the program, any unpaid court costs, except for unpaid fines, and unpaid amounts due as restitution to a crime victim credited to the Crime Victims Compensation Fund not submitted to the director shall be considered waived.
- Unless the unpaid court costs were part of an order entered after the date upon which the director requested information.

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SB 180

- The driver's license suspension or revocation with respect to any unpaid fine not reported by a court shall be released upon completion of the program by the participant.

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SB 180

- Within 30 days after receipt of information concerning unpaid court costs, the director shall determine if the applicant is eligible to participate in the program.
- Upon determination, the director shall promptly notify the applicant of his or her acceptance into the program.

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SB 180

- Upon acceptance of the applicant as a participant in the program, the director shall develop a consolidated repayment schedule for the participant, which will require the participant to remit payments on a monthly basis to the director according to guidelines.

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SB 180

- The monthly payment shall be determined based on the participant's monthly income and expenditures, but may not be less than $50 per month; and
- The consolidated repayment schedule shall require full payment of the unpaid court costs within one year.

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SB 180

- The consolidated repayment schedule may be amended to reflect changes in a participant's circumstances.
- The director may permit a hardship waiver of the requirements, upon a determination that the applicant's circumstances may have changed, and that the objectives of this article are best accomplished if the consolidated repayment schedule requires a lesser monthly payment or a longer period. director in the administration of this article.

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SB 180

- Provided, That the director may not waive the total amount of unpaid court costs submitted by the courts.
- Upon acceptance into the program, a participant in good standing with the program is under no obligation to make separate or additional payments of unpaid court costs directly to a court.

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SB 180

- The director shall disburse 95 percent of the portions of the payments .
- Courts shall accept and document these payments of 95 percent of the total unpaid court costs as payment in full of the amount owed by the participant to the court.

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Com Sub SB 311

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Com Sub SB 311

- Relating to court-ordered community service; designating supervisor of person sentenced to court-ordered community service; and providing state and political subdivisions immunity from certain suits from individuals participating in court-ordered community service.

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Com Sub SB 311

- Notwithstanding any provision of this code to the contrary, a municipal judge or a magistrate may substitute, in lieu of the imposition of a sentence of incarceration or imposition of a fine, community service work for such incarceration or fine.
- Where community service work is ordered as a substitute on a sentence of incarceration, an eight-hour work day shall extinguish one day of any sentence of incarceration.

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Com Sub SB 311

- The minimum wage established by the prevailing federal minimum wage in effect at the time sentencing is imposed shall be used to compute the amount of community service work necessary to extinguish the fine. In the discretion of the court, the sentence credits may run concurrently or consecutively.

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Com Sub SB 311

- Any community service ordered shall be performed for government entities or charitable or nonprofit entities.
- Any person who is sentenced to court-ordered community service under this section by a municipal court shall be supervised by the chief of police, or his or her designee.

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Com Sub SB 311

- Persons sentenced under the provisions of this section remain under the jurisdiction of the sentencing court.
- The court may withdraw the community service sentence at any time by order entered with or without notice and order a person previously sentenced to community service to serve the term of incarceration or to pay the fine available to the court upon the person's conviction:

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Com Sub SB 311

- Provided, That any community service work performed before the community service sentence is withdrawn shall be credited against any term of incarceration or fine imposed.
- This section does not create any additional cause of action for individuals who appear in municipal or magistrate court.

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Com Sub SB 472

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Com Sub SB 472

- Relating to inmate work including persons convicted in municipal court of ordinance violations as eligible to participate in alternative work programs.

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Com Sub SB 472

- Any person who has been convicted in a municipal court, under any municipal ordinance, which is punishable by imposition of a fine or confinement in a regional jail may, in the discretion of the sentencing judge as an alternative to the sentence imposed by statute or ordinance for the crime, be sentenced under one of the following programs:

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Com Sub SB 472

- The weekend jail program under which a person would be required to spend weekends or other days normally off from work in jail;
- The work program under which a sentenced person would be required to spend the first two or more days of his or her sentence in jail and then, in the discretion of the court, would be assigned to a municipal, county, or state agency to perform labor within the jail, or in and upon the buildings, grounds, institutions, bridges, and roads, including orphaned roads.

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Com Sub SB 472

- Eight hours of labor are to be credited as one day of the sentence imposed.
- A person sentenced under this program may be required to provide his or her own transportation to and from the work site, lunch, and work clothes;

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Com Sub SB 472

- The community service program under which a sentenced person would spend no time in jail, but would be sentenced to a number of hours or days of community service work with government entities or charitable or nonprofit entities approved by the circuit court.
- Regarding any portion of the sentence designated as confinement, eight hours of community service work is to be credited as one day of the sentence imposed.

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Com Sub SB 472

- Regarding any portion of the sentence designated as a fine, the fine is to be credited at an hourly rate equal to the prevailing federal minimum wage at the time the sentence was imposed.
- In the discretion of the court, the sentence credits may run concurrently or consecutively.
- A person sentenced under this program may be required to provide his or her own transportation to and from the work site, lunch, and work clothes;

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Com Sub SB 472

- In no event may the duration of the alternate sentence exceed the maximum period of incarceration otherwise allowed.
- In imposing a sentence under the provisions of this section, the court shall first make the following findings of fact and incorporate them into the court's sentencing order:

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Com Sub SB 472

- The person sentenced was not convicted of an offense for which a mandatory period of confinement is imposed by statute;
- That an alternative sentence under provisions of this article will best serve the interests of justice.

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Com Sub SB 472

- A person sentenced by a municipal judge would be under the supervision of the city department for whom work is performed.
- A person sentenced under the provisions of this section may be required to pay the costs of his or her incarceration, including meal costs:

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Com Sub SB 472

- A person sentenced under the provisions of this section remains under the jurisdiction of the court.
- The court may withdraw any alternative sentence at any time by order entered with or without notice and require that the remainder of the sentence be served in the county jail, a regional jail or a state correctional facility:

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Com Sub SB 472

- Provided, That no alternative sentence directed by the sentencing judge or magistrate or administered under the supervision of the sheriff, his or her deputies, a jailer, or a guard may require the convicted person to perform duties which would be considered detrimental to the convicted person's health as attested to by a physician.

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Com Sub SB 472

- A person sentenced to a day report center must be identified as moderate to high risk of reoffending and moderate to high criminogenic need, as defined by the standardized risk and needs assessment adopted by the Supreme Court of Appeals of West Virginia.

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Com Sub SB 472

- That a judge may impose a period of supervision or participation in a day report center, notwithstanding the results of the standardized risk and needs assessment, upon making specific written findings of fact as to the reason for departing from the requirements.

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Com Sub SB 472

- There is hereby authorized a program whereby a sentenced person in a regional jail or state correctional facility may be assigned to participate in performing requested tasks approved by the commissioner for municipal, county, and state agencies that could use such services as cleaning up streams, state parks, streets and highways, and similar services.

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HB 4958

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Plea Payment

- However, if they do not pay or request a payment plan on that day, they have up to 90 days to either pay in full, or to request a payment plan.

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Failure to Pay or Request Payment Plan

- Defendants have 90 days after they plead guilty or no contest, or are found guilty to pay in full all fines, fees, and costs or to request a payment plan.

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Failure to Pay or Request Payment Plan

- If the defendant does not pay or request a payment plan within the 90 days, courts may impose a $10.00 late fee in addition to the amount owed. This fee will be retained by the court and is not remitted to the state.
- The imposition of the late fee is at the discretion of the court.

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Failure to Pay or Request Payment Plan

- If the defendant has not paid in full or requested a payment plan within 90 days after adjudication of the case, the court must send a notice to the defendant.

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Failure to Pay or Request Payment Plan

- The notice must contain:
  - The defendant's payment is 90 days past due;
  - The defendant has failed to enroll in a payment plan;
  - A $10.00 late fee has been assessed, if applicable;
  - Defendant may be the subject of a judgement lien or have their debt sent to a collection agency or both.

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Failure to Pay or Request Payment Plan

- If the defendant does not respond to the notice within 30 days from the date the notice is mailed, the court may file a judgement lien, consign the amount for collection, or do both.

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Payment Plan Administration

- There is a new method for enrolling in a payment plan, for determining payment amounts and number of payments, and options for penalty and collection if the defendant defaults on their plan.

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Payment Plan Administration

- Under the new statute, all defendants must be offered an opportunity to enroll in a payment plan.
- The Defendant must sign an affidavit attesting to the fact that they cannot pay the assessed fines, costs, and fees.

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Payment Plan Administration

- Although the affidavit is required, payment plans are not need based. There is no income threshold below which a person must fall to be able to enroll in a plan and the information contained in the affidavit is to facilitate the calculation of the maximum monthly payment.

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Payment Plan Administration

- When a defendant enrolls in a payment plan, the court shall charge a $25.00 plan administration fee **in addition to** all other fines, costs, and fees.
- This fee is retained by the municipal court. The $25.00 plan administration fee may be paid in full at the time of enrollment or divided into no more than five payments.

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Payment Plan Administration

- No payment from the defendant is required when enrolling in a payment plan unless the defendant elects to pay the $25.00 plan administration fee in whole or in part.

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Payment Plan Administration

- The new statute has implemented a formula for calculating the maximum amount of payments and the number of payments in a plan.
- There is no longer a uniform time limit on the length of payment plans.

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Combining Payment Plans

- Combining payment plans for subsequent offenses
- It is the intention of the legislation that defendants only have one payment plan with any individual court.

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Combining Payment Plans

- The maximum amount of the payment will stay the same if the defendant has not undergone a change in economic circumstances, but the duration of the plan will change according to the new total amount due.

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Combining Payment Plans

- Combined payment plans are only available to defendants who are current with their existing payment plan.
- If the defendant is in arrears with their existing plan, the existing plan must be brought current, including the payment of any late fees, prior to establishing a new combined payment plan.

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Combining Payment Plans

- If the defendant cannot bring the account current, the court should advise the defendant that they have 90 days to remit the entire amount owed to the court, or the amount may be consigned to collection, or be placed as a judgement lien, or both.

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Combining Payment Plans

- If the defendant has undergone a change in economic circumstances that would affect the maximum payment due on the payment plan.
- The court may need to recalculate the maximum payment amount and apply that amount to the recalculated plan.

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Combining Payment Plans

- The court may also assess an additional $25 administration fee for recalculating the payment plan.
- As with the initial fee, the $25 may be paid in full at the time of recalculation or divided into no more than five payments.

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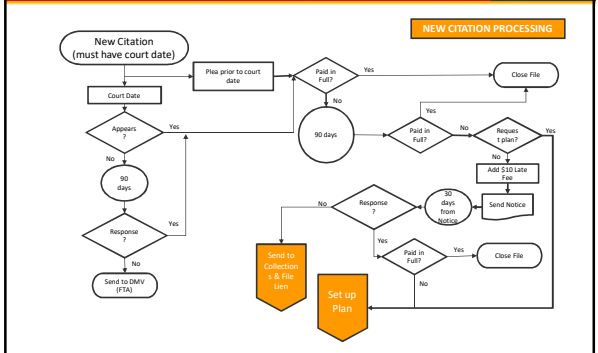

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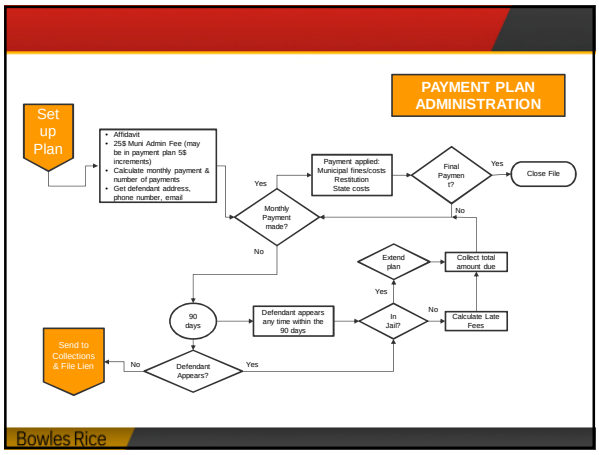
PAYMENT PLAN ADMINISTRATION
Set up Plan
Affidavit
258 Muni Admin Fee (may be in payment plan 5$ increments)
Calculate monthly payment & number of payments
Get defendant address, phone number, email
Monthly Payment made?
Yes
No
Payment applied: Municipal fines/costs Restitution State costs
Final Paymen t?
Yes
Close File
No
Extend plan
Collect total amount due
Yes
90 days
Defendant appears any time within the 90 days
In Jail?
No
Calculate Late Fees
Send to Collections & File Lien
No
Defendant Appears?
Yes
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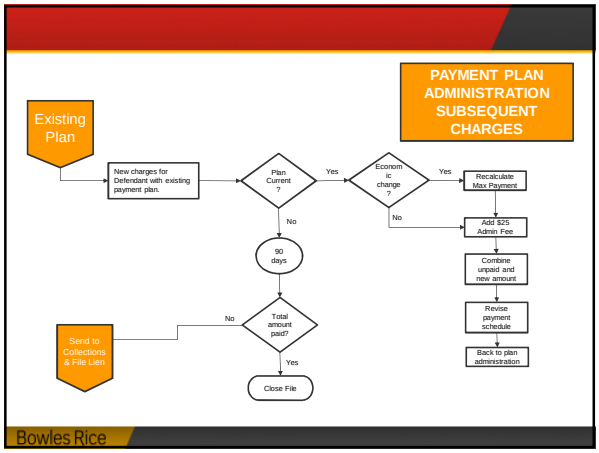
PAYMENT PLAN ADMINISTRATION SUBSEQUENT CHARGES
Existing Plan
New charges for Defendant with existing payment plan.
Plan Current ?
Yes
Economic change ?
Yes
Recalculate Max Payment
No
Add $25 Admin Fee
No
90 days
Combine unpaid and new amount
Revise payment schedule
Back to plan administration
Total amount paid?
No
Send to Collections & File Lien
Yes
Close File
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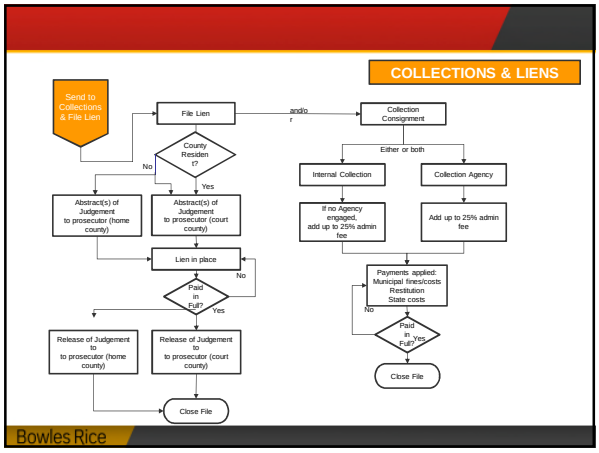
COLLECTIONS & LIENS
Send to Collections & File Lien
File Lien
and/or
Collection Consignment
County Resident?
No
Yes
Either or both
Internal Collection
Collection Agency
Abstract(s) of Judgement to prosecutor (home county)
Abstract(s) of Judgement to prosecutor (court county)
If no Agency engaged, add up to 25% admin fee
Add up to 25% admin fee
Lien in place
No
Paid in Full?
Yes
Payments applied: Municipal fines/costs Restitution State costs
No
Paid in Full?
Yes
Release of Judgement to to prosecutor (home county)
Release of Judgement to to prosecutor (court county)
Close File
Close File
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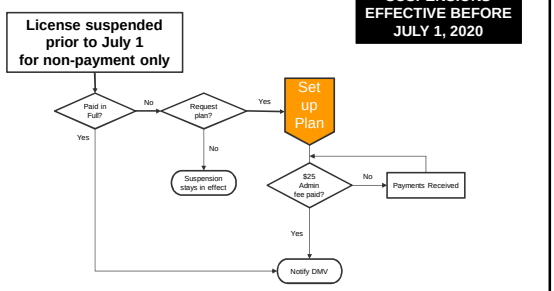
SUSPENSIONS EFFECTIVE BEFORE JULY 1, 2020



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WEST VIRGINIA MUNICIPAL LEAGUE

Criminal Procedure/Constitutional Protections

Floyd M. Sayre, III, Esq.
2020

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Bowles Rice

SEARCHES & SEARCH WARRANTS

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GENERAL

- The U.S. and West Virginia Constitutions guarantee citizens the right to be free of unreasonable searches and seizures. *U.S. Const., Amend. IV and N.M. Const., Art II, Sec. 10.* These provisions give a judge the responsibility to determine when law enforcement officers may reasonably conduct searches.
- Some aspects of the law governing search and seizure are unsettled or evolving. This chapter provides general guidelines for judges, but is not intended to address all issues that may arise.

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SEARCH WARRANTS

- Municipal judges have authority to issue search warrants to law enforcement officers to search premises located within the municipality, but only related to offenses within the court's jurisdiction.

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SEARCH WARRANTS

- Before issuing a search warrant, the judge must make an independent determination of whether there is probable cause to believe that evidence relating to the commission of a crime exists on the premises or person to be searched.

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SEARCH WARRANTS

- Search warrants should not be issued routinely or "rubber stamped." They should be issued only after the judge carefully and impartially reviews the facts of each case as presented in the affidavit supporting the request for the warrant.
- A search warrant must be specific about the place to be searched and the objects searched for.

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ISSUANCE

The court may issue a warrant to search for and seize the following type of property:

- Property that has been obtained or is possessed in a manner that constitutes a violation of a municipal ordinance.
- Property designed or intended for us, or which is or has been used, as the means of committing a violation of a municipal ordinance.
- Property that would be material evidence in a prosecution for a violation of a municipal ordinance.

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ISSUANCE

- The warrant must contain or have attached a sworn written statement of facts showing probable cause for its issuance and the name of any person whose sworn written statement has been taken in support of the warrant. The probable cause must be based upon substantial evidence, which may be hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished.

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ISSUANCE

- Before ruling on a request for a warrant, the court may require the person making the affidavit, and any supporting witnesses, to appear personally and testify before the court. In that case, the additional evidence must be put in writing under oath or affirmation and served with the warrant.
- The judge's review is almost always *ex parte*; the subject of the search warrant does not usually receive notice.

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EXECUTION & RETURN

- A municipal search warrant must be executed by a municipal police officer, a full-time salaried state or county law enforcement officer, a campus security officer, or a federal civil officer authorized to enforce or assist in enforcing any federal law.

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EXECUTION & RETURN

- The inventory of property must be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken.

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EXECUTION & RETURN

- The inventory shall be signed by the officer and the person or persons in whose presence the inventory was taken.
- The return to the municipal court must be made promptly after execution of the warrant. The return is accompanied by a written inventory of any property taken.

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SEARCHES WITHOUT WARRANTS

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GENERAL

- The law permits law enforcement officers to conduct searches without warrants in certain limited circumstances listed below, where the need or the opportunity for the officer to search immediately is especially obvious. Searches without warrants generally come to the attention of a judge in the form of motions made by defendant to suppress evidence.

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GENERAL

- If the prosecutor attempts to introduce evidence that was seized after a warrantless search, the defendant may seek to have the evidence suppressed on the grounds that a warrant should have been obtained.

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EVIDENCE IN PLAIN VIEW

- If an officer sees contraband or other incriminating evidence in plain view while he or she is conducting a lawful investigation, the officer may seize such property without benefit of a warrant, and if the seized property establishes probable cause, may make a warrantless arrest. Seeing contraband in plain view does not constitute a search.

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EVIDENCE IN PLAIN VIEW

- However, the officer cannot enter a place, such as a vehicle or a home, and seize evidence in plain view without a warrant or some other lawful reason. The officer must be in a place where he or she is allowed to be in order to seize the evidence. For example, if an officer stops a vehicle and, upon approaching the driver, notices illegal drugs on the passenger seat, the officer may not enter the vehicle and seize the drugs. The officer must either get a warrant or consent from the driver to enter the vehicle unless exigent circumstances exist.

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SEARCHES OF PERSONS & PLACES

- **Incident to Arrest**
  - An arresting officer may make a valid warrantless search of the person whom he or she is arresting and the portion of the premises within the arrestee's control.
    - The search and seizure will be invalid if the arrest is invalid.
    - The arrest should be made before the search.
    - The search should be made immediately after the arrest.
    - An arrest is not valid if it is merely used as an excuse to search a person or place.

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SEARCHES OF PERSONS & PLACES

- A valid warrantless arrest may be made if based upon information obtained from an unidentified informant, if the information is corroborated by other information such as police reports or verification of informant's description by the police.

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SEARCHES OF PERSONS & PLACES

- **Exigent Circumstances**
  - Premises may be searched without a warrant if exceptional circumstances exist (also known as "exigent circumstances").
  - A situation requiring swift action to prevent imminent danger of life or serious damage to property: The claim of an extraordinary situation is measured by the facts known to the officers at the time they are called upon to act.

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SEARCHES OF PERSONS & PLACES

- **Imminent escape:** This situation is not limited to a chase but also includes those situations where swift action is needed to prevent an escape. The "imminent escape" emergency justifies a warrantless entry into the residence of a suspect for the purpose of an arrest.
- **Contraband:** An officer may search without a warrant when he or she has cause to believe that contraband may be immediately removed or destroyed.

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SEARCHES OF PERSONS & PLACES

- Even if a law enforcement officer has legal possession of sealed boxes, the officer may not conduct a warrantless search by opening those boxes without exigent circumstances.

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SEARCHES OF PERSONS & PLACES

- **Voluntary Consent**
  - A person may voluntarily consent to a search. By voluntarily consenting the person waives the right to be free from a search without a warrant. Any evidence found during a consensual search may be lawfully seized.

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SEARCHES OF PERSONS & PLACES

- The person who consents must know that he or she has a right to refuse a warrantless search.
- The consent must be given voluntarily; that is, the person must not be under duress or be coerced by the officer requesting the search.
- The consent must be clearly and explicitly given. Permission to enter premises is not permission to search the premises.
- The scope of the search must be limited to the consent given.

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SEARCHES OF PERSONS & PLACES

- **Consent of Co-Possessor**
  - Where two or more people have common use of or joint access to the premises, a relationship to the premises based on right of occupancy, possession of a key to premises, individually owned property on the premises, or community property interests, and where only the consent of one of these people has been given, the search is a valid consensual search.

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SEARCHES OF PERSONS & PLACES

- The police cannot, however, search an area reserved for a non-consenting individual's exclusive use. In other words, if several people live in a house, any one of those people could consent to a search of the "common area" of the house and any area under that person's exclusive control, such as a kitchen or living room, but not another person's bedroom.

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SEARCHES OF PERSONS & PLACES

- However, a recent United States Supreme Court case stated that, if two people have equal rights to the premises, and one consents to a search, but the other specifically does not consent, the search may not be done. In this case both parties were present. There is no requirement that law enforcement seek out all joint possessors of a premises prior to searching.

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SEARCHES OF PERSONS & PLACES

- **Private Person Conducts Search**
  - A private person who conducts a search for private purposes does not need a search warrant. Security searches made by airline employees acting under federal tariff regulations, for example, are private searches and do not require a search warrant.

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SEARCHES OF PERSONS & PLACES

- **Public Schools**
  - Public school officials may conduct a warrantless search of a student's person if he or she has a reasonable suspicion that a crime has been committed or the official has reasonable cause to believe that the search will reveal evidence of the student's violation of school laws or rules.

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SEARCHES OF MOTOR VEHICLES

- Probable cause is always needed to search a motor vehicle, whether the vehicle is parked, stopped for a license and registration check, or stopped for an investigation. Because a motor vehicle differs inherently from a residence or office due to its mobility and possibility of movement outside an officer's jurisdiction, a motor vehicle may be searched without a warrant on facts that would not necessarily justify a warrantless search of a residence or office.

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SEARCHES OF MOTOR VEHICLES

- The scope of a warrantless search based on probable cause is no narrower and no broader than what would be authorized by a warrant. The scope of a search must be supported by probable cause. If an officer has probable cause to search an automobile for contraband, the officer can search every part of the vehicle (including the trunk), including all containers and packages, where the contraband might be found.

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SEARCHES OF MOTOR VEHICLES

- The scope of a warrantless search of an automobile for contraband is not defined by the nature of the container (e.g. luggage or paper bag) in which the contraband is secreted. The object of the search and the places in which there is probable cause to believe that the object may be found define the scope of the search.

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SEARCHES OF MOTOR VEHICLES

- Before a vehicle can be stopped, the officer must have an articulable and reasonable suspicion that a motorist is unlicensed, that an automobile is unregistered, or that either the vehicle or occupant is otherwise in violation of the law. The stopping of only certain automobiles and the detaining of the driver in order to check license or registration constitute an infringement of a person's Fourth Amendment rights. The random stopping of vehicles does not constitute a general roadblock.

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SEARCHES OF MOTOR VEHICLES

- Random stopping and detaining constitute a "seizure," even if the purpose of the stop is limited and the detention brief.
- At the same time that an automobile may be subject to governmental regulations, a person operating or traveling in an automobile does not lose his or her reasonable expectation of privacy.

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SEARCHES OF MOTOR VEHICLES

- For a warrantless search of a vehicle to be valid, there must first be a justifiable reason for stopping the vehicle.
  - An officer may stop a vehicle for the lawful arrest of the driver for a violation of the Motor Vehicle Code. Once the defendant is arrested, the officer may search the defendant and that portion of the vehicle that is within the defendant's reach. In other words, the officer may search the passenger compartment of the vehicle and any containers within the passenger compartment without a warrant. This is known as a search incident to a lawful arrest.

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SEARCHES OF MOTOR VEHICLES

- The arresting officer may broaden the search to the entire vehicle if the officer is going to impound the vehicle. This broadened search is an inventory search, not a search incident to a lawful arrest, and may include the trunk as well as the passenger compartment of the vehicle. See below for more information on inventory searches. The existence of a Motor Vehicle Code violation must not be used as an excuse for searching the vehicle for evidence of another crime.

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SEARCHES OF MOTOR VEHICLES

- As long as an officer has a reasonable suspicion, not merely a hunch, that a crime has been or is being committed, the officer may stop a vehicle for the purpose of investigating possible criminal activity, even though there is no probable cause to make an arrest. Radio dispatches from investigating officers or an eyewitness description of a vehicle at the scene of a crime are examples of cause for making a valid investigatory stop of a vehicle.

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SEARCHES OF MOTOR VEHICLES

- **Roadblocks and Checkpoints**
  - Officers have authority to set up general roadblocks or checkpoints for purposes of checking sobriety, licenses and vehicle registrations. However, this may not be used as an excuse for searching the vehicle for evidence of another crime.

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SEARCHES OF MOTOR VEHICLES

- **Arrest for Motor Vehicle Code Violation**
  - After a valid license or registration check or a valid investigatory stop, there is probable cause for a warrantless search of the vehicle if the officer:
    - Sees contraband or other evidence of a crime in plain view. See previous discussion of plain view.
    - Smells marijuana and there are exigent circumstances necessitating immediate action. The mobility of a vehicle is not enough to establish exigency.

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SEARCHES OF MOTOR VEHICLES

- As in other searches, if the driver of a vehicle gives consent and consent is unlimited in scope, and if the stop and/or arrest is initially valid, there is no issue of illegal search and any contraband found can be properly seized.

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SEARCHES OF MOTOR VEHICLES

- Generally, if it is practical to obtain a warrant to search a vehicle, a search warrant must be obtained. The following situations illustrate when a warrant should be obtained.
  - The vehicle is regularly parked in a specific location, like a person's driveway.
  - The vehicle travels a regular route, for example, a delivery truck.
  - The vehicle is in a garage for repairs.
  - Probable cause to search has developed after a vehicle has been impounded.

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SEARCHES OF MOTOR VEHICLES

- **Inventory Search**
  - An inventory search is performed to protect the contents of the vehicle. It is done to ensure that anything the driver has in the vehicle is returned to the driver when the vehicle is released (assuming the items in the vehicle are not contraband). A warrantless inventory search of a vehicle is lawful if all of the following requirements are met:
    - The vehicle is in police control and custody.
    - The inventory is made pursuant to established police regulations.
    - The search is reasonable, to protect the owner's property or to protect the law enforcement officer from false claims or potential danger.

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SEARCHES OF MOTOR VEHICLES

- If the evidence of crime that is discovered is property, the possession of which is prohibited by law, no search warrant is required before seizing the property. Inventory searches must be limited to the extent necessary to carry out the caretaking function. If the vehicle is left on the road for a long time before being taken into custody, a warrantless search is not authorized.

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SEARCHES OF MOTOR VEHICLES

- An inventory search of a defendant's automobile, lawfully parked at the scene of the crime, made after defendant has been arrested and booked, is lawful. The evidence obtained from the parked car will not be suppressed even if the only connection between the car, the defendant and the crime is that the defendant is the owner of the car and the keys are found in the defendant's possession during booking.

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SEARCHES OF MOTOR VEHICLES

- A warrantless search of an automobile will not be invalid just because it reveals evidence of a crime by a passenger who does not own the vehicle because the defendant/passenger does not have a legitimate expectation of privacy in an automobile belonging to another. In other words, the defendant/passenger has no standing to object to a warrantless search of the driver's vehicle, even though the passenger was being transported in the automobile.

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MOTION TO SUPPRESS

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GENERAL

- A person contesting a search and seizure may make a motion for return of the property and suppression of its use as evidence. A municipal judge may hear and decide a motion to suppress only if the search and seizure was in connection with a case filed in his or her municipal court.

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GENERAL

- At a hearing on a motion to suppress, the judge may receive evidence on any fact related to the motion. Hearsay is admissible. A defendant's testimony at a hearing on a motion to suppress cannot be used as substantive evidence against the defendant at trial, unless it is used to impeach his or her testimony at trial.

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GENERAL

- In cases where the search and seizure occurred without a warrant and a motion to suppress is made, the prosecution has the burden of proving by a preponderance of the evidence that circumstances existed which justified the officer's acting without a warrant.

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GENERAL

- If after a hearing the judge grants a motion to suppress, the property is returned unless otherwise subject to lawful detention, such as illegal drugs or other contraband. Charges may or may not be dismissed based upon the granting of the motion. It is up to the prosecution to determine whether they can prove their case beyond a reasonable doubt without the suppressed evidence.

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WHO MAY FILE MOTION

- Filing a motion to suppress the use of seized property as evidence challenges the legality of the search and seizure. Not everyone who claims an illegal search and seizure has a right to challenge it. The constitutional right for a person to be secure from unreasonable searches and seizures is a personal right. Therefore, only a person whose right to privacy has been infringed by a search and seizure has the right to challenge the search and seizure.

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GROUNDS FOR SUPPRESSION

- **With a Warrant**
  - When the search was made pursuant to a search warrant, and the "good faith" exception to the exclusionary rule does not apply (see below), the following may be grounds for granting a motion to suppress:
    - The search and seizure was not conducted within the limits and for the reasons stated in the search warrant.
    - The search and seizure was conducted in an unreasonable manner.
    - The property obtained was not described in the warrant.

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GROUNDS FOR SUPPRESSION

- There was no substantial basis established by the affidavit for determining the existence of probable cause, or the affidavit upon which the warrant was based is proved to be false and the falsity is known or should have been known by the person making the affidavit.

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GROUNDS FOR SUPPRESSION

- The U.S. Supreme Court has adopted a "good faith" exception to the exclusionary rule to the effect that evidence seized by police officers who are acting in reasonable reliance upon a search warrant issued by a detached and neutral judge, but ultimately found to be invalid, is admissible at trial. Suppression of evidence should be ordered only on a case-by-case basis and only in those unusual cases in which exclusion will further the purposes of the exclusionary rule.

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GROUNDS FOR SUPPRESSION

- **Without a Warrant**
  - When the search was made without a warrant, the following may be grounds for granting a motion to suppress:
    - The arrest preceding the search, whether with or without an arrest warrant, was invalid.
    - The search following the arrest was made too long after the arrest.
    - The search following the arrest extended beyond that portion of the premises within the arrestee's control.

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GROUNDS FOR SUPPRESSION

- The circumstances surrounding the warrantless search were not "exceptional." For example, there was no imminent peril to life or limb.
- Consent to search was not voluntarily given.
- It was practical under the circumstances to obtain a search warrant to search a motor vehicle.
- The initial stop of the motor vehicle was invalid.

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ARREST

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ARREST WITHOUT A WARRANT

- In all municipal court cases, if the defendant is arrested without a warrant, a criminal complaint must be prepared and given to the defendant prior to transferring the defendant to the custody of the detention facility. If the defendant is in custody, the complaint should be filed with the municipal court at the time it is given to the defendant. If the court is not open at that time and the defendant remains in custody, the complaint must be filed the next business day. If the defendant is not in custody the next business day, the complaint is to be filed with the court as soon as practicable.

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ARREST WITHOUT A WARRANT

- An officer may make a warrantless arrest for a petty misdemeanor only if the officer has probable cause to believe that the suspect is committing a misdemeanor in the officer's presence; that the suspect was present at the scene of a motor vehicle accident; or that the suspect is charged with a crime in another jurisdiction as further explained in

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ARREST WITHOUT A WARRANT

- West Virginia statutes provide an exception to this rule in cases where an officer is at the scene of a domestic disturbance and has probable cause to believe that a person has committed an assault or a battery upon a household member. "Household member" is defined as a spouse, former spouse, family member (including a relative, parent, current or former step-parent, current or former in-law, child or co-parent of a child), or a person with whom the victim has had a continuous personal relationship.

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PROBABLE CAUSE DETERMINATION

- Under the Fourth Amendment to the United States Constitution, an accused who is detained and unable to meet conditions of release has a right to a probable cause determination. To satisfy this constitutional requirement, the judicial determination of probable cause must be prompt, although delay up to 48 hours may be constitutionally permissible. The burden is on the government to prove a delay beyond 48 hours is reasonable. Weekends and holidays are not to be considered as permissible excuses for delays beyond 48 hours.

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PROBABLE CAUSE DETERMINATION

- The probable cause determination is non-adversarial and is usually held in the absence of the defendant and of counsel. A showing of probable cause must be based upon substantial evidence, which may be hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing there is a factual basis for the information furnished.

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PROBABLE CAUSE DETERMINATION

- Witnesses are not necessary unless the court believes witnesses might be useful for finding no probable cause. In other words, the judge must find that there was probable cause to arrest the defendant without a warrant.

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PROBABLE CAUSE DETERMINATION

- If the complaint and any attached statements fail to make a written showing of probable cause, the police officer or prosecutor may file either an amended complaint or a separate "statement of probable cause" which sets forth sufficient facts to detain the defendant.
- If the court finds that there is no probable cause to believe that the defendant has committed an offense, the court dismisses the complaint without prejudice and orders the release of the defendant.

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PROBABLE CAUSE DETERMINATION

- If the court finds probable cause that the defendant committed an offense, the court reviews the conditions of release. If no conditions of release have been set and the offense is a bailable offense, the court sets bail. The court's finding of probable cause must be in writing.

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ARREST WARRANT

- Although a criminal summons is the preferred method of acquiring jurisdiction over a defendant in a non-felony criminal action, the judge may determine, if good cause is shown, that the interests of justice will be better served by issuing an arrest warrant. If the defendant is arrested pursuant to a warrant, an additional probable cause determination is not necessary after arrest.
- If the defendant fails to appear in person, or by counsel when it is allowed by statute, at the time and place specified in the summons, the judge may issue a type of arrest warrant known as a "bench warrant."

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DISCOVERY

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DISCOVERY

- Discovery is the process where the parties exchange information that they will be using at trial. Discovery rules were enacted so that there would be full disclosure and no surprises at trial.

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DISCOVERY

- The prosecution must disclose and make available for inspection and copying any records, papers, documents or other tangible evidence in its possession, custody and control that meet one or more of the following conditions:
  - Is material to the preparation of the defense.
  - Is intended for use by the prosecution at trial.
  - Was obtained from or belongs to the defendant.

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DISCOVERY

- The defendant must disclose and make available to the prosecution for inspection and copying any records, papers, documents or other tangible evidence in the defendant's possession, custody or control that:
  - The defendant intends to introduce in evidence at trial.

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DISCOVERY

- The prosecution and defendant must exchange a list of the names and addresses of witnesses each intends to call at trial, along with any recorded statement made by the witness, no later than ten days prior to trial. If requested by a party, any witness on either list must be made available for interview prior to trial.

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DISCOVERY

- Each party has a continuing duty to promptly disclose any additional material or witnesses that the party would have previously been required to disclose.

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DISCOVERY

- If a party fails to comply with the discovery rule or an order issued pursuant to it, the court may take any of the following actions:
  - Order the party to disclose the information.
  - Grant a continuance.
  - Prohibit the party from calling an undisclosed witness or introducing undisclosed evidence at the trial.
  - Enter any other appropriate order, including holding an attorney or party in contempt of court.

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MOTIONS

- Any defense or objection that is capable of determination without trial of the general issue may be raised by motion before trial.
  For example:
  - A defendant challenging a search and seizure may make a motion for return of the property and suppression of its use as evidence in trial.
  - A defendant challenging a confession, admission or other evidence may make a motion to suppress its use as evidence in trial.

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MOTIONS

- An application to the court for an order shall be by motion and made in writing, unless the request is made during a hearing or trial. The motion shall state with particularity the grounds on which it is based and shall set forth the specific relief or order sought.

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EXCUSAL & RECUSAL

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EXCUSAL

- A party has no right, statutory or otherwise, to excuse a municipal judge. This means that no party has the automatic right to disqualify the judge from hearing a case to which that judge has been assigned. If a party asks the judge to excuse him or herself, the judge should inform the party that excusal is not allowed in municipal court. However, when judges feel that they should not hear a case, recusal is the method by which they remove themselves.

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RECUSAL

- **Grounds for Disqualification and Recusal**
  - The Code of Judicial Conduct states that a judge is disqualified and must recuse him or herself in any proceeding in which the "judge's impartiality might reasonably be questioned."

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RECUSAL

- Some of the circumstances described in the Code for when a judge must recuse him or herself are listed in the following slides. However, under the Code, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, even if the judge's situation does not fall within any of the listed circumstances.

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RECUSAL

- A judge must recuse him or herself from a case when any of the following circumstances apply:
  - The judge has a personal bias or prejudice concerning a party or a party's lawyer.

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RECUSAL

- The judge has personal knowledge of disputed evidentiary facts concerning the case.
- The judge, while a judge or a candidate for judicial office, has made a public statement that commits, or appears to commit, the judge with respect to either (a) an issue in the proceeding; or (b) the controversy in the proceeding.

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RECUSAL

- The judge knows that the judge or the judge's spouse, parent or child, or any other family member residing in the judge's household, has one of the following:
  - A financial interest in the subject matter in controversy.
  - A financial interest in a party to the case.
  - Any other significant interest that could be substantially affected by the outcome of the case.

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RECUSAL

- The judge or the judge's spouse, or any person related to them within the third degree, or the spouse of any of those related people, meets one of the following:
  - Is a party to the case, or is an officer, director or trustee of a party.
  - Is acting as a lawyer in the case.
  - Is known by the judge to have a significant interest that could be substantially affected by the outcome of the case.
  - Is to the judge's knowledge likely to be a material witness in the case.

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RECUSAL

- Judges are required to use reasonable efforts to keep informed about their own personal and fiduciary financial interests and the personal financial interests of their spouse and minor children residing in the household.

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RECUSAL

- A judge who is disqualified for any reason other than personal bias or prejudice concerning a party can disclose this fact on the record and ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification.

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RECUSAL

- The judge will be permitted to hear the case only if all the parties and their lawyers, without participation by the judge, agree in writing that the judge should not be disqualified. The agreement must be incorporated in the record of the proceeding. Without unanimous written agreement by all the parties and their lawyers, the judge remains disqualified and must recuse him or herself from the case.

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WEST VIRGINIA MUNICIPAL LEAGUE

Evidence

Floyd M. Sayre, III, Esq.
2020

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APPLICATION OF THE RULES OF EVIDENCE

- **Courts**
  - The rules of evidence apply to all courts in the state, including municipal, magistrate, metropolitan, probate, district and appellate courts, and to commissioners, masters, referees and child support hearing officers appointed by the court. **Rule 101**

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APPLICATION OF THE RULES OF EVIDENCE

- **Types of Evidence**
  - The evidence rules apply to all types of evidence: testimony of witnesses, real evidence (an object which has a direct or indirect part in the incident), and demonstrative evidence (visual aids such as models, maps, charts and demonstrations).

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CONSTRUCTION OF THE RULES OF EVIDENCE

- Judges have a great deal of discretion in ruling on the admissibility of evidence. In doing so, judges are guided by the overall philosophy expressed in rules **Rule102**

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CONSTRUCTION OF THE RULES OF EVIDENCE

- **Evidence in Municipal Court**

  These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined. **Rule102**

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GENERAL PRINCIPLES OF EVIDENCE

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OVERALL

The goal of the rules of evidence is the introduction of relevant, reliable and material information for use in determining issues. The fact finder must evaluate the evidence to determine its credibility. Evidence that is relevant, reliable and material may be excluded if it will create unfair prejudice, confusion or a waste of time, or if public policy (as expressed in the rules of evidence) mandates exclusion.

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PRELIMINARY QUESTIONS

- The court determines preliminary issues, such as the qualification of a person to be a witness, the existence of a privilege or the admissibility of evidence. **Rule104**

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PRELIMINARY QUESTIONS

- For example, a defendant who testifies on a preliminary matter, such as the admissibility of certain evidence, does not become subject to cross-examination on other issues in the case. The defendant retains the Fifth Amendment protection against self-incrimination.

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ORIGINAL WRITING RULES

- Photocopies or duplicates are admissible unless the authenticity of the original is questioned or under the circumstances it would be unfair to admit the duplicate in lieu of the original. **Rule1003**

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JUDICIAL NOTICE

- The court may take judicial notice of a fact (i.e. accept as established) which commonly is known to be true without the need for evidence. The fact must be either generally known within the community or capable of determination by reference to sources with known accuracy. **Rule201**

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JUDICIAL NOTICE

- The purpose of this rule is to save the time and expense of proving self-evident or well-established facts. For example, the court may take judicial notice of a statutory provision.

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RELEVANCY

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ADMISSION IN GENERAL

- Relevant evidence means evidence that has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." **Rule 401**

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ADMISSION IN GENERAL

- Relevancy is the fundamental basis for admission for any evidence. Evidence that is not relevant is not admissible, for it would have no use in proving anything at issue. Evidence that is relevant is admissible unless otherwise provided by law. **Rule 402**

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ADMISSION IN GENERAL

- Generally, whatever naturally and logically tends to establish a fact at issue is relevant. The logical relevance of the evidence need be only minimal to be admissible. Since the evidence must have "any tendency" to establish the fact, the evidence in itself need not be sufficient to persuade the judge or jury that the fact is more probably true than not. **Rule 402**

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EXCLUSION IN GENERAL

- Relevant evidence is admissible unless excluded by constitution, statute, the West Virginia Rules of Evidence, or other rules adopted by the Supreme Court. **Rule 402**

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EXCLUSION IN GENERAL

- The rules favor admission of relevant evidence except when certain public policies or practical considerations dictate. **Rule 403**

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AUTHENTICATION AND IDENTIFICATION

- Authentication and identification are aspects of relevancy. Evidence must be authenticated or identified in some way to be relevant and admissible. Generally this requirement is met if there is evidence to support a finding that the matter in question is what its proponent claims. **Rule 901**

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AUTHENTICATION AND IDENTIFICATION

- For example, a non-expert witness can testify on the genuineness of a person's handwriting based upon familiarity with the handwriting.
- A witness can identify a voice on the phone based upon familiarity with the voice.
- Public records may be authenticated by testimony that they are from the public office where items of that nature are kept.
- In the case of a document, authenticity and identification usually are not an issue unless the document is challenged, which may then require identification by the author or custodian. **Rule 901**

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EVIDENCE ON SPECIFIC TOPICS

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CHARACTER EVIDENCE

- Character is a person's nature, general disposition, or specific disposition on traits such as honesty, peacefulness and truthfulness.
- Evidence of a person's character is not admissible to prove that the person acted consistently with that character on a particular occasion. **Rule 404**

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CHARACTER EVIDENCE

- This is because character evidence often has little probative value and may distract the judge or jury from the main question of what actually occurred in the case in question. This can be a particularly difficult area of evidence for judges and trial lawyers. **Rule 404**

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CHARACTER EVIDENCE

- Exceptions to the general rule are:
  - Character evidence used for impeachment of the truthfulness of witnesses is admissible.
  - In a criminal case, evidence of the defendant's character is admissible when offered by the defendant. The prosecution then may introduce evidence of the defendant's character to rebut the defendant's evidence. The prosecution may not use evidence of the defendant's character unless initially offered by the defendant.
  - In a criminal case, the character of the victim is admissible when offered by the defendant. Once admitted, the prosecution may introduce evidence of the victim's character to rebut this evidence. **Rule 404**

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CHARACTER EVIDENCE

- Similarly, evidence of other crimes or wrong acts is not admissible to show that a person acted in conformity with this history. This evidence may be admissible for other purposes, however, such as to prove motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident.
- Specific instances of a persons' conduct may be admitted in cases where character is an essential element of a charge, claim or defense. **Rule 404**

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CHARACTER EVIDENCE

- **Habit Evidence**
  - Habit evidence is admissible. Habit is a person's regular response to a particular situation. Habit is a response that is repeated to the point of becoming semi-automatic, such as always signaling turns in a car. The predictability of the habit bolsters its reliability as evidence that the same response occurred in the current case. Evidence of a person's habit, or an organization's routine practice, is relevant and admissible to prove that the conduct of the person or organization was in conformity with the habit or practice. **Rule 406**

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REMEDIAL MEASURES

- Evidence of remedial measures is not admissible to prove negligence or culpable conduct in connection with an event.
- Remedial measures are those actions taken after an event which would have made the event less likely to occur if taken earlier. This evidence can be admitted for other purposes, however, such as to prove ownership or control. **Rule 407**

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GUILTY PLEAS

- Evidence of a defendant's offer to plead guilty or no contest to a crime, or any statement made during the plea negotiations, is not admissible against
the defendant in any civil or criminal proceeding. **Rule 410**

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WITNESS TESTIMONY

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BASIC REQUIREMENTS

- Every person is competent to be a witness unless the rules provide otherwise. The two qualifications on this rule are:
  - The witness must have personal knowledge of the matter. **Rule 602**
  - The witness must declare by oath or affirmation that the testimony will be truthful. **Rule 603**

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BASIC REQUIREMENTS

- The competency of a witness to testify means that the witness must have some capacity to observe, record, recollect and recount, as well as understand the duty to tell the truth. In determining witness competency, courts generally view the evidence in the light most favorable to the witness and permit the jury to assess the witness's credibility. The judge may not testify in the case. **Rule 601**

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QUESTIONING OF WITNESSES

- The court must exercise reasonable control over the manner and order of questioning witnesses and presenting evidence in order to promote discovery of the truth, avoid needless time in trial, and protect witnesses from harassment and undue embarrassment.

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QUESTIONING OF WITNESSES

- The court may control the following:
  - Cross-examination should be limited to the subject matter of the direct examination and questions affecting the credibility and bias of the witness. The court may permit examination into additional matters.
  - Leading questions (i.e., questions that suggest the answer) should not be used in direct examination unless necessary to develop the witness's testimony or if the witness is hostile, such as identified with the opposing side. Leading questions are permitted on cross-examination.

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QUESTIONING OF WITNESSES

- The court may call and interrogate witnesses. However, this should be a rare occurrence in criminal cases. In criminal matters, the court should be especially guarded in its questioning of a witness in order to maintain an appearance of impartiality, to avoid the appearance of commenting on the evidence or guilt or innocence of the defendant, and to preserve the prosecution's burden of proving its case.

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QUESTIONING OF WITNESSES

- Before introduction of evidence and upon motion of either party or the court, the court shall exclude witnesses so they cannot hear the testimony of other witnesses. Witnesses that may not be excluded include parties to the case, an officer or employee designated as the representative of a party, or a person whose presence is essential to the presentation of a party's case (e.g., an expert witness). **Rule 615**

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QUESTIONING OF WITNESSES

- If a witness cannot recall an event while testifying, the witness may use a writing, such as a police report, to refresh his or her memory. The writing is not introduced into evidence just because it has been used in this way. **Rule 612**

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QUESTIONING OF WITNESSES

- However, if a witness uses a writing to refresh memory for the purposes of testifying, the court may order that the adverse party be allowed to inspect the writing, introduce it, and cross-examine the witness on it. **Rule 612**

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QUESTIONING OF WITNESSES

Using a writing to refresh a witness's memory is different from using a recorded recollection. Once a witness "jogs" his or her memory by reviewing some kind of writing, the witness then testifies in court from his or her refreshed memory - not by reading the writing aloud. By contrast, a recorded recollection is used in lieu of live testimony when a witness is no longer able to recall past events, but was able to record those events at an earlier date. When a recorded recollection is used, the writing is read aloud into evidence.

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IMPEACHMENT

- Impeachment is the process of questioning or attacking the credibility ("believability") of a witness. The credibility of a witness may be attacked by any party, including the party calling the witness. **Rule 607**

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IMPEACHMENT

- A witness can be impeached, for example, by showing that the witness made prior inconsistent statements, is biased, has a disreputable character, or was unable to observe the events. These questions of a witness's credibility are aimed at assessing the reliability of the testimony. **Rule 608**

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IMPEACHMENT

Specific ways in which a witness's credibility may be questioned include:

- **Character.** If the witness's truthful character has been attacked, the witness's credibility may be questioned by another witness's opinion on the witness's general character or reputation within the community for truthfulness or untruthfulness. Another witness may not be called to testify, however, on specific instances of conduct by a testifying witness. Such instances may only be inquired about during cross-examination of the testifying witness. **Rule 608**

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IMPEACHMENT

- **Conviction of a Crime.** Evidence of conviction within the last ten years of a crime involving dishonesty or a false statement may be admitted against any witness. Evidence of a felony conviction within the last ten years is admissible on the issue of credibility against any witness. However, a felony conviction is admissible against a defendant only if its probative value outweighs its prejudicial effect. **Rule 609**

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IMPEACHMENT

- **Prior Inconsistent Statements under Oath.** A witness may be impeached by a showing that the witness's out-of-court statement under oath is inconsistent with the in-court testimony. When questioning a witness concerning a prior statement, the statement need not be shown to the witness but on request it must be shown to opposing counsel. Extrinsic evidence (i.e., evidence other than the witness's testimony) of a prior inconsistent statement by a witness is not admissible unless the witness has an opportunity to explain or deny the statement, and the opposite party has an opportunity to examine the witness. **Rule 613**

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OPINIONS AND EXPERT TESTIMONY

Opinions that are helpful to the judge in determining the facts are admissible. As the line between fact and opinion is often difficult to draw, the rules allow witnesses to express opinions as long as they are based on a certain degree of reliability.

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OPINIONS AND EXPERT TESTIMONY

- **Lay Witnesses**. When a witness is not testifying as an expert, any opinions the witness testifies to must be rationally based on the witness's perception, and must be helpful to a clear understanding of the testimony or a fact in issue.
  Rule 701

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OPINIONS AND EXPERT TESTIMONY

- This means that prior to offering an opinion the witness must lay a foundation establishing personal knowledge of the facts that form the basis of the opinion. The foundation for a lay opinion must establish that the witness was able to observe an event, that the witness actually observed the event, and that the witness observed enough information to form a reliable opinion. **Rule 702**

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OPINIONS AND EXPERT TESTIMONY

- **Expert Witnesses.** Expert witness testimony is admissible if it is helpful to the judge and if the witness is properly qualified to give the testimony. The rule states that if scientific, technical or other specialized knowledge will assist the trier of fact in understanding the evidence or determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify in the form of an opinion or otherwise. **Rule 702**

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OPINIONS AND EXPERT TESTIMONY

- The court has wide discretion in determining whether an expert witness is qualified. The trier of fact determines what weight to give the testimony if it is admitted.
- An expert may base his or her opinion on facts or data he or she observed, perceived, or became aware of either at or before a hearing. These facts need not be admissible into evidence if they are reasonably relied upon by experts in the field. **Rule 702**

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HEARSAY

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GENERAL RULE

- Hearsay is defined as an oral or written statement, other than one made by a person testifying at a trial or hearing, that is offered in evidence to prove the truth of the matter asserted. **Rule 801**

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GENERAL RULE

- The person who made the out-of-court statement is called the "declarant."
- Hearsay is considered to be unreliable because it is a statement made out of the courtroom, where the declarant could not be observed by the judge to assess demeanor and credibility. **Rule 801**

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GENERAL RULE

- Because of its inherent unreliability, the general rule is that hearsay is not admissible unless it falls into one of the exceptions created by the West Virginia Rules of Evidence, other rules adopted by the Supreme Court, or statute.
- Although the general rule is simple (hearsay is inadmissible), there are numerous exceptions to the hearsay rule that allow the introduction of hearsay under circumstances deemed to be minimally reliable. **Rule 801**

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STATEMENTS THAT ARE NOT HEARSAY

- By definition, out-of-court statements that are not offered to prove the truth of the matter asserted, but are offered for other purposes, are not hearsay and are not subject to the hearsay rules. **Rule 801**

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STATEMENTS THAT ARE NOT HEARSAY

- Additionally, the rule defining hearsay includes a list of statements that are not considered to be hearsay. Hence the hearsay rules do not apply to these statements, although other rules of evidence may apply. Statements that are not hearsay are: **Rule 801**

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STATEMENTS THAT ARE NOT HEARSAY

- **Prior Statement by a Witness.** If the witness testifies and is subject to cross-examination and the statement (a) was made under oath subject to the penalty of perjury (at a trial, hearing, other proceeding, or deposition) and was inconsistent with the witness's testimony; (b) is consistent with the testimony and offered to rebut a charge against the witness of recent fabrication or improper influence or motive; or (c) is an identification of a person made after perceiving the person, then the statement is not hearsay.
  Rule 801

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STATEMENTS THAT ARE NOT HEARSAY

- **Admission by Party-Opponent.** If the statement is offered against a party and is (a) the party's own statement; (b) a statement which the party has indicated is truthful; (c) a statement by a person authorized by the party to make the statement; (d) a statement by the party's agent on a matter within the scope of agency or employment, made during that relationship; or (e) a statement by a co-conspirator of the party during the course of the conspiracy, then the statement is not hearsay.
  Rule 801

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EXCEPTIONS TO THE HEARSAY RULE
(WHEN HEARSAY CAN BE ADMITTED)

There are so many exceptions to the hearsay rule that the study of hearsay is really the study of the exceptions.

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EXCEPTIONS TO THE HEARSAY RULE
(WHEN HEARSAY CAN BE ADMITTED)

- **Present Sense Impression.** A statement describing or explaining an event made while the person was perceiving the event or immediately thereafter is admissible. **Rule 803**

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EXCEPTIONS TO THE HEARSAY RULE
(WHEN HEARSAY CAN BE ADMITTED)

- **Excited Utterance.** A statement relating to a startling event made while under the stress and excitement of the event is admissible. Note, however, that admission of an excited utterance will violate the Confrontation Clause of the state constitution unless the prosecution shows that the declarant is unavailable to testify. **Rule 803**

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EXCEPTIONS TO THE HEARSAY RULE
(WHEN HEARSAY CAN BE ADMITTED)

- **Mental and Physical Condition.** A statement of the person's state of mind, emotion, sensation or physical condition at the time is admissible (for example, statements of intent, plan, motive, design, mental feeling, pain, or bodily health). **Rule 803**

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EXCEPTIONS TO THE HEARSAY RULE
(WHEN HEARSAY CAN BE ADMITTED)

- **Medical Diagnosis and Treatment.** Statements made for medical diagnosis or treatment are admissible if they describe: medical history; past or present symptoms, pain, or sensations; or the inception or general character of the cause or external source of the symptoms, pain, or sensations, insofar as reasonably pertinent to diagnosis or treatment. **Rule 803**

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EXCEPTIONS TO THE HEARSAY RULE
(WHEN HEARSAY CAN BE ADMITTED)

- **Recorded Recollection.** A statement or record made when a witness had knowledge but no longer has sufficient recollection is admissible. **Rule 803**

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EXCEPTIONS TO THE HEARSAY RULE
(WHEN HEARSAY CAN BE ADMITTED)

- The rules contain a catchall exception allowing admission of other hearsay that has equivalent guarantees of trustworthiness. For cases filed on or after November 1, 2007, the catchall, or residual, exception to the prohibitions against hearsay is located in the newly-adopted. **Rule 803**

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EXCEPTIONS TO THE HEARSAY RULE
(WHEN HEARSAY CAN BE ADMITTED)

- The rules allow admission of the following hearsay statements only when the declarant is unavailable to testify: **Rule 804**

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EXCEPTIONS TO THE HEARSAY RULE
(WHEN HEARSAY CAN BE ADMITTED)

- **Former Testimony.** Testimony given as a witness in another hearing is admissible under certain circumstances. **Rule 804**

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EXCEPTIONS TO THE HEARSAY RULE
(WHEN HEARSAY CAN BE ADMITTED)

- **Statement Under Belief of Impending Death.** A statement made while believing one's death is imminent, concerning the cause or circumstances of that death, is admissible. **Rule 804**

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EXCEPTIONS TO THE HEARSAY RULE
(WHEN HEARSAY CAN BE ADMITTED)

- **Statement Against Interest.** A statement that at the time it was made was so contrary to the person's interests, or so tended to expose the person to civil or criminal liability, or makes a claim by the person against another invalid, that a reasonable person would not have made the statement unless true, is admissible. **Rule 804**

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EXCEPTIONS TO THE HEARSAY RULE
(WHEN HEARSAY CAN BE ADMITTED)

- **Statement of Personal or Family History.** A statement of the person's birth, adoption, marriage, divorce or other fact of personal or family history is admissible. **Rule 804**

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EXCEPTIONS TO THE HEARSAY RULE
(WHEN HEARSAY CAN BE ADMITTED)

- **Forfeiture by Wrongdoing.** A statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.

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EXCEPTIONS TO THE HEARSAY RULE
(WHEN HEARSAY CAN BE ADMITTED)

- **Other Exceptions.** As noted earlier, statements not specifically covered by either *Rules* but having equivalent guarantees of trustworthiness may be admissible under the residual exception to the prohibitions against hearsay.

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PRIVILEGES

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GENERAL RULE

- A "privilege" is an exemption from giving testimony. Privileges are intended to protect a relationship of social importance. Since privileges can result in the exclusion of relevant evidence and suppression of the truth, they are limited to relationships of special value that could be irrevocably harmed if breached. **Rule 501**

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GENERAL RULE

- The rules on privilege begin with a presumption of non-privilege. No person has a privilege to refuse to be a witness, refuse to disclose any matter, refuse to produce any object or writing, or prevent another person from being a witness or disclosing information, except as required by the constitution, the West Virginia rules of Evidence or other rules adopted by the Supreme Court. **Rule 501**

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EXCEPTIONS TO THE RULE

The rules recognize the following privileges:

- **Reports Privileged by Statute.** A party may refuse to disclose reports required by law if the statute requiring the report so allows. **Rule 501**

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EXCEPTIONS TO THE RULE

- **Lawyer-Client Privilege.** A client has a privilege to refuse to disclose and to prevent other persons from disclosing confidential communications made in the course of professional legal services.

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EXCEPTIONS TO THE RULE

- **Physician-Patient and Psychotherapist-Patient Privilege.** A patient has a privilege to refuse to disclose and to prevent other persons from disclosing confidential communications made for the purposes of diagnosis or treatment of the patient's physical, mental or emotional condition, including drug addiction, between the patient and the patient's physician or psychotherapist.

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EXCEPTIONS TO THE RULE

- **Husband-Wife Privilege.** A person has a privilege to refuse to disclose and to prevent others from disclosing a confidential communication made by the person to his or her spouse while they were married. There is, however, no husband-wife privilege in proceedings charging one spouse with a crime against the person or property of the other, or against the child of either.

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EXCEPTIONS TO THE RULE

- **Communications to Clergy Privilege.** A person has a privilege to refuse to disclose and prevent others from disclosing a confidential communication made by the person to a clergy member as spiritual advisor..

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EXCEPTIONS TO THE RULE

- **Political Vote Privilege.** Every person has a privilege to refuse to disclose the person's vote at a political election conducted by secret ballot unless the vote was cast illegally.

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EXCEPTIONS TO THE RULE

- **News Media-Confidential Source Privilege.** A person employed in the news media for the purposes of gathering news for the general public has a privilege to refuse to disclose the confidential source from whom any information was obtained and any confidential information obtained in the course of professional activities.

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VOLUNTARY DISCLOSURE

- A person who is granted a privilege may waive it by voluntarily disclosing or consenting to the disclosing of a significant part of the matter or communication. Disclosure of privileged matter is not admissible against the person if the disclosure was compelled erroneously or was made without opportunity to claim the privilege.

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COMMENTARY ON CLAIM OF PRIVILEGE

- The court and counsel must not comment on a claim of privilege, and no inferences may be drawn from the claim.

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WEST VIRGINIA MUNICIPAL LEAGUE

Granting and Revocation of Bond

Floyd M. Sayre, III, Esq.
2020

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§62-1C-1. Right To Bail; Exceptions; Review

- (a) A person arrested for an offense not punishable by life imprisonment shall be admitted to bail
- (b) Bail may be allowed pending appeal from a conviction,

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Right To Bail; Exceptions; Review

- (c) The amount of bail or the discretionary denial of bail at any stage of the proceedings may be reviewed by summary petition first to the lower appellate court, if any, and thereafter by summary petition to the supreme court of appeals or any judge thereof.

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Release Upon Own Recognizance Authorized

- Any other provision of this article to the contrary notwithstanding, when from all the circumstances, the court or magistrate is of the opinion that the defendant or person arrested will appear as may be required of him, either before or after conviction, such defendant or person arrested may be released upon his own recognizance

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Bail Defined; Form; Receipts

- Bail is security for the appearance of a defendant to answer to a specific criminal charge
  - (a) The deposit by the defendant or by some other person for him of cash.
  - (b) The written undertaking by one or more persons to forfeit a sum of money equal to the amount of the bail if the defendant is in default for appearance, which shall be known as a recognizance.
- (c) Such other form as may be approved by the court.

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Bail Defined; Form; Receipts

- (c) Such other form as the judge of the court that will have jurisdiction to try the offense may determine.
- All bail shall be received by the clerk of the court, or by the magistrate and, except in case of recognizance, receipts shall be given therefor by him.

Bowles Rice

307

Fixing Of Amount

- The amount of bail shall be fixed by the court with consideration given:
  - to the seriousness of the offense charged
  - the previous criminal record of the defendant
  - his financial ability, and
  - the probability of his appearance.

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308

Fixing Of Amount

- When two or more charges are filed or are pending against the same person at or about the same time, the bail given may be made to include all offenses charged against the defendant.

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309

§62-1C-4
Personal Recognizance

- The recognizance shall be signed by the defendant.

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§62-1C-4
Property

- It shall also be signed by one or more adult persons owning real property in the state.
- The court or justice may require that justification of surety be furnished.
- The assessed value above all liens and encumbrances shall not be less than one half the amount of the bail.

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311

§62-1C-4
Commercial

- the recognizance may be signed by the defendant and a surety company authorized to do business in this state.

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312

§62-1C-4 Indigent

- An indigent person who the court is satisfied will appear as required shall not be denied bail because of his inability to furnish recognizance.

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313

Recognizance And Deposits.

- The recognizance shall be returnable to and all deposits shall be held by the court before whom the defendant is to appear or does appear, and upon the transfer of the case to any other court the recognizance shall be returnable to and transmitted together with any deposits to such other court.

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314

Continuing Bail.

- The bail as initially given may continue in effect pending indictment, arraignment, continuance, trial and appeal after conviction, as the court may direct.

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315

Forfeiture Of Bail; Basis Therefore

- Whenever a person under bail serves as his or her own surety and he or she willfully and without just cause fails to appear as and when required or violates any other term or condition of bail, the circuit court or magistrate shall declare the bail forfeited.

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Forfeiture Of Bail; Basis Therefore

- Whenever a person or entity other than the person under bail serves as surety, forfeiture of bail shall be declared only when the person under bail willfully and without just cause fails to appear as and when required.

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Forfeiture Of Bail -- Setting Aside

- The court or justice may direct that a forfeiture be set aside, upon such conditions as may be imposed, if it appears that justice does not require the enforcement of the forfeiture.

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318

Forfeiture Of Bail -- Enforcement.

- When a forfeiture has not been set aside, the court or justice, upon motion of the state, shall enter a judgment of default and execution may issue thereon:

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Forfeiture Of Bail -- Enforcement.

- If the deposit for bail be by a person other than the defendant, or if the bail be in the form of recognizance, such person making the deposit or the surety on the recognizance shall be given ten days' notice by certified mail at his last-known address to appear and show cause why a judgment of default should not be entered.

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320

Forfeiture Of Bail -- Enforcement.

- Execution shall issue in the name of the state and shall proceed in the manner provided by law in civil actions. If the bail be in the form of bonds or stocks, the judgment order may direct that all or part thereof be sold through a state or national bank or through a brokers exchange registered with the federal securities and exchange commission.

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321

Bail In Excess Of Jurisdictional

- Where the forfeiture has been declared by a justice or by a court of limited jurisdiction of bail in excess of the jurisdictional limit of justice or of the particular court, such forfeiture shall be certified to a court of the county having sufficient jurisdiction, which court shall thereupon proceed as if the forfeiture were originally declared in such court.

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322

Forfeiture Of Bail -- Remission.

- After entry of such judgment, the court or justice may remit the penalty in whole or in part under the conditions applying to the setting aside of forfeiture in section eight of this article.

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323

Forfeiture Of Bail -- Exoneration

- When the condition of the bond has been satisfied or the forfeiture thereof has been set aside or remitted, the court or magistrate shall exonerate the surety and release any bail

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Forfeiture Of Bail -- Exoneration

- if the bail be in a form other than a recognizance, the deposit shall be returned to the person who made the same. The surety may be exonerated by a deposit of cash in the amount of the bail or by a timely surrender of the defendant into custody.

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325

Forfeiture Of Bail -- Exoneration

- when a bail bondsman has a surety bond forfeited because of the failure of a defendant to appear, that bail bondsman shall be reimbursed the full amount of the bond forfeiture, if the bail bondsman returns the defendant to the custody of the court or magistrate, within two years of the forfeiture of the bond.

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Forfeiture Of Bail -- Defects In Form Of Bail

- No action or judgment for forfeiture of bail shall be defeated or arrested by the neglect or omission to record the declaration of forfeiture or by reason of any defect in the form of the bail, if it appear to have been taken by a court or justice authorized to take it, and be substantially sufficient.

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327

Bailpiece

- A bailpiece is a certificate stating that the bail became such for the accused in a particular case and the amount thereof.
- Upon demand therefor, the court, magistrate or clerk shall issue to the bail bondsperson a bailpiece.

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Bailpiece

- Any officer shall assist the bail bondsperson holding such bailpiece to take the accused into custody and produce him before the court or magistrate.
- The bail bondsperson may take the accused into custody and surrender him or her to the court without such bailpiece.

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Bailpiece

- If bailpiece is inaccessible due to unavailability of the court's circuit clerk or magistrate, the bail bondsperson, or his or her designee, can take an offender to a regional or county jail without bailpiece, and the jail must accept the offender;

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Bailpiece

- provided:
  - The bail bondsperson, or his or her designee, appears on the registered list maintained at the jails and approved by the court of original jurisdiction;
  - The bail bondsperson signs an agreement provided by the jail indicating that the offender has been booked in lieu of bailpiece.

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Bailpiece

- Provided:
  - (3) Bailpiece must be applied for by the bail bondsperson or his or her designee from the court's circuit clerk or magistrate and hand-delivered by the bail bondsperson or his or her designee to the jail housing such offender on the next judicial day following the initial intake.

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332

Bailpiece

- Any bail bondsperson who willfully fails to attempt to obtain the appropriate bailpiece within the allotted time period provided in subsection (b) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be prohibited from continuing to conduct business in this state

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333

Guaranteed Arrest Bond Certificate

- For a misdemeanor violation of any motor vehicle law of the state or any municipality, except reckless driving or driving while intoxicated, the guaranteed arrest bond certificate of any surety company licensed to do business by the insurance commissioner, when presented by the person whose signature appears thereon shall be accepted as bail in lieu of cash or recognizance in an amount not to exceed five hundred dollars.

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Guaranteed Arrest Bond Certificate

- A "guaranteed arrest bond certificate" shall mean any printed card or certificate issued by an automobile club or association to its members in good standing bearing the signature of the member and containing a printed statement that such club or association and a surety company will guarantee the payment of any fine or forfeiture imposed on the member in an amount not to exceed five hundred dollars if the member fails to appear in court as required.

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335

Offenses Against Municipalities

- Bail for a person accused of an offense against a municipality shall be governed by the provisions of this article applicable to a justice, except that the bail may be deposited with the mayor or with such other officer of the municipality as may be designated by the mayor

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336

Failure To Appear; Penalties

- Any person, who, having been released and who shall willfully and without just cause fail to appear as and when it may be required of him, shall be guilty of the offense as hereinafter prescribed, and, upon conviction thereof, shall be punished in the manner hereinafter provided.

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337

Failure To Appear; Penalties

- If any such person was admitted to bail or released after being arrested for, charged or convicted of a misdemeanor and shall thereafter be convicted such persons shall be guilty of a misdemeanor and shall be fined not more the one thousand dollars or confined in the county jail for not more thirty days, or both

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Failure To Appear; Penalties

- Any penalty authorized by this section shall be in addition to any forfeiture authorized or mandated by this article or by any other provision of law.

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WEST VIRGINIA MUNICIPAL LEAGUE

Roundtable Discussion and Wrap up

Floyd M. Sayre, III, Esq.
2020

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Criminal Actions

- "**Criminal action**" is a court proceeding involving a person charged with committing a crime.
- "**Crime"** is an act or omission forbidden by law or ordinance for which, upon conviction, a sentence of imprisonment and/or a fine is authorized.

341

Misdemeanor under Municipal Ordinance

Jurisdiction

- The municipal courts have jurisdiction in all petty misdemeanor offenses under **ordinances legally adopted by the governing body of the municipality.**

342

Misdemeanor under Municipal Ordinance

Venue

- Venue is the place where the charges are brought and the trial is held.
- A case will be heard in municipal court if the offense was committed within the municipal boundaries and is a violation of a municipal ordinance.

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343

Misdemeanor under Municipal Ordinance

Time Limits

- The time limit for bringing a criminal action (filing a criminal complaint) in municipal court is within **one** year from the time the crime was committed.
- This is called a statute of limitations, which sets the time limit for filing charges.

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Initiation of a Case by Complaints and Citation

A case in municipal court begins by filing one of the following documents:

- **Criminal complaint** - This is a signed statement charging a person with violating a municipal ordinance. It contains the facts of the violation, the common name of the offense that is charged, and the specific section number of the ordinance that was violated.
  - Complaints can be filed by municipal police officers.
  - Complaints can only contain charges that are within the jurisdiction of the municipal court.
  - If there is more than one defendant, a separate complaint must be filed for each.

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Initiation of a Case by Complaints and Citation

- **Criminal citation.** This is a signed statement citing a person for violating a municipal ordinance and is sometimes called a non-traffic citation. It contains the name and address of the person, the specific offense charged, the specific section number of the ordinance that was violated, and the time and place for the person to appear in court.
  - The citation is issued by an official authorized by law to do so, for example zoning violations are typically cited on criminal citations.
  - A copy of the citation is given to the person cited. The original must be filed in municipal court as soon as practical.
  - Unless the person requests an earlier date, the time specified in the citation for the person to appear in court must be at least three days after the citation is issued.

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Initiation of a Case by Complaints and Citation

- **Traffic citation.** This is a standardized form known as the "uniform traffic citation" that is used statewide for enforcement of motor vehicle offenses.

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Initiation of a Case by Complaints and Citation

- The form contains spaces for details about the person cited, the vehicle involved, the conditions at the time of the violation, the specific offense charged, and the police officer's signature.
- The form also contains two options:
  1. A notice for the person to appear in court; or
  2. A choice to admit guilt, sign the form and pay a fine known as a "penalty assessment" without having to appear in court.

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Initiation of a Case by Complaints and Citation

- The uniform traffic citation is issued by the State of West Virginia.
- A copy of the uniform traffic citation is given to the person cited. The citation copy thus serves as a summons. The original must be filed in municipal court as soon as practical.

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Citations

- Municipal police officers need to begin including a court date on every citation they issue.
- The court may still request the suspension of a defendant's driver's license.

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Citations

- Only If a defendant fails to appear in court, but the defendant **must** be given an initial court date in order to be able to affect the license suspension.

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Citations

- Defendants may appear prior to that date to enter a guilty or no contest plea and either pay in full or set up a payment plan.

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Plea Prior to Hearing

- Defendants may enter a plea of guilty or no contest prior to their court date.
- The new statute does not impact how the court processes these pleas when the Defendant pays in full.

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Plea Prior to Hearing

- The Defendant may also request a payment plan.
- If the Defendant does not pay in full or request a payment plan at the time they enter the plea, they have up to 90 days from the time they entered the plea to either pay in full, or enter into a payment plan.

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Initiation of a Case by Arrest Without Warrant

- If a person is arrested without a warrant, a copy of the complaint is given to him or her prior to transfer to a detention facility.
- If necessary, the complaint may be placed with the individual's personal belongings.
- There is no requirement that the complaint be sworn before a notary or judicial officer prior to being given to the person.

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Case Files

- **Receiving a criminal complaint or citation.** A police officer will submit the criminal complaint or citation to the court. The clerk will then create a case file for the document. It is common practice for courts to file stamp (stamp the date and possibly time) on the complaint and other documents filed with the court in reference to the case.

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Case Files

- **Docket number.** Each complaint or citation submitted to the court should have a docket number. Each docket number should be distinct. This number may be obtained in one of two ways:
  - Automatic numbering through the computer case management system. (This is the most common process)
  - Manual assignment by the clerk using a docketing system developed by the court. (This is an older system which has been replaced with the computerized assignment in most courts.)

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Case Files

- **Maintaining files.** Each court should adopt an organized system for maintaining files (for example: numeric, alphabetic, or color-coded.)
- The system should provide easy access for all users.

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Case Files

- **Maintaining files.** The court should also decide whether the contents will be kept loose or fastened to the folder.
- There should also be a determination of how the contents will be filed in the folder (newest on top or on bottom) and should be consistent in each file.

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Suspensions

- Municipal courts can still request that the DMV suspend the driver's licenses of defendants who fail to appear for their court dates.

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Suspensions

- The court must wait 90 days before requesting that the DMV suspend a defendant's West Virginia license for failing to appear in court.

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Suspensions

- The defendant may appear at any time in that 90 days to reschedule a court appearance, or enter a guilty or no contest plea, but the court has no obligation to further notify the defendant of the 90-day deadline.

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Arraignment

- The arraignment is the proceeding at which the defendant is brought before the judge for the first time after arrest or in response to a criminal summons.

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Arraignment

Explanation of Rights

At the arraignment of the defendant, the judge must inform the defendant of all the following:

- The offense charged.
- The maximum penalty and any mandatory minimum penalty provided by law for the offense charged. If a specific penalty is not provided, the defendant is informed of the penalty for a petty misdemeanor.
- The right to bail, if the person was arrested and is still in custody.

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Arraignment

- The right to see, hear, question and cross-examine the witnesses who testify against the defendant at the trial.
- The right to call witnesses to testify for the defense and to have them subpoenaed and required to appear, at no cost to the defendant.
- The right to the assistance of counsel at every stage of the proceedings, if a jail sentence is being considered by the judge.
- The right to representation by an attorney at the municipality's expense, if the defendant is an indigent and a jail sentence is being considered by the judge.
- The right to remain silent and the fact that any statement made by the defendant may be used against him or her.

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Arraignment

- The right to testify at trial, but if the right is exercised the defendant is subject to cross-examination.
- That if defendant pleads guilty or no contest, it may have an effect upon the defendant's immigration or naturalization status, and if defendant is represented by an attorney, the court shall determine that defendant has been advised of those consequences by his or her attorney.

The court may allow the defendant reasonable time and the opportunity to make telephone calls and consult with an attorney.

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Arraignment

Representation by Counsel

- After the explanation of rights, the judge determines whether the defendant is represented by counsel.
- If the defendant is not represented by counsel, the judge may allow the defendant reasonable time and opportunity to make telephone calls to seek and consult with counsel before the proceedings continue.
- If it appears that the defendant may be indigent, then the judge decides if a jail sentence may be imposed upon a plea of guilty or upon conviction.

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Arraignment

- If the judge decides that no imprisonment will be imposed, then all of the following apply:
  - The defendant is not entitled to appointed counsel.
  - No determination of indigency is necessary.
  - No waiver of counsel is necessary, except in the case of driving while intoxicated.

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Arraignment

- If the judge decides to reserve the option to impose a sentence of imprisonment, then a determination of indigency is necessary.
- In such case, an indigent defendant is entitled to appointed counsel at the expense of the municipality.

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Arraignment

Entry of Plea

- The defendant is required to plead to the complaint after receiving the explanation of rights and an opportunity to consult with counsel, if counsel is present, unless counsel is not required or is waived.
- If the defendant refuses to plead or stands mute, the judge enters a plea of not guilty for the defendant.

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Arraignment

The plea must be one of the following:

- Not guilty.
- Not guilty by reason of insanity.
- *Nolo contendere* (no contest), if permitted by the judge. This plea has the same legal effect as a plea of guilty for purposes of the case before the court, but the plea may not be used against the defendant as an admission of guilt in any collateral proceeding (e.g., a civil lawsuit).
- Guilty.

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Not Guilty Plea

- If the defendant pleads not guilty, the case is set for trial as soon as possible.
- At any point in the proceedings, the defendant may request to withdraw a not guilty plea and enter a guilty plea or, if permitted, a *nolo contendere* plea. In determining whether or not to accept the change of plea, the judge applies the standards of knowing and voluntariness discussed below.

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Nolo Contendere Plea

- If the defendant pleads *nolo contendere*, before accepting the plea the judge must be sure that the plea is voluntarily made, that the defendant realizes that the plea of *nolo contendre* will have the same effect as a guilty plea in municipal court, and that the defendant understands the consequences of the plea.
- The defendant should be personally questioned for these purposes, even when represented by counsel.

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Guilty Plea

- Before accepting a guilty plea, the judge must make sure that the plea is voluntarily made, that the defendant realizes the consequences of the plea, and that there is a factual basis for the guilty plea.
- The factual basis that is required for the plea of guilty, but not for the plea of *nolo contendere*, may be established by simply asking the defendant: "What did you do that makes you believe you are guilty of this offense?" The answer the defendant gives should establish every element of the offense, including the criminal intent required.

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Plea Payment

- If a defendant appears on their assigned court date, and either pleads guilty or no contest, or is found guilty by the court, they may pay in full or request a payment plan on that day.

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Plea Payment

- However, if they do not pay or request a payment plan on that day, they have up to 90 days to either pay in full, or to request a payment plan.

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Voluntary Nature of Plea

- In the case of a *nolo contendere* plea or a guilty plea, the judge should determine if the plea is voluntary and otherwise acceptable and proper.
- For a plea of guilty or *nolo contendere* to be voluntary, it must be of the defendant's own free will, with a full understanding of all rights and possible consequences.
- The plea must not have been induced by threats or by promises.

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Voluntary Nature of Plea

- A plea agreement is not considered a promise that renders the plea involuntary. The judge shall address the defendant personally, in open court, and ask the defendant both of the following questions:
  - Is your guilty plea (or plea of *nolo contendere*) voluntary and not the result of force or threats or promises apart from a plea agreement?
  - Is your willingness to plead guilty (or *nolo contendere*) the result of prior discussions between the attorney for the city and either you or your attorney?

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Plea Agreement

- A plea agreement should be in writing and presented to the judge for approval. The judge must not take any part in the plea discussions or negotiations. The judge's task is to approve or disapprove the agreement negotiated by the parties. If approved, the judge signs the plea agreement. The plea agreement is filed in the court file.

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Failure to Pay or Request Payment Plan

- Defendants have 90 days after they plead guilty or no contest, or are found guilty to pay in full all fines, fees, and costs or to request a payment plan.

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Failure to Pay or Request Payment Plan

- If the defendant does not pay or request a payment plan within the 90 days, courts may impose a $10.00 late fee in addition to the amount owed. This fee will be retained by the court and is not remitted to the state.
- The imposition of the late fee is at the discretion of the court.

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Failure to Pay or Request Payment Plan

- If the defendant has not paid in full or requested a payment plan within 90 days after adjudication of the case, the court must send a notice to the defendant.

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Failure to Pay or Request Payment Plan

- The notice must contain:
  - The defendant's payment is 90 days past due;
  - The defendant has failed to enroll in a payment plan;
  - A $10.00 late fee has been assessed, if applicable;
  - Defendant may be the subject of a judgement lien or have their debt sent to a collection agency or both.

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Failure to Pay or Request Payment Plan

- If the defendant does not respond to the notice within 30 days from the date the notice is mailed, the court may file a judgement lien, consign the amount for collection, or do both.

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Payment Plan Administration

- There is a new method for enrolling in a payment plan, for determining payment amounts and number of payments, and options for penalty and collection if the defendant defaults on their plan.

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Payment Plan Administration

- Under the new statute, all defendants must be offered an opportunity to enroll in a payment plan.
- The Defendant must sign an affidavit attesting to the fact that they cannot pay the assessed fines, costs, and fees.

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Payment Plan Administration

- Although the affidavit is required, payment plans are not need based. There is no income threshold below which a person must fall to be able to enroll in a plan and the information contained in the affidavit is to facilitate the calculation of the maximum monthly payment.

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Payment Plan Administration

- When a defendant enrolls in a payment plan, the court shall charge a $25.00 plan administration fee **in addition to** all other fines, costs, and fees.
- This fee is retained by the municipal court. The $25.00 plan administration fee may be paid in full at the time of enrollment or divided into no more than five payments.

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Payment Plan Administration

- No payment from the defendant is required when enrolling in a payment plan unless the defendant elects to pay the $25.00 plan administration fee in whole or in part.

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Payment Plan Administration

- The new statute has implemented a formula for calculating the maximum amount of payments and the number of payments in a plan.
- There is no longer a uniform time limit on the length of payment plans.

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390

Combining Payment Plans

- Combining payment plans for subsequent offenses
- It is the intention of the legislation that defendants only have one payment plan with any individual court.

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Combining Payment Plans

- The maximum amount of the payment will stay the same if the defendant has not undergone a change in economic circumstances, but the duration of the plan will change according to the new total amount due.

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Combining Payment Plans

- Combined payment plans are only available to defendants who are current with their existing payment plan.
- If the defendant is in arrears with their existing plan, the existing plan must be brought current, including the payment of any late fees, prior to establishing a new combined payment plan.

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Combining Payment Plans

- If the defendant cannot bring the account current, the court should advise the defendant that they have 90 days to remit the entire amount owed to the court, or the amount may be consigned to collection, or be placed as a judgement lien, or both.

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Combining Payment Plans

- If the defendant has undergone a change in economic circumstances that would affect the maximum payment due on the payment plan.
- The court may need to recalculate the maximum payment amount and apply that amount to the recalculated plan.

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Combining Payment Plans

- The court may also assess an additional $25 administration fee for recalculating the payment plan.
- As with the initial fee, the $25 may be paid in full at the time of recalculation or divided into no more than five payments.

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Scheduling Trials or Hearings

- If the defendant pleads not guilty, the court clerk schedules the date for trial. Certain information may be recorded when setting a hearing date. The date, time, type of proceeding, docket number, and names of plaintiff and defendant (or counsel) may be entered on the calendar. Appropriate notations may be made on the calendar when a hearing has been canceled or rescheduled.

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Scheduling Trials or Hearings

- The clerk shall issue subpoenas for witnesses upon request by prosecution or defense.
- Clerk must send copies of all notices or orders issued by the court, or any action taken by the court, to all parties involved, including counsel.

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Dismissal

Definitions

- Dismissal with prejudice means that the offense which is dismissed may not be charged again in any court.
- Dismissal without prejudice does not prevent the prosecution from charging the defendant again with the same offense. The prosecution is free to bring another action.

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Voluntary Dismissal by Prosecution

- The prosecution may file a notice of dismissal at any time before trial. Dismissal is without prejudice unless otherwise stated in the notice of dismissal.
- The judge signs the notice of dismissal, and the original is filed with the court. The prosecution is responsible for serving the notice of dismissal on the defendant.

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Voluntary Dismissal by Prosecution

- A specific count or charge in the complaint may be dismissed without dismissing the entire complaint. The notice of dismissal form is modified to indicate the count or charge that is being dismissed.
- Additionally, the prosecution may file a document called a Nolle Prosequi. This document literally means that the prosecution declines to prosecute the case. It is a dismissal of all or some of the charges and does not require the judge's signature. These dismissals are without prejudice unless otherwise stated.

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Voluntary Dismissal Without Prosecutor

- The Officer may file a motion of dismissal at any time before trial. Dismissal is without prejudice unless otherwise stated in the notice of dismissal.
- The judge has the desecration to accept or reject the motion.

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Trial

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Start of Trial

Calling the Case

The judge begins the trial by calling the case. The judge or clerk may say:

- Court is now in session.
- _____ The case of City/Town/Village of _____ versus (*name of defendant*) is now before this court for trial.

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Readiness to Proceed

The judge then inquires whether all parties are present and ready to proceed with trial. If all parties are not present, the judge may:

- Reset the date of trial upon good cause shown for nonappearance.
  - If the defendant is absent without good cause, issue a bench warrant for the defendant
  - If the prosecution is not present, dismiss the case.

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Readiness to Proceed

If the parties are present but are not ready to proceed with trial, the judge may do one of the following:

- Upon good cause shown, grant a continuance (postponement) of the trial.
- Require the parties to proceed.
- If a subpoenaed witness has not appeared and is essential to the trial, issue a bench warrant for the non-appearing witness and grant a continuance.

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Sitting of Jury

- Clerk Calls names
- Vior Dire

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Start of Trial

Witness Oath

- If the witnesses are to be administered the oath as a group, the oath is given at this time. Otherwise, each witness is administered the oath at the time the person is called to testify.

  Do you solemnly swear or affirm that the testimony you give is the truth, the whole truth, and nothing but the truth, under penalty of perjury?

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408

Start of Trial

- Any party giving testimony must take this oath.
- Since some people, for any number of reasons, do not want to swear an oath, the above allows the person to swear or affirm.
- Do not ask whether the person is swearing or affirming. Reading the oath as above is sufficient.

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Start of Trial

- Interpreters used to translate testimony in municipal court must take an oath that they will make a true and impartial translation in an understandable manner using their best skills and judgment in accordance with the standards and ethics of their profession.

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Start of Trial

Exclusion of Witnesses

- A party may make a motion or the judge asks if the parties wish to “invoke the rule” excluding witnesses.

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Start of Trial

- If either party invokes the rule, the judge excludes the witnesses, other than the parties, from the courtroom so that they cannot hear the testimony of the other witnesses. When the judge applies the rule to any witness, the witness should be instructed substantially as follows:

  The rule has been invoked. You must leave the courtroom and remain outside so you cannot hear the testimony of the other witnesses. You should not discuss your testimony with anyone, either before you testify or after you have testified, except that you may discuss your testimony with the lawyers in the case – but you must not do so in the presence of any other witness.

Bowles Rice

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Start of Trial

- The judge may order exclusion of witnesses without a request from either party.
- The witness exclusion rule does not authorize the exclusion of the defendant or other person whose presence is essential, such as the arresting officer who is to assist the prosecution.

Bowles Rice

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Opening Statements

- In most cases in municipal court, opening statements are unnecessary. Even when there are attorneys present, either or both sides may waive opening statements.

Bowles Rice

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Opening Statements

- An opening statement is an outline of anticipated proof in the case. Its purpose is to give the judge introductory information about facts and issues so the judge will be able to understand the evidence.
- No exhibits may be introduced or witnesses examined in an opening statement and no argument is permitted.
- Basically, the remarks included in the opening statements should all come after the introductory phrase, "We will show that..." The opening statements, and any comments made by the attorneys, are not testimony.
- They are not evidence to be considered when deciding the case.

Bowles Rice

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Opening Statements

- After the prosecution has made an opening statement or has waived the opportunity to do so, the judge permits the defendant or defendant's attorney to make an opening statement if he or she desires to do so. The defendant may waive the right to make an opening statement until after the prosecution's case has been presented.
- If there are multiple defendants, opening statements may be made by each attorney representing each defendant.

Bowles Rice

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Presentation of Evidence

Order of Presentation

- The prosecution calls and examines the witnesses for the prosecution, each of whom may be cross-examined by the defense. The prosecution then rests.
- The judge hears appropriate oral motions, which either party may make at this point in the proceedings such as a defense motion for a directed verdict. If the case is not dismissed at this point, the defendant may present his or her case.

Bowles Rice

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Presentation of Evidence

- If they choose to do so, the defense calls and examines the witnesses for the defense, each of whom is subject to cross-examination by the prosecution, and then rests.
  - If the defendant did not present an opening statement at the beginning of the trial, the opening statement may be given before the defendant's first witness is called.
  - The defendant is not required to present any evidence or call any witnesses. The prosecution may call rebuttal witnesses and then rest its entire case.
  - If the defendant did not call witnesses or present any evidence, the prosecution cannot call rebuttal witnesses.
  - Rebuttal witnesses are called only to rebut evidence that has previously been introduced by the defense.

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Presentation of Evidence

- After both parties have rested their entire cases, the judge hears oral motions and closing arguments, which may be made by either party.
- The judge then rules on the case.

Bowles Rice

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Presentation of Evidence

Witness Testimony

- After each witness has been examined by the party calling him or her (called direct examination), the opposing party may cross-examine the witness.
- Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness.

Bowles Rice

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Presentation of Evidence

- Although the extent of the cross-examination is within the discretion of the trial judge, the judge may not restrict cross-examination if it might be of assistance to the defendant or if it concerns subjects on which the defense is entitled to cross-examine.

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Presentation of Evidence

- After cross-examination, the party who called the witness may re-examine (called re-direct) the witness regarding evidence presented during cross-examination.
- At the discretion of the judge, the party who cross-examined the witness may "re-cross-examine" the witness, but only if new subject matter was brought out during the redirect examination. Re-cross is limited to that new subject matter.

Bowles Rice

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Presentation of Evidence

- A party or attorney may object to questions, but even if he or she fails to do so, the judge may interrupt on his or her own initiative to prevent questions which are valueless or harassing.
- It must be remembered, however, that the right to confront witnesses in criminal cases is of constitutional origin, so be cautious when restricting the defense.

Bowles Rice

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Presentation of Evidence

- The judge may ask appropriate questions of a witness at any point during the presentation of evidence. However, the judge should not ask questions that will "help" the prosecution or defense with their case or that could constitute an implied comment on the case.
- Generally, the judge's questions should focus on clarification of confusing testimony.

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Presentation of Evidence

- In general, a witness may not testify to a matter unless the witness has personal knowledge of the matter.
- Hearsay evidence is not admissible unless allowed by the Rules of Evidence.
- Statements made by the defendant during plea negotiations are not admissible in evidence for any purpose including impeachment of the defendant.

Bowles Rice

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Presentation of Evidence

- A witness may refuse to testify to a matter if he or she has a privilege to refuse under the Rules of Evidence.
- In addition to the privileges allowed under the Rules of Evidence, a witness has the privilege under the Fifth Amendment of the U.S. Constitution to refuse to answer any question in any criminal proceeding where the answer might incriminate him or her in current or future criminal proceedings.

Bowles Rice

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Presentation of Evidence

- A judge cannot consider a defendant's refusal to testify against him or her in determining guilt.
- Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay, waste of time or needless presentation of cumulative evidence.

Bowles Rice

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Defendant as Witness

- A defendant has an absolute right not to testify. A defendant has the same privilege as any other witness to invoke the Fifth Amendment and refuse to answer any question in any criminal proceeding. However, the defendant may not simply select which testimony to give and which to withhold.

Bowles Rice

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Defendant as Witness

- A defendant waives his or her Fifth Amendment privilege against self-incrimination:
  - When testifying on his or her own behalf, except as limited by the Rules of Evidence.
  - During cross-examination on matters reasonably related to the subject matter of his or her direct examination, including impeachment by proof of prior convictions. Impeachment means to call into question the credibility of the witness.

Bowles Rice

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Defendant as Witness

- A defendant may be questioned about prior convictions under certain circumstances.
  - Allows cross-examination regarding any felony conviction if the judge finds its probative value outweighs the prejudice to the defendant.
    - Allows cross-examination regarding conviction of any crime, felony or misdemeanor, if the offense involves dishonesty or a false statement.

Bowles Rice

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Defendant as Witness

- A defendant may not be questioned about a prior conviction under any of the following circumstances:
  - The answer could expose the defendant to an enhanced sentence or deprive him or her of liberty.
  - The conviction is for a misdemeanor not involving the truthfulness of the defendant and is therefore irrelevant to the defendant's credibility.
  - The conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.
  - The conviction has been the subject of a pardon, annulment, certificate of rehabilitation or other equivalent procedure based on a finding of rehabilitation and the person has not been convicted of a subsequent felony.

Bowles Rice

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Defendant as Witness

- When testifying as a witness, the defendant may not be questioned about post-arrest silence relating to any issue in the case when the defendant's silence lacks probative value.

Bowles Rice

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Introduction of Documentary Evidence

A party examining a witness may introduce written documents or other things as evidence during examination of the witness.

- A party asks to have the exhibits numbered in sequence and marked as exhibits. This is usually done by the court clerk or the judge..
- The party must show the exhibit to the opposing party.
- The witness being examined then identifies the exhibit that has been marked and states his or her personal knowledge of the exhibit.

Bowles Rice

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Introduction of Documentary Evidence

- The admissibility in evidence of an exhibit is established through examination of witnesses and may require the testimony of more than one witness before the exhibit becomes admissible.
- A party may offer an exhibit to be admitted as evidence at any time before ending the party's side of the case. The judge rules on whether the exhibit is admissible.

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Introduction of Documentary Evidence

Once the exhibit has been admitted into evidence, it may be used in the examination of other witnesses and considered by the court in reaching its verdict. The court may not rely on evidence that has not been admitted.

Documentary evidence that is hearsay is not admissible unless allowed by the Rules of Evidence.

Bowles Rice

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Objections

The opposing party may object to any of the following:

- A question asked a witness.
- An answer given by a witness.
- The introduction of documents or other things as evidence.

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Objections

The objection must be raised at the time of the question, answer or introduction of evidence. When an objection is raised to a question or exhibit, the party must state the reason for the objection. The opposing party may respond, then the judge either sustains (agrees with) or overrules (disagrees with) the objection.

Bowles Rice

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Closing Arguments

- The closing argument is the opportunity for each side to summarize its case for the judge.
- Unlike the opening statements, where the attorneys or parties may only summarize the evidence they plan to present, in closing arguments they may analyze and argue the facts and law of the case. No evidence may be introduced or witnesses examined in doing so, however.
- As with opening statements, closing arguments are frequently waived in municipal court. The closing arguments are not testimony. They are not evidence to be considered when deciding the case.

Bowles Rice

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Closing Arguments

- The prosecution gives his or her argument first.
- The defendant's closing argument follows the prosecution's closing argument.
  - The defendant may give a closing argument even if the prosecution does not give one first.
  - The defendant is not required to give a closing argument. After the defendant's closing argument, the prosecution may offer a rebuttal argument.

Bowles Rice

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Closing Arguments

- The prosecution is prohibited from making any statement either in opening or closing argument which can be construed as a comment on the defendant's failure to testify, and the court should not consider this in its rulings.
- The attorneys in closing argument may comment concerning the failure of a party (the municipality or the defendant) to call a witness other than the defendant to testify in the case.

Bowles Rice

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Verdict

- The judge orally announces his or her decision after the parties have rested their cases and have given closing arguments.
- No statute or court rule allows for taking a case under advisement or delaying a verdict; the decision is given at the conclusion of the trial.
- The judge prepares a judgment and sentence form in accordance with the decision unless a sentencing hearing is to be held at a later date. The judge signs the form and gives a copy to each party.

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Review of Pertinent Statutes

West Virginia Municipal League
New Judge Training

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8-10-2
Municipal Court For Municipalities

- Only a defendant who has been charged with an offense for which a period of confinement in jail may be imposed is entitled to a trial by jury.
- If a municipal court judge determines, upon demand of a defendant, to conduct a trial by jury in a criminal matter, it shall follow the procedures set forth in the rules of criminal procedure for magistrate courts promulgated by the Supreme Court of Appeals,
- Except that the jury in municipal court shall consist of twelve members.

Bowles Rice

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8-11-1.

Ordinances To Make Municipal Powers Effective; Penalties Imposed Under Judgment Of Mayor Or Police Court Or Municipal Judge; Right To Injunctive Relief; Right To Maintain Action To Collect Fines; Additional Assessment Of Costs

- Prescribe reasonable penalties for violation of its ordinances, orders, bylaws, acts, resolutions, rules and regulations, in the form of fines, forfeitures and confinement in the county or regional jail or the place of confinement in the municipality, if there is one, for a term not exceeding thirty days.
- The fines, forfeitures and confinement shall be recovered, imposed or enforced under the judgment of the mayor of the municipality or the individual lawfully exercising the mayor's functions, or the police court judge or municipal court judge of a city, if there is one, and may be suspended upon reasonable conditions as may be imposed by the mayor, other authorized individual or judge.

Bowles Rice

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8-11-1.

Ordinances To Make Municipal Powers Effective; Penalties Imposed Under Judgment Of Mayor Or Police Court Or Municipal Judge; Right To Injunctive Relief; Right To Maintain Action To Collect Fines; Additional Assessment Of Costs

- A certified transcript of a judgment for a fine rendered by a municipal court may be filed in the office of the clerk of a circuit court and docketed in the judgment lien book kept in the office of the clerk of the county commission in the same manner and with the same effect as the filing and docketing of a certified transcript of judgment rendered by a magistrate court as provided for in section two, article six, chapter fifty of this code. The judgment shall include costs assessed against the defendant.
- In addition to any other costs which may be lawfully imposed, an additional cost shall be imposed in an amount of not less than forty-two dollars for a traffic offense constituting a moving violation, regardless of whether the penalty for the violation provides for a period of incarceration, and for any other offense for which the ordinance prescribing the offense provides for a period of incarceration.

Bowles Rice

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8-11-1.

Ordinances To Make Municipal Powers Effective; Penalties Imposed Under Judgment Of Mayor Or Police Court Or Municipal Judge; Right To Injunctive Relief; Right To Maintain Action To Collect Fines; Additional Assessment Of Costs

- Of the forty-two dollars imposed as an additional cost, two dollars are administrative costs to be retained by the municipality, and forty dollars shall be paid into the regional jail and correctional facility development fund in the state treasury in accordance with section one-a of this article.
- Execution shall be by fieri facias issued by the clerk of the circuit court in the same manner as writs are issued on judgments for a fine rendered by circuit courts or other courts of record under the provisions of section eleven, article four, chapter sixty-two of this code.

Bowles Rice

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8-11-1b.
Additional Costs In Certain Criminal Proceedings

- In each criminal case before a mayor or in the municipal court of a municipality in which the defendant is convicted, whether by plea or at trial, under the provisions of a municipal ordinance which has the same elements as an offense described in section two, article five, chapter seventeen-c of this code or section eighteen-b, article seven, chapter twenty of this code,
- There shall be imposed, in addition to other costs, fines, forfeitures or penalties as may be allowed by law, costs in the amount of fifty-five dollars.
- The clerk of each municipal court, or other person designated to receive fines and costs, shall, for purposes of further defraying the cost to the municipality of enforcing the provisions of the ordinance or ordinances described in this section and related provisions, deposit these moneys in the general revenue fund of the municipality.

Bowles Rice

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17A-2A-4.

Prohibition On Disclosure And Use Of Personal Information From Motor Vehicles Records

- Notwithstanding any other provision of law to the contrary, and except as provided in sections five through eight, both inclusive, of this article, the division, and any officer, employee, agent or contractor thereof may not disclose any personal information obtained by the division in connection with a motor vehicle record.

Bowles Rice

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17A-2A-4.

Prohibition On Disclosure And Use Of Personal Information From Motor Vehicles Records

- Notwithstanding the provisions of this article or any other provision of law to the contrary, finger images obtained and stored by the division of motor vehicles as part of the driver's licensing process may not be disclosed to any person or used for any purpose other than the processing and issuance of driver's licenses and associated legal action unless the disclosure or other use is expressly authorized by this code.
- Notwithstanding the provisions of this article or any other provision of law to the contrary, an individual's photograph or image, social security number, and medical or disability information shall not be disclosed pursuant to West Virginia Code §17A-2A-7(2),(3), (5), (7), (8), (10) and (11), without the express written consent of the person to whom such information applies

Bowles Rice

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17C-5-11.

Municipal Ordinances To Contain Same Elements As Offenses Under This Article; Penalties In Municipal Ordinances Required To Conform To State Penalties

- Notwithstanding the provisions of section five, article twelve, chapter eight of this code, on and after the first day of September, one thousand nine hundred eighty-three, each and every municipal ordinance defining a misdemeanor offense of or relating to driving under the influence of alcohol or driving under the influence of intoxicating liquor or otherwise prohibiting conduct made unlawful by this article shall be null and void and of no effect unless such ordinance defines such an offense in substantially similar terms as an offense defined under the provisions of this article and such offense contains the same elements as an offense defined herein.

Bowles Rice

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17C-5-11.

Municipal Ordinances To Contain Same Elements As Offenses Under This Article; Penalties In Municipal Ordinances Required To Conform To State Penalties

- Notwithstanding the provisions of section one, article eleven, chapter eight of this code, on and after the first day of August, one thousand nine hundred eighty-three, each and every municipal ordinance defining a misdemeanor offense of or relating to driving under the influence of alcohol or driving under the influence of intoxicating liquor or otherwise prohibiting conduct made unlawful by this article shall prescribe the same penalty for such offense as is prescribed for an offense under this article containing the same elements.

Bowles Rice

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17C-18-1.
Violations Of Chapter; Penalties For Misdemeanor

- It is a misdemeanor for any person to violate any of the provisions of this chapter unless such violation is by this chapter or other law of this state declared to be a felony.
- Every person convicted of a misdemeanor for a violation of any of the provisions of this chapter for which another penalty is not provided shall:
  - First conviction thereof be punished by a fine of not more than one hundred dollars or by imprisonment for not more than ten days;
  - Second such conviction within one year thereafter such person shall be punished by a fine of not more than two hundred dollars or by imprisonment for not more than twenty days or by both such fine and imprisonment;
  - Third or subsequent conviction such person shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than six months or both such fine and imprisonment.

Bowles Rice

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17C-19-6.
Form For And Records Of Books Of Traffic Citations

- Every traffic-enforcement agency in this state shall provide in appropriate form approved by the commissioner, the superintendent of the division of public safety and the commissioner of the division of highways, traffic citations containing notices to appear which shall be issued in books with citations in quadruplicate and meeting the requirements of this article.
- The chief administrative officer of every such traffic-enforcement agency shall be responsible for the issuance of such books and shall maintain a record of every such book and each citation contained therein issued to individual members of the traffic-enforcement agency and shall require and retain a receipt for every book so issued.

Bowles Rice

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30-29-4.

Special Revenue Account – Collections; Disbursements; Administrative Expenses

- A two dollar fee shall be added to the usual court costs of all criminal court proceedings involving violation of any criminal law of the state or any county or municipality thereof, excluding violations of municipal parking ordinances.
- A two dollar fee shall be added to the amount of any cash or property bond posted for violation of any criminal law of the state or any county or municipality thereof, excluding bonds posted solely for violation of municipal parking ordinances.
- Upon forfeiture of such bond, the two dollar fee shall be deposited as provided in subsection (c) of this section.

Bowles Rice

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49-5-2.

Juvenile Jurisdiction Of Circuit Courts, Magistrate Courts And Municipal Courts; Constitutional Guarantees; Hearings; Evidence And Transcripts

Notwithstanding any other provision of this article, municipal courts have concurrent juvenile jurisdiction with the circuit court for a violation of any municipal ordinance regulating traffic, for any municipal curfew ordinance which is enforceable or for any municipal ordinance regulating or prohibiting public intoxication, drinking or possessing alcoholic liquor or nonintoxicating beer in public places, any other act prohibited by section nine, article six, chapter sixty or section nineteen, article sixteen, chapter eleven of this code or underage possession or use of tobacco or tobacco products, as provided in article nine-a, chapter sixteen of this code. Municipal courts may impose the same punishment for these violations as a circuit court exercising its juvenile jurisdiction could properly impose, except that municipal courts have no jurisdiction to impose a sentence of incarceration for the violation of these laws.

Bowles Rice

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52-1-17.
Reimbursement Of Jurors

- A juror shall be paid mileage, at the rate set by the Secretary of the Department of Administration, for travel expenses to and from the juror's residence to the courthouse or other place where the court is convened;
- And shall be reimbursed for other expenses incurred as a result of his or her required attendance at sessions of the court at a rate of not less than fifteen dollars nor more than forty dollars,
- Set at the discretion of the circuit court or the chief judge of the circuit court, for each day of required attendance.

Bowles Rice

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52-1-17.
Reimbursement Of Jurors

- Any time a panel of prospective jurors has been required to report to court for the selection of a petit jury in any scheduled matter, the court shall, by specific provision in a court order, assess a jury cost. In both magistrate and circuit court cases the jury cost shall be the actual cost of the jurors' service:
- *Provided,* That the actual cost of a magistrate jury can only be assessed where the jury request or demand occurs on or after the first day of July, two thousand seven. For any magistrate court case in which the jury request or demand occurred prior to the first day of July, two thousand seven, the jury cost assessed shall be two hundred dollars.

Bowles Rice

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52-1-17.
Reimbursement Of Jurors

- The jury costs shall be assessed against the parties as follows:
  - In every criminal case, against the defendant upon conviction, whether by plea, by bench trial or by jury verdict;
  - In every civil case, against either party or prorated against both parties, at the court's discretion, if the parties settle the case or elect for a bench trial; and

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Bowles Rice

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52-1-17.
Reimbursement Of Jurors

  - In the discretion of the court, and only when fairness and justice so require, a circuit court or magistrate court may forego assessment of the jury fee, but shall set out the reasons for waiving the fee in a written order:

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62-1C-1a.
Release Upon Own Recognizance Authorized

Any other provision of this article to the contrary notwithstanding, when from all the circumstances, the court or magistrate is of the opinion that the defendant or person arrested will appear as may be required of him, either before or after conviction, such defendant or person arrested may be released upon his own recognizance.

Bowles Rice

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62-1C-2.
Bail Defined; Form; Receipts

- Bail is security for the appearance of a defendant to answer to a specific criminal charge before any court or magistrate at a specific time or at any time to which the case may be continued. It may take any of the following forms:
  - The deposit by the defendant or by some other person for him of cash.
  - The written undertaking by one or more persons to forfeit a sum of money equal to the amount of the bail if the defendant is in default for appearance, which shall be known as a recognizance.
  - Such other form as the judge of the court that will have jurisdiction to try the offense may determine.
  - All bail shall be received by the clerk of the court, or by the magistrate and, except in case of recognizance, receipts shall be given therefore by him.

Bowles Rice

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62-1C-3.
Fixing Of Amount; Bail May Cover Two Or More Charges

- The amount of bail shall be fixed by the court or justice with consideration given to the seriousness of the offense charged, the previous criminal record of the defendant, his financial ability, and the probability of his appearance.
- When two or more charges are filed or are pending against the same person at or about the same time, the bail given may be made to include all offenses charged against the defendant.

Bowles Rice

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62-1C-4.

Recognizance; Signing; Requirements For Signers Or Surety Company; Release Upon Own Recognizance; Indigent Persons

- The recognizance shall be signed by the defendant. It shall also be signed by one or more adult persons owning real property in the state.
- The court or justice may require that justification of surety be furnished.
  - The assessed value of the real property as shown on the county land books over and above all liens and encumbrances shall not be less than one half the amount of the bail.
  - Or, the recognizance may be signed by the defendant and a surety company authorized to do business in this state.
- If the offense is a misdemeanor, either the court or justice may release the defendant on his own recognizance.
- An indigent person who the court is satisfied will appear as required shall not be denied bail because of his inability to furnish recognizance.

Bowles Rice

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§8-10-2a.

Payment of fines by credit cards or payment plan; suspension of driver's license for failure to pay motor vehicle violation fines or to appear in court.

- A municipal court may accept credit cards in payment of all costs, fines, forfeitures or penalties.
- A municipal court may collect a substantial portion of all costs, fines, forfeitures or penalties at the time such amount is imposed by the court so long as the court requires the balance to be paid within one hundred eighty days from the date of judgment in accordance with a payment plan.

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