SUPERIOR COURT RULES OF CRIMINAL PROCEDURE

I. SCOPE, PURPOSE, AND CONSTRUCTION

1. Scope of Rules and Mandatory Electronic Charging and Filing. — (a) ***Scope of Rules.*** These rules govern the procedure:

(1) In all criminal proceedings in the Superior Court, including appeals from sentences imposed by the District Court or other lower courts, petitions for the writ of habeas corpus and other post-conviction remedy proceedings, extradition and rendition of witnesses and fugitives from justice, and actions to recover fines, penalties, or forfeitures; and

(2) In all proceedings in the District Court or before those justices of the peace who are authorized, pursuant to G.L. 1956 § 12-10-2, to set and take bail in all complaints bailable before the Superior and District Courts (hereinafter referred to as bail commissioners) involving offenses within the original jurisdiction of the Superior Court.

These rules may be known and cited as the Rules of Criminal Procedure for the Superior Court of Rhode Island and may be cited as Super.R.Crim.P.

(b) *Mandatory Electronic Charging (eCharging).* The Office of the Attorney General shall initiate the criminal case through electronic means. The electronic content and format shall be determined by the Superior Court.

(c) *Mandatory Electronic Filing.* In accordance with Article X of the Rhode Island Supreme Court Rules Governing Electronic Filing, electronic filing is mandatory for subsequent pleadings filed in a Superior Court criminal case by using the Rhode Island Judiciary's (Judiciary) Electronic Filing System.

Except for incarcerated individuals who are self-represented or where a waiver is granted in accordance with Article X, Rule 3(c), all parties are required to use the Judiciary's Electronic Filing System. Self-represented litigants may electronically file documents in accordance with Article X, Rule 3(b) but are not required to do so. The Super.R.Crim.P. must be read in conjunction with Article X, the Rhode Island Judiciary Rules of Practice Governing Public Access to Electronic Case Information, and the Rhode Island Judiciary User Guide for Electronic Filing.

(1) *Definitions.* For further definitions, see Article X, Rule 1(c) of the Rhode Island Supreme Court Rules Governing Electronic Filing.

(A) *Case Management System (CMS).* An electronic document repository database maintained and managed by the Judiciary and administered by the respective courts to track information used to manage the courts' caseload, such as case numbers, party names and identifiers, attorneys for parties, titles of all documents filed in a case, and all scheduled events in a case.

(B) *Certificate of Service.* Where the Super.R.Crim.P. requires service of a document to be certified by an attorney of record or a self-represented litigant, the following certification may be used:

CERTIFICATE OF SERVICE

I hereby certify that, on the ___ day of _____, _____:

☐ I filed and served this document through the electronic filing system on the following: _____.

The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

☐ I served this document through the electronic filing system on the following: _____.

The document electronically served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

☐ I mailed or Empty Checkbox hand-delivered this document to the attorney for the opposing party and/or the opposing party if self-represented, whose name is _____ at the following address _____.

/s/ NAME

(C) *Electronic Filing System (EFS).* An approved Judiciary-wide system for the filing and service of pleadings, motions, and other documents or information via electronic means such as the Internet, a court-authorized remote service provider, or through other remote means to and from the Judiciary's CMS.

(D) *Filing.* Where the Super.R.Crim.P. require a document to be filed in a Superior Court case, filing shall mean the electronic transmission of a document in electronic form to or from a court or clerk through the Judiciary's EFS or scanned and filed into the Judiciary's CMS at the clerk's office.

(E) *Notice.* Where the Super.R.Crim.P. require notice to be given, notice shall mean electronic notice using the EFS unless stated otherwise.

(F) *Registered User.* An individual or entity with an assigned username and password authorized by the Judiciary to access and utilize the EFS.

(G) *Rhode Island Judiciary Public Portal.* An online service provided and maintained by the Judiciary which is the point of entry for electronic access to case information from the Judiciary's database whether at the courthouse or remotely. The database is an electronic collection of court records displayed as a register of actions or docket sheet. The register of actions or docket sheet lists parties, case events, document filings, or other activities in a case set forth in chronological order.

(H) *Service.* Where the Super.R.Crim.P. require a document or information to be served, sent, delivered, or forwarded, the following shall be applicable:

(i) Subpoenas, complaints, petitions, or other documents that must be hand-delivered or served in person with a summons shall not be served electronically;

(ii) All other service or notice within a case shall be electronic using the EFS unless stated otherwise; and

(iii) All discovery on a case shall be electronically served using the EFS except when the discovery is of a type which does not lend itself to electronic service (either because it consists of non-conforming documents or is too voluminous), in which case conventional service shall be used.

(I) *Signature.* Where the Super.R.Crim.P. require an electronic signature on any document, the signature shall be reflected as /s/ NAME unless stated otherwise.

(2) *Electronic Filing of Documents.* When using the EFS:

(A) All subsequent pleadings, motions, and other papers, shall be submitted individually with related documents submitted as separate files within the same submission or filing (for example, a motion and memorandum or other supporting attachments or exhibits filed in support of a motion); and

(B) Categories of items such as bills, receipts, invoices, photographs, etc. may be submitted in one attachment.

For specific requirements, see the Superior Court's Criminal Electronic Filing System Guidelines.

(3) *Clerk Review; Acceptance/Rejection Procedure.* Following submission, the Superior Court shall timely review the electronically filed document(s) and shall notify the filing party as to whether the filing is accepted or rejected. Upon acceptance, the submitted document(s) shall be entered into the docket of the case and the docket shall reflect the date and time of filing as set forth in Article X, Rule 5(b) of the Rhode Island Supreme Court Rules Governing Electronic Filing. In accordance with Article X, Rule 5(c), grounds for the rejection of a document submitted to the EFS in the Superior Court are limited in scope as follows:

(A) Pleadings filed without a conventional signature where required;

(B) Pleadings filed without the required documents as set forth in the Superior Court's Criminal Electronic Filing System Guidelines;

(C) Pleadings not filed in accordance with Rule 1(c)(2), except for the criminal information or indictment package in Rule 1(d)(3);

(D) Documents, including any required documents, attachments, or exhibits, scanned in the wrong orientation, e.g., upside down or backwards;

(E) Documents scanned and filed that are unreadable or illegible;

(F) Documents filed in a fillable portable document format (PDF);

(G) The document filed does not match the selected filing code type;

(H) The document is filed into the wrong case;

(I) The document contains the wrong or incomplete case caption;

(J) The document is filed with no case identification;

(K) The document was improperly scanned or uploaded;

(L) The document name or address for a party exceeds the number of allotted characters;

(M) The filer added a party or participant that is not configured in the CMS or does not match the information in the case;

(N) A payment processing error occurred; and/or

(O) A technical submission error occurred.

If rejected, the filing will not be docketed and notice will be sent to the Registered User indicating why the document(s) was returned. The rejection notice shall identify the basis for the rejection in accordance with the rules of the court. A rejected filing shall be promptly corrected and resubmitted and shall be deemed to have been submitted and filed on the initial filing date for purposes of any statutory or rule-based deadline.

(d) *Obligations of the Office of the Attorney General.*

(1) *Mandatory eCharging.* All criminal cases shall be initiated through eCharging. A criminal case will be deemed to have been initiated on the date and time when it is submitted through eCharging, regardless of whether the court is open for business at the time of submission. Documents will be considered to have been timely filed when submitted at any time up to 11:59 p.m. on a filing deadline day. The time and date registered by the Judiciary's computer shall be conclusive.

(2) Criminal Information or Indictment. The criminal information or indictment shall be filed through the EFS as the lead document within two (2) business days of when the case is accepted by the court through eCharging. A criminal information or indictment submitted after 2:00 p.m. Monday through Friday will be processed the following business day.

(3) *Criminal Information Package or Indictment.* Two (2) sets of the criminal information package or indictment shall be filed separately through the EFS as attachments. One criminal information package or indictment shall be submitted as a non-public document. The second criminal information package or indictment shall be submitted as public document with documents and/or information redacted in accordance with Article X, Rules Governing Electronic Filing and the Rhode Island Judiciary Rules of Practice Governing Public Access to Electronic Case Information. The information package or indictment may be filed in one PDF with a Table of Contents as the first page. For specific requirements regarding the content and order of the information package or indictment, see the Superior Court's Criminal Electronic Filing System Guidelines.

2. Purpose and Construction.— These rules are intended to provide for the just determination of every criminal proceeding to which they apply. They shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.

3. The Complaint. — The complaint is a written statement setting forth the offense charged and shall be certified by the Office of the Attorney General or the authorized law enforcement agency. A judicial officer of the District Court or an officer empowered to issue warrants against persons charged with committing criminal offenses shall require the complainant to swear to the facts of the complaint under oath. The complaint shall be in a form approved by the District Court. If the defendant is not in custody or before the court, the judicial officer or other officer shall examine under oath the complainant and any witnesses and shall require their statements be reduced to writing and be subscribed and sworn to by the persons making them.

4. Arrest Warrant or Summons Upon Complaint. — (a) *Arrest Warrant.*

(1) *Issuance.* If it appears from the complaint, or from the statement or statements made and subscribed to before a judicial officer of the District Court or other officer empowered to issue warrants, that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a warrant for the arrest of the defendant shall issue to any officers authorized by law to execute it.

(2) *Form.* The arrest warrant shall be signed by the judicial officer issuing it and shall contain the name of the defendant or, if the defendant's name is unknown, any name or description by which the defendant can be identified with reasonable certainty. The arrest warrant shall describe the offense(s) charged in the complaint. The judicial officer or other officer issuing an arrest warrant may endorse upon it the amount of bail if the offense is bailable by that judicial officer or other officer. The warrant shall be directed to any officers or other persons authorized by law to execute same and shall command that the defendant be arrested and, unless otherwise provided by law, be brought before a judicial officer of the District Court for the division in which the crime was committed.

(3) *Execution and Return of a Warrant.*

(A) *By Whom.* The arrest warrant shall be executed by any officer authorized by law.

(B) *Territorial Limits.* The arrest warrant may be executed at any place within the State of Rhode Island.

(C) *Manner.* The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in the officer's possession at the time of the arrest, but upon request the officer shall show the warrant to the defendant as soon as possible. If the officer does not have the warrant in the officer's possession at the

time of the arrest, the officer shall then inform the defendant of the offense(s) charged and that an arrest warrant has been issued.

(D) *Return.* The officer executing an arrest warrant shall make return thereof to the judicial officer before whom the defendant is brought pursuant to Rule 5. Upon execution of an arrest warrant or surrender by a defendant, the attorney for the Office of the Attorney General or the authorized law enforcement agency shall cause any copies of the arrest warrant to be returned to the District Court for the division in which the offense was committed. The Office of the Attorney General or the authorized law enforcement agency may return any unexecuted arrest warrants to the District Court for cancellation. At the request of the attorney for the Office of the Attorney General or the authorized law enforcement agency made at any time while the complaint is pending, an arrest warrant returned unexecuted and not cancelled may be delivered to any authorized person for execution.

(b) *Summons.*

(1) *Issuance.* The Office of the Attorney General or the authorized law enforcement agency may serve a summons upon the defendant.

(2) *Form.* The summons shall be in a form approved by the District Court, describe the offense(s) charged in the complaint, and shall summon the defendant to appear at a stated time and place before a judicial officer of the District Court for the division in which the offense is alleged to have been committed.

The Office of the Attorney General or the authorized law enforcement agency shall have the defendant sign the summons or acknowledge that the defendant refused to sign. If a defendant fails to appear in response to the summons, a bench warrant may issue. The most current Summons is located on the Judiciary's website at *www.courts.ri.gov* under the heading of Forms, District Court.

(3) *Service and Return of a Summons.*

(A) *By Whom.* The summons may be served by any person authorized to execute a warrant.

(B) *Territorial Limits.* The summons may be served at any place within the State of Rhode Island.

(C) *Manner.* The summons shall be served upon a defendant by delivering a copy to the defendant personally, by leaving it at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by mailing it to the defendant's last known address.

(D) *Return.* Upon service of a summons or surrender by a defendant, the attorney for the Office of the Attorney General or the authorized law enforcement agency shall cause any copies of the summons or any summons issued against the defendant for the same offense, to be returned to the District Court for the division in which the offense was committed. On or before the return day the person to whom a summons was delivered for service shall make return thereof to the District Court

for the division in which the offense was committed. At the request of the attorney for the Office of the Attorney General or the authorized law enforcement agency made at any time while the complaint is pending, a summons returned unserved or a duplicate thereof may be delivered to any authorized person for service.

5. Proceedings Before the District Court. — (a) *Appearance Before the District Court.* Unless otherwise provided by statute, an officer making an arrest under a warrant issued upon a complaint shall take the arrested person without unnecessary delay before a judicial officer of the District Court as commanded in the warrant. Any person making an arrest without a warrant shall take the arrested person without unnecessary delay before a judicial officer of the District Court for the division in which the arrest was made or in which the crime was committed. When a person arrested without a warrant is brought before a judicial officer, a complaint shall be filed in accordance with Dist.R.Crim.P. 1(d) and (e). Whenever an arrest shall be made, the arrested person shall be afforded a prompt hearing for the purpose of admission to bail before a judicial officer of the District Court or a bail commissioner; if the arrest is made pursuant to warrant and the amount of bail has been endorsed on the warrant, the person shall also be entitled to be taken promptly before an officer authorized to accept bail. If a defendant is charged with any of the offenses set forth in § 12-13-1.1 of the General Laws of 1956 (1994 Reenactment), the judicial officer of the District Court before whom the defendant has been brought may order that the defendant be brought before a judicial officer of the Superior Court as soon as practicable, but not later than forty-eight (48) hours thereafter, not counting any intervening Saturday, Sunday, or legal holiday; provided that such appearance before a judicial officer of the Superior Court may be made in the discretion of the court through the use of two-way simultaneous audio/video communication between a holding facility and the courthouse. The judicial officer of the Superior Court before whom the defendant is brought pursuant to such order shall at that time either hold a bail hearing or set a hearing date, which shall be the earliest practicable date for the hearing to be held.

(b) *Statement by the Judicial Officer.* The judicial officer before whom the defendant is brought shall inform the defendant of the complaint against the defendant, of the defendant's right to retain an attorney and, of the defendant's right to request the assignment of an attorney if the defendant is unable to obtain an attorney. The judicial officer shall also inform the defendant that the defendant is not required to make a statement and that any statement made by the defendant may be used against the defendant. The judicial officer shall allow the defendant reasonable time and opportunity to consult an attorney and, where authorized by statute, shall admit the defendant to bail as provided in these rules.

(c) *Preliminary Examination.* The defendant shall not be called upon to plead. If the defendant waives preliminary examination, the judge of the District Court shall forthwith hold him to answer in the Superior Court. If the defendant does not waive examination, the judge shall hear the evidence within a reasonable time. The defendant may cross-examine witnesses against him or her and may introduce evidence in his or her own behalf. If from the evidence it appears to the judge that there is probable cause to believe that an offense has been committed and that the defendant has committed it, the judge shall forthwith hold the defendant to answer in the Superior Court; otherwise the judge shall discharge the defendant. The judge shall, where authorized by statute, admit the defendant to bail as provided in these rules. After concluding the proceeding the judge shall transmit forthwith to the clerk of the Superior Court for the appropriate county all papers in the proceeding and any bail taken by him or her.

5A. Diversion. — Following a defendant's appearance in the district court on a felony charge, eligible defendants may be referred to the Superior Court Diversion Program, which is an opportunity for eligible defendants to defer prosecution of the charged offenses in exchange for the defendant's successful completion of the Diversion Program.

(a) *Eligibility and Referral.* Eligible defendants are those who meet the criteria prescribed in § 8-2-39.3. Counsel for the defendant, the Department of Attorney General, or a court may refer a defendant to the Superior Court Diversion Program by completing and submitting a Superior Court Diversion Program Referral Form in accordance with the instructions thereon.

(b) *Acceptance and Participation.* If a defendant is deemed by the Superior Court to be eligible and appropriate for participation in the Superior Court Diversion Program, the defendant shall sign an agreement acknowledging his/her obligations, waiving his/her right to a speedy trial and agreeing to toll any applicable civil and/or criminal statutes of limitations while a participant in the Superior Court Diversion Program.

(c) *Termination.* A defendant may terminate his/her participation in the Superior Court Diversion Program at any time by notifying his/her case worker and appearing before the Court. If a defendant fails to abide by the terms and conditions of the Diversion Program, his/her participation may be terminated by the court upon notice and following a hearing. Upon the termination of a defendant from the Diversion Program, the case will be returned to the superior court criminal calendar for prosecution.

(d) *Right to Counsel.* Defendants participating in the Superior Court Diversion Program shall have the right to retain and consult with counsel, or to have counsel appointed for him or her if indigent, prior to signing the participation agreement.

Defendant shall also have the right to have counsel present at any termination hearings.

(e) *Successful Completion and Dismissal.* A defendant's participation in the Diversion Program shall be for a set period of time prescribed by the court, but the diversion period shall not exceed one (1) year from the date of acceptance into the Diversion Program without permission of the court. Following a defendant's successful completion of the Diversion Program, the charges against the defendant shall be dismissed in accordance with Rule 48(a) or by the court in accordance with Rule 48(b).

(f) *Confidentiality.* All records relating to a defendant's participation in the Superior Court Diversion Program shall be confidential and shall be maintained separate and apart from the participating defendant's Superior Court criminal case file.

III. INDICTMENT, INFORMATION, AND COMPLAINT

6. The Grand Jury. — (a) *Number of Grand Jurors.* A grand jury shall consist of not less than thirteen (13) nor more than twenty-three (23) members and a sufficient number of legally qualified persons shall be summoned to meet this requirement.

(b) *Objections to Grand Jury and to Grand Jurors.*

(1) *Challenges.* The attorney for the State or a defendant who has been held to answer may challenge the array of jurors on the ground that the grand jury was not selected or drawn in accordance with the law and may challenge an individual juror on the ground that the juror is not legally qualified. Challenges shall be made before the administration of the oath to the jurors and shall be determined by the court.

(2) *Motion to Dismiss.* A motion to dismiss the indictment may be based on objections to the array or on the lack of legal qualification of an individual juror, if not previously determined upon challenge. An indictment shall not be dismissed on the ground that one (1) or more members of the grand jury were not legally qualified if it appears from the signatures which appear on the indictment pursuant to subdivision (f) of this rule that twelve (12) or more jurors, after deducting the number not legally qualified, concurred in finding the indictment.

(c) *Foreman and Deputy Foreman.* The court shall appoint one (1) of the jurors to be foreman and another to be deputy foreman. The foreman shall have power to administer oaths and affirmations. During the absence of the foreman, the deputy foreman shall act as foreman.

(d) *Who May Be Present.* Attorneys for the State, the witness under examination, interpreters when needed and, for the purpose of taking the evidence or recording instructions, a stenographer or operator of a recording device may be present while

the grand jury is in session, but no person other than the jurors may be present while the grand jury is deliberating or voting.

(e) *Recording and Disclosure of Proceedings.*

(1) *Recording of Proceedings.* All proceedings, except when the grand jury is deliberating or voting, shall be recorded stenographically or by an electronic recording device. An unintentional failure of any recording to reproduce all or any portion of a proceeding shall not affect the validity of the prosecution. The recording or reporter's notes or any transcript prepared therefrom shall remain in the custody or control of the attorney for the State unless disclosed in the proper discharge of the attorney's official duties or otherwise ordered by the court in a particular case. In the event an indictment is not returned any notes of a stenographer and transcriptions of such notes, and any other recordings of the proceedings, shall be delivered to and impounded by the court.

(2) *General Rule of Secrecy.* A grand juror, an interpreter, a stenographer, an operator of a recording device, a typist who transcribes recorded testimony, an attorney for the State, or any person to whom disclosure is made under subdivision (e)(3)(A)(ii) shall not disclose matters occurring before the grand jury, except as otherwise provided for in these rules. A knowing violation of Rule 6 may be punished as a contempt of court.

(3) *Exceptions.*

(A) Disclosure otherwise prohibited by this rule of matters occurring before the grand jury, other than its deliberations and the vote of any grand juror, may be made to:

(i) An attorney for the State for use in the performance of such attorney's duty; and

(ii) Such government personnel (including personnel of the federal government) as are deemed necessary by an attorney for the State to assist an attorney for the State in the performance of such attorney's duty to enforce criminal law.

(B) Any person to whom matters are disclosed under subdivision (e)(3)(A)(ii) shall not utilize that grand jury material for any purpose other than assisting the attorney for the State in the performance of such attorney's duty to enforce criminal law. An attorney for the State shall promptly provide the court with the names of the persons to whom such disclosure has been made, and shall certify that the attorney has advised such persons of their obligation of secrecy under this rule.

(C) Disclosure otherwise prohibited by this rule of matters occurring before the grand jury may also be made:

(i) When so directed by a court preliminarily to or in connection with a judicial proceeding;

(ii) When permitted by a court at the request of the defendant, upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury;

(iii) When the disclosure is made by an attorney for the State to another grand jury; or

(iv) When permitted by a court at the request of an attorney for the State, upon a showing that such matters may disclose a violation of federal criminal law, to an appropriate official of the federal government for the purpose of enforcing such law. If the court orders disclosure of matters occurring before the grand jury, the disclosure shall be made in such manner, at such time, and under such conditions as the court may direct.

(D) Unless the hearing on a petition for disclosure pursuant to subdivision (e)(3)(C)(i) is ex parte, which it may be when the petitioner is the State, the petitioner shall serve written notice of the petition upon:

(i) The attorney for the State;

(ii) The parties to the judicial proceeding if disclosure is sought in connection with such a proceeding; and

(iii) Such other persons as the court may direct.

The court shall afford those persons a reasonable opportunity to appear and be heard.

(4) *Sealed Indictments.* The judicial officer to whom an indictment is returned may direct that the indictment be kept secret until the defendant is in custody or has been released pending trial or arraigned or presented on said indictment before a judicial officer. Thereupon the clerk shall seal the indictment and no person shall disclose the return of the indictment except when necessary for the issuance and execution of a warrant or summons.

(5) *Closed Hearing.* Subject to any right to an open hearing in contempt proceedings, the court shall order a hearing on matters affecting a grand jury proceeding to be closed to the extent necessary to prevent improper disclosure of matters occurring before a grand jury.

(6) *Sealed Records.* Records, orders, and subpoenas relating to grand jury proceedings shall be kept under seal to the extent and for such time as is necessary to prevent improper disclosure of matters occurring before a grand jury.

(f) *Finding and Return of Indictment.* An indictment may be found only upon the concurrence of twelve (12) or more jurors and shall be signed by each juror who concurred in the finding. The indictment shall be returned by the grand jury to a judicial officer in open court. If the defendant is in custody or has given bail or recognizance and twelve (12) jurors do not concur in finding an indictment, the foreman shall so report in writing to the court forthwith; whereupon, the Attorney

General shall immediately notify the division of the District Court before which a complaint has been filed or is pending against the defendant of this fact.

(g) *Tenure, Discharge, and Excuse.* A grand jury shall serve until the expiration of its term of office as fixed by statute. The court may at any time excuse a grand jury subject to recall during its term of office. On written application of the Attorney General, a grand jury may be extended beyond its term. The tenure and powers of a grand jury are not affected by the beginning or expiration of a term of court. At any time for cause shown the court may excuse a juror either temporarily or permanently, and in the latter event the court may impanel another person in place of the juror excused.

6.1. Notification that Information or Indictment Will Not be Filed. — When a person who has been charged in a complaint with an offense which may be prosecuted by information or indictment is in custody or has given bail or recognizance and the Attorney General decides not to file an information or to seek an indictment or a no true bill has been returned by a grand jury based upon the charges in the complaint, the Attorney General shall immediately notify the appropriate division of the District Court and the keeper of records of the Adult Correctional Institutions of that fact in writing.

7. The Indictment, Information, and Complaint. — (a) *Use of Indictment, Information, or Complaint.* An offense which may be punished by a term of life imprisonment shall be prosecuted by indictment. An offense which may be punished by imprisonment for a term exceeding one (1) year or by a fine exceeding five hundred dollars ($500) may be prosecuted by indictment or by information signed by the Attorney General or one of the Attorney General's designated assistants. Any other offense may be prosecuted by complaint. A complaint or information may be filed without leave of court.

(b) *Waiver of Indictment or Information.* With the consent of the Attorney General and leave of the Superior Court, any offense other than one punishable by a mandatory term of life imprisonment, may be prosecuted by complaint or information, if the defendant, after the defendant has been advised of the nature of the charge and of the defendant's rights, waives in writing and in open court or through the use of two-way simultaneous audio/video communications between a holding facility and the courthouse, prosecution by indictment, where applicable, and consents to proceed by complaint or information, as the case may be. Consent to proceed by complaint shall operate as a waiver of prosecution by information, where applicable.

(c) *Nature and Contents.* The indictment, information, or complaint shall be a plain, concise, and definite written statement of the offense charged. An indictment,

information, or complaint which provides the defendant and the court with adequate notice of the offense being charged shall be sufficient if the offense is charged either (1) by using the name given to the offense by the common law or by statute, or (2) by stating the definition of the offense in terms of either the common law or the statute defining the offense, or in terms of substantially the same meaning. It need not contain a formal commencement, a formal conclusion, or any other matter not necessary to such statement. Allegations made in one count may be incorporated by reference in another count. It may be alleged in a single count that the means by which the defendant committed the offense are unknown or that the defendant committed it by one or more specified means. The indictment or information shall state and the complaint may state for each count the official or customary citation of any statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated. Error in the citation or its omission shall not be grounds for dismissal of the indictment, information, or complaint or for reversal of a conviction if the error or omission did not mislead the defendant to the defendant's prejudice. The indictment or information shall be signed by the Attorney General or one of the Attorney General's designated assistants.

(d) *Surplusage.* The court on motion of the defendant may strike surplusage from the indictment, information, or complaint.

(e) *Amendment of Indictment, Information, or Complaint.* At any time prior to verdict or finding, the court may with the consent of the defendant permit the indictment to be amended to correct an error in form or the description of the offense intended to be charged or to charge a lesser included offense. The court may permit an information or a complaint to be amended at any time before verdict or finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced.

(f) *Bill of Particulars.* Upon motion of a defendant the court shall direct the filing of a bill of particulars. A motion for a bill of particulars may be made within thirty (30) days after arraignment or at such later time as the court may permit. A bill of particulars may be amended at any time subject to such conditions as justice requires.

8. Joinder of Offenses and of Defendants. — (a) *Joinder of Offenses.* Two (2) or more offenses may be charged in the same indictment, information, or complaint in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are of the same or similar character or are based on the same act or transaction or on two (2) or more acts or transactions connected together or constituting parts of a common scheme or plan.

(b) *Joinder of Defendants.* Two (2) or more defendants may be charged in the same indictment, information, or complaint if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting

an offense or offenses. Such defendants may be charged in one (1) or more counts together or separately and all of the defendants need not be charged in each count.

9. Arrest Warrant, Summons, or Notice to Appear Upon Indictment or Information. — (a) *Arrest Warrant.*

(1) *Issuance.* Upon the request of the attorney for the State, the court shall issue an arrest warrant for each defendant named in the indictment or information. The clerk shall deliver the arrest warrant to an officer or other person authorized by law to execute it.

(2) *Form.* The form of the arrest warrant shall be as provided in Rule 4(a)(2) except that it shall be signed by either the court, or the clerk or the clerk's deputy. The warrant shall describe the offense(s) charged in the indictment or information and shall command that the defendant be arrested and brought before the court. The amount of bail may be fixed by the court and endorsed on the arrest warrant.

(3) *Execution and Return of an Arrest Warrant.*

(A) *Execution.* The arrest warrant shall be executed as provided in Rule 4(a)(3). The officer executing the warrant shall bring the arrested person promptly before the court or, for the purpose of admission to bail, before the clerk or an officer authorized to accept bail.

(B) *Return.* The officer executing an arrest warrant shall make return thereof to the issuing court. Upon execution of an arrest warrant or surrender by a defendant, the attorney for the State shall cause any copies of the arrest warrant or any unexecuted arrest warrant issued against the defendant for the same offense, to be returned to the issuing court for cancellation. At the request of the attorney for the State made at any time while the indictment or information is pending, an arrest warrant returned unexecuted and not canceled may be delivered to an appropriate officer or other authorized person for execution.

(b) *Summons and Notice to Appear.*

(1) *Issuance.* The clerk shall issue a summons or a notice to appear instead of a warrant upon the request of the attorney for the State or by direction of the court. The clerk shall deliver the summons to an officer or other person authorized by law to serve it. A notice to appear may be mailed to the defendant. If a defendant fails to appear in response to a summons or a notice to appear, a warrant shall issue.

(2) *Form.* The summons shall be in a form approved by the Superior Court, describe the offense(s) charged, and shall summon or notify the defendant to appear before the court at a stated time and place.

(3) *Service of a Summons or Notice to Appear.*

(A) *Service.* The summons shall be served as provided in Rule 4(b)(3). A summons to a corporation shall be served by delivering a copy to an officer or to a managing or general agent or to any other agent authorized by appointment or by

law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the corporation's last known address within the State or at its principal place of business elsewhere in the United States. A notice to appear shall be served by mailing it to the defendant's last known address.

(B) *Return.* On or before the return day the person to whom a summons or a notice to appear was delivered for service shall make return thereof. Upon service of a summons or a notice to appear or surrender by a defendant, the attorney for the State shall cause any copies of the summons or notice to appear, or any summons or notice to appear issued against the defendant for the same offense, to be returned to the issuing court for cancellation. At the request of the attorney for the State made at any time while the indictment or information is pending, a summons or a notice to appear returned unserved or a duplicate thereof may be delivered to an appropriate officer or other authorized person for service.

9.1. Informations — Motion to Dismiss. — A defendant who has been charged by information may, within thirty (30) days after the defendant has been served with a copy of the information, or at such later time as the court may permit, move to dismiss on the ground that the information and exhibits appended thereto do not demonstrate the existence of probable cause to believe that the offense charged has been committed or that the defendant committed it. The motion shall be scheduled to be heard within a reasonable time.

IV. ARRIGNMENT AND PREPARATION FOR TRIAL

10. Arraignment. — Arraignment shall be conducted in open court or in the discretion of the court, through the use of two-way simultaneous audio/video communication between a holding facility and the courthouse, and shall consist of reading the indictment, information, or complaint to the defendant or stating to the defendant the substance of the charge and calling on the defendant to plead thereto. The defendant shall be given a copy of the indictment, information, or complaint before the defendant is called upon to plead.

11. Pleas. — A defendant may plead not guilty, guilty or, with the consent of the court, nolo contendere. The court may refuse to accept a plea of guilty and shall not accept such plea or a plea of nolo contendere without first addressing the defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea. If a defendant refuses to plead or if the court refuses to accept a plea of guilty or if a defendant corporation fails to appear, the court shall enter a plea of not guilty. The court shall not enter a

judgment upon a plea of guilty or nolo contendere unless it is satisfied that there is a factual basis for the plea.

12. Pleadings and Motions Before Trial — Defenses and Objections. — (a) **Pleadings and Motions.** Pleadings in criminal proceedings shall be the indictment, information, or complaint, and the pleas of not guilty, guilty and nolo contendere. All other pleas, demurrers, and motions to quash are abolished and defenses and objections raised before trial which heretofore could have been raised by one (1) or more of them shall be raised only by motion to dismiss or to grant appropriate relief, as provided in these rules.

(b) **The Motion Raising Defenses and Objections.**

(1) *Defenses and Objections Which May Be Raised.* Any defense or objection which is capable of determination without the trial of the general issue may be raised before trial by motion.

(2) *Defenses and Objections Which Must Be Raised.* The defense of double jeopardy and all other defenses and objections based on defects in the institution of the prosecution or in the indictment, information, or complaint, other than that it fails to show jurisdiction in the court or to charge an offense, may be raised only by motion before trial. The motion shall include all such defenses and objections then available to the defendant. Failure to present any such defense or objection as herein provided constitutes a waiver thereof, but the court for cause shown may grant relief from the waiver. Lack of jurisdiction or the failure of the indictment, information, or complaint to charge an offense may be raised by suggestion of the parties or the court at any time during the pendency of the proceeding.

(3) *Time of Making Motion.* The motion shall be made no later than thirty (30) days after the plea is entered, except that if the defendant has moved pursuant to Rule 9.1 to dismiss, it shall be made within thirty (30) days after entry of an order disposing of that motion; but in any event the court may permit the motion to be made within a reasonable time after the plea is entered or a Rule 9.1 motion has been determined.

(4) *Hearing on Motion.* A motion before trial raising defenses or objections shall be determined before trial unless the court orders that it be deferred for determination at the trial of the general issue.

(5) *Effect of Determination.* If a motion is determined adversely to the defendant, the defendant shall be permitted to plead if the defendant had not previously pleaded. A plea previously entered shall stand. If the court grants a motion based on a defect in the institution of the prosecution or in the indictment, information, or complaint, the court may also order that the defendant be held in custody or that the defendant's bail be continued for a specified time pending the filing of a new indictment, information, or complaint.

(c) *Defense of Insanity.*

(1) *Notice.* If a defendant who pleads not guilty intends to rely in any way on the defense of insanity, the defendant shall no later than thirty (30) days after the defendant enters the defendant's plea file a written notice of such intention with the court and serve a copy thereof upon the Attorney General. The notice shall contain the names and addresses of persons the defendant intends to call as witnesses to establish that the defendant was insane at the time of the alleged offense. In the event the defendant gives notice that the defendant intends to rely on the defense of insanity, the Attorney General shall, not later than thirty (30) days prior to commencement of trial, file with the court and serve upon the defendant a written notice stating the names and addresses of persons whom the State intends to call as witnesses to establish the defendant's sanity at the time of the alleged offense.

(2) *Failure to Comply.* In the event a notice is not filed and served as required by this subdivision, the court may refuse to permit the party in default to present evidence at the trial with respect to the defense of insanity or may in its discretion enter such other order as it deems appropriate under the circumstances, including an extension of time to file the notice if deemed necessary.

(d) *Motion for a Speedy Trial.* **When** a Motion for a Speedy Trial is filed by a defendant, the attorney for the defendant shall send a copy to the Attorney General. The motion shall then be assigned for hearing.

(e) *Motion to Dismiss for Failure to Obtain a Speedy Trial.* When a Motion to Dismiss for Failure to Obtain a Speedy Trial is filed, the attorney for the defendant shall send a copy to the Attorney General. The motion shall then be assigned for hearing.

13. Trial Together of Indictments, Informations, or Complaints. — The court may order two (2) or more indictments, informations, or complaints to be tried together if the offenses, and the defendants if there is more than one (1), could have been joined in a single indictment, information, or complaint. The procedure shall be the same as if the prosecution were under such single indictment, information, or complaint.

14. Relief From Prejudicial Joinder. — If it appears that a defendant or the State is prejudiced by a joinder of offenses or of defendants in an indictment, information, or complaint or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires. If two (2) or more defendants are to be tried together and the State intends to introduce at trial a statement or confession of any of the defendants, the attorney for the State shall, prior to trial, on notice to all defendants deliver to the court any such written statement or confession or a written

summary of any such oral statement or confession for in camera inspection and determination of whether any portion of the statement or confession involves another defendant and, if so, whether such portion can be effectively deleted therefrom. If the court determines that effective deletions cannot practicably be made, it shall order separate trials of the defendants. Upon failure of the attorney for the State to comply with this rule, the court may refuse to admit into evidence such statement or confession.

15. Depositions. — (a) *When Taken.* If it appears that a prospective witness may be unable to attend or prevented from attending a trial or hearing, that the prospective witness' testimony is material, and that it is necessary to take the witness' deposition in order to prevent a failure of justice, the court at any time after the filing of an indictment, information, or complaint may upon motion of a defendant or the State and notice to the parties, order that the prospective witness' testimony be taken by deposition and that any designated books, papers, documents, or tangible objects, not privileged, be produced at the same time and place. If a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court on written motion of the witness and upon notice to the parties may direct that the witness' deposition be taken. After the deposition has been subscribed the court may discharge the witness.

(b) *Notice of Taking.* The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time.

(c) *Defendant's Attorney and Payment of Expenses.* If a defendant is without an attorney, the court shall advise the defendant of the defendant's right to an attorney and assign an attorney to represent the defendant unless the defendant elects to proceed without an attorney or is able to obtain an attorney. If it appears that a defendant at whose instance a deposition is to be taken cannot bear the expense thereof, the court may direct that the expenses of travel and subsistence of the defendant's attorney for attendance at the examination shall be paid by the State. If a deposition is taken at the instance of the prosecution or of a witness who has been committed for failure to give bail, the defendant's attorney and a defendant not in custody shall be paid by the State their expenses for travel and subsistence for attendance at the examination. If a deposition is to be taken at the instance of any party or of a witness committed for failure to give bail, a defendant who is in custody shall be permitted to attend the taking of the deposition at the expense of the State.

(d) *How Taken.* A deposition shall be taken in the manner provided in civil actions. The court at the request of a defendant may direct that a deposition be taken on written interrogatories in the manner provided in civil actions.

(e) *Use.* At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used if it appears that the witness is unavailable as defined in Rhode Island Rule of Evidence 804(a). Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, an adverse party may require the party to offer all of it which is relevant to the part offered and any party may offer other parts.

(f) *Objections to Admissibility.* Objections to receiving in evidence a deposition or part thereof may be made as provided in civil actions.

16. Discovery and Inspection. — (a) *Discovery by Defendant.* Upon written request by a defendant, the attorney for the State shall permit the defendant to inspect or listen to and copy or photograph any of the following items within the possession, custody, or control of the State, the existence of which is known, or by the exercise of due diligence may become known to the attorney for the State:

(1) All relevant written or recorded statements or confessions, signed or unsigned, or written summaries of oral statements or confessions made by the defendant or copies thereof;

(2) All relevant recorded testimony before a grand jury of the defendant, or in the case of a corporate defendant, of any present or former officer or employee of the defendant corporation concerning activities carried on, or knowledge acquired, within the scope of or reasonably relating to any present or former officer or employee's employment;

(3) All written or recorded statements or confessions which were made by a codefendant who is to be tried together with the moving defendant and which the State intends to offer in evidence at the trial, and written summaries of oral statements or confessions of such a co-defendant in the event the State intends at the trial to offer evidence of such oral statements or confessions;

(4) All books, papers, documents, photographs, audio recordings, or copies thereof, or tangible objects, buildings, or places which are intended for use by the State as evidence at the trial or were obtained from or belong to the defendant;

(5) All results or reports in writing, or copies thereof, of physical or mental examinations, and of scientific tests or experiments made in connection with the particular case and, subject to an appropriate protective order under subdivision (f), any tangible objects still in existence that were the subject of such tests or experiments;

(6) A written summary of testimony that the State intends to use under Rules 702, 703, or 705 of the Rhode Island Rules of Evidence during its case-in-chief at trial, which testimony describes the witness' opinions, the bases and reasons for those opinions, and the witness' qualifications;

(7) A written list of the names and addresses of all persons whom the attorney for the State expects to call as witnesses at the trial in support of the State's direct case;

(8) As to those persons whom the State expects to call as witnesses at the trial, all relevant recorded testimony before a grand jury of such persons and all written or recorded verbatim statements, signed or unsigned, of such persons and, if no such testimony or statement of a witness is in the possession of the State, a summary of the testimony such person is expected to give at the trial;

(9) All reports or records of prior convictions of the defendant, or of persons whom the attorney for the State expects to call as witnesses at the trial, and within fifteen (15) days after receipt from the defendant of a list produced pursuant to subdivision (b)(3) of persons whom the defendant expects to call as witnesses all reports or records of prior convictions of such persons; and

(10) All warrants which have been executed in connection with the particular case and the papers accompanying the warrants, including affidavits, transcripts of oral testimony, returns, and inventories.

(b) *Discovery by the State.* A defendant who seeks any discovery under subdivision (a) of this rule shall permit the State, upon receipt of a written request, to inspect or listen to and copy or photograph any of the following items within the possession, custody, or control of the defendant or the defendant's attorney:

(1) All books, papers, documents, photographs, audio recordings, or copies thereof, or tangible objects, buildings, or places which are intended for use by the defendant as evidence at the trial;

(2) All results or reports in writing, or copies thereof, of physical or mental examinations, and of scientific tests or experiments made in connection with the particular case and prepared by a person whom the defendant intends to call as a witness at the trial and, subject to an appropriate protective order under subdivision (f), any tangible objects still in existence that were the subject of such tests or experiments;

(3) A written summary of testimony that the defendant intends to use under Rules 702, 703, or 705 of the Rhode Island Rules of Evidence as evidence at trial, which summary describes the witness' opinions, the bases and reasons for those opinions, and the witness' qualifications;

(4) A written list of the names and addresses of all persons other than the defendant whom the defendant expects to call as witnesses at the trial in the event the State presents a prima facie case; and

(5) As to those persons other than the defendant whom the defendant expects to call as witnesses at the trial, all written or recorded verbatim statements, signed or unsigned, of such persons and, if no such statement of a witness is in the possession of the defendant, a summary of the testimony such person is expected to give at the trial.

(c) *Notice of Alibi.* In the event a defendant seeks any discovery under subdivision (a) of this rule, then upon demand by the attorney for the State and delivery by the attorney for the State to the defendant of a written statement describing with specificity the date and time when and the place where the offense charged is alleged to have occurred, the defendant, within twenty-one (21) days after receipt of such demand and particulars, shall give written notification whether the defendant intends to rely in any way on the defense of alibi. If the defendant does so intend, the notice shall state with specificity the place at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses the defendant intends to call at the trial to establish such alibi. Within twenty-one (21) days after receipt of written notification of intent to rely on the defense of alibi, together with particulars thereof, the attorney for the State shall furnish to the defendant written notice of the names and addresses of the witnesses whom the State intends to call at the trial to establish the defendant's presence at the place where and the time when the offense is alleged to have occurred.

(d) *Material Not Subject to Discovery.* Except as provided in subdivisions (a) and (b), this rule does not authorize discovery of internal reports, memoranda, or other documents made by a defendant, or the defendant's attorney or agent, or by the attorney for the State, or by officers or agents of the State, in connection with or in preparation for the prosecution or defense of a criminal proceeding.

(e) *Failure to Call a Witness.* The fact that a person was designated by a party pursuant to subdivision (a)(6) or subdivision (b)(3) as an intended witness but was not called to testify shall not be commented upon at the trial by any party.

(f) *Protective Orders.* Upon motion and a sufficient showing the court may at any time order that the discovery or inspection sought pursuant to this rule be denied, restricted, or deferred, or make such other order as is appropriate. In determining the motion, the court may consider, among other things, the following: protection of witnesses and others from physical harm, threats of harm, bribes, economic reprisals, and other intimidation; maintenance of such secrecy regarding informants as is required for effective investigation of criminal activity; protection of confidential relationships and privileges recognized by law; and the need to safeguard from loss or to preserve the condition of tangible objects sought to be discovered under subdivisions (a)(4), (a)(5), (b)(1), and (b)(2). The court may permit a party to make a showing of good cause, in whole or in part, in the form of a written statement to be inspected by the court alone. If the court thereafter enters a protective order, the

entire text of the party's statement shall be sealed and preserved in the records of the court, to be made available only to an appellate court in the event of an appeal. Upon application of a party who has, pursuant to subdivision (a)(6) or subdivision (b)(3), been requested to designate the names of persons who will be called as witnesses at the trial, the court may order that the testimony of one (1) or more persons so designated be perpetuated by oral deposition pursuant to Rule 15 at a time and place and before an officer ordered by the court. Examination and cross-examination shall proceed as permitted at the trial. A record of the testimony of such a witness shall be made and shall be admissible at the trial as part of the case of the party who requested the taking of the deposition in the event the witness becomes unavailable without fault of such party of if the witness changes the witness' testimony materially.

(g) *Procedure and Timing.*

(1) *Defendant's Request.* A request by a defendant for discovery and inspection shall be made within thirty (30) days after arraignment. The attorney for the State shall respond in writing within fifteen (15) days after service of the request stating with respect to each item or category either that discovery and inspection will be permitted or stating that the request will not or cannot be complied with and the reason why. The response shall also specify the place and time defendant may inspect the items being made available.

(2) *State's Request.* Within twenty-one (21) days after serving a response to a defendant's request for discovery and inspection, the attorney for the State may serve a defendant with a request for discovery and inspection. The defendant shall respond within fifteen (15) days after service of the request stating with respect to each item or category either that discovery and inspection will be permitted or stating that the request will not or cannot be complied with and the reason why. The response shall also specify the place and time the attorney for the State may inspect the items being made available.

(3) *Discovery or Inspection Withheld.* In the event a party refuses to comply with a request for discovery or inspection, the party who served the request may move for an order to compel compliance with his request.

(4) *Extensions of Time.* The court may on motion of a party and for good cause shown extend the time for serving requests or responses permitted or required under this rule.

(h) *Continuing Duty to Disclose.* If, subsequent to compliance with a request for discovery or with an order issued pursuant to this rule and prior to or during trial, a party discovers additional material previously requested which is subject to discovery or inspection under this rule, the party shall promptly notify the other party of the existence thereof.

(i) *Failure to Comply.* If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this rule, the court may order such party to provide the discovery or inspection, grant a continuance, or prohibit the party from introducing in evidence the material which or testimony of a witness whose identity or statement were not disclosed, or the court may enter such other order as the court deems appropriate.

(j) *Applicability of Rule.* This rule applies only to criminal trials in the Superior Court.

17. Subpoena. — (a) *For Attendance of Witnesses; Form; Issuance.* Every subpoena shall be issued by the clerk of court or a notary public or other officer authorized by statute, shall state the name of the court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified.

(b) *Defendants Unable to Pay.* The court shall order at any time that a subpoena be issued for service on a named witness upon an ex parte application of a defendant upon a satisfactory showing that the defendant is financially unable to pay the fees of the witness and that the presence of the witness is necessary to an adequate defense. If the court orders the subpoena to be issued the cost incurred by the process and fees of the witness so subpoenaed shall be paid in the same manner in which similar costs and fees are paid in case of a witness subpoenaed on behalf of the State.

(c) *For Production of Documentary Evidence and of Objects***.** A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein. The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that books, papers, documents, or objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents, or objects or portions thereof to be inspected by the parties and their attorneys.

(d) *Service.* A subpoena may be served by a duly authorized officer in accordance with Title 9, Chapter 5 (Writs, Summons, and Process) of the Rhode Island General Laws or by any other person who is not a party and who is not less than eighteen (18) years of age. Service of a subpoena shall be made by delivering a copy thereof to the person named and by tendering to him the fee for one day's attendance and the mileage allowed by law. When the subpoena is issued in behalf of the State or an officer or agency thereof, fees and mileage need not be tendered.

(e) *Place of Service.*

(1) *In Rhode Island.* A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the State of Rhode Island.

(2) *Out of State.* A subpoena directed to a witness outside the State of Rhode Island shall issue under the circumstances and in the manner and be served as provided in the Uniform Act to Secure the Attendance of Witnesses from Without the State in Criminal Cases, G.L.1956 (1969 Reenactment) §§ 12-16-1 through 12-16-13.

(f) *For Taking Deposition; Place of Examination.*

(1) *Issuance.* An order to take a deposition constitutes a sufficient authorization for the issuance of subpoenas for the persons named or described therein.

(2) *Place.* A person named or described in a subpoena for the taking of a deposition may be required to travel to and attend an examination at the place within the State designated in the notice required by Rule 15(b). The court, on motion of any party or of the person to be examined, may direct that the deposition be taken at some other place.

(g) *Contempt.* Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the court in which the action is pending.

V. VENUE

18. Place of Prosecution and Trial. — Except as otherwise permitted by statute or by these rules, the prosecution and trial shall be had in the county in which the offense was committed.

19. [Reserved.]

20. [Reserved.]

21. Motion to Transfer. — (a) *For Prejudice in the County.* The court, upon motion of the defendant, shall transfer the proceedings as to the defendant to another county whether or not such county is specified in the defendant's motion if the court is satisfied that there exists in the county where the prosecution is pending so great a prejudice against the defendant that the defendant cannot obtain a fair and impartial trial in that county.

(b) *Transfer in Other Cases.* For the convenience of parties and witnesses and in the interest of justice, the court upon motion of the defendant may transfer the proceedings as to the defendant.

(c) *Proceedings on Transfer.* When a transfer is ordered pursuant to subdivision (a) or (b) of this rule, the clerk shall transmit to the clerk of the court to which the

proceeding is transferred all non-electronic portions of the record, and the prosecution shall continue in that county. After judgment has been entered in the case, the clerk of the court in which the case was tried shall return all non-electronic portions of the record to the clerk of the court from which the case was transferred.

(d) *Transfer for Pre-trial Proceedings.* The court upon motion of any party or upon its own motion may transfer the proceeding to the Superior Court for Providence County for the purpose of hearing and determining any pending pre-trial motions or proceedings, or for the purpose of permitting pre-trial motions to be made and determined.

(e) *Transfer for Post-trial Proceedings.* The court upon motion of any party or upon its own motion may transfer the proceeding to another county for the purpose of hearing and determining any pending post-trial motions or proceedings, or for the purpose of sentencing.

22. Time of Motion to Transfer. — A motion to transfer under these rules may be made at or before arraignment or at such other time as the court or these rules may prescribe.

VI. TRIAL

23. Trial by Jury or by the Court. — (a) *Trial by Jury.* Cases required to be tried by jury shall be so tried unless the defendant in open court waives a jury trial in writing with the approval of the court.

(b) *Jury of Less Than Twelve (12).* Juries shall be of twelve (12) but at any time before verdict the parties may in open court stipulate in writing with the approval of the court that the jury shall consist of any number less than twelve (12).

(c) *Trial Without a Jury.* In a case tried without a jury the court shall make a general finding and shall in addition on request find the facts specially and state separately the court's conclusions of law thereon. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein.

24. Trial Jurors. — (a) *Examination.* The court may permit a defendant or the defendant's attorney and the attorney for the State to conduct the examination of prospective jurors or the court itself may conduct the examination. In the latter event, the court shall permit the defendant or the defendant's attorney and the attorney for the State to supplement the examination by further inquiry or, upon request, the court itself shall put to the prospective jurors such additional questions as are submitted by the parties or their attorneys. The examination of prospective jurors shall be for the purpose of determining whether a prospective juror is related to a party, or has

any interest in the case, or has expressed or formed an opinion or is sensible of any bias or prejudice therein. The examination shall be conducted under oath if requested.

(b) *Peremptory Challenges.* If the offense charged is punishable by imprisonment for more than one (1) year, each side is entitled to six (6) peremptory challenges. If the offense charged is punishable by imprisonment for not more than one (1) year or by fine or both, each side is entitled to three (3) peremptory challenges. If the jury is impaneled in accordance with subdivision (c) of this rule, each side will be entitled to one (1) extra peremptory challenge if one (1) or two (2) additional jurors are to be impaneled and to two (2) extra peremptory challenges if more than two (2) additional jurors are to be impaneled. If there is more than one (1) defendant, the court may allow the defendants additional peremptory challenges.

(c) *Alternate Jurors.* The court in its discretion may direct the impaneling of a jury not to exceed sixteen (16) members, all having the same qualifications and impaneled and sworn in the same manner as a jury of twelve (12). If a juror is excused after the juror has been sworn but before any opening statement is begun, another juror may be impaneled and sworn in the juror's place. All the jurors shall sit and hear the case, but the court for cause may excuse any of them from service provided the number of jurors is not reduced to less than twelve (12) or such other number stipulated to under Rule 23(b). If more than such number remains at the conclusion of the court's charge, the clerk in the presence of the court and the parties shall put the names of the remaining jurors in a box and from it shall draw twelve (12) names, or such other number stipulated to by the parties, to determine the issues. The court may order that jurors whose names have not been drawn be retained after the jury retires to deliberate, and the court may thereafter order that retained alternate juror(s) replace any deliberating juror(s) who, for good cause, as determined by the court, cannot continue to deliberate. The alternate juror(s) selected to replace deliberating juror(s) shall be drawn, as needed, from a box containing the names of the remaining alternate jurors. The court must ensure that a retained alternate does not discuss the case with anyone until that alternate replaces a juror or is discharged. If an alternate replaces a juror after deliberations have begun, the court must instruct the jury to begin its deliberations anew.

(d) *Appointment of Foreperson.* Prior to the time the jury retires to commence its deliberations, the court shall appoint one (1) of the jurors to act as foreperson.

25. Justice –Disability. — (a) *During Trial.* If by reason of absence, death, sickness, or other disability the justice before whom a jury trial has commenced is unable to proceed with the trial, any other justice assigned thereto by order of the Presiding Justice, upon certifying that justice has familiarized himself or herself with the record of the trial, may proceed with and finish the trial.

(b) *After Verdict or Finding of Guilt.* If by reason of absence, death, sickness, or other disability the justice before whom the defendant has been tried is unable to perform the duties to be performed by the court after a verdict or finding of guilty, any other justice assigned thereto by order of the Presiding Justice may perform those duties; but if such other justice is satisfied that the justice cannot perform those duties because the justice did not preside at the trial or for any other reason, such other may in the justice's discretion grant a new trial.

26. Evidence. — (a) *Form and Admissibility.* In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by statute or by these rules. All evidence shall be admitted which is admissible under the statutes of this State, or under the Rhode Island Rules of Evidence. The competency of a witness to testify shall be determined in like manner.

(b) *Record of Excluded Evidence.* In an action tried by a jury, if an objection to a question propounded to a witness is sustained by the court, the examining attorney may make a specific offer of what the attorney expects to prove by the answer of the witness. The court shall require the offer to be made out of the hearing of the jury. The court may add such other or further statement as clearly shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. In actions tried without a jury the same procedure may be followed, except that the court upon request, shall take and report the evidence in full, unless it clearly appears that the evidence is not admissible on any ground or that the witness is privileged.

(c) *Affirmation in Lieu of Oath.* Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

(d) *Examination of Witnesses.* While examining or cross-examining a witness an attorney shall stand, unless the court otherwise permits.

Rule 26.1. Statements of Witnesses. — (a) *Production of Statements.* If pre-trial discovery pursuant to Rule 16 has not occurred, after a witness other than the defendant has testified on direct examination, the court, on motion of a party who did not call the witness, shall order the attorney for the State or the defendant and the defendant's attorney, as the case may be, to produce, for the examination and use of the moving party, any statement (as defined in subdivision (e)) of the witness that is in their possession or under their control, and that relates to the subject matter concerning which the witness has testified. If the entire contents of the statement relate to the subject matter of the testimony of the witness, the court shall order that the statement be delivered to the moving party. Upon delivery of the statement to the moving party, the court in its discretion, upon application of that party, may recess the proceedings for such time as it may determine to be reasonably required

for the moving party to examine the statement and prepare to use it in the proceedings.

(b) *Privileged or Unrelated Matter.* If the other party claims that any statement ordered to be produced under this rule contains privileged information or matter that does not relate to the subject matter of the testimony of the witness, the court shall order that the statement be delivered to the court in camera. Upon inspection, the court shall excise the portions of the statement that are privileged or that do not relate to the subject matter of the testimony of the witness, and shall order that the statement, with such material excised, be delivered to the moving party. If any portion of a statement is withheld from the defendant and the defendant objects to such withholding, and the trial is continued to an adjudication of the guilt of the defendant, the entire text of the statement shall be preserved by the attorney for the State and, in the event the defendant appeals, shall be made available to the Supreme Court for the purpose of determining the correctness of the ruling of the trial court.

(c) *Sanction for Failure to Produce Statement.* If the other party elects not to comply with an order to deliver a statement to the moving party, the court shall order that the testimony of the witness be stricken from the record and that the proceeding continue, or, if it is the attorney for the State who elects not to comply during a trial, shall declare a mistrial if required by the interest of justice.

(d) *Production of Criminal Records.* If pre-trial discovery pursuant to Rule 16 has not occurred, after a witness called by the State has testified on direct examination, the court shall, on motion of the defendant, order the attorney for the State to provide the defendant with a written statement of all criminal convictions of the witness that are known to the attorney for the State or are contained in the files of the Attorney General's Bureau of Criminal Identification.

(e) *Statement Defined.* The term "statement," as used in subdivisions (a), (b), and (c) of this rule, means the following:

(1) A written statement made by the witness that is signed or otherwise adopted or approved by the witness;

(2) A substantially verbatim recital of an oral statement made by the witness that is recorded contemporaneously with the making of the oral statement and that is contained in a stenographic, mechanical, electrical, or other recording, or a transcription thereof; or

(3) A statement, however taken or recorded, or a transcription thereof, made by the witness to a grand jury.

(f) *Scope of Rule.* This rule applies at trial and at pre-trial hearings, such as suppression hearings, and post-trial proceedings, such as sentencing proceedings, hearings to revoke or modify probation, and other post-conviction proceedings.

26.2. Opening Statements. — Before any evidence is offered at trial, the State may make an opening statement. If a defendant is permitted to make an opening statement, the defendant may do so just prior to the introduction of evidence by the State, or just prior to presenting the defendant's case.

26.3. Sexual Assault and Other Sexual Offenses — Proof of Prior Sexual Conduct of Complainant. — If a defendant who is charged with the crime of sexual assault or any other sexual offense intends to introduce proof that the complaining witness has engaged in sexual activities with other persons, the defendant shall give notice of the defendant's intention to the court and the attorney for the State. The notice shall be given prior to the introduction of any evidence of such fact; it shall be given orally out of the hearing of spectators and, if the action is being tried by a jury, out of the hearing of the jurors. Upon receiving such notice, the court shall order the defendant to make a specific offer of the proof that the defendant intends to introduce in support of this issue. The offer of proof, and all arguments relating to it, shall take place outside the hearing of spectators and jurors. The court shall then rule upon the admissibility of the evidence offered.

27. Proof of Official Record. — An official record or an entry therein or the lack of such a record or entry may be proved in accordance with the Rhode Island Rules of Evidence.

28. Expert Witnesses and Interpreters. — (a) *Expert Witnesses.* The court may on its own motion or upon the motion of a party order the defendant or the State or both to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint witnesses of its own selection. An expert witness shall not be appointed by the court unless the expert witness consents to act. A witness so appointed shall be informed of the witness' duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of the witness' findings, if any, and may thereafter be called to testify by the court or by any party. The witness shall be subject to cross-examination by each party. The court may determine the reasonable compensation of such a witness and may direct that it be paid either by the State or by the party who moved for appointment. The parties also may call expert witnesses of their own selection.

(b) *Interpreters.* The court may appoint an interpreter of its own selection. Compensation for interpreters shall be paid by the State.

29. Motion for Judgment of Acquittal and Motion to Dismiss. — (a) *Motion for judgment of acquittal.*

(1) *Motion Before Submission to Jury.* The court on motion for a judgment of acquittal of a defendant or on the court's own motion shall order the entry of judgment of acquittal of one (1) or more offenses charged in the indictment, information, or complaint, after the evidence on either side is closed, if the evidence is insufficient to sustain a conviction of such offense or offenses. If a defendant's motion for judgment of acquittal at the close of the evidence offered by the State is not granted, the defendant may offer evidence without having reserved the right.

(2) *Reservation of Decision on Motion.* If a motion for judgment of acquittal is made at the close of all the evidence, the court may reserve decision on the motion, submit the case to the jury, and decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict.

(b) *Motion to dismiss.* In a case tried without a jury, a motion to dismiss may be filed at the close of the State's case to challenge the legal sufficiency of the State's trial evidence.

30. Instructions. — At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the request. At the same time copies of such request shall be furnished to adverse parties. If a defendant relies upon an affirmative defense, or justification, or matter in mitigation and wishes the court to instruct the jury with respect to such, the defendant shall so advise the court in writing no later than at the close of the evidence. No party may assign as error any portion of the charge or omission therefrom unless the party objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which the party objects and the grounds of the party's objection. Objections shall be made out of the presence of the jury.

The court, in its discretion, may provide written copies of the instructions to the jury in addition to the oral instructions that are given. If the court provides written copies of the instructions to the jury, the instructions shall be provided in full.

30.1. Jury Deliberations. — The trial justice may permit the members of a jury which is in the course of its deliberations, after providing them with appropriate instructions, to separate for the time being in order that they may obtain their meals or to return to their homes overnight and until the next court session.

31. Verdict. — (a) *Return.* The verdict shall be unanimous. It shall be returned by the jury to the trial justice in open court.

(b) *Several Defendants.* If there are two (2) or more defendants, the jury at any time during its deliberations may return a verdict or verdicts with respect to a defendant or defendants as to whom the jury has agreed; if the jury cannot agree with respect to all, the defendant or defendants as to whom the jury does not agree may be tried again.

(c) *Conviction of a Lesser Included Offense.* The defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein if the attempt is an offense.

(d) *Poll of Jury.* When a verdict is returned and before the jury is discharged the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberations or, if circumstances warrant, the jury may be discharged.

(e) *Special Verdict: Insanity.* If a defendant raises the defense of insanity and evidence thereof is presented at the trial, the jury, if it finds the defendant not guilty on that ground, shall declare that fact in its verdict.

VII. JUDGMENT

32. Sentence and Judgment. — (a) *Sentence.*

(1) *Imposition of Sentence.* Sentence shall be imposed without unreasonable delay. A delay between verdict and imposition of sentence will not be deemed unreasonable if a defendant has not moved for imposition of sentence. Pending sentence the court may commit the defendant or continue or alter the bail. Before imposing sentence the court shall afford the defendant's attorney an opportunity to speak on behalf of the defendant and shall address the defendant personally and ask the defendant if the defendant wishes to make a statement in the defendant's own behalf and to present any information in mitigation of punishment.

(2) *Notification of Right to Appeal.* After imposing sentence in a case which has gone to trial on a plea of not guilty, the court shall advise the defendant of the defendant's right to appeal and of the right of a person who is unable to pay the cost of an appeal to apply for leave to be represented on appeal by the Public Defender or to appeal in forma pauperis.

(b) *Judgment.* A judgment of conviction shall set forth the offense charged, the plea, the verdict or findings, and the adjudication and sentence. If the defendant is found not guilty or for any reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judicial officer and entered by the clerk.

(c) *Presentence Investigation.*

(1) *When Made.* In every case in which a sentence of imprisonment for more than one (1) year may be imposed, except where the prescribed punishment is a mandatory term of life imprisonment, the administrator of probation and parole shall make a presentence investigation and report to the court before the imposition of sentence or the granting of probation. In all other cases the administrator shall make a presentence investigation and render a report when directed to do so by the court. Unless the defendant consents, the report shall not be submitted to the court or its contents disclosed to anyone before the defendant has pleaded guilty or nolo contendere or, if the defendant has proceeded to trial, before the defendant has been found guilty and all of the defendant's pending motions for a new trial have been denied.

(2) *Report.* The report of the presentence investigation shall contain any prior criminal record of the defendant and such information about the defendant's characteristics, the defendant's financial condition, and the circumstances affecting the defendant's behavior as may be helpful in imposing or deferring sentence or in granting probation or in the correctional treatment of the defendant, and such other information as may be required by the court.

(3) *Disclosure.* Before imposing sentence the court shall make the presentence report available to the Attorney General to aid the State's attorney in making a recommendation to the court concerning the sentence to be imposed. The court shall also make the report available for inspection to the attorney for the defendant, or to the defendant if the defendant is not represented by an attorney, and afford an opportunity to the defense to comment thereon. The court may withhold from the defendant or the defendant's attorney only those portions of the report that it finds:

(i) Contain diagnostic opinion which if revealed to the defendant may seriously disrupt a program of rehabilitation;

(ii) Identify sources of information which have been obtained on a promise of confidentiality; or

(iii) Would, if revealed to the defendant, seriously disrupt personal relationships, the maintenance of which are important to a program of rehabilitation.

If the court withholds any portion of a report, it shall apprise the parties of that fact and state the reasons why the court has not made the entire report available. The court shall then seal the entire report, indicating thereon the portions that were withheld, and order it preserved in the records of the court to be made available to the appellate court in the event of an appeal by the defendant.

(d) *Withdrawal of Plea.* A motion to withdraw a plea of guilty or of nolo contendere may be made only before sentence is imposed or deferred or probation is imposed or imposition of sentence is suspended.

(e) *Probation and Sentence.* Unless otherwise provided by law, the defendant may be placed on probation or execution of sentence may be suspended or sentence may be deferred.

(f) *Revocation of Probation.* The court shall not revoke probation or revoke a suspension of sentence or impose a sentence previously deferred except after a hearing at which the defendant shall be afforded the opportunity to be present and apprised of the grounds on which such action is proposed. The defendant may be admitted to bail pending such hearing. Prior to the hearing the State shall furnish the defendant and the court with a written statement specifying the grounds upon which action is sought under this subdivision. No revocation shall occur unless the State establishes by a fair preponderance of the evidence that the defendant breached a condition of the defendant's probation or deferred sentence or failed to keep the peace or remain on good behavior.

33. New Trial. — On motion of the defendant the court may grant a new trial to the defendant if required in the interest of justice. If trial was by the court without a jury, the court on motion of a defendant for a new trial may vacate the judgment, take additional testimony, and direct the entry of a new judgment. A motion for a new trial based on newly discovered evidence may be made only within three (3) years after the entry of judgment by the court, but if an appeal is pending, the court may grant the motion only on remand of the case. A motion for a new trial based on any other grounds shall be made within ten (10) days after the verdict or finding of guilty or within such further time as the court may fix during the ten-day period. A copy of the motion for a new trial shall be filed with the clerk of the court.

34. Arrest of Judgment. — The court on motion of a defendant shall arrest judgment if the indictment, information, or complaint does not charge an offense or if the court was without jurisdiction of the offense charged. The motion in arrest of judgment shall be made within ten (10) days after verdict or finding of guilty, or after plea of guilty or nolo contendere, or within such further time as the court may fix during the ten-day period.

35. Correction, Decrease, or Increase of Sentence. — (a) *Correction or reduction of sentence.* The court may correct an illegal sentence at any time. The court may correct a sentence imposed in an illegal manner and it may reduce any sentence when a motion is filed within one hundred and twenty (120) days after the sentence is imposed, or within one hundred and twenty (120) days after receipt by the court of a mandate of the Supreme Court of Rhode Island issued upon affirmance of the judgment or dismissal of the appeal, or within one hundred and twenty (120) days after receipt by the court of a mandate or order of the Supreme Court of the

United States issued upon affirmance of the judgment, dismissal of the appeal, or denial of a writ of certiorari. The court shall act on the motion within a reasonable time, provided that any delay by the court in ruling on the motion shall not prejudice the movant. The court may reduce a sentence, the execution of which has been suspended, upon revocation of probation.

(b) *Increase in sentence.* Within twenty (20) days after the filing of a motion to reduce a sentence, the attorney general may file a motion for an increase in said sentence. The court on its own motion, after the filing of a motion to reduce a sentence, may increase said sentence. Whenever a judge increases a sentence, the reasons for so doing must be made part of the record and must be based on objective information concerning identifiable conduct on the part of the defendant occurring after the time of the original sentencing proceeding.

(c) *Motion for Termination of Probation.* At any time after a defendant has served at least three (3) years of a term of probation in the community, the probation unit of the Department of Corrections, either at a defendant's request or administratively, may review the defendant's case history and recommend amending the defendant's sentence to terminate the defendant's probation. The probation unit's recommendation shall be based on the criteria contained in subdivision (1). In the event the probation unit recommends termination of the defendant's probation, the defendant may file in Superior Court a motion to amend the defendant's sentence to terminate the defendant's probation. This rule shall apply to all persons on probation and otherwise eligible, including persons sentenced to probation prior to the adoption of this rule.

(1) A motion seeking probation termination shall contain a signed certificate from the probation unit of the department of corrections stating that:

(i) A copy of the signed certificate has been provided to the State and the defendant's probation is not conditioned on an active no-contact order; and

(ii) The defendant has completed all of the terms and conditions of the defendant's probation, including, but not limited to, counseling requirements, community service orders, restitution orders, and fines; and

(iii) There are no pending probation or deferred sentence revocation proceedings filed against the defendant; and

(iv) During the three (3) years preceding the issuance of the certificate by the probation unit, the court has not declared defendant a violator of the defendant's probation or deferred sentence; and

(v) The defendant is not currently on parole in this or any other jurisdiction; and

(vi) The defendant is not currently on probation, suspended sentence, or deferred sentence in any other criminal case in this or any other jurisdiction, with the exception of another criminal case where the term of probation, suspended sentence

or deferred sentence was imposed on the same date as the other sentence and the sentences were ordered to run concurrently; and

(vii) The defendant is not the subject of pending charge(s) in this or any other jurisdiction; and

(viii) The probation unit has made reasonable efforts to contact victims through its Office of Victims Services and/or the victim's last known address; and

(ix) After review of the defendant's case history and the criteria in subdivisions (1)(i) to (ix), the probation unit recommends that the defendant's probation be terminated.

(2) The motion shall be filed by the defendant at least ten (10) days before the time fixed for the hearing, with a copy provided to the State who shall be afforded an opportunity to object to the motion. The court may grant the motion to discharge the defendant from probation, after hearing, if in the discretion of the judicial officer, the judicial officer finds that the defendant has demonstrated that the defendant no longer requires supervision.

(3) The defendant shall appear in open court, with or without an attorney and may be questioned, under oath by the attorney for the State or the judicial officer.

(4) In the event that the motion is granted, an order shall issue and thereafter a new judgment reflecting the change(s) in the sentence shall be entered by the court.

36. Clerical Mistakes. — Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of the court's own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the Supreme Court, and thereafter while the appeal is pending may be so corrected with leave of the Supreme Court.

VIII. APPEAL

37. [Reserved.]

38. Stay of Execution and Relief Pending Review

(a) *Stay of Execution.*

(1) *Imprisonment.* A sentence of imprisonment shall be stayed if an appeal is taken and the defendant is admitted to bail.

(2) *Fine.* A sentence to pay a fine or a fine and costs, if an appeal is taken, may be stayed by the court upon such terms as the court deems proper. The court may require the defendant pending appeal to deposit the whole or any part of the fine and costs with the clerk of the Superior Court, or to give bond for the payment thereof,

or to submit to an examination of assets, and the court may make any appropriate order to restrain the defendant from dissipating the defendant's assets.

(3) *Probation.* An order which defers sentencing or places the defendant on probation shall be stayed if an appeal is taken.

(b) *Bail.* Admission to bail upon appeal shall be as provided in these rules or the appellate rules of the Supreme Court of Rhode Island.

39. [Reserved.]

IX. SUPPLEMENTARY AND SPECIAL PROCEEDINGS

40. [Reserved.]

41. Search and Seizure. — (a) *Authority to Issue Warrant.* A search warrant authorized by this rule may be issued by a judicial officer of the District Court, as well as by any judicial officer of the Supreme or Superior Courts.

(b) *Grounds for Issuance.* A warrant may be issued under this rule to search for and seize any property:

(1) Stolen or embezzled, or obtained by any false pretense with intent to cheat or defraud;

(2) Designed or intended for use or which is or has been used as the means of committing a violation of law;

(3) Possession of which is unlawful; and/or

(4) Which is evidence of the commission of a crime.

(c) *Issuance and Contents.* A warrant shall issue only on written application by an officer or other person authorized by law to apply for a search warrant and supported by an affidavit, sworn to before a person authorized by this rule to issue warrants, specifically designating the place to be searched, the owner or occupant thereof, if known to the affiant, and the person or thing to be searched for, and establishing the grounds for issuing the warrant. If the judicial officer is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, the judicial officer shall issue a warrant identifying the property and naming or describing the person or place to be searched. The warrant shall be directed to any officer authorized by law to execute it where the person or place to be searched is located. The warrant shall state the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof. The warrant shall command the officer to search forthwith the person or place named for the property specified. The warrant shall direct that it be served in the daytime, unless for good cause shown the warrant provides for its execution at

any time of day or night. The warrant shall designate the judicial officer to whom it shall be returned.

(d) *Execution and Return With Inventory.* The warrant may be executed only within seven (7) days after its date. The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall 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 (1) credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be verified by the officer. The judicial officer shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(e) *Return of Papers to Clerk.* Within fourteen (14) days of the issuance of a warrant, the warrant, accompanied by any supporting affidavits, an inventory of any property seized, and all other papers in connection therewith shall be filed with the clerk of the division of the District Court which has jurisdiction over the place of the search or, in the event of a warrant that is not executed, the court from which it was issued.

(f) *Motion to Suppress Evidence.* A person aggrieved by an unlawful search and seizure may move in the division of the District Court which has jurisdiction over the place where the property was seized, or in the division of the District Court to which such person has been brought pursuant to Rule 5, to suppress for use as evidence anything so obtained on the ground that:

(1) The property was illegally seized without warrant;

(2) The warrant is insufficient on its face;

(3) The property seized is not that described in the warrant;

(4) There was not probable cause for believing the existence of the grounds on which the warrant was issued; or

(5) The warrant was illegally executed.

The judicial officer shall receive evidence on any issue of fact necessary to the decision of the motion. Whether or not a motion to suppress has been made initially in the District Court, the motion to suppress may be made in the Superior Court after an indictment has been returned or an information filed or an appeal has been filed from the District Court and the Superior Court will not be bound by any prior determination of the District Court. The motion shall be made before trial in the Superior Court unless opportunity therefor did not exist or the defendant was not

aware of the grounds for the motion, but the court in its discretion may entertain the motion at the trial or hearing.

(g) *Return of Illegally Seized Property.*

(1) *District Court.* If a motion to suppress is granted by the District Court, it shall not order the State to return illegally seized property unless:

(i) An indictment or an information charging an offense involving such property has not been returned or filed within six (6) months of the determination of the District Court

(ii) The grand jury has pursuant to Rule 6(f) reported its failure to find an indictment charging an offense involving such property; or

(iii) The Attorney General has pursuant to Rule 6.1 reported that the Attorney General does not intend to file an information or seek an indictment charging an offense involving such property.

In no event shall property which is otherwise subject to lawful detention be ordered returned.

(2) *Superior Court.*

(i) *Prior to Trial.* If a motion to suppress is granted by the Superior Court prior to commencement of trial, the court shall defer ruling upon an application for return of illegally seized property if the State, within seven (7) days of entry of the order to suppress, files a notice to appeal the order of suppression pursuant to §§ 9-24-32 and 9-24-33 of the General Laws of 1956 (1969 Reenactment).

(ii) *During Trial.* If a motion to suppress evidence is granted after commencement of trial, the court shall order illegally seized property which is not otherwise subject to lawful detention to be returned.

(h) *Scope and Definition.* This rule does not modify any act, inconsistent with it, regulating search, seizure, and the issuance and execution of search warrants in circumstances for which special provision is made. The term "property" is used in this rule to include documents, books, papers, and any other tangible objects.

42. Criminal Contempt. — (a) *Summary Disposition.* A criminal contempt may be punished summarily if the judicial officer certifies that the judicial officer saw or heard the conduct constituting the contempt and that the conduct was committed in the actual presence of the court. The order of contempt shall recite the adjudication and sentence and shall be signed by the judicial officer and entered of record.

(b) *Disposition Upon Notice and Hearing.* A criminal contempt except as provided in subdivision (a) of this rule shall be prosecuted on notice. The notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and describe it as such. The notice shall be given orally by the judicial officer in open court in the presence of the defendant or, on application of an attorney

for the State or of an attorney appointed by the court for that purpose, by an order to show cause or an order of arrest. The defendant is entitled to admission to bail as provided in these rules. In a proceeding under this subdivision, if the contempt charged involves disrespect to or criticism of a judicial officer, that judicial officer is disqualified from presiding at the trial or hearing except with the defendant's consent. Upon a verdict or finding of guilt the court shall enter an order fixing the punishment.

X. GENERAL PROVISIONS

43. Presence of the Defendant.— The defendant shall be present at the arraignment and at the imposition of sentence, except as otherwise provided by these rules. The defendant shall be present at every stage of the trial, including the impaneling of the jury and the return of the verdict, except that the defendant may be excluded from the proceedings if, after appropriate warning, the defendant persists in acting in a manner so disorderly, disruptive, and disrespectful of the court that the trial cannot be carried on with the defendant in the courtroom. The defendant's voluntary absence after the trial has been commenced in the defendant's presence shall not prevent continuing the trial to and including the return of the verdict. A corporation may appear by an attorney for all purposes. In prosecutions for offenses punishable by fine or by imprisonment for not more than one (1) year or both, the court, with the written consent of the defendant, may permit arraignment, plea, trial, and imposition of sentence in the defendant's absence. The defendant's presence is not required at a reduction of sentence under Rule 35.

44. Assignment of an Attorney. — If a defendant appears in Superior Court without an attorney, the court shall advise the defendant of the defendant's right to an attorney and assign an attorney to represent the defendant at every stage of the proceeding unless the defendant is able to obtain the defendant's own counsel or elects to proceed without an attorney.

45. Time. — (a) *Computation.* In computing any period of time prescribed or allowed by these rules, by order of court or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday.

(b) *Enlargement.* When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion:

(1) With or without motion or notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order: or

(2) Upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but the court may not extend the time for taking any action under Rules 33, 34, and 35, except to the extent and under the conditions stated in them.

(c) *For Motions — Affidavits.* A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than five (5) days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion, and opposing affidavits may be served not later than one (1) day before the hearing, unless the court permits them to be served at some other time.

(d) *Additional Time After Electronic Service or Service by Mail. Whenever* a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party, and the notice or paper is served upon the party electronically or by mail, one (1) day shall be added to the prescribed period.

46. Release on Bail. — (a) *Right to Bail.*

(1) Before and After Conviction. In accordance with the Constitution and laws of this State, a defendant shall be admitted to bail before conviction and may be admitted to bail after conviction pending appeal.

(2) Extradition Proceedings. A person arrested in connection with an extradition proceeding may in the discretion of the court be admitted to bail except where the defendant is charged with an offense punishable by death or life imprisonment under the laws of the demanding state.

(b) *Bail for Witne***ss.** If upon a hearing it appears that the testimony of a person is material in any criminal proceeding and if it is shown that it may become impracticable to secure the person's presence by subpoena, the court may require the person to give bail for the person's appearance as a witness in an amount fixed by the court. If the person fails to give bail, the court may commit the person pending final disposition of the proceeding in which the testimony is needed, may order the person's release if the person has been detained for an unreasonable length of time, and may modify at any time the requirement as to bail.

(c) *Terms.* If the defendant is admitted to bail, the terms thereof shall be such as in the judgment of the court will insure the presence of the defendant, having regard to the nature and circumstances of the offense charged, the weight of the evidence

against the defendant, the financial ability of the defendant to give bail, the character of the defendant, and the policy against unnecessary detention of defendants pending trial.

(d) *Form and Conditions.* A defendant required or permitted to give bail shall execute a recognizance in such form as may be prescribed to assure for the defendant's appearance, for the defendant's good behavior, and that the defendant will keep the peace. The court, having regard to the considerations set forth in subdivision (c), may require one (1) or more sureties, may authorize the acceptance of cash or bonds or other security in an amount equal to or less than the face amount of the recognizance, or may authorize the release of the defendant without security upon the defendant's written agreement to appear at a specified time and place and upon such conditions as may be prescribed to insure the defendant's appearance.

(e) *Violation of Terms of Recognizance.* In addition to other remedies provided for in this rule or otherwise provided for by law, violation of the terms of a recognizance may be punished as a contempt of court.

(f) *Justification of Sureties.* Every surety, except a corporate surety authorized by law to give a recognizance, shall justify by affidavit or oral testimony under oath and may be required to describe the property by which the surety proposes to justify and the encumbrances thereon, the number and amount of other bonds and undertakings for bail entered into by the surety and remaining undischarged and all the surety's other liabilities. No recognizance shall be approved unless the surety thereon appears to be qualified.

(g) *Revocation of Bail or Personal Recognizance.*

(1) *Revocation.* In addition to other remedies provided for in this rule or otherwise provided for by law, violation of the bail or personal recognizance conditions may result in the defendant's bail or personal recognizance being revoked and may result in the defendant being ordered held without bail at the Adult Correctional Institutions.

(2) *Hearing.* The court shall not revoke a defendant's bail or personal recognizance except after a hearing at which the defendant shall be afforded the opportunity to be present and apprised of the grounds on which such action is proposed. If the court finds by a preponderance of the evidence that a violation of the bail or personal recognizance conditions has occurred, the defendant may be admitted to bail or held without bail pending such hearing, as the court may deem reasonable. Prior to the hearing the State shall furnish the defendant and the court with a written statement specifying the grounds upon which revocation is sought.

(3) *Date for readmission to bail to be set.* If the court revokes the defendant's bail or personal recognizance, the court shall set the date for trial. If the case has not been brought to trial or otherwise adjudicated after ninety (90) days, the defendant may move to be readmitted to bail

(4) *Alternative remedies.* Alternatively, in lieu of revoking the defendant's recognizance, the court may, in appropriate cases where a violation of the bail and personal recognizance conditions has been proven or admitted, require the defendant to give a new recognizance, with or without surety or sureties, in place of the one already given, with new or additional conditions, as to the court may seem reasonable.

(h) *Forfeiture.*

(1) *Declaration.* If there is a breach of condition of a recognizance, the court upon motion of the attorney for the State shall declare a forfeiture of the bail.

(2) *Setting Aside.* The court may direct that a forfeiture be set aside, upon such conditions as the court may impose, if it appears that justice does not require the enforcement of the forfeiture.

(3) *Enforcement.* When a forfeiture has not been set aside, the court shall on motion enter a judgment of default and execution may issue thereon. By entering into a recognizance the obligors submit to the jurisdiction of the court and irrevocably appoint the clerk of the court as their agent upon whom any papers affecting their liability may be served. Their liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the obligors to their last known addresses.

(4) *Remission.* After entry of such judgment, the court may remit it in whole or in part under the conditions applying to the setting aside of forfeiture in paragraph (2) of this subdivision.

(5) *Settlement.* The Attorney General may settle with any obligor liable upon a forfeited recognizance upon such terms and in such manner as the Attorney General shall deem most advantageous to the interest of the State.

(i) *Exoneration.* When the condition of the recognizance bond has been satisfied or the forfeiture thereof has been set aside or remitted or settled, the court shall exonerate the obligors and release any bail. A surety may be exonerated by a deposit of cash in the amount of the bond or by a timely surrender of the defendant into custody.

47. Motions. — An application to the court for an order shall be by motion. A motion other than one made during a trial or hearing shall be in writing unless the court permits it to be made orally. The motion shall state with particularity the grounds upon which it is made and shall set forth the relief or order sought. It may be supported by affidavit. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

48. Dismissal. — (a) *By Attorney for State.* The attorney for the State may file a dismissal of an indictment, information, or complaint and the prosecution shall thereupon terminate. Such dismissal may not be filed during the trial without consent of the defendant.

(b) *By the Court.* The court, upon a finding that a defendant has successfully completed the diversion program, may dismiss the charge(s) then pending against the defendant.

49. Service and Filing of Papers. — (a) *Service: When Required.* Written motions, other than those which are heard ex parte, written notices, designations of record on appeal, and similar papers shall be served upon each of the parties.

(b) *Service: How Made.*

(1) Whenever under these rules or by an order of the court service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless the court orders service on the party.

(2) For attorneys and self-represented litigants who are Registered Users, service is made electronically using the EFS.

(3) For incarcerated individuals, attorneys who are granted a waiver pursuant to Article X, Rule 3(c) of the Rhode Island Supreme Court Rules Governing Electronic Filing, and self-represented litigants who do not elect to electronically file pursuant to Article X, Rule 3(b), service is made by:

(A) Delivering a copy to the person served by:

(i) Handing it to the person;

(ii) Leaving it at the person's office with a clerk or other person in charge or if no one is in charge, leaving it in a conspicuous place in the office; or

(iii) Leaving it at the person's dwelling house or usual place of abode with someone of suitable age and discretion residing there.

(B) Mailing a copy to the last known address of the person served. Service by mail is complete on mailing; or

(C) Any other means ordered by the court.

(c) *Docketing of Orders.* Immediately upon the entry of an order made on a written motion subsequent to arraignment, the clerk shall make a docket entry in the case. Lack of such an entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted by Rule 4 of the Rules of Appellate Procedure of the Supreme Court of Rhode Island.

(d) *Filing: No Proof of Service Required.* All papers required to be served shall be filed with the court either before service or within a reasonable time thereafter. Such filing by a party or party's attorney shall constitute a representation by the party that a copy of the paper has been or will be served upon each of the other parties as

required by subdivision (a) of this rule. No further proof of service is required unless an adverse party raises a question of notice. In such instance the affidavit of the person making service shall be prima facie evidence.

Discovery requests and responses shall be filed with the court. However, the accompanying discovery materials shall not be filed with the court until they are used in the proceeding or the court orders their filing. The court, on motion generally or in a specific case, or on its own initiative, may order the filing of such discovery materials. Notwithstanding anything in this subsection, any party pressing or opposing any motion for relief under Rules 16(f) or (i) shall file copies of the relevant portions of discovery materials with the court as exhibits to any such motion or opposition.

(e) *Filing With the Court Defined.* The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judicial officer may permit the pleadings to be filed with the judicial officer, in which event the judicial officer shall note the filing date and forthwith transmit them to the office of the clerk.

(f) *Effect of Failure to File.* If any party to an action fails to file within five (5) days after the service any of the pleadings required by this rule to be filed, the court, on motion of any party or of its own initiative, may order the pleadings to be filed forthwith, and if the order be not obeyed, the court may order them to be regarded as stricken and their service to be of no effect.

50. Appearance and Withdrawal of Attorneys. — (a) *Appearance.* The attorney for a defendant in a criminal action shall forthwith file the attorney's appearance with the clerk of the Superior Court for the county wherein the action is pending.

(b) *Withdrawal.* An attorney who has appeared on behalf of any defendant in a criminal action may not withdraw unless the attorney first obtains the consent of the court. All withdrawals shall be upon motion with notice to the defendant and the Attorney General and after hearing thereon. A motion to withdraw shall not be granted unless the attorney who seeks to withdraw shall append to the attorney's motion the last known address of the attorney's client, which shall be the official address to which notices may be sent. A motion to withdraw shall be accompanied by an affidavit setting forth facts showing the military status of the defendant. If it appears that the defendant is in the military service of the United States, as defined in the Servicemembers Civil Relief Act (50 U.S.C.A. App. § 501, et seq.), and any amendments thereto, the motion shall not be granted unless the defendant consents thereto in writing or another attorney appears of record as counsel at the time of such withdrawal.

(c) *Out of State Counsel.* No person, who is not an attorney of the Supreme Court of the State of Rhode Island, shall be permitted to act as attorney for any party in any proceeding, hearing, or trial in the Superior Court, unless granted leave to do so by the Superior Court or by the Supreme Court. Unless the Superior Court or the Supreme Court permits otherwise, any attorney who is granted leave to practice before the Superior Court shall not engage in any proceeding, hearing, or trial therein unless there is present in the courtroom for the duration of the proceeding, hearing, or trial, a member of the bar of Rhode Island who shall be prepared to continue with the proceeding, hearing, or trial in the absence of an attorney who has been so granted leave.

Subject to the limitations and exceptions set forth in Article II, Rule 9 of the Supreme Court Rules for the Admission of Attorneys and Others to Practice Law, leave shall be granted by the Superior Court in its discretion upon a miscellaneous petition signed by the petitioner in a form approved by the Supreme Court, supported by certifications of the attorney seeking admission pro hac vice and of Rhode Island associate counsel, and assented to by the party being represented in a client certification. The most current forms for pro hac vice admission are located on the Judiciary's website at *www.courts.ri.gov* under the heading of Forms, Superior Court.

Leave to represent more than one defendant may be granted provided, however, that for each defendant there shall also be a separate Rhode Island associate trial counsel who shall be present in the courtroom for the duration of the proceeding, hearing, or trial, unless excused by the court.

Leave to represent more than one defendant shall be granted by the Superior Court, in its discretion, upon motion in the form approved by the court, signed by the movant, and assented to by the defendant being represented and by Rhode Island associate trial counsel.

51. Exceptions Unnecessary. — Formal exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which the party desires the court to take or the party's objection to the action of the court and the party's grounds therefor if requested.

52. Harmless Error. — Any error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded.

53. Regulation of Conduct in the Courtroom. — The taking of photographs and the broadcasting, televising, and recording of court proceedings shall be

controlled by the trial judicial officer in accordance with Supreme Court Rules, Article VII, Canons 1-13 or orders, which address media coverage of judicial proceedings. Taking written notes and sketching in the courtroom may be permitted in the discretion of and under the supervision and control of the trial judicial officer.

54. [Reserved.]

55. Records. — The clerk of the court shall keep such records in criminal proceedings as required by law, rule, or by order of the judicial officers of the court, including a criminal docket in which, among other things, shall be entered each order or judgment of the court. The entry of an order or judgment shall show the date the entry is made. In trials in the Superior Court, all proceedings, including the testimony of witnesses and the opening statements and closing arguments to the jury, shall be stenographically or electronically recorded.

56. Courts and Clerks. — Subject to law, the Superior Court shall be deemed always open for the purpose of filing any proper paper, of issuing and returning process, and of making motions and orders. The clerk's office with the clerk or deputy or an assistant in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays.

57. Rules of Practice and Orders. — A majority of the judicial officers of the Superior Court may from time to time adopt rules of practice and general orders to further regulate in criminal matters the practice and conduct of business therein not inconsistent with these rules. If no procedure is prescribed by these rules, or by rules of practice or general orders adopted pursuant to the authority contained in this rule, the court shall proceed in any lawful manner not inconsistent with these rules or with any applicable statute.

58. Forms. — The forms listed in the Appendix of Forms are located on the Judiciary's website at *www.courts.ri.gov* under the heading of Public Resources, Forms, Superior Court are sufficient under the rules and are not mandatory.

59. Effective Date. — These amended rules take effect on September 5, 2017. They govern all criminal proceedings thereafter commenced and so far as just and practicable all proceedings then pending.

60. [Reserved.]

APPENDIX OF FORMS

The following forms located on the Judiciary's website at *www.courts.ri.gov* under the heading of Public Resources, Forms, Superior Court and are expressly declared by Rule 58 to be sufficient under the rules. They are limited in number. No attempt is made to furnish a manual of forms.

Affidavit for Bail
Bail and Recognizance Conditions
Defendant's Petition to Waive Indictment or Information
Deferred Sentence Agreement
Dismissal Under Criminal Rule 48(a)
Entry of Appearance — Criminal
Financial Statement
Motion, Affidavit, and Order to Proceed in Forma Pauperis
Motion and Affidavit to Expunge or Seal Record — Felony
Motion and Affidavit to Expunge or Seal Record — Misdemeanor
Motion for Permission to Travel
Motion to Vacate No Contact Order
No Contact Order
Notice of Appeal
Pro Hac Vice — Attorney Certification for Admission Pro Hac Vice
Pro Hac Vice — Client Certification
Pro Hac Vice — Miscellaneous Petition for Admission Pro Hac Vice
Request to Enter Plea of Nolo Contendre or Guilty
Restraining—No Contact — Counseling Order
Waiver of Extradition Proceedings
Waiver of Right of Jury Trial