

TITLE 19
CRIMINAL PROCEDURE

CHAPTER 21
TRIAL

19-2101. ORDER OF TRIAL. The jury having been impaneled and sworn, the trial must proceed in the following order:

1. If the indictment is for a felony, the clerk must read it and state the plea of the defendant to the jury. In all other cases this formality may be dispensed with.

2. The prosecuting attorney or other counsel for the people must open the cause and offer the evidence in support of the indictment.

3. The defendant or his counsel may then open the defense and offer his evidence in support thereof.

4. The parties may then respectively offer rebutting testimony only, unless the court for good reason, in furtherance of justice, permit them to offer evidence upon their original case.

5. When the evidence is concluded, unless the case is submitted to the jury on either side, or on both sides, without argument, the prosecuting attorney or other counsel for the people must open, and the prosecuting attorney may conclude, the argument.

6. The judge must then charge the jury if requested by either party; he may state the testimony and declare the law, but must not charge the jury in respect to matters of fact; such charge must be reduced to writing before it is given, unless by the mutual consent of the parties it is given orally.

[(19-2101) Cr. Prac. 1864, sec. 354, p. 255; R.S., R.C., & C.L., sec. 7855; C.S., sec. 8941; I.C.A., sec. 19-2001.]

19-2102. WHEN ORDER MAY BE DEPARTED FROM. When the state of the pleadings requires it, or in any other case for good reasons, and in the sound discretion of the court, the order prescribed in the last section may be departed from.

[(19-2102) Cr. Prac. 1864, sec. 355, p. 256; R.S., R.C., & C.L., sec. 7856; C.S., sec. 8942; I.C.A., sec. 19-2002.]

19-2103. ARGUMENT TO JURY. If the indictment is for an offense punishable with death, two (2) counsel on each side may argue the cause to the jury. If it is for any other offense, the court may, in its discretion, restrict the argument to one (1) counsel on each side.

[(19-2103) Cr. Prac. 1864, sec. 356, p. 256; R.S., R.C., & C.L., sec. 7857; C.S., sec. 8943; I.C.A., sec. 19-2003.]

19-2104. PRESUMPTION OF INNOCENCE -- REASONABLE DOUBT. A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal.

[19-2104, added 1972, ch. 336, sec. 8, p. 987.]

19-2105. DOUBT AS TO DEGREE OF CRIME. When it appears that the defendant has committed a public offense, and there is reasonable ground of doubt in which of two or more degrees he is guilty, he can be convicted of the lowest of such degrees only.

[19-2105, added 1972, ch. 336, sec. 8, p. 987.]

19-2106. TRIAL OF JOINT DEFENDANTS. When two (2) or more defendants are jointly indicted or informed against for a felony or for any criminal offense, the defendants may be tried separately or jointly, in the discretion of the court.

[19-2106, added 1972, ch. 336, sec. 8, p. 988.]

19-2107. DISCHARGE OF CODEFENDANT FOR USE AS WITNESS. When two (2) or more persons are included in the same indictment, the court may, at any time before the defendants have gone into their defense, on the application of the prosecuting attorney, direct any defendant to be discharged from the indictment, that he may be a witness for the people.

[19-2107, added 1972, ch. 336, sec. 8, p. 988.]

19-2108. DISCHARGE OF DEFENDANT TO TESTIFY FOR CODEFENDANTS. When two (2) or more persons are included in the same indictment, and the court is of opinion that in regard to a particular defendant there is not sufficient evidence to put him on his defense, it must order him to be discharged from the indictment before the evidence is closed, that he may be a witness for his codefendants.

[19-2108, added 1972, ch. 336, sec. 8, p. 988.]

19-2109. DISCHARGE EQUIVALENT TO ACQUITTAL. The order mentioned in the last two (2) sections is an acquittal of the defendant discharged, and is a bar to another prosecution for the same offense.

[19-2109, added 1972, ch. 336, sec. 8, p. 988.]

19-2110. RULES OF EVIDENCE. The rules of evidence in civil actions are applicable also to criminal actions, except as otherwise provided in this code.

[(19-2110) R.S., R.C., & C.L., sec. 7864; C.S., sec. 8950; I.C.A., sec. 19-2010.]

19-2111. CONSPIRACY -- SUFFICIENCY OF EVIDENCE. Upon a trial for conspiracy, in a case where an overt act is necessary to constitute the offense, the defendant cannot be convicted unless one (1) or more overt acts are expressly alleged in the indictment, nor unless one (1) of the acts alleged is proved; but other overt acts not alleged in the indictment may be given in evidence.

[19-2111, added 1972, ch. 336, sec. 8, p. 988.]

19-2113. BIGAMY -- PROOF OF MARRIAGE. Upon a trial for bigamy, it is not necessary to prove either of the marriages by the register, certificate,

or other record evidence thereof, but the same may be proved by such evidence as is admissible to prove a marriage in other cases; and when the second marriage took place out of this state, proof of that fact, accompanied with proof of cohabitation thereafter in this state, is sufficient to sustain the charge.

[I.C., sec. 19-2113, as added by 1972, ch. 336, sec. 8, p. 988.]

19-2114. FORGING BANK BILLS -- PROOF OF INCORPORATION -- EXPERT WITNESSES. Upon a trial for forging any bill or note purporting to be the bill or note of an incorporated company or bank, or for passing or attempting to pass, or having in his possession, with intent to pass, any such forged bill or note, it is not necessary to prove the incorporation of such bank or company by the charter or act of incorporation, but it may be proved by a general reputation, and persons of skill are competent witnesses to prove that such bill or note is forged or counterfeited.

[19-2114, added 1972, ch. 336, sec. 8, p. 988.]

19-2115. ABORTION AND ABDUCTION -- CORROBORATING TESTIMONY. Upon a trial for procuring or attempting to procure an abortion, or aiding or assisting therein, or for inveigling, enticing, or taking away an unmarried female of previous chaste character, under the age of eighteen (18) years, for the purpose of prostitution, or aiding or assisting therein, the defendant cannot be convicted upon the testimony of the woman upon or withwhom the offense was committed, unless she is corroborated by other evidence.

[(19-2115) R.S., R.C., & C.L., sec. 7869; C.S., sec. 8955; I.C.A., sec. 19-2015.]

19-2116. FALSE PRETENSE -- SUFFICIENCY OF EVIDENCE. Upon a trial for having with intent to cheat or defraud another designedly, by any false pretense, obtained the signature of any person to a written instrument, or having obtained from any person, any money, personal property, or valuable thing, the defendant cannot be convicted if the false pretense was expressed in language, unaccompanied by a false token or writing, unless the pretense or some note or memorandum thereof be in writing, subscribed by or in the hand writing of the defendant, or unless the pretense be proven by the testimony of two (2) witnesses, or that of one (1) witness and corroborating circumstances; but this section shall not apply to a prosecution for falsely representing or personating another, and, in such assumed character, marrying, or receiving any money or property.

[19-2116, added 1972, ch. 336, sec. 8, p. 989.]

19-2117. TESTIMONY OF ACCOMPLICE -- CORROBORATION. A conviction cannot be had on the testimony of an accomplice, unless he is corroborated by other evidence, which in itself, and without the aid of the testimony of the accomplice, tends to connect the defendant with the commission of the offense; and the corroboration is not sufficient, if it merely shows the commission of the offense, or the circumstances thereof.

[(19-2117) Cr. Prac. 1864, sec. 364, p. 256; R.S., R.C., & C.L., sec. 7871; C.S., sec. 8957; I.C.A., sec. 19-2017.]

19-2118. DISCHARGE OF JURY FOR WANT OF JURISDICTION, OR INSUFFICIENCY OF INDICTMENT. The court may direct the jury to be discharged where it appears that it has not jurisdiction of the offense, or that the facts charged in the indictment do not constitute an offense punishable by law.

[(19-2118) Cr. Prac. 1864, sec. 367, p. 257; R.S., R.C., & C.L., sec. 7872; C.S., sec. 8958; I.C.A., sec. 19-2018.]

19-2119. DISCHARGE OF JURY FOR WANT OF JURISDICTION -- OFFENSE COMMITTED OUT OF STATE. If the jury is discharged because the court has not jurisdiction of the offense charged in the indictment, and it appears that it was committed out of the jurisdiction of this state, the defendant must be discharged.

[(19-2119) Cr. Prac. 1864, sec. 368, p. 257; R.S., R.C., & C.L., sec. 7873; C.S., sec. 8959; I.C.A., sec. 19-2019.]

19-2120. OFFENSE COMMITTED IN ANOTHER COUNTY. If the offense was committed within the exclusive jurisdiction of another county of this state, the court must direct the defendant to be committed for such time as it deems reasonable, to await a warrant from the proper county for his arrest; or if the offense is a misdemeanor only, it may admit him to bail in an undertaking, with sufficient sureties, that he will, within such time as the court may appoint, render himself amenable to a warrant for his arrest from the proper county, and, if not sooner arrested thereon, will attend at the office of the sheriff of the county where the trial was had, at a certain time particularly specified in the undertaking, to surrender himself upon the warrant, if issued, or that his bail will forfeit such sum as the court may fix, to be mentioned in the undertaking; and the clerk must forthwith transmit a certified copy of the indictment, and of all the papers filed in the action, to the prosecuting attorney of the proper county, the expense of which transmission is chargeable to that county.

[(19-2120) Cr. Prac. 1864, secs. 369, 370, p. 257; R.S., R.C., & C.L., sec. 7874; C.S., sec. 8960; I.C.A., sec. 19-2020.]

19-2121. PROCEDURE IF DEFENDANT NOT ARRESTED -- PROCEDURE IF DEFENDANT ARRESTED. If the defendant is not arrested on a warrant from the proper county, as provided in the last section, he must be discharged from custody, or his bail in the action exonerated, or money deposited instead of bail must be refunded, as the case may be, and the sureties in the undertaking, as mentioned in that section, must be discharged. If he is arrested, the same proceedings must be had thereon as upon the arrest of a defendant in another county on a warrant of arrest issued by a magistrate.

[(19-2121) Cr. Prac. 1864, secs. 371, 372, p. 257; R.S., R.C., & C.L., sec. 7875; C.S., sec. 8961; I.C.A., sec. 19-2021.]

19-2122. PROCEDURE UPON DISCHARGE OF JURY FOR INSUFFICIENCY OF INDICTMENT. If the jury is discharged because the facts as charged do not constitute an offense punishable by law, the court must order that the defendant, if in custody, be discharged; or if admitted to bail, that his bail be exonerated; or if he has deposited money instead of bail, that the money be refunded to him, unless in its opinion a new indictment can be framed upon which the

defendant can be legally convicted, in which case it may direct that the case be submitted to the same or another grand jury.

[(19-2122) Cr. Prac. 1864, sec. 373, p. 257; R.S., R.C., & C.L., sec. 7876; C.S., sec. 8962; I.C.A., sec. 19-2022.]

19-2123. ADVISORY INSTRUCTION TO ACQUIT. If, at any time after the evidence on either side is closed, the court deems it insufficient to warrant a conviction, it must advise the jury to acquit the defendant. But the jury are not bound by the advice.

[(19-2123) Cr. Prac. 1864, sec. 375, p. 258; R.S., R.C., & C.L., sec. 7877; C.S., sec. 8963; I.C.A., sec. 19-2023.]

19-2124. VIEW OF PREMISES BY JURY. When, in the opinion of the court, it is proper that the jury should view the place in which the offense is charged to have been committed, or in which any other material fact occurred, it may order the jury to be conducted in a body, in the custody of the sheriff, to the place, which must be shown to them by a person appointed by the court for that purpose; and the sheriff must be sworn to suffer no person to speak or communicate with the jury, nor to do so himself, on any subject connected with the trial, and to return them into court without unnecessary delay, or at a specified time.

[(19-2124) Cr. Prac. 1864, secs. 376, 377, p. 258; R.S., R.C., & C.L., sec. 7878; C.S., sec. 8964; I.C.A., sec. 19-2024.]

19-2125. DISCLOSURE OF FACTS KNOWN BY JUROR. If a juror has any personal knowledge respecting a fact in controversy in a cause, he must declare the same in open court during the trial. If, during the retirement of the jury, a juror declares a fact which could be evidence in the cause, as of his own knowledge, the jury may return into court. In either of these cases, the juror making the statement must be sworn as a witness and examined in the presence of the parties.

[(19-2125) Cr. Prac. 1864, sec. 378, p. 258; R.S., R.C., & C.L., sec. 7879; C.S., sec. 8965; I.C.A., sec. 19-2025.]

19-2126. CUSTODY OF JURY DURING TRIAL. The jury sworn to try any felony may, at any time during the trial, and after the submission of the cause, in the discretion of the court, be permitted to separate, or they may be kept together, in the charge of a proper officer. Provided however, that in causes where the defendant has been charged with first-degree murder, and the prosecuting attorney has filed a notice of intent to seek the death penalty pursuant to section [18-4004A](#), Idaho Code, and such notice has not been withdrawn, the jury may not be permitted to separate after submission of the cause and completion of the special sentencing proceeding held pursuant to section [19-2515](#) or [19-2515A](#), Idaho Code. Before permitting the jury to separate after the cause has been submitted, the court shall permit counsel to place objections, if any, on the record outside the presence of the jury. In case the court orders the jury to be kept together the county must provide a suitable place for the board and lodging of the jury, at the expense of the county, and when first given custody of the jury the officer or bailiff must be sworn to keep the jury together during each recess and adjournment during

the trial; to allow no person to speak to or communicate with them, or any of them, nor to do so himself, on any subject connected with the trial, and to return them into court as ordered by the court.

[(19-2126) Cr. Prac. 1864, sec. 379, p. 258; am. 1881, p. 227, sec. 4; R.S., R.C., & C.L., sec. 7880; C.S., sec. 8966; am. 1929, ch. 14, sec. 1, p. 14; I.C.A., sec. 19-2026; am. 1981, ch. 229, sec. 1, p. 466; am. 1987, ch. 145, sec. 1, p. 290; am. 2002, ch. 94, sec. 11, p. 262; am. 2003, ch. 19, sec. 3, p. 72; am. 2003, ch. 136, sec. 2, p. 394; am. 2008, ch. 22, sec. 1, p. 35.]

19-2127. ADMONISHMENT OF JURY ON ADJOURNMENTS. The jury must also, at each adjournment of the court, whether permitted to separate or kept in charge of officers, be admonished by the court that it is their duty not to converse among themselves or with anyone else on any subject connected with the trial, or to form or express any opinion thereon until the cause is finally submitted to them.

[(19-2127) Cr. Prac. 1864, sec. 380, p. 259; R.S., R.C., & C.L., sec. 7881; C.S., sec. 8967; I.C.A., sec. 19-2027.]

19-2128. DISCHARGE OF JUROR FOR ILLNESS OR DISABILITY -- SUBSTITUTE JUROR. If, before the conclusion of the trial, a juror becomes sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case a new juror may be sworn and the trial begin anew, or the jury may be discharged and a new jury then or afterwards impaneled; provided, however, that where substitute jurors have been impaneled in the manner provided by law, such substitute juror or jurors shall be used as provided by the law authorizing the impaneling of substitute jurors.

[(19-2128) Cr. Prac. 1864, sec. 381, p. 259; R.S., R.C., & C.L., sec. 7882; C.S., sec. 8968; am. 1923, ch. 31, sec. 1, p. 34; I.C.A., sec. 19-2028.]

19-2129. DECISION OF QUESTIONS OF LAW. The court must decide all questions of law which arise in the course of a trial.

[(19-2129) Cr. Prac. 1864, sec. 382, p. 259; R.S., R.C., & C.L., sec. 7883; C.S., sec. 8969; I.C.A., sec. 19-2029.]

19-2130. DECISION OF QUESTIONS OF LAW AND FACT -- TRIAL FOR LIBEL. On the trial of an indictment for libel, the jury have the right to determine the law and the fact.

[(19-2130) Cr. Prac. 1864, sec. 383, p. 259; R.S., R.C., & C.L., sec. 7884; C.S., sec. 8970; I.C.A., sec. 19-2030.]

19-2131. DECISION OF QUESTIONS OF LAW AND FACT IN OTHER TRIALS -- JURY BOUND BY INSTRUCTIONS. On the trial of an indictment for any other offense than libel, questions of law are to be decided by the court, questions of fact by the jury; and although the jury have the power to find a general verdict, which includes questions of law as well as of fact, they are bound, nevertheless, to receive as law what is laid down as such by the court.

[(19-2131) Cr. Prac. 1864, sec. 384, p. 259; R.S., R.C., & C.L., sec. 7885; C.S., sec. 8971; I.C.A., sec. 19-2031.]

19-2132. INSTRUCTIONS TO JURY -- REQUESTS -- INSTRUCTIONS ON INCLUDED OFFENSES. (a) In charging the jury, the court must state to them all matters of law necessary for their information. Either party may present to the court any written charge and request that it be given. If the court thinks it correct and pertinent, it must be given; if not, it must be refused. Upon each charge presented and given or refused, the court must indorse and sign its decision. If part be given and part refused, the court must distinguish, showing by the indorsement what part of the charge was given and what part refused.

(b) The court shall instruct the jury with respect to a lesser included offense if:

(1) Either party requests such an instruction; and

(2) There is a reasonable view of the evidence presented in the case that would support a finding that the defendant committed such lesser included offense but did not commit the greater offense.

(c) If a lesser included offense is submitted to the jury for consideration, the court shall instruct the jury that it may not consider the lesser included offense unless it has first considered each of the greater offenses within which it is included, and has concluded in its deliberations that the defendant is not guilty of each of such greater offenses.

[(19-2132) Cr. Prac. 1864, secs. 385-387, p. 259; R.S., R.C., & C.L., sec. 7886; C.S., sec. 8972; I.C.A., sec. 19-2032; am. 1977, ch. 154, sec. 7, p. 394; am. 1988, ch. 327, sec. 1, p. 989.]

19-2133. RETIREMENT OF JURY -- OATH OF BAILIFF. After hearing the charge, the jury may either decide in court or may retire for deliberation. If they do not agree without retiring, an officer must be sworn to keep them together in some private and convenient place, and not permit any person to speak or communicate with them, nor to do so himself, unless by order of the court, or to ask them whether they have agreed upon a verdict, and to return them into court when they have so agreed, or when ordered by the court.

[(19-2133) Cr. Prac. 1864, sec. 388, p. 259; R.S., R.C., & C.L., sec. 7887; C.S., sec. 8973; I.C.A., sec. 19-2033.]

19-2134. COMMITMENT OF DEFENDANT PENDING TRIAL. When a defendant who has given bail appears for trial, the court may, in its discretion, at any time after his appearance for trial, order him to be committed to the custody of the proper officer of the county, to abide the judgment or further order of the court, and he must be committed and held in custody accordingly.

[(19-2134) Cr. Prac. 1864, sec. 389, p. 259; R.S., R.C., & C.L., sec. 7888; C.S., sec. 8974; I.C.A., sec. 19-2034.]

19-2135. ABSENCE OF PROSECUTING ATTORNEY -- APPOINTMENT OF SUBSTITUTE. If the prosecuting attorney fails to attend the trial, the court must appoint some attorney at law to perform the duties of the prosecuting attorney on such trial.

[(19-2135) R.S., R.C., & C.L., sec. 7889; C.S., sec. 8975; I.C.A., sec. 19-2035.]