

TITLE 19  
CRIMINAL PROCEDURE

CHAPTER 19

MODE OF TRIAL -- FORMATION OF TRIAL JURY -- POSTPONEMENT OF TRIAL

19-1901. ISSUE OF FACT DEFINED. An issue of fact arises:

1. Upon a plea of not guilty.
2. Upon a plea of a former conviction or acquittal of the same offense.
3. Upon a plea of once in jeopardy.

[(19-1901) Cr. Prac. 1864, sec. 311, p. 250; R.S., R.C., & C.L., sec. 7780; C.S., sec. 8903; I.C.A., sec. 19-1801.]

19-1902. TRIAL BY JURY. Issues of fact must be tried by jury, unless a trial by jury be waived in criminal cases by the consent of both parties expressed in open court and entered in the minutes. In case of misdemeanor the jury may consist of six (6) or any number less than six (6) upon which the parties may agree in open court. There shall be no right to trial by jury for an infraction.

[(19-1902) R.S., sec. 7781; am. 1890-1891, p. 165, sec. 1; reen. 1899, p. 110, sec. 1; reen. R.C. & C.L., sec. 1781; C.S., sec. 8904; I.C.A., sec. 19-1802; am. 1965, ch. 80, sec. 1, p. 130; am. 1982, ch. 353, sec. 8, p. 878; am. 2000, ch. 69, sec. 1, p. 152; am. 2014, ch. 236, sec. 3, p. 597.]

19-1903. PRESENCE OF DEFENDANT. If the indictment is for a felony, the defendant must be personally present at the trial; but if for misdemeanor, the trial may be had in the absence of the defendant.

[(19-1903) R.S., R.C., & C.L., sec. 7782; C.S., sec. 8905; I.C.A., sec. 19-1803.]

19-1904. ADDITIONAL JURORS. A court may direct that one (1) or more jurors in addition to the regular panel be called and impaneled to sit as alternate jurors. All jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges prior to deliberations. At the conclusion of closing arguments, jurors exceeding the number required of a regular panel shall be removed by lot. Those removed by lot may be discharged after the jury retires to consider its verdict. If more than one (1) additional juror is called, each party is entitled to two (2) peremptory challenges in addition to those otherwise allowed by law; provided however, that if only one (1) additional juror is called, each party shall be entitled to one (1) peremptory challenge in addition to those otherwise provided by law.

[19-1904, added 2002, ch. 94, sec. 10, p. 262.]

19-1905. JURY TO BE FORMED AS IN CIVIL ACTIONS. Trial juries for criminal actions are formed in the same manner as trial juries in civil actions.

[(19-1905) Cr. Prac. 1864, sec. 313, p. 250; R.S., R.C., & C.L., sec. 7787; C.S., sec. 8906; I.C.A., sec. 19-1805.]

19-1906. PREPARATION OF CALENDAR. The clerk must prepare a calendar of all criminal actions pending in the court, enumerating them according to the date of the filing of the indictment, specifying opposite the title of each action whether it is for a felony or a misdemeanor, and whether the defendant is in custody or on bail.

[(19-1906) Cr. Prac. 1864, sec. 314, p. 250; R.S., R.C., & C.L., sec. 7788; C.S., sec. 8907; I.C.A., sec. 19-1806.]

19-1907. ORDER OF TRYING CASES. The issues on the calendar must be disposed of in the following order, unless upon application of either party, for good causes shown by affidavit, and upon two (2) days' notice to the opposite party, with service of a copy of the affidavit in support of the application, the court shall direct an indictment to be tried out of its order:

1. Indictments for felony, when the defendant is in custody.
2. Indictments for misdemeanor, when the defendant is in custody.
3. Indictments for felony, when the defendant is on bail.
4. Indictments for misdemeanor, when the defendant is on bail.

[(19-1907) Cr. Prac. 1864, sec. 315, p. 250; R.S., R.C., & C.L., sec. 7789; C.S., sec. 8908; I.C.A., sec. 19-1807.]

19-1908. TIME TO PREPARE FOR TRIAL. After his plea the defendant is entitled to at least two (2) days to prepare for trial.

[(19-1908) Cr. Prac. 1864, sec. 316, p. 250; R.S., R.C., & C.L., sec. 7790; C.S., sec. 8909; I.C.A., sec. 19-1808.]

19-1909. TRIAL MAY BE POSTPONED FOR CAUSE. When an indictment is called for trial, or at any time previous thereto, the court may, upon sufficient cause, direct the trial to be postponed to another day of the same or of the next term.

[(19-1909) Cr. Prac. 1864, sec. 317, p. 250; R.S., R.C., & C.L., sec. 7795; C.S., sec. 8910; I.C.A., sec. 19-1809.]

19-1910. PRETRIAL RISK ASSESSMENT TOOLS. (1) All pretrial risk assessment tools shall be transparent, and:

- (a) All documents, data, records, and information used by the builder to build or validate the pretrial risk assessment tool and ongoing documents, data, records, and written policies outlining the usage and validation of the pretrial risk assessment tool shall be open to public inspection, auditing, and testing;
- (b) A party to a criminal case wherein a court has considered, or an expert witness has relied upon, a pretrial risk assessment tool shall be entitled to review all calculations and data used to calculate the defendant's own risk score; and
- (c) No builder or user of a pretrial risk assessment tool may assert trade secret or other intellectual property protections in order to quash discovery of the materials described in paragraph (a) of this subsection in a criminal or civil case.

(2) For purposes of this section, "pretrial risk assessment tool" means a pretrial process that creates or scores particular factors in order to estimate a person's level of risk to fail to appear in court, risk to commit a new crime, or risk posed to the community in order to make recommendations as to bail or conditions of release based on such risk, whether made on an individualized basis or based on a grid or schedule.

[19-1910, added 2019, ch. 258, sec. 1, p. 768.]