

TITLE 19
CRIMINAL PROCEDURE

CHAPTER 14
INDICTMENT

19-1401. INDICTMENT, HOW FOUND. An indictment cannot be found without the concurrence of at least twelve (12) grand jurors. When so found it must be endorsed, a true bill, and the endorsement must be signed by the foreman of the grand jury.

[(19-1401) Cr. Prac. 1864, sec. 225, p. 241; R.S., R.C., & C.L., sec. 7665; C.S., sec. 8817; I.C.A., sec. 19-1301.]

19-1402. FAILURE TO FIND INDICTMENT -- RETURN OF DEPOSITIONS. If twelve (12) grand jurors do not concur in finding an indictment against a defendant who has been held to answer, the depositions, if any, transmitted to them must be returned to the court, with an indorsement thereon, signed by the foreman, to the effect that the charge is dismissed.

[(19-1402) Cr. Prac. 1864, sec. 226, p. 241; R.S., R.C., & C.L., sec. 7666; C.S., sec. 8818; I.C.A., sec. 19-1302.]

19-1403. RESUBMISSION OF CHARGE AFTER DISMISSAL. The dismissal of the charge does not prevent its resubmission to a grand jury as often as the court may direct, but without such direction it cannot be resubmitted.

[(19-1403) Cr. Prac. 1864, sec. 227, p. 241; R.S., R.C., & C.L., sec. 7667; C.S., sec. 8819; I.C.A., sec. 19-1303.]

19-1404. ENDORSEMENT OF NAMES OF WITNESSES. When an indictment is found, the names of the witnesses examined before the grand jury, or whose depositions may have been read before them, must be inserted at the foot of the indictment, or endorsed thereon, before it is presented to the court.

[(19-1404) Cr. Prac. 1864, sec. 228, p. 241; R.S., R.C., & C.L., sec. 7668; C.S., sec. 8820; I.C.A., sec. 19-1304.]

19-1405. PRESENTMENT AND FILING OF INDICTMENT. An indictment, when found by the grand jury, must be presented by their foreman, in their presence, to the court, and must be filed with the clerk.

[(19-1405) Cr. Prac. 1864, sec. 229, p. 241; R.S., R.C., & C.L., sec. 7669; C.S., sec. 8821; I.C.A., sec. 19-1305.]

19-1406. INDICTMENT OF DEFENDANT NOT IN CUSTODY. When an indictment is found against a defendant not in custody, the same proceedings must be had as are described by sections [19-1501](#) to [19-1516](#), against a defendant who fails to appear for arraignment.

[(19-1406) Cr. Prac. 1864, sec. 230, p. 241; R.S., R.C., & C.L., sec. 7670; C.S., sec. 8822; I.C.A., sec. 19-1306.]

19-1407. RULES OF PLEADING. All the forms of pleading in criminal actions, and the rules by which the sufficiency of pleadings is to be determined, are those prescribed by this code.

[(19-1407) Cr. Prac. 1864, sec. 231, p. 241; R.S., R.C., & C.L., sec. 7675; C.S., sec. 8823; I.C.A., sec. 19-1307.]

19-1408. FIRST PLEADING IS INDICTMENT. The first pleading on the part of the people is the indictment.

[(19-1408) Cr. Prac. 1864, sec. 232, p. 242; R.S., R.C., & C.L., sec. 7676; C.S., sec. 8824; I.C.A., sec. 19-1308.]

19-1409. REQUIREMENTS OF INDICTMENT. The indictment must contain:

1. The title of the action, specifying the name of the court to which the indictment is presented, and the names of the parties.
2. A statement of the acts constituting the offense in ordinary and concise language, and in such manner as to enable a person of common understanding to know what is intended.

[(19-1409) Cr. Prac. 1864, sec. 233, p. 242; R.S., R.C., & C.L., sec. 7677; C.S., sec. 8825; I.C.A., sec. 19-1309.]

19-1410. FORM OF INDICTMENT. It may be substantially in the following form:

The state of Idaho against A.B., in the district court of the judicial district, in the county of term,

A.B. is accused by the grand jury of the county of by this indictment, of the crime of (giving its legal appellation, such as murder, arson, or the like), committed as follows:

The said A.B., on the day of,, at the county of, (here set forth the act or omission charged as an offense).

[(19-1410) Cr. Prac. 1864, sec. 234, p. 242; R.S., R.C., & C.L., sec. 7678; C.S., sec. 8826; I.C.A., sec. 19-1310; am. 2002, ch. 32, sec. 3, p. 48.]

19-1411. CERTAINTY REQUIRED OF INDICTMENT. It must be direct and certain as it regards:

1. The party charged.
2. The offense charged.
3. The particular circumstances of the offense charged, when they are necessary to constitute a complete offense.

[(19-1411) Cr. Prac. 1864, sec. 235, p. 242; R.S., R.C., & C.L., sec. 7679; C.S., sec. 8827; I.C.A., sec. 19-1311.]

19-1412. INDICTMENT BY FICTITIOUS NAME. When a defendant is indicted by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it must be inserted in the subsequent proceedings, referring to the fact of his being indicted by the name mentioned in the indictment.

[(19-1412) Cr. Prac. 1864, sec. 236, p. 242; R.S., R.C., & C.L., sec. 7680; C.S., sec. 8828; I.C.A., sec. 19-1312.]

19-1414. ALLEGATION AS TO TIME. The precise time at which the offense was committed need not be stated in the indictment; but it may be alleged to have been committed at any time before the finding thereof, except where the time is a material ingredient in the offense.

[(19-1414) Cr. Prac. 1864, sec. 238, p. 242; R.S., R.C., & C.L., sec. 7682; C.S., sec. 8830; I.C.A., sec. 19-1314.]

19-1415. ERRONEOUS DESIGNATION OF PERSON INJURED. When an offense involves the commission of, or an attempt to commit, a private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured, or intended to be injured, is not material.

[(19-1415) Cr. Prac. 1864, sec. 239, p. 242; R.S., R.C., & C.L., sec. 7683; C.S., sec. 8831; I.C.A., sec. 19-1315.]

19-1416. CONSTRUCTION OF WORDS. The words used in an indictment are construed in their usual acceptance in common language, except such words and phrases as are defined by law, which are construed according to their legal meaning.

[(19-1416) Cr. Prac. 1864, sec. 240, p. 242; R.S., R.C., & C.L., sec. 7684; C.S., sec. 8832; I.C.A., sec. 19-1316.]

19-1417. WORDS OF STATUTE. Words used in a statute to define a public offense need not be strictly pursued in the indictment; but other words conveying the same meaning may be used.

[(19-1417) Cr. Prac. 1864, sec. 241, p. 242; R.S., R.C., & C.L., sec. 7685; C.S., sec. 8833; I.C.A., sec. 19-1317.]

19-1418. SUFFICIENCY OF INDICTMENT. The indictment is sufficient if it can be understood therefrom:

1. That it is entitled in a court having authority to receive it, though the name of the court be not stated.

2. That it was found by a grand jury of the county in which the court was held.

3. That the defendant is named, or, if his name cannot be discovered that he is described by a fictitious name, with a statement that his true name is to the jury unknown.

4. That the offense was committed at some place within the jurisdiction of the court, except where the act, though done without the local jurisdiction of the county, is triable therein.

5. That the offense was committed at some time prior to the time of finding the indictment.

6. That the act or omission charged as the offense is clearly and distinctly set forth in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended.

7. That the act or omission charged as the offense is stated with such a degree of certainty as to enable the court to pronounce judgment upon conviction, according to the right of the case.

[(19-1418) Cr. Prac. 1864, sec. 242, p. 243; R.S., R.C., & C.L., sec. 7686; C.S., sec. 8834; I.C.A., sec. 19-1318.]

19-1419. DEFECTS OF FORM. No indictment is insufficient, nor can the trial, judgment, or other proceeding thereon, be affected, by reason of any defect or imperfection in matter of form, which does not tend to the prejudice of a substantial right of the defendant upon its merits.

[(19-1419) Cr. Prac. 1864, sec. 243, p. 243; R.S., R.C., & C.L., sec. 7687; C.S., sec. 8835; I.C.A., sec. 19-1319.]

19-1420. AMENDMENT OF INDICTMENT. An indictment or information may be amended by the prosecuting attorney without leave of the court, at any time before the defendant pleads, and at any time thereafter, in the discretion of the court, where it can be done without prejudice to the substantial rights of the defendant. An information or indictment cannot be amended so as to charge an offense other than that for which the defendant has been held to answer.

[(19-1420) C.S., sec. 8835-A as added by 1929, ch. 72, sec. 1, p. 110; I.C.A., sec. 19-1320.]

19-1421. PRESUMPTIONS AND FACTS JUDICIALLY NOTICED. Neither presumptions of law nor matters of which judicial notice is taken, need be stated in an indictment.

[(19-1421) Cr. Prac. 1864, sec. 244, p. 243; R.S., R.C., & C.L., sec. 7688; C.S., sec. 8836; I.C.A., sec. 19-1321.]

19-1422. PLEADING JUDGMENTS. In pleading a judgment or other determination of, or proceeding before, a court or officer of special jurisdiction, it is not necessary to state the facts constituting jurisdiction; but the judgment or determination may be stated as given or made, or the proceedings had. The facts constituting jurisdiction, however, must be established on the trial.

[(19-1422) Cr. Prac. 1864, sec. 245, p. 243; R.S., R.C., & C.L., sec. 7689; C.S., sec. 8837; I.C.A., sec. 19-1322.]

19-1423. PLEADING PRIVATE STATUTES. In pleading a private statute, or a right derived therefrom, it is sufficient to refer to the statute by its title and the day of its passage, and the court must thereupon take judicial notice thereof.

[(19-1423) Cr. Prac. 1864, sec. 246, p. 243; R.S., R.C., & C.L., sec. 7690; C.S., sec. 8838; I.C.A., sec. 19-1323.]

19-1424. INDICTMENT FOR LIBEL. An indictment for libel need not set forth any extrinsic facts for the purpose of showing the application to the party libeled, or of the defamatory matter on which the indictment is founded; but it is sufficient to state generally that the same was published concerning him, and the fact that it was so published must be established on the trial.

[(19-1424) Cr. Prac. 1864, sec. 247, p. 243; R.S., R.C., & C.L., sec. 7691; C.S., sec. 8839; I.C.A., sec. 19-1324.]

19-1425. MISDESCRIPTION OF FORGED INSTRUMENT. When an instrument which is the subject of an indictment for forgery has been destroyed or withheld by the act or the procurement of the defendant, and the fact of such destruction or withholding is alleged in the indictment and established on the trial, the misdescription of the instrument is immaterial.

[(19-1425) Cr. Prac. 1864, sec. 248, p. 243; R.S., R.C., & C.L., sec. 7692; C.S., sec. 8840; I.C.A., sec. 19-1325.]

19-1426. INDICTMENT FOR PERJURY. In an indictment for perjury, or subornation of perjury, it is sufficient to set forth the substance of the controversy or matter in respect to which the offense was committed, and in what court and before whom the oath alleged to be false was taken, and that the court, or the person before whom it was taken, had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment need not set forth the pleadings, record, or proceedings with which the oath is connected, nor the commission or authority of the court or person before whom the perjury was committed.

[(19-1426) Cr. Prac. 1864, sec. 249, p. 244; R.S., R.C., & C.L., sec. 7693; C.S., sec. 8841; I.C.A., sec. 19-1326.]

19-1427. INDICTMENT FOR LARCENY OR EMBEZZLEMENT. In an indictment for the larceny or embezzlement of money, bank notes, certificates of stock, or valuable securities, or for a conspiracy to cheat or defraud a person of any such property, it is sufficient to allege the larceny or embezzlement, or the conspiracy to cheat and defraud, to be of money, bank notes, certificates of stock, or valuable securities, without specifying the coin, number, denomination, or kind thereof.

[(19-1427) R.S., R.C., & C.L., sec. 7694; C.S., sec. 8842; I.C.A., sec. 19-1327.]

19-1428. INDICTMENT FOR SELLING OBSCENE BOOKS. An indictment for exhibiting, publishing, passing, selling, or offering to sell, or having in possession, with such intent, any lewd or obscene book, pamphlet, picture, print, card, paper, or writing, need not set forth any portion of the language used or figures shown upon such book, pamphlet, picture, print, card, paper, or writing; but it is sufficient to state generally the fact of the lewdness or obscenity thereof.

[(19-1428) R.S., R.C., & C.L., sec. 7695; C.S., sec. 8843; I.C.A., sec. 19-1328.]

19-1429. CONVICTION OR ACQUITTAL OF SEVERAL DEFENDANTS. Upon an indictment against several defendants, any one or more may be convicted or acquitted.

[(19-1429) Cr. Prac. 1864, sec. 250, p. 244; R.S., R.C., & C.L., sec. 7696; C.S., sec. 8844; I.C.A., sec. 19-1329.]

19-1430. DISTINCTION BETWEEN ACCESSORIES AND PRINCIPALS ABOLISHED. The distinction between an accessory before the fact and a principal and between principals in the first and second degree, in cases of felony, is abrogated; and all persons concerned in the commission of a felony, whether they directly commit the act constituting the offense, or aid and abet in its commission, though not present, shall hereafter be prosecuted, tried, and punished as principals, and no other facts need be alleged in any indictment against such an accessory than are required in an indictment against his principal.

[(19-1430) Cr. Prac. 1864, sec. 251, p. 244; R.S., R.C., & C.L., sec. 7697; C.S., sec. 8845; I.C.A., sec. 19-1330.]

19-1431. TRIAL OF ACCESSORIES WITHOUT PRINCIPAL. An accessory to the commission of a felony may be indicted, tried, and punished, though the principal may be neither indicted nor tried.

[(19-1431) Cr. Prac. 1864, sec. 252, p. 244; R.S., R.C., & C.L., sec. 7698; C.S., sec. 8846; I.C.A., sec. 19-1331.]

19-1432. CHARGING TWO OR MORE OFFENSES IN SAME INDICTMENT. Two (2) or more offenses may be charged in the same indictment or information 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.

[I.C., sec. 19-1432, as added by 1972, ch. 336, sec. 6, p. 987.]

19-1433. UNNECESSARY TO NEGATE STATUTORY DEFENSES IN CERTAIN CASES. In any complaint, information, or indictment, and in any action or proceeding brought for the enforcement of any of the provisions of chapters 22, 25, 27, 28, 29, 30, 31, 32, or 33, [title 37](#), Idaho Code, it shall not be necessary to negate any exception, excuse, proviso, or exemption, contained in those chapters, and the burden of proof of any such exception, excuse, proviso, or exemption shall be upon the defendant.

[19-1433, added 1970, ch. 186, sec. 1, p. 540.]