

TITLE 19
CRIMINAL PROCEDURE

CHAPTER 24
EXCEPTIONS -- NEW TRIAL -- ARREST OF JUDGMENT

19-2402. TRANSCRIPT AND EXHIBITS ON APPEAL TO SUPREME COURT. Any party desiring to procure a record of the evidence, proceedings and exhibits made during the trial of a criminal action in the district court for use on appeal to the Supreme Court may procure such transcript and exhibits in the same way in which a transcript and exhibits are obtained in a civil action. Said transcript shall be ordered, prepared, served, settled, lodged, filed and used in the same way and with the same effect as in a civil action. The provisions of section [10-509](#) shall apply to a reporter's transcript in a criminal action.

[(19-2402) 1927, ch. 135, sec. 1, p. 178; I.C.A., sec. 19-2302; am. 1949, ch. 179, sec. 1, p. 381.]

19-2403. RULINGS DEEMED EXCEPTED TO. The ruling and decision of the court in criminal cases disallowing a challenge to the panel of the jury, or to any individual juror, for any of the causes set forth in sections [19-2018](#), [19-2019](#) shall be deemed excepted to on the part of the defendant.

[(19-2403) 1905, p. 328, sec. 1; reen. R.C. & C.L., sec. 7947; C.S., sec. 9014; I.C.A., sec. 19-2304.]

19-2404. NEW TRIAL DEFINED. A new trial is a reexamination of the issue in the same court, before another jury, after a verdict has been given.

[(19-2404) Cr. Prac. 1864, sec. 426, p. 264; R.S., R.C., & C.L., sec. 7950; C.S., sec. 9015; I.C.A., sec. 19-2305.]

19-2405. EFFECT OF NEW TRIAL. The granting of a new trial places the parties in the same position as if no trial had been had. All the testimony must be produced anew, and the former verdict can not be used or referred to either in evidence or in argument.

[(19-2405) Cr. Prac. 1864, sec. 426, p. 264; R.S., R.C., & C.L., sec. 7951; C.S., 9016; I.C.A., sec. 19-2306.]

19-2406. GROUNDS FOR NEW TRIAL. When a verdict has been rendered against the defendant the court may, upon his application, grant a new trial in the following cases only:

1. When the trial has been had in his absence, if the indictment is for a felony.

2. When the jury has received any evidence out of court other than that resulting from a view of the premises.

3. When the jury has separated without leave of the court after retiring to deliberate upon their verdict, or been guilty of any misconduct by which a fair and due consideration of the case has been prevented.

4. When the verdict has been decided by lot or by any means other than a fair expression of opinion on the part of all the jurors.

5. When the court has misdirected the jury in a matter of law, or has erred in the decision of any question of law arising during the course of the trial.

6. When the verdict is contrary to law or evidence.

7. When new evidence is discovered material to the defendant, and which he could not with reasonable diligence have discovered and produced at the trial. When a motion for a new trial is made upon the ground of newly-discovered evidence, the defendant must produce at the hearing in support thereof the affidavits of the witnesses by whom such evidence is expected to be given, and if time is required by the defendant to procure such affidavits the court may postpone the hearing of the motion for such length of time as, under all the circumstances of the case, may seem reasonable.

[(19-2406) 1874, p. 363, sec. 424; R.S., R.C., & C.L., sec. 7952; C.S., sec. 9017; I.C.A., sec. 19-2307.]

19-2407. TIME FOR APPLICATION. The application for a new trial may be made before or after judgment; and must be made within the time provided by the Idaho criminal rules unless the court or judge extends the time.

[(19-2407) Cr. Prac. 1864, sec. 428, p. 264; R.S., R.C., & C.L., sec. 7953; C.S., sec. 9018; I.C.A., sec. 19-2308; am. 1989, ch. 83, sec. 1, p. 145; am. 1993, ch. 87, sec. 1, p. 216.]

19-2408. ARREST OF JUDGMENT -- GROUNDS FOR MOTION. A motion in arrest of judgment is an application on the part of the defendant that no judgment be rendered on a plea or verdict of guilty, or on a verdict against the defendant on a plea of a former conviction or acquittal. It may be founded on any of the defects in the indictment that are grounds of demurrer, unless the objection to the indictment has been waived by a failure to demur, and must be made before or at the time the defendant is called for judgment.

[(19-2408) Cr. Prac. 1864, secs. 429, 431, po. 264 and 265; R.S., R.C., & C.L., sec. 7960; C.S., sec. 9019; I.C.A., sec. 19-2309.]

19-2409. ARREST WITHOUT MOTION. The court may also, on its own view of any of these defects, arrest the judgment without motion.

[(19-2409) Cr. Prac. 1864, sec. 430, p. 265; R.S., R.C., & C.L., sec. 7961; C.S., sec. 9020; I.C.A., sec. 19-2310.]

19-2410. EFFECT OF SUSTAINING MOTION. The effect of allowing a motion in arrest of judgment is to place the defendant in the same situation in which he was before the indictment was found.

[(19-2410) Cr. Prac. 1864, sec. 432, p. 265; R.S., R.C., & C.L., sec. 7962; C.S., sec. 9021; I.C.A., sec. 19-2311.]

19-2411. DISCHARGE OR DETENTION OF DEFENDANT. If, from the evidence on the trial, there is reason to believe the defendant guilty, and a new indictment can be framed, upon which he may be convicted, the court may order him to be recommitted to the office of the proper county, or admitted to bail anew, to answer the new indictment. If the evidence shows him guilty of another offense, he must be committed or held thereon, and in neither case shall the

verdict be a bar to another prosecution or indictment. But if no evidence appears sufficient to charge him with any offense he must, if in custody, be discharged; or if admitted to bail, his bail is exonerated; or if money has been deposited instead of bail, it must be refunded to the defendant; and the arrest of judgment shall operate as an acquittal of the charge upon which the indictment was founded.

[(19-2411) Cr. Prac. 1864, sec. 433, p. 265; R.S., R.C., & C.L., sec. 7963; C.S., sec. 9022; I.C.A., sec. 19-2312.]