

TITLE 19
CRIMINAL PROCEDURE

CHAPTER 16
SETTING ASIDE INDICTMENT

19-1601. GROUND FOR SETTING ASIDE INDICTMENT. The indictment must be set aside by the court in which the defendant is arraigned, upon his motion, in either of the following cases:

1. When it is not found, endorsed and presented as prescribed in this code.

2. When the names of the witnesses examined before the grand jury, or whose depositions may have been read before them, are not inserted at the foot of the indictment, or endorsed thereon.

3. When a person is permitted to be present during the session of the grand jury, and when the charge embraced in the indictment is under consideration, except as provided in chapter 11 of this title.

4. When the defendant has not been held to answer before the finding of the indictment, on any ground which would have been good ground for challenge, either to the panel or to any individual grand juror.

[(19-1601) Cr. Prac. 1864, secs. 274, 275, pp. 246 and 247; R.S., R.C., & C.L., sec. 7730; C.S., sec. 8863; I.C.A., sec. 19-1501; am. 1970, ch. 60, sec. 3, p. 146; am. 2003, ch. 140, sec. 1, p. 408.]

19-1602. WAIVER OF OBJECTIONS. If the motion to set aside the indictment is not made the defendant is precluded from afterward taking the objections mentioned in the last section.

[(19-1602) Cr. Prac. 1864, sec. 276, p. 247; R.S., R.C., & C.L., sec. 7731; C.S., sec. 8864; I.C.A., sec. 19-1502.]

19-1603. HEARING AND DISPOSITION OF MOTION. The motion must be heard at the time it is made, unless for cause the court postpones the hearing to another time. If the motion is denied, the defendant must immediately answer the indictment, either by demurring or pleading thereto. If the motion is granted, the court must order that the defendant, if in custody, be discharged therefrom; or, if admitted to bail, that his bail be exonerated; or, if he has deposited money instead of bail, that the same be refunded to him, unless it directs that the case be resubmitted to the same or another grand jury.

[(19-1603) Cr. Prac. 1864, secs. 277-279, p. 247; R.S., R.C., & C.L., sec. 7732; C.S., sec. 8865; I.C.A., sec. 19-1503.]

19-1604. ORDER FOR RESUBMISSION. If the court directs the case to be resubmitted, the defendant, if already in custody, must so remain, unless he is admitted to bail; or, if already admitted to bail, or money has been deposited instead thereof, the bail or money is answerable for the appearance of the defendant to answer a new indictment; and, unless a new indictment is found before the next grand jury of the county is discharged, the court must, on the discharge of such grand jury, make the order prescribed by the preceding section.

[(19-1604) Cr. Prac. 1864, secs. 280, p. 247, 281; R.S., R.C., & C.L., sec. 7733; C.S., sec. 8866; I.C.A., sec. 19-1504.]

19-1605. ORDER NO BAR TO FUTURE PROSECUTION. An order to set aside an indictment, as provided in this chapter, is no bar to a future prosecution for the same offense.

[(19-1605) Cr. Prac. 1864, sec. 282, p. 247; R.S., R.C., & C.L., sec. 7734; C.S., sec. 8867; I.C.A., sec. 19-1505.]