CHAPTER 19

Indictments

**SECTION 17‑19‑10.** Offense shall be prosecuted upon grand jury indictment; exceptions.

 No person shall be held to answer in any court for an alleged crime or offense, unless upon indictment by a grand jury, except in the following cases:

 (1) when a prosecution by information is expressly authorized by statute;

 (2) in proceedings before a police court or magistrate; and

 (3) in proceedings before courts martial.

HISTORY: 1962 Code Section 17‑401; 1952 Code Section 17‑401; 1942 Code Section 995; 1932 Code Section 995; Cr. P. '22 Section 81; Cr. C. '12 Section 75; Cr. C. '02 Section 48; G. S. 2448; R. S. 47.

**SECTION 17‑19‑20.** Allegations sufficient for indictment.

 Every indictment shall be deemed and judged sufficient and good in law which, in addition to allegations as to time and place, as required by law, charges the crime substantially in the language of the common law or of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood and, if the offense be a statutory offense, that the offense be alleged to be contrary to the statute in such case made and provided.

HISTORY: 1962 Code Section 17‑402; 1952 Code Section 17‑402; 1942 Code Section 1003; 1932 Code Section 1003; Cr. P. '22 Section 89; Cr. C. '12 Section 83; Cr. C. '02 Section 56; R. S. 55; 1887 (19) 829.

**SECTION 17‑19‑30.** Allegations sufficient for indictment for murder.

 Every indictment for murder shall be deemed and adjudged sufficient and good in law which, in addition to setting forth the time and place, together with a plain statement, divested of all useless phraseology, of the manner in which the death of the deceased was caused, charges that the defendant did feloniously, wilfully and of his malice aforethought kill and murder the deceased.

HISTORY: 1962 Code Section 17‑403; 1952 Code Section 17‑403; 1942 Code Section 1007; 1932 Code Section 1007; Cr. P. '22 Section 93; Cr. C. '12 Section 87; Cr. C. '02 Section 60; R. S. 59; 1887 (19) 829.

**SECTION 17‑19‑40.** Special count for carrying concealed weapons in case of murder and certain other crimes; jurisdiction.

 In every indictment for murder, manslaughter, assault and assault and battery of a high and aggravated nature and assault and assault and battery with intent to kill and in every case when the crime is charged to have been committed with a deadly weapon of the character specified in Section 16‑23‑460, there shall be a special count in the indictment for carrying concealed weapons and the jury shall be required to find a verdict on such special count. All cases embraced in this section, including the carrying of the weapons, shall be in the exclusive jurisdiction of the court of general sessions, except in cases where other courts have been given concurrent jurisdiction.

HISTORY: 1962 Code Section 17‑404; 1952 Code Section 17‑404; 1942 Code Section 1008; 1932 Code Section 1008; Cr. P. '22 Section 94; Cr. C. '12 Section 159; Cr. C. '02 Section 131, 1897 (22) 427; 1972 (57) 2235.

Editor's Note

2010 Act No. 273, Section 7.C, provides:

"Wherever in the 1976 Code of Laws reference is made to the common law offense of assault and battery of a high and aggravated nature, it means assault and battery with intent to kill, as contained in repealed Section 16‑3‑620, and, except for references in Section 16‑1‑60 and Section 17‑25‑45, wherever in the 1976 Code reference is made to assault and battery with intent to kill, it means attempted murder as defined in Section 16‑3‑29."

**SECTION 17‑19‑50.** Averments of instrument of writing, print or figures in indictment.

 In all cases whatsoever in which it shall be necessary to make any averment in any indictment as to any instrument, whether the instrument consists wholly or in part of writing, print or figures, it shall be sufficient to describe such instrument by any name or designation by which it may be usually known or by the purport thereof and in such manner as to sufficiently identify such instrument without setting out any copy or facsimile of the whole or any part thereof.

HISTORY: 1962 Code Section 17‑405; 1952 Code Section 17‑405; 1942 Code Section 1009; 1932 Code Section 1009; Cr. P. '22 Section 95; Cr. C. '12 Section 88; Cr. C. '02 Sections 61, 62; R. S. 60, 61; 1887 (19) 829.

**SECTION 17‑19‑60.** Indictments for perjury.

 In any indictment for perjury it shall not be necessary to set forth more than the substance of the oath and the fact concerning which the perjury is alleged to have been committed.

HISTORY: 1962 Code Section 17‑406; 1952 Code Section 17‑406; 1942 Code Section 1009; 1932 Code Section 1009; Cr. P. '22 Section 95; Cr. C. '12 Section 88; Cr. C. '02 Sections 61, 62; R. S. 60, 61; 1887 (19) 829.

**SECTION 17‑19‑70.** Indictments against corporations.

 Whenever any corporation doing business in this State, whether incorporated under the laws of this State or not, shall be charged with any offense cognizable by the courts of general sessions the solicitor shall hand out a bill of indictment to the grand jury of the county in which such offense, or some part thereof, has been committed and if the grand jury shall return a true bill the solicitor shall cause a copy of such indictment to be served on such corporation offending in the manner indicated in Section 17‑13‑80 and upon service of such indictment and the notice required by such section the court of general sessions shall obtain and have jurisdiction of such corporation.

HISTORY: 1962 Code Section 17‑407; 1952 Code Section 17‑407; 1942 Code Section 991; 1932 Code Section 991; Civ. C. '22 Section 4299; Civ. C. '12 Section 2832; 1911 (27) 41.

**SECTION 17‑19‑80.** Person indicted for capital offense shall have copy of indictment.

 Whoever shall be accused and indicted for any capital offense whatsoever shall have a true copy of the whole indictment, but not the names of the witnesses, delivered to him, three days at least before he shall be tried for such offense, whereby to enable him to advise with counsel thereupon, his attorney, agent or any of them requiring the copy, paying the officer his usual fees for the copy of every such indictment.

HISTORY: 1962 Code Section 17‑408; 1952 Code Section 17‑408; 1942 Code Section 978; 1932 Code Section 978; Cr. P. '22 Section 69; Cr. C. '12 Section 66; Cr. C. '02 Section 40; G. S. 2632; R. S. 40; 1731 (3) 286.

**SECTION 17‑19‑90.** Objections to defects in indictments.

 Every objection to any indictment for any defect apparent on the face thereof shall be taken by demurrer or on motion to quash such indictment before the jury shall be sworn and not afterwards.

HISTORY: 1962 Code Section 17‑409; 1952 Code Section 17‑409; 1942 Code Section 1004; 1932 Code Section 1004; Cr. P. '22 Section 90; Cr. C. '12 Section 84; Cr. C. '02 Section 57; R. S. 56; 1887 (19) 829.

**SECTION 17‑19‑100.** Amendments of indictments; proceedings after amendment.

 If (a) there be any defect in form in any indictments or (b) on the trial of any case there shall appear to be any variance between the allegations of the indictment and the evidence offered in proof thereof, the court before which the trial shall be had may amend the indictment (according to the proof, if the amendment be because of a variance) if such amendment does not change the nature of the offense charged. After such amendment the trial shall proceed in all respects and with the same consequences as if the indictment had originally been returned as so amended, unless such amendment shall operate as a surprise to the defendant, in which case the defendant shall be entitled, upon demand, to a continuance of the cause.

HISTORY: 1962 Code Section 17‑410; 1952 Code Section 17‑410; 1942 Code Section 1005; 1932 Code Section 1005; Cr. P. '22 Section 91; Cr. C. '12 Section 85; Cr. C. '02 Section 58; R. S. 57; 1887 (19) 829.