

TITLE 19  
CRIMINAL PROCEDURE

CHAPTER 17  
PLEADINGS BY DEFENDANT

19-1701. DEMURRER OR PLEA. The only pleading on the part of the defendant is either a demurrer or a plea.

[(19-1701) Cr. Prac. 1864, sec. 283, p. 247; R.S., R.C., & C.L., sec. 7740; C.S., sec. 8868; I.C.A., sec. 19-1601.]

19-1702. DEMURRER OR PLEA -- WHEN INTERPOSED. Both the demurrer and plea must be put in, in open court, either at the time of the arraignment or at such other time as may be allowed to the defendant for that purpose.

[(19-1702) Cr. Prac. 1864, sec. 284, p. 247; R.S., R.C., & C.L., sec. 7741; C.S., sec. 8869; I.C.A., sec. 19-1602.]

19-1703. GROUND FOR DEMURRER. The defendant may demur to the indictment when it appears upon the face thereof, either:

1. That the grand jury by which it was found had no legal authority to inquire into the offense charged, by reason of its not being within the legal jurisdiction of the county.

2. That it does not substantially conform to the requirements of sections [19-1409](#), [19-1410](#) and [19-1411](#).

3. That more than one offense is charged in the indictment.

4. That the facts stated do not constitute a public offense.

5. That the indictment contains any matter which, if true, would constitute a legal justification or excuse of the offense charged, or other legal bar to the prosecution.

[(19-1703) Cr. Prac. 1864, sec. 285, p. 247; R.S., R.C., & C.L., sec. 7742; C.S., sec. 8870; I.C.A., sec. 19-1603.]

19-1704. FORM OF DEMURRER. The demurrer must be in writing, signed either by the defendant or his counsel, and filed. It must distinctly specify the grounds of objection to the indictment, or it must be disregarded.

[(19-1704) Cr. Prac. 1864, sec. 286, p. 248; R.S., R.C., & C.L., sec. 7743; C.S., sec. 8871; I.C.A., sec. 19-1604.]

19-1705. ARGUMENT ON DEMURRER. Upon the demurrer being filed, the argument upon the objections presented thereby must be heard, either immediately or at such time as the court may appoint.

[(19-1705) Cr. Prac. 1864, sec. 287, p. 248; R.S., R.C., & C.L., sec. 7744; C.S., sec. 8872; I.C.A., sec. 19-1605.]

19-1706. JUDGMENT ON DEMURRER. Upon considering the demurrer, the court must give judgment either allowing or disallowing it, and an order to that effect must be entered upon the minutes.

[(19-1706) Cr. Prac. 1864, sec. 288, p. 248; R.S., R.C., & C.L., sec. 7745; C.S., sec. 8873; I.C.A., sec. 19-1606.]

19-1707. EFFECT OF JUDGMENT. If the demurrer is allowed, the judgment is final upon the indictment demurred to, and is a bar to another prosecution for the same offense, unless the court, being of the opinion that the objection on which the demurrer is allowed may be avoided in a new indictment, directs the case to be resubmitted to the same or another grand jury.

[(19-1707) Cr. Prac. 1864, sec. 289, p. 248; R.S., R.C., & C.L., sec. 7746; C.S., sec. 8874; I.C.A., sec. 19-1607.]

19-1708. DISCHARGE OF DEFENDANT. If the court does not direct the case to be resubmitted, the defendant, if in custody, must be discharged, or if admitted to bail, his bail is exonerated, or if he has deposited money instead of bail, the money must be refunded to him.

[(19-1708) Cr. Prac. 1864, sec. 290, p. 248; R.S., R.C., & C.L., sec. 7747; C.S., sec. 8875; I.C.A., sec. 19-1608.]

19-1709. RESUBMISSION OF CHARGE. If the court directs that the case be resubmitted, the same proceedings must be had thereon as when the indictment is set aside on motion.

[(19-1709) Cr. Prac. 1864, sec. 291, p. 248; R.S., R.C., & C.L., sec. 7748; C.S., sec. 8876; I.C.A., sec. 19-1609.]

19-1710. PLEA AFTER DISALLOWANCE. If the demurrer is disallowed, the court must permit the defendant at his election to plead, which he must do forthwith, or at such time as the court may direct. If he does not plead, the plea of not guilty must be entered for him.

[(19-1710) Cr. Prac. 1864, sec. 292, p. 248; R.S., R.C., & C.L., sec. 7749; C.S., sec. 8877; I.C.A., sec. 19-1610.]

19-1711. OBJECTIONS MUST BE TAKEN BY DEMURRER. When the objections declared grounds of demurrer by this chapter appear upon the face of the indictment, they can only be taken by demurrer, except that the objections to the jurisdiction of the court over the subject of the indictment, or that the facts stated do not constitute a public offense, may be taken at the trial under the plea of not guilty, or after the trial in arrest of judgment.

[(19-1711) Cr. Prac. 1864, sec. 293, p. 248; R.S., R.C., & C.L., sec. 7750; C.S., sec. 8878; I.C.A., sec. 19-1611.]

19-1712. KINDS OF PLEAS. There are four (4) kinds of pleas to an indictment. A plea of:

1. Guilty.
2. Not guilty.
3. A former judgment of conviction or acquittal of the offense charged, which may be pleaded either with or without the plea of not guilty.
4. Once in jeopardy.

[(19-1712) Cr. Prac. 1864, sec. 294, p. 248; R.S., R.C., & C.L., sec. 7755; C.S., sec. 8879; I.C.A., sec. 19-1612.]

19-1713. FORM OF PLEAS. Every plea must be oral, and entered upon the minutes of the court in substantially the following form:

1. If the defendant pleads guilty: "The defendant pleads that he is guilty of the offense charged."

2. If he pleads not guilty: "The defendant pleads that he is not guilty of the offense charged."

3. If he pleads a former conviction or acquittal: "The defendant pleads that he has already been convicted (or acquitted) of the offense charged by the judgment of the court of .... (naming it) rendered at .... (naming the place), on the .... day of ....."

4. If he pleads once in jeopardy: "The defendant pleads that he has been once in jeopardy for the offense charged (specifying the time, place and court)."

[(19-1713) Cr. Prac. 1864, secs. 295, 296, p. 248; R.S., R.C., & C.L., sec. 7756; C.S., sec. 8880; I.C.A., sec. 19-1613.]

19-1714. PLEA OF GUILTY. A plea of guilty can be put in by the defendant himself only in open court, unless upon indictment against a corporation, in which case it may be put in by counsel. The court may at any time before judgment, upon a plea of guilty, permit it to be withdrawn and a plea of not guilty substituted: provided, that upon the application of the defendant, a plea of guilty may be received, and sentence may be passed, at chambers as provided in section [1-901](#).

[(19-1714) Cr. Prac. 1864, secs. 297, 298, p. 249; R.S., sec. 7757; am. R.C. & C.L., sec. 7757; C.S., sec. 8881; I.C.A., sec. 19-1614.]

19-1715. PLEA OF NOT GUILTY. The plea of not guilty puts in issue every material allegation of the indictment, information or complaint except that mental disease or defect excluding responsibility may be raised as a defense only in the manner provided for in this act.

[(19-1715) Cr. Prac. 1864, sec. 299, p. 249; R.S., R.C., & C.L., sec. 7758; C.S., sec. 8882; I.C.A., sec. 19-1615; am. 1970, ch. 31, sec. 13, p. 61.]

19-1716. EVIDENCE ADMISSIBLE UNDER PLEA OF NOT GUILTY. All matters of fact tending to establish a defense other than former conviction or acquittal, or once in jeopardy, may be given in evidence under the plea of not guilty.

[(19-1716) Cr. Prac. 1864, sec. 300, p. 249; R.S., R.C., & C.L., sec. 7759; C.S., sec. 8883; I.C.A., sec. 19-1616.]

19-1717. WHAT IS NOT A FORMER ACQUITTAL. If the defendant was formerly acquitted on the ground of variance between the indictment and the proof, or the indictment was dismissed upon an objection to its form or substance, or in order to hold the defendant for a higher offense, without a judgment of acquittal, it is not an acquittal of the same offense.

[I.C., sec. 19-1717 as added by 1972, ch. 336, sec. 7, p. 987.]

19-1718. WHAT IS A FORMER ACQUITTAL. Whenever the defendant is acquitted on the merits he is acquitted of the same offense, notwithstanding any defect in form or substance in the indictment on which the trial was had.

[I.C., sec. 19-1718 as added by 1972, ch. 336, sec. 7, p. 987.]

19-1719. CONVICTION OR ACQUITTAL BARS INCLUDED OFFENSES. When the defendant is convicted or acquitted, or has once been placed in jeopardy upon an indictment, the conviction, acquittal or jeopardy is a bar to another indictment for the offense charged in the former, or for an attempt to commit the same, or for an offense included therein, of which he might have been convicted under that indictment.

[I.C., sec. 19-1719 as added by 1972, ch. 336, sec. 7, p. 987.]

19-1720. REFUSAL TO ANSWER. If the defendant refuses to answer the indictment by demurrer or plea, a plea of not guilty must be entered.

[(19-1720) Cr. Prac. 1864, sec. 304, p. 249; R.S., R.C., & C.L., sec. 7763; C.S., sec. 8887; I.C.A., sec. 19-1620.]