

TITLE 19
CRIMINAL PROCEDURE

CHAPTER 20
CHALLENGING THE JURY

19-2001. KINDS OF CHALLENGE. A challenge is an objection made to trial jurors and is of two kinds:

1. To the panel.
2. To an individual juror.

[(19-2001) Cr. Prac. 1864, sec. 318, p. 250; R.S., R.C., & C.L., sec. 7815; C.S., sec. 8911; I.C.A., sec. 19-1901.]

19-2002. DEFENDANTS MUST JOIN IN CHALLENGE. When several defendants are tried together they can not sever their challenges, but must join therein.

[(19-2002) Cr. Prac. 1864, sec. 319, p. 250; R.S., R.C., & C.L., sec. 7816; C.S., sec. 8912; I.C.A., sec. 19-1902.]

19-2003. PANEL DEFINED. The panel is a list of jurors returned by a sheriff to serve at a particular court or for the trial of a particular action.

[(19-2003) Cr. Prac. 1864, sec. 320, p. 250; R.S., R.C., & C.L., sec. 7817; C.S., sec. 8913; I.C.A., sec. 19-1903.]

19-2004. CHALLENGE TO PANEL DEFINED -- WHO MAY TAKE. A challenge to the panel is an objection made to all the jurors returned, and may be taken by either party.

[(19-2004) Cr. Prac. 1864, sec. 321, p. 250; R.S., R.C., & C.L., sec. 7818; C.S., sec. 8914; I.C.A., sec. 19-1904.]

19-2005. CHALLENGE TO PANEL -- GROUNDS. A challenge to the panel can be founded only on a material departure from the forms prescribed in respect to the drawing and return of the jury in civil actions, or on the intentional omission of the sheriff to summon one (1) or more of the jurors drawn.

[(19-2005) Cr. Prac. 1864, sec. 322, p. 250; R.S., R.C., & C.L., sec. 7819; C.S., sec. 8915; I.C.A., sec. 19-1905.]

19-2006. CHALLENGE TO PANEL -- WHEN AND HOW TAKEN. A challenge to the panel must be taken before a juror is sworn, and must be in writing, and must plainly and distinctly state the facts constituting the ground of challenge.

[(19-2006) Cr. Prac. 1864, sec. 323, p. 250; R.S., R.C., & C.L., sec. 7820; C.S., sec. 8916; I.C.A., sec. 19-1906.]

19-2007. EXCEPTION TO CHALLENGE. If the sufficiency of the facts alleged as ground of the challenge is denied, the adverse party may except to the challenge. The exception need not be in writing, but must be entered on the minutes of the court, and thereupon the court must proceed to try the sufficiency of the challenge, assuming the facts alleged therein to be true.

[(19-2007) Cr. Prac. 1864, secs. 324, 325, p. 250; R.S., R.C., & C.L., sec. 7821; C.S., sec. 8917; I.C.A., sec. 19-1907.]

19-2008. OVERRULING OR ALLOWANCE OF EXCEPTION. If, on the exception, the court finds the challenge sufficient, it may, if justice require it, permit the party excepting to withdraw his exception, and to deny the facts alleged in the challenge. If the exception is allowed the court may, in like manner, permit an amendment of the challenge.

[(19-2008) Cr. Prac. 1864, sec. 326, p. 250; R.S., R.C., & C.L., sec. 7822; C.S., sec. 8918; I.C.A., sec. 19-1908.]

19-2009. DENIAL OF CHALLENGE -- TRIAL. If the challenge is denied, the denial may be oral, and must be entered on the minutes of the court, and the court must proceed to try the question of fact; and upon such trial, the officers, whether judicial or ministerial, whose irregularity is complained of, as well as any other persons, may be examined to prove or disprove the facts alleged as the ground of the challenge.

[(19-2009) Cr. Prac. 1864, secs. 327, 328, p. 250; R.S., R.C., & C.L., sec. 7823; C.S., sec. 8919; I.C.A., sec. 19-1909.]

19-2010. CHALLENGE FOR BIAS OF OFFICERS. When the panel is formed, or in part formed, from persons whose names are not drawn as jurors, a challenge may be taken to the panel on account of any bias of the officer who summoned them, which would be good ground of challenge to a juror. Such challenge must be made in the same form, and determined in the same manner, as if made to a juror.

[(19-2010) Cr. Prac. 1864, sec. 329, p. 250; R.S., R.C., & C.L., sec. 7824; C.S., sec. 8920; I.C.A., sec. 19-1910.]

19-2011. DISCHARGE OF JURY ON SUSTAINING CHALLENGE. If, either upon an exception to the challenge or a denial of the facts, the challenge is allowed, the court must discharge the jury, so far as the trial of the indictment in question is concerned. If it is disallowed, the court must direct the jury to be impaneled.

[(19-2011) Cr. Prac. 1864, sec. 330, p. 250; R.S., R.C., & C.L., sec. 7825; C.S., sec. 8921; I.C.A., sec. 19-1911.]

19-2012. INSTRUCTION AS TO RIGHT OF CHALLENGE. Before a juror is called the defendant must be informed by the court, or under its direction, that if he intends to challenge an individual juror he must do so before the jury is sworn.

[(19-2012) Cr. Prac. 1864, sec. 331, p. 252; R.S., R.C., & C.L., sec. 7826; C.S., sec. 8922; I.C.A., sec. 19-1912.]

19-2013. CHALLENGE TO INDIVIDUAL JUROR -- KINDS. A challenge to an individual juror is either:

1. For cause; or,
2. Peremptory.

[(19-2013) Cr. Prac. 1864, sec. 332, p. 252; R.S., R.C., & C.L., sec. 7827; C.S., sec. 8923; I.C.A., sec. 19-1913.]

19-2014. TIME FOR CHALLENGE. It must be taken before the jury is sworn to try the cause.

[(19-2014) Cr. Prac. 1864, sec. 333, p. 252; R.S., R.C., & C.L., sec. 7828; C.S., sec. 8924; I.C.A., sec. 19-1914.]

19-2015. PEREMPTORY CHALLENGE DEFINED. A peremptory challenge can be taken by either party and may be oral. It is an objection to a juror for which no reason need be given, but upon which the court must exclude him.

[(19-2015) Cr. Prac. 1864, sec. 334, p. 252; R.S., R.C., & C.L., sec. 7829; C.S., sec. 8925; I.C.A., sec. 19-1915.]

19-2016. NUMBER OF PEREMPTORY CHALLENGES. If the offense charged is punishable with death or with imprisonment in the state prison for life, the defendant is entitled to ten (10) and the state to ten (10) peremptory challenges. On a trial for any other offense the defendant is entitled to six (6) and the state six (6) peremptory challenges.

[(19-2016) Cr. Prac. 1864, sec. 335, p. 252; R.S., sec. 7830; am. 1907, p. 171, sec. 1; reen. R.C., & C.L., sec. 7830; C.S., sec. 8926; I.C.A., sec. 19-1916.]

19-2017. CHALLENGE FOR CAUSE DEFINED. A challenge for cause may be taken by either party. It is an objection to a particular juror, and is either:

1. General--That the juror is disqualified from serving in any case;
- or,
2. Particular--That he is disqualified from serving in the action on trial.

[(19-2017) Cr. Prac. 1864, sec. 336, p. 252; R.S., R.C., & C.L., sec. 7831; C.S., sec. 8927; I.C.A., sec. 19-1917.]

19-2018. GENERAL CAUSES OF CHALLENGE. General causes of challenge are:

1. A conviction of felony.
2. A want of any of the qualifications prescribed by law to render a person a competent juror.
3. Unsoundness of mind, or such defect in the faculties of the mind or organs of the body as render him incapable of performing the duties of a juror.

[(19-2018) Cr. Prac. 1864, sec. 337, p. 252; R.S., R.C., & C.L., sec. 7832; C.S., sec. 8928; I.C.A., sec. 19-1918.]

19-2019. PARTICULAR CAUSES OF CHALLENGE. Particular causes of challenge are of two kinds:

1. For such a bias as, when the existence of the fact is ascertained, in judgment of law disqualifies the juror, and which is known in this code as implied bias.

2. For the existence of a state of mind on the part of the juror in reference to the case, or to either of the parties, which, in the exercise of a sound discretion on the part of the trier, leads to the inference that he will not act with entire impartiality, and which is known in this code as actual bias.

[(19-2019) Cr. Prac. 1864, sec. 338, p. 252; R.S., R.C., & C.L., sec. 7833; C.S., sec. 8929; I.C.A., sec. 19-1919.]

19-2020. GROUNDS OF CHALLENGE FOR IMPLIED BIAS. A challenge for implied bias may be taken for all or any of the following causes and for no other:

1. Consanguinity or affinity within the fourth degree to the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or to the defendant.

2. Standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, or being a member of the family or boarder or lodger of the defendant, or of the person alleged to be injured by the offense charged or on whose complaint the prosecution was instituted, or in his employment on wages.

3. Being a party adverse to the defendant in a civil action or having complained against or been accused by him in a criminal prosecution.

4. Having served on the grand jury which found the indictment, or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment.

5. Having served on a trial jury which has tried another person for the offense charged in the indictment.

6. Having been one of a jury formerly sworn to try the same charge, and whose verdict was set aside or which was discharged without a verdict after the case was submitted to it, or being a witness for the prosecution, or subpoenaed as such.

7. Having served as a juror in a civil action brought against the defendant for the act charged as an offense.

8. Having formed or expressed an unqualified opinion or belief that the prisoner is guilty or not guilty of the offense charged.

9. If the offense charged be punishable with death, the entertaining of such conscientious opinions as would preclude his finding the defendant guilty; in which case he must neither be permitted nor compelled to serve as a juror.

[(19-2020) Cr. Prac. 1864, sec. 339, p. 252; R.S., R.C., & C.L., sec. 7834; C.S., sec. 8930; I.C.A., sec. 19-1920.]

19-2021. EXEMPTION NOT GROUND FOR CHALLENGE. An exemption from service on a jury is not a cause of challenge, but the privilege of the person exempted.

[(19-2021) Cr. Prac. 1864, sec. 340, p. 253; R.S., R.C., & C.L., sec. 7835; C.S., sec. 8931; I.C.A., sec. 19-1921.]

19-2022. CHALLENGE FOR BIAS -- HOW STATED. In a challenge for implied bias, one or more of the legal causes must be alleged. In a challenge for actual bias, it must be alleged that the juror is biased against the party challenged. In either case the challenge may be oral, but must be entered on the minutes of the court.

[(19-2022) Cr. Prac. 1864, sec. 341, p. 253; R.S., R.C., & C.L., sec. 7836; C.S., sec. 8932; I.C.A., sec. 19-1922.]

19-2023. EXCEPTIONS TO CHALLENGE. The adverse party may except to the challenge in the same manner as to a challenge to the panel, and the same proceedings must be had thereon. The adverse party may also orally deny the facts alleged as the ground of challenge.

[(19-2023) Cr. Prac. 1864, sec. 342, p. 253; R.S., R.C., & C.L., sec. 7837; C.S., sec. 8933; I.C.A., sec. 19-1923.]

19-2024. TRIAL OF CHALLENGE. If the facts are denied the challenge must be tried by the court.

[(19-2024) Cr. Prac. 1864, sec. 343, p. 253; R.S., sec. 7838; am. 1905, p. 9, sec. 1; reen. R.C. & C.L., sec. 7838; C.S., sec. 8934; I.C.A., sec. 19-1924.]

19-2025. EXAMINATION OF CHALLENGED JUROR. Upon the trial of a challenge to an individual juror, the juror challenged may be examined as a witness to prove or disprove the challenge, and must answer every question pertinent to the inquiry.

[(19-2025) Cr. Prac. 1864, sec. 346, p. 253; R.S., R.C., & C.L., sec. 7841; C.S., sec. 8935; I.C.A., sec. 19-1925.]

19-2026. EXAMINATION OF WITNESSES. Other witnesses may also be examined on either side, and the rules of evidence applicable to the trial of other issues govern the admission or exclusion of evidence on the trial of the challenge.

[(19-2026) Cr. Prac. 1864, sec. 347, p. 254; R.S., R.C., & C.L., sec. 7842; C.S., sec. 8936; I.C.A., sec. 19-1926.]

19-2027. DISPOSITION OF CHALLENGE FOR BIAS. On the trial of a challenge for either implied or actual bias, the court must determine the law and the fact, and must either allow or disallow the challenge, and direct an entry accordingly upon the minutes.

[(19-2027) Cr. Prac. 1864, secs. 348, 349, p. 254; R.S., sec. 7843; am. 1905, p. 9, sec. 1; reen. R.C. & C.L., sec. 7843; C.S., sec. 8937; I.C.A., sec. 19-1927.]

19-2028. EXHAUSTION OF CHALLENGES FOR CAUSE. All challenges to an individual juror, except peremptory, must be taken, first by the people, and then by the defendant, and each party must exhaust all his challenges for cause before the other begins.

[(19-2028) Cr. Prac. 1864, sec. 351, p. 254; R.S., R.C., & C.L., sec. 7846; C.S., sec. 8938; I.C.A., sec. 19-1928.]

19-2029. ORDER OF CHALLENGES FOR CAUSE. The challenges of either party for cause need not all be taken at once, but they must be taken separately, in the following order, including in each challenge all the causes of challenge belonging to the same class:

1. To the panel.
2. To an individual juror, for a general disqualification.
3. To an individual juror, for an implied bias.
4. To an individual juror, for an actual bias.

[(19-2029) Cr. Prac. 1864, sec. 352, p. 254; R.S., R.C., & C.L., sec. 7847; C.S., sec. 8939; I.C.A., sec. 19-1929.]

19-2030. ALTERATION OF PEREMPTORY CHALLENGES. After the jury is passed for cause, both parties alternately, beginning with the people, may take their peremptory challenges. But no challenge is lost by failure to alternate if the panel is opened by the other party; and each party is entitled to a full panel before exercising a peremptory challenge. Provided, however, in the discretion of the court, the number of jurors who will hear the case, plus a number of jurors representing the total number of possible peremptory challenges, may be called and examined for cause before the parties begin to exercise their peremptory challenges.

[(19-2030) Cr. Prac. 1864, sec. 353, p. 254; R.S., R.C., & C.L., sec. 7848; C.S., sec. 8940; I.C.A., sec. 19-1930; am. 1986, ch. 202, sec. 1, p. 505.]