

CHAPTER 266

FORM OF INDICTMENTS

AN ACT to amend, revise and codify sections thirteen thousand seven hundred thirty three (13733), thirteen thousand seven hundred thirty four (13734), thirteen thousand seven hundred thirty five (13735), thirteen thousand seven hundred thirty six (13736), thirteen thousand seven hundred thirty nine (13739), thirteen thousand seven hundred forty (13740), thirteen thousand seven hundred forty one (13741), thirteen thousand seven hundred forty two (13742), thirteen thousand seven hundred forty three (13743), thirteen thousand seven hundred forty nine (13749), thirteen thousand seven hundred fifty (13750), thirteen thousand seven hundred fifty three (13753), thirteen thousand seven hundred fifty four (13754), thirteen thousand seven hundred fifty five (13755), thirteen thousand seven hundred fifty six (13756), and thirteen thousand seven hundred fifty eight (13758) of the code, 1927, relating to the form, contents and sufficiency of indictments, and to provide for bills of particular in aid of indictments.

Be it enacted by the General Assembly of the State of Iowa:

That sections thirteen thousand seven hundred thirty-three (13733), thirteen thousand seven hundred thirty-four (13734), thirteen thousand seven hundred thirty-five (13735), thirteen thousand seven hundred thirty-six (13736), thirteen thousand seven hundred thirty-nine (13739), thirteen thousand seven hundred forty (13740), thirteen thousand seven hundred forty-one (13741), thirteen thousand seven hundred forty-two (13742), thirteen thousand seven hundred forty-three (13743), thirteen thousand seven hundred forty-nine (13749), thirteen thousand seven hundred fifty (13750), thirteen thousand seven hundred fifty-three (13753), thirteen thousand seven hundred fifty-four (13754), thirteen thousand seven hundred fifty-five (13755), thirteen thousand seven hundred fifty-six (13756), and thirteen thousand seven hundred fifty-eight (13758), of the code, 1927, are amended, revised, and codified to read as follows, to wit:—

1 SECTION 1. The indictment may be in substantially the following
2 form:

3 "In the district court of Iowa in and for.....county.

4 State of Iowa vs. A. B.

5 The grand jurors of the county of.....accuse A. B. of
6 (here state the offense, e. g., treason, manslaughter, robbery, or lar-
7 ceny) and charge that (here the particulars of the offense, for in-
8 stance, as set forth in section thirty-three (33) of this act may be
9 added with the view to avoiding the necessity for a bill of particu-
10 lars)."

11 [Illustration for Indictment for Murder.

12 The grand jurors of the county of Polk accuse John Doe of murder
13 and charge that on or about the 1st day of December, 1928, John Doe
14 murdered Richard Roe.

15 Illustration for Indictment for Burglary.

16 The grand jurors of the county of Polk accuse John Doe of burglary
17 and charge that on or about the 1st day of December, 1928, John Doe
18 committed burglary of the dwelling of Richard Roe.

19 Illustration for Indictment for Robbery.

20 The grand jurors of the county of Polk accuse John Doe of robbery
21 and charge that on or about the 1st day of December, 1928, John Doe
22 robbed Richard Roe.]

1 SEC. 2. The indictment may charge, and is valid and sufficient if
2 it charges, the offense for which the accused is being prosecuted in one
3 or more of the following ways:

4 (1) By using the name given to the offense by statute.

5 (2) By stating so much of the definition of the offense, either in
6 terms of the common law or of the statute defining the offense, or in
7 terms of substantially the same meaning, as is sufficient to give the
8 court and the accused notice of what offense is intended to be charged.

9 The indictment may refer to a section or sub-section of any statute
10 creating the crime charged therein, and in determining the validity
11 or sufficiency of such indictment regard shall be had to such reference.

1 SEC. 3. No indictment which charges the offense in accordance with
2 the provisions of the preceding section shall be held to be insufficient
3 on the ground that it fails to inform the defendant of the particulars
4 of the offense.

1 SEC. 4. (1) When an indictment charges an offense in accordance
2 with the provisions of section two (2) hereof, but such indictment
3 together with the minutes of the evidence filed therewith fails to in-
4 form the defendant of the particulars of the offense sufficiently to
5 enable him to prepare his defense, or to give him such information
6 as he is entitled to under the constitution of this state, the court may,
7 of its own motion, and shall, at the request of the defendant, order the
8 county attorney to furnish a bill of particulars containing such infor-
9 mation as may be necessary for these purposes, or the county attorney
10 may of his own motion furnish such bill of particulars.

11 (2) When the court deems it to be in the interest of justice that
12 facts not set out in the indictment or in the minutes of the evidence
13 or in any previous bill of particulars, should be furnished to the de-
14 fendant, it may order the county attorney to furnish a bill of particu-
15 lars containing such facts. In determining whether such facts and,
16 if so, what facts, should be so furnished the court shall consider the
17 whole record of the case and the entire course of the proceedings
18 against the defendant.

19 (3) Supplemental bills of particulars or a new bill may be ordered
20 by the court or furnished voluntarily under the conditions above
21 stated.

22 (4) Each supplemental bill shall operate to amend any and all pre-
23 vious bills and a new bill shall supersede any previous bill.

24 (5) When any bill of particulars is furnished it shall be filed and
25 become a part of the record and a copy of such bill shall be given to
26 the defendant upon his request.

1 SEC. 5. If it appears from the bill of particulars furnished under
2 the preceding section that the particulars stated do not constitute the
3 offense charged in the indictment, or that the defendant did not com-
4 mit that offense, or that a prosecution for that offense is barred by
5 the statute of limitations, the court may and on motion of defendant
6 shall set aside the indictment unless the county attorney shall furnish
7 another bill of particulars which so states the particulars as to show
8 that the particulars constitute the offense charged in the indictment
9 and that the offense was committed by the defendant and that it is
10 not barred by the statute of limitations.

1 SEC. 6. (1) In an indictment or bill of particulars it is sufficient for
2 the purpose of identifying the defendant to state his true name, or to
3 state the name, appellation or nickname by which he has been or is
4 known, or, if no better way of identifying him is practicable, by stat-
5 ing a fictitious name, or describing him as a person whose name is
6 unknown, or in any other manner. In stating the true name or the
7 name by which the defendant has been or is known or a fictitious
8 name, it is sufficient to state a surname, a surname and one or more
9 given names, or a surname and one or more abbreviations or initials
10 of a given name or names.

11 (2) If the defendant is a corporation, it is sufficient to state the
12 corporate name of such corporation, or any name or designation by
13 which it has been or is known or by which it may be identified, with-
14 out an averment that the corporation is a corporation or that it was
15 incorporated according to law.

16 (3) If in the course of the proceedings the true name of a person
17 indicted otherwise than by his true name is disclosed by the defendant
18 or in the proceedings before the court, it shall order the true name of
19 the defendant to be inserted in the indictment and court record wher-
20 ever his name appears otherwise therein, and the case shall proceed
21 against him in his true name.

22 (4) In no case is it necessary to prove that the true name of the
23 defendant is unknown to the grand jury or prosecuting attorney.

1 SEC. 7. (1) An indictment need contain no allegation of the time
2 of the commission of the offense except in those cases in which time
3 is a material ingredient of the offense.

4 (2) The allegation in an indictment that the defendant committed
5 the offense shall in all cases be considered an allegation that the of-
6 fense was committed after it became an offense and before the finding
7 of the indictment and within the period of limitations prescribed by
8 law for the prosecution of the offense.

9 (3) All allegations of the indictment and bill of particulars shall,
10 unless stated otherwise, be deemed to refer to the same time.

1 SEC. 8. (1) An indictment need contain no allegation of the place
2 of the commission of the offense, except in those cases in which the
3 place is a material ingredient of the offense.

4 (2) The allegation in an indictment that the defendant committed
5 the offense shall in all cases be considered an allegation that the of-
6 fense was committed within the territorial jurisdiction of the court.

7 (3) All allegations in the indictment and bill of particulars shall,
8 unless stated otherwise, be deemed to refer to the same place.

1 SEC. 9. An indictment need contain no allegation of the means by
2 which an offense was committed, unless such allegation is necessary
3 to charge an offense under section two (2) hereof.

1 SEC. 10. An indictment or bill of particulars need contain no allega-
2 tion of the value or price of any property, unless such allegation is
3 necessary to charge an indictable offense under section two (2) hereof,
4 and in such case it is sufficient to aver that the value or price of the
5 property equals or exceeds the certain value or price which determines
6 the offense. The facts which give the property such value need not be
7 alleged.

1 SEC. 11. (1) An indictment need contain no allegation of the owner-
2 ship of any property, unless such allegation is necessary to charge the
3 offense under section two (2) hereof.

4 (2) An allegation in an indictment or bill of particulars of own-
5 ership of property is supported by proof of possession or right of
6 possession of such property, and any statement in an indictment or bill
7 of particulars which implies possession or right of possession is a
8 sufficient allegation of ownership.

1 SEC. 12. (1) An indictment need contain no allegation of the intent
2 with which an act was done, unless such allegation is necessary to
3 charge the offense under section two (2) hereof.

4 (2) An allegation generally of an intent to defraud and injure is
5 sufficient without alleging an intent to defraud or injure any particu-
6 lar person, unless such allegation is necessary to charge the offense
7 under section two (2) hereof.

1 SEC. 13. (1) An indictment need not allege that the offense was
2 committed or the act done "feloniously" or "traitorously" or "unlaw-
3 fully" or "with force and arms" or "with a strong hand", nor need it
4 use any phrase of like kind otherwise to characterize the offense, nor
5 need it allege that the offense was committed or the act done "bur-
6 glariously", "wilfully", "knowingly", "maliciously", or "negligently",
7 nor need it otherwise characterize the manner of the commission of the
8 offense unless such characterization is necessary to charge the of-
9 fense under section two (2) hereof.

1 SEC. 14. An indictment need not state any matter not necessary
2 to be proved.

1 SEC. 15. Whenever it is necessary in an indictment to describe any
2 place or thing in order to charge an offense under section two (2) it
3 is sufficient to describe such place or thing by any term which in com-
4 mon understanding embraces such place or thing and does not include
5 any place or thing which is not by law the subject of, or connected
6 with, the offense.

1 SEC. 16. (1) In an indictment or bill of particulars it is sufficient
2 for the purpose of identifying any person other than the defendant
3 to state his true name, or to state the name, appellation, or nickname
4 by which he has been or is known, or, if no better way of identifying
5 such person is practicable, by stating a fictitious name, or stating the
6 name of an office or position held by him, or by describing him as
7 "a certain person", or by words of similar import, or in any other
8 manner. In stating the true name of such person or the name by
9 which such person has been, or is known, it is sufficient to state a
10 surname, or a surname and one or more given names, or a surname
11 and one or more abbreviations or initials of a given name or names.

12 (2) It is sufficient for the purpose of describing any group or
13 association of persons not incorporated to state the proper name of
14 such group or association, or to state any name or designation by
15 which the group or association has been or is known or by which it
16 may be identified, or to state the names of all the persons in such
17 group or association, or to state the name or names of one or more

18 persons in such group or association, referring to the other or others
19 as "another" or "others".

20 (3) It is sufficient for the purpose of describing a corporation to
21 state the corporate name of such corporation, or any name or desig-
22 nation by which it has been or is known, or by which it may be iden-
23 tified, without an averment that the corporation is a corporation or
24 that it was incorporated according to law.

25 (4) In no case is it necessary to aver or prove that the true name
26 of any person, group or association of persons or any corporation is
27 unknown to the grand jury or prosecuting attorney.

28 (5) If in the course of the trial the true name of any person, group,
29 or association of persons, or corporation, described otherwise than
30 by the true name is disclosed by the evidence, the court shall cause the
31 true name to be inserted in the indictment and court record wherever
32 the name appears otherwise.

1 SEC. 17. In an indictment in which it is necessary to make an aver-
2 ment as to money, treasury notes or certificates, bank notes or other
3 securities intended to circulate as money, checks, drafts or bills of
4 exchange, it is sufficient to describe the same or any of them as
5 money, without specifying the particular character, number, denomi-
6 nation, kind, species, or nature thereof.

1 SEC. 18. Whenever it is necessary in an indictment or bill of par-
2 ticulars to make an averment relative to any instrument which con-
3 sists wholly or in part of writing or figures, pictures or designs, it is
4 sufficient to describe such instrument by any name or description by
5 which it is usually known or by which it may be identified, or by its
6 purport, without setting forth a copy or facsimile of the whole or
7 any part thereof: Provided that the description, if in a bill of par-
8 ticulars, sets forth the character and contents of the instrument with
9 such particularity as to enable the defendant to prepare his defense.

1 SEC. 19. Whenever in an indictment or bill of particulars an aver-
2 ment relative to any spoken or written words or any picture is neces-
3 sary, it is sufficient to set forth such spoken or written words by
4 their general purport or to describe such picture generally, without
5 setting forth a copy or facsimile of such written words or such pic-
6 ture: Provided that when such words or description occur in a bill of
7 particulars, the defendant is thereby sufficiently informed of the
8 identity of the words or picture concerning which the averment is
9 made as to enable him to prepare his defense.

1 SEC. 20. The words and phrases used in an indictment or bill of
2 particulars are to be construed according to their usual acceptation,
3 except that words and phrases which have been defined by law or
4 which have acquired a legal signification are to be construed according
5 to their legal signification.

1 SEC. 21. In alleging in an indictment or information a prior con-
2 viction of the defendant it is sufficient to allege that the defendant
3 was convicted of a certain offense, stating the name of the offense,
4 if it has one, or otherwise stating the offense in accordance with the
5 provisions of section two (2), sub-section 2.

1 SEC. 22. No indictment for an offense created or defined by statute
2 shall be invalid or insufficient merely for the reason that it fails to
3 negative any exception, excuse or proviso contained in the statute
4 creating or defining the offense.

1 SEC. 23. No indictment for an offense which may be committed by
2 the doing of one or more of several acts, or by one or more of several
3 means, or with one or more of several intents, or with one or more
4 of several results, shall be invalid or insufficient for the reason that
5 two or more of such acts, means, intents or results are charged in the
6 disjunctive or alternative.

1 SEC. 24. No indictment shall be invalid or insufficient for the rea-
2 son that it alleges indirectly and by inference or by way of recital any
3 matters, facts, or circumstances connected with or constituting the
4 offense.

1 SEC. 25. No indictment for libel shall be invalid or insufficient for
2 the reason that it does not set forth extrinsic facts for the purpose of
3 showing the application to the party alleged to be libelled of the de-
4 famatory matter on which the indictment is founded.

1 SEC. 26. An indictment for perjury, or for subornation of, solici-
2 tation of, or conspiracy to commit, perjury need not set forth any part
3 of the records or proceedings with which the oath was connected, or
4 the commission or authority of the court or other official before whom
5 the perjury was committed or was to have been committed, or the
6 form of the oath or affirmation, or the manner of administering the
7 same.

1 SEC. 27. In an indictment for an offense which is divided into de-
2 grees it is sufficient to charge that the accused committed the of-
3 fense.

1 SEC. 28. No indictment shall be invalid or insufficient by reason of
2 any repugnant allegation contained therein: Provided that an offense
3 is charged in accordance with the provisions of section two (2) hereof.

1 SEC. 29. Any allegation unnecessary under existing law or under
2 the provisions of this act may, if contained in an indictment, be dis-
3 regarded as surplusage.

1 SEC. 30. Nothing contained in this act shall be so construed as to
2 make invalid or insufficient any indictment which would have been
3 valid and sufficient under the law existing at the date of the enact-
4 ment hereof.

1 SEC. 31. Whenever reference is made to what is necessary to be
2 included in an indictment the interpretation shall be that it is neces-
3 sary to be included in the indictment, information or bill of particu-
4 lars; and wherever reference is made to what is not necessary to be
5 included in an indictment, the interpretation shall be that it is not
6 necessary to be included in the indictment, information or bill of
7 particulars.

1 SEC. 32. No preliminary information and no information for a

- 2 non-indictable offense which charges the offense in accordance with
 3 the provisions of this act, shall be held to be insufficient.
- 1 SEC. 33. The following forms may be used in the cases in which
 2 they are applicable:
- 3 Adultery—A. B. committed adultery with C. D.
 4 Affray—A. B. and C. D. made an affray.
 5 Arson—A. B. committed arson of the dwelling of C. D. (Other
 6 Burnings) A. B. wilfully and maliciously burned the warehouse of
 7 C. D. A. B. wilfully and maliciously set fire to the hay stack of C. D.
 8 Assault—A. B. assaulted C. D.
 9 Assault and Battery—A. B. committed assault and battery upon
 10 C. D.
 11 Assault with intent—A. B. assaulted C. D. with intent to murder
 12 (or to rob or to inflict great bodily injury, as the case may be).
 13 Assault while masked—A. B. while masked, assaulted C. D.
 14 Attempt—A. B. attempted to break and enter the dwelling of C. D.
 15 with intent to commit a public offense (or attempted to commit arson
 16 of the dwelling of C. D., or attempted to produce the miscarriage of
 17 C. D., or whatever the indictable attempt may be).
 18 Bigamy—A. B. committed bigamy with C. D.
 19 Bribery—A. B. bribed C. D. (or offered a bribe to C. D., or accepted
 20 a bribe from C. D. etc.).
 21 Burglary—A. B. committed burglary of the dwelling of C. D.
 22 Burglary by means of explosives—A. B. committed burglary of the
 23 building of C. D. by means of explosives.
 24 Burglary by means of electricity—A. B. committed burglary of the
 25 building of C. D. by means of electricity.
 26 (Other breaking and enterings)—A. B. broke and entered the dwell-
 27 ing of C. D. (or A. B. committed an entry of the dwelling of C. D., or
 28 A. B. broke and entered office of C. D. as the case may be).
 29 Carrying concealed weapons—A. B. carried concealed weapons.
 30 Cigarettes—A. B. sold cigarettes to C. D. without affixing stamps.
 31 Common felon—A. B. committed burglary of the dwelling of C. D.
 32 (or robbed C. D., or set forth any other crime mentioned in section
 33 13396 of the code after the following convictions (set forth convic-
 34 tions of D of two prior offenses mentioned in section 13396, giving
 35 the court, date and place of rendition).
 36 Conspiracy—A. B. and C. D. conspired together to murder E. F.
 37 (or to steal the property of E. F. or to rob E. F., as the case may be).
 38 Desertion—A. B. deserted his wife C. B. (or his child D. B.).
 39 Embezzlement—A. B. embezzled fifty dollars of C. D.
 40 Failure to report automobile accident—A. B., while operating a
 41 motor vehicle, injured C. D. and failed to give notice of the accident.
 42 False pretenses—A. B. obtained an automobile from C. D. by means
 43 of false pretenses.
 44 Forgery—A. B. forged a certain instrument purporting to be a
 45 promissory note (or describe the note or give its tenor or substance).
 46 Gambling—A. B. gambled with C. D.
 47 Incest—A. B. committed incest with C. D.
 48 Indecent exposure—A. B. made an indecent exposure of his person.
 49 Intoxicating liquors—
 50 Nuisance—A. B. kept a building at (give street and number and

- 51 city or otherwise describe or identify the building for purposes of
 52 abatement) in which he unlawfully possessed intoxicating liquors.
 53 Possession—A. B. unlawfully possessed intoxicating liquors.
 54 Keeping house of ill fame—A. B. kept a house of ill fame.
 55 Kidnapping—A. B. kidnapped C. D.
 56 Larceny—A. B. stole from C. D. a horse worth more than twenty
 57 dollars.
 58 Lascivious acts with children—A. B. committed lascivious acts with
 59 C. D. who was under sixteen years of age.
 60 Lewdness—A. B. and C. D. lewdly associated together.
 61 Libel—A. B. published a libel concerning C. D. in the form of a
 62 letter (book, picture, etc. as the case may be), (the particulars should
 63 specify the pages and lines constituting the libel, when necessary, as
 64 where it is contained in a book or pamphlet).
 65 Malicious mischief—A. B. maliciously injured the building of C. D.
 66 Manslaughter—A. B. unlawfully killed C. D.
 67 Murder—A. B. murdered C. D.
 68 Perjury—A. B. committed perjury by testifying as follows: (Set
 69 forth the testimony).
 70 Prostitution—A. B. resorted to a house of ill fame for the purpose
 71 of prostitution (or A. B. was found in a hotel leading a life of prosti-
 72 tution, as the case may be).
 73 Rape—A. B. raped C. D.
 74 Receiving stolen property—A. B. received a stolen watch belonging
 75 to C. D. and worth more than twenty dollars, knowing that it had been
 76 stolen.
 77 Robbery—A. B. robbed C. D.
 78 Seduction—A. B. seduced C. D.
 79 Sodomy—A. B. committed sodomy with C. D.
 80 Uttering a forged instrument—A. B. uttered as genuine a forged
 81 instrument purporting to be a promissory note (or describe the note
 82 or give its tenor or substance).

Senate File No. 326. Approved April 6, A. D. 1929.

CHAPTER 267

COURT PROCEDURE. INDICTMENTS

AN ACT to amend section thirteen thousand seven hundred eighty-one (13781), code, 1927, relating to motions to set aside indictments.

Be it enacted by the General Assembly of the State of Iowa:

1 SECTION 1. Section thirteen thousand seven hundred eighty-one
 2 (13781), code, 1927, is amended by adding to paragraph seven (7)
 3 thereof the following: "except as hereinafter provided."

1 SEC. 2. Section thirteen thousand seven hundred eighty-one
 2 (13781), code, 1927, is further amended by inserting immediately
 3 after said section, the following:

4 "13781-cl. Exception. A motion to set aside an indictment shall
 5 not lie on the ground that the grand jury which returned the indict-
 6 ment was composed of more than one juror from the same civil town-
 7 ship."

House File No. 244. Approved March 28, A. D. 1929.