

CHAPTER 10.

[H. B. 16.]

CRIMINAL PROCEDURE.

AN ACT relating to crimes and punishments and the rights and custody of persons accused of crime; amending section 1046, Code 1881 and RCW 10.40.070, and section 51, chapter 28, Laws of 1891 and RCW 10.40.080; repealing sections 42, 253, 292, 443 and 444, chapter 249, Laws of 1909, and section 240, chapter 249, Laws of 1909 and RCW 9.91.100, and section 1934, Code 1881, section 233, page 396, Laws of 1873, section 41, page 109, Laws of 1854, and section 5, chapter 149, Laws of 1895 and RCW 10.58.050, and section 1113, Code 1881, section 128, page 98, Laws of 1854 and RCW 10.82.060, and section 40, chapter 28, Laws of 1891, section 1025, Code 1881 and RCW 10.37.075, and section 17, chapter 11, Laws of 1891, section 1272, Code 1881, section 2, page 90, Laws of 1875 and RCW 9.87.040, and section 9, chapter 30, Laws of 1907, and section 1, chapter 151, Laws of 1917, and section 1, page 376, Laws of 1854 and RCW 10.25.120, and chapter 60, Laws of 1907, and section 7, chapter 150, Laws of 1925 extraordinary session and RCW 10.73.020, and section 32, chapter 61, Laws of 1893 and RCW 10.73.050 and 10.73.060; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

RCW 10.40.070 amended.

SECTION 1. Section 1046, Code 1881 and RCW 10.40.070 are each amended to read as follows:

Motion to set aside indictment.

The motion to set aside the indictment can be made by the defendant on one or more of the following grounds, and must be sustained.

(1) When it is not indorsed "a true bill," and the indorsement signed by the foreman of the grand jury as prescribed by RCW 10.28.150;

(2) When it has not been presented and marked "filed" as prescribed by RCW 10.28.200;

(3) When any person, other than the grand jurors, was present before the grand jury when the question was taken upon the finding of the indictment, or when any person, other than the grand jurors, was present before the grand jury

during the investigation of the charge, except as required or permitted by law.

(4) That the grand jury were not selected, drawn, summoned, impaneled, or sworn as prescribed by law.

SEC. 2. Section 51, chapter 28, Laws of 1891 and RCW 10.40.080 are each amended to read as follows: RCW 10.40.080 amended.

A motion to set aside an information can be made by the defendant on one or more of the following grounds, and must be sustained: Motion to set aside information.

(1) When it is not signed by the prosecuting attorney.

(2) When it is not verified.

(3) When it has not been marked "filed" by the clerk.

SEC. 3. The following acts or parts of acts are repealed: Repeal.

(1) Chapter 60, Laws of 1907 (uncodified);

(2) Section 42, chapter 249, Laws of 1909 (uncodified);

(3) Section 240, chapter 249, Laws of 1909 and RCW 9.91.100;

(4) Section 253, chapter 249, Laws of 1909 (uncodified);

(5) Section 292, chapter 249, Laws of 1909 (uncodified);

(6) Sections 443 and 444, chapter 249, Laws of 1909 (uncodified);

(7) Section 1934, Code 1881, section 233, page 396, Laws of 1873, and section 41, page 109, Laws of 1854 (uncodified);

(8) Section 5, chapter 149, Laws of 1895 and RCW 10.58.050;

(9) Section 1113, Code 1881, section 128, page 98, Laws of 1854 and RCW 10.82.060;

(10) Section 9, chapter 30, Laws of 1907 (uncodified);

Repeal.

(11) Section 1, chapter 151, Laws of 1917 (uncodified);

(12) Section 1, page 376, Laws of 1854 and RCW 10.25.120;

(13) Section 17, chapter 11, Laws of 1891, section 1272, Code 1881, section 2, page 90, Laws of 1875 and RCW 9.87.040;

(14) Section 7, chapter 150, Laws of 1925 extraordinary session and RCW 10.73.020;

(15) Section 32, chapter 61, Laws of 1893 and RCW 10.73.050 and RCW 10.73.060;

(16) Section 40, chapter 28, Laws of 1891, section 1025, Code 1881 and RCW 10.37.075.

Emergency.

SEC. 4. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House January 28, 1957.

Passed the Senate February 11, 1957.

Approved by the Governor February 19, 1957.

Explanatory note.

(The above measure, being remedial legislation introduced at the request of the Statute Law Committee, was accompanied by the following explanatory note.)

Section 1. Section 1046, Code 1881 and RCW 10.40.070 are amended to remove as one of the grounds to set aside an indictment the requirement that the names of the witnesses are not indorsed upon it. This requirement is now obsolete as Code 1881 § 995 (RCS § 2043) which formerly required the names of witnesses to be indorsed on an indictment was repealed by section 9, chapter 150, Laws of 1925 extraordinary session.

Sec. 2. Section 51, chapter 28, Laws of 1891 and RCW 10.40.080 are amended to remove as one of the grounds to set aside an information the requirement that the names of the witnesses be indorsed upon it. Subdivision (4) refers to RCS § 2050 which was amended by section 2, chapter 150, Laws of 1925 extraordinary session to eliminate the indorsement of witnesses on informations and provided instead for the filing and serving of a list of witnesses by the prosecution and the defendant.

Sec. 3. Subdivision (1) Sections 1 and 2 of chapter 60, Laws of 1907 (RRS §§ 2149, 2150) relating to immunity of witnesses in prosecutions for bribery, grafting or corrupt solicitation were omitted from RCW as having been superseded by 1909 c 249 §§ 39 and 78 (RRS §§ 2291, 2330) RCW 10.52.090, 9.18.080.

The criminal code (1909 c 249 § 49) provides as follows:

"No statute, law or rule is continued in force because it is consistent with the provisions of this act on the same subject; but in all cases provided for by this act, all statutes, laws and rules heretofore in force in this state, whether consistent or not with the provisions of this act, unless expressly continued in force by it are repealed and abrogated."

See also *State v. Bielman*, 86 Wash. 460 and *State ex rel. McCoske v. Kinnear*, 145 Wash. 686, 689. Explanatory note.

Subdivisions (2) 1909 c 249 § 42 (RRS § 2294) relating to the application of the 1909 criminal code to prior offenses has been omitted from RCW as obsolete. That section provides:

"Nothing contained in any provision of this act shall apply to an offense committed or act done at any time before the day when this act shall take effect. Such an offense shall be punished according to, and such act shall be governed by, the provisions of law existing when it is done or committed, in the same manner as if this act had not been passed."

Except for offenses of murder and arson where death ensues the statute of limitations (RCW 10.01.020) has expired as to all crimes committed prior to 1909. Furthermore, the general savings section, RCW 10.01.040 provides that all offenses shall be punished under the law in force at the time the offense was committed. See *State v. Hanlen*, 193 Wash. 494.

Subdivision (3) 1909 c 249 § 240; RCW 9.91.100 (RRS § 2492) relating to "Interfering with dead body or funeral" is superseded by the 1943 cemetery act, see RCW 68.08.120 and 68.48.010(3).

Subdivision (4) 1909 c 249 § 253 (RRS § 2505) relating to "Possession of uninspected oils and effacing brands from oil barrels" was omitted from RCW as obsolete. The instant section imposes a criminal sanction upon the act of selling, etc., certain oils which have not been approved by the state oil inspector and upon selling empty barrels without effacing inspection brands thereon. The oil inspection acts (1903 c 187, 1905 c 161, and 1907 c 192) have all been repealed by 1907 c 192 § 8, 1913 c 60 § 14 and 1927 c 63 § 1, rendering the instant section a nullity.

Subdivision (5) 1909 c 249 § 292 (RRS § 2544) provides that:

"Every person who shall practice medicine or surgery or dentistry without having obtained and filed in the office of the county clerk where he resides, a license as required by law, shall be guilty of a gross misdemeanor."

This section was omitted from RCW as obsolete.

(a) Dentistry: The law never required dentists to register with the county clerk. They were and are required to register with the county auditor:

1893 p 91 § 5; Rem. and Bal. § 8417

1923 p 31 § 15; RRS § 10030-15

1935 p 294 § 7; Rem. Supp. § 10031-7; RCW 18.32.190;

under penalty of misdemeanor:

1893 p 92 § 8; 1901 p 316 § 4; Rem. and Bal. § 8421

1923 p 39 § 36; RRS § 10030-36;

under penalty of gross misdemeanor:

1935 p 299 § 16; Rem. Supp. § 10031-16; RCW 18.32.390;

and penalty of forfeiture of license:

1923 p 31 § 15; RRS § 10030-16

1935 p 297 § 10; Rem. Supp. § 10031-10; RCW 18.32.190.

(b) Physicians and surgeons: Former laws required the certificate to be filed in county of residence:

1890 p 119 § 7; 1 H.C. § 2850; 1 Bal. § 3018

1909 p 681 § 9; Rem. and Bal. § 8395

1919 p 376 §§ 5, 6; RRS § 10012, 10013;

The above requirement was repealed by 1941 c 166 § 2, and the same act [1941 c 166 § 1; Rem. Supp. 1941 § 10010-1; RCW 18.71.080] provided for annual registration with the director of licenses.

Subdivision (6) 1909 c 249 § 443 (RRS § 2695) relates to "Selling liquors not aged." This section was held to be impliedly repealed by the liquor act of 1933 (1933 ex.s. c 62) and was omitted from RCW for that reason.

The same reasoning would seem to apply to 1909 c 249 § 444 (RRS § 2696) "Mixing, distilling, selling, etc., low wines or spirits" which was likewise omitted.

Subdivision (7) Section 1934, Code of 1881 and the earlier sections from which it was derived was omitted from RCW and RRS as being

Explanatory
note.

superseded by section 16, chapter 11, Laws of 1891 (codified as RCW 10.16.090).

Subdivision (8) Repeal of section 5, chapter 149, Laws of 1895 and RCW 10.58.050 is recommended because the section provides proof of marriage under the 1895 act (chapter 149, Laws of 1895). All other sections of the 1895 act have been repealed by section 52, chapter 249, Laws of 1909 which appears to render this section a nullity.

Subdivision (9) This section is repealed as it has been expressly superseded by RCW 10.82.070 requiring that fines be paid to the current state school fund. See *Slayden v. Carr*, 94 Wash. 412, 162 Pac. 529.

Subdivision (10) Section 9, chapter 30, Laws of 1907 (uncodified) reads as follows:

"All the criminal insane now confined in the state hospitals for the insane shall be forthwith sent by the authorities of those hospitals to the State penitentiary and placed in the control of the warden and confined by him in the ward or department for the criminal insane, herein provided for, and shall not thereafter be discharged from his custody save in the manner herein provided. Any criminally insane person now confined in the state penitentiary shall be transferred to the ward for the criminally insane, and shall not be discharged, save as herein provided."

The purpose of this section was to effectuate the transfer of the criminally insane to the state penitentiary in accordance with chapter 30, Laws of 1907 and is of a temporary nature.

Subdivision (11) Section 1, chapter 151, Laws of 1917 (uncodified) reads as follows:

"That whenever heretofore the board of county commissioners of any county, shall have offered a reward to any person or persons who shall apprehend, bring back and secure any person for the commission of a felony, but shall not have named, in such offer, the person whose apprehension is sought, and any person, in consequence of such offer, shall have apprehended, brought back and secured the person who committed such felony, and such person shall have been charged therewith and convicted thereof, and the board of county commissioners shall have ordered such reward paid to the person so affecting such arrest and conviction, and the county auditor of such county shall have issued a warrant in payment of such reward, and such warrant shall have been held or shall be invalid by reason of the fact that in the offer of such reward by the board of county commissioners, no particular person was named as the person for whose arrest and conviction such reward was offered, such warrant shall be and is hereby declared to be valid, and it shall be the duty of the county treasurer of such county to pay such warrant out of the fund in the county treasury upon which the same was drawn, but no interest shall be paid thereon."

This section is special legislation to validate warrants issued prior to the 1917 law and is now obsolete.

Subdivision (12) This section is obsolete. For the procedure followed in the disposition of criminal or civil proceedings when a new county is created see chapter 28, Laws of 1911.

Subdivision (13) This section refers to vagrancy as defined in section 1271, Code of 1881 which was repealed by section 1, chapter 43, Laws of 1927. As this section sets forth the procedure to be followed for the examination of vagrants as defined in section 1271, Code 1881, which was repealed, it is doubtful whether it has been of any validity since that repeal.

Subdivision (14) This section was abrogated by Rules of Court, Rules on Appeal—Rule 65 (effective January 3, 1956); and is no longer of any force or effect.

Subdivision (15) These sections of RCW and the session law section were abrogated by Rules of Court, Rules on Appeal—Rule 65 (effective January 3, 1956); and are no longer of any force or effect.

Subdivision (16) RCW 10.37.075 reads as follows:

"In prosecutions under the provisions of the penal code, sections fifty-two, sixty and ninety-one, where the owner of the property is unknown, such property shall, for the purpose of this code, be deemed and held to be owned by the state of Washington; and in all cases where the indictment or information alleges the state to be the owner of such property, and the proof on the trial discloses the name of the actual owner, it shall not be deemed a variance, or failure of proof, unless the defendant is the actual owner."

The three sections referred to relate to crimes involving theft of animals or stock and were part of Hill's Penal Code. As all three sections were repealed by chapters 43 and 25, Laws of 1927, the section appears to be a nullity and it is recommended that it be repealed.

Explanatory
note.

CHAPTER 11.

[H. B. 17.]

HOSPITAL DISTRICTS.

AN ACT relating to hospital districts; amending section 1, chapter 82, Laws of 1955 and RCW 70.44.040.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. Section 1, chapter 82, Laws of 1955 and RCW 70.44.040 are each amended to read as follows:

The provisions of Title 54 relating to elections and procedure of the commission, except vacancies occurring therein, and boundaries and consolidation of public utility districts shall govern public hospital districts, except that the total vote cast upon the proposition to form the district shall exceed forty percent of the total number of votes cast in the precincts comprising the districts at the next preceding general and county election, and except that hospital district commissioners shall hold office for the term of six years and until their successors are elected and qualified, each term to commence on the second Monday in January in each year following the election. At the election at which the proposition is submitted to the voters as to whether a district shall be formed, three commissioners shall be elected to hold office, respectively, for the terms of two, four, and

RCW 70.44.040
amended.

Hospital
districts.—
Elections—
Vacancies—
Procedure—
Boundaries—
Consolidations
—Terms of
commissioners.