

IC 35-34

ARTICLE 34. BRINGING CRIMINAL CHARGES

IC 35-34-1

Chapter 1. Indictment and Information

IC 35-34-1-1

Commencement of prosecution; filing; sealing; violation

Sec. 1. (a) All prosecutions of crimes shall be brought in the name of the state of Indiana. Any crime may be charged by indictment or information.

(b) Except as provided in IC 12-15-23-6(d), all prosecutions of crimes shall be instituted by the filing of an information or indictment by the prosecuting attorney, in a court with jurisdiction over the crime charged.

(c) Whenever an indictment or information is filed, the clerk of the court shall:

- (1) mark the date of filing on the instrument;
- (2) record it in a record book; and
- (3) upon request, make a copy of it available to the defendant or his attorney.

(d) The court, upon motion of the prosecuting attorney, may order that the indictment or information be sealed. If a court has sealed an indictment or information, no person may disclose the fact that an indictment or information is in existence or pending until the defendant has been arrested or otherwise brought within the custody of the court. However, any person may make any disclosure necessarily incident to the arrest of the defendant. A violation of this subsection is punishable as a contempt.

As added by Acts 1981, P.L.298, SEC.3. Amended by Acts 1982, P.L.204, SEC.18; P.L.10-1994, SEC.7.

IC 35-34-1-2

Contents; requisites; form

Sec. 2. (a) The indictment or information shall be in writing and allege the commission of an offense by:

- (1) stating the title of the action and the name of the court in which the indictment or information is filed;
- (2) stating the name of the offense in the words of the statute or any other words conveying the same meaning;
- (3) citing the statutory provision alleged to have been violated, except that any failure to include such a citation or any error in such a citation does not constitute grounds for reversal of a conviction where the defendant was not otherwise misled as to the nature of the charges against the defendant;
- (4) setting forth the nature and elements of the offense charged in plain and concise language without unnecessary repetition;
- (5) stating the date of the offense with sufficient particularity to show that the offense was committed within the period of limitations applicable to that offense;

- (6) stating the time of the offense as definitely as can be done if time is of the essence of the offense;
- (7) stating the place of the offense with sufficient particularity to show that the offense was committed within the jurisdiction of the court where the charge is to be filed;
- (8) stating the place of the offense as definitely as can be done if the place is of the essence of the offense; and
- (9) stating the name of every defendant, if known, and if not known, by designating the defendant by any name or description by which he can be identified with reasonable certainty.

(b) An indictment shall be signed by:

- (1) the foreman or five (5) members of the grand jury; and
- (2) the prosecuting attorney or his deputy.

An information shall be signed by the prosecuting attorney or his deputy and sworn to or affirmed by him or any other person.

(c) An indictment or information shall have stated upon it the names of all the material witnesses. Other witnesses may afterwards be subpoenaed by the state, but unless the name of a witness is stated on the indictment or information, no continuance shall be granted to the state due to the absence of the witness.

(d) The indictment or information shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged. It need not contain a formal commencement, a formal conclusion, or any other matter not necessary to the statement. Presumptions of law and matters of which judicial notice is taken need not be stated.

(e) The indictment may be substantially in the following form:

IN THE _____ COURT OF INDIANA, 20 ____
STATE OF INDIANA
vs. CAUSE NUMBER _____
A _____ B _____

The grand jury of the county of _____ upon their oath or affirmation do present that AB, on the _____ day of _____ 20 ____ at the county of _____ in the state of Indiana (HERE SET FORTH THE OFFENSE CHARGED).

(f) The information may be substantially in the same form as the indictment, substituting for the words, "the grand jury of the county of _____, upon their oath or affirmation so present" the following: "CD, being duly sworn on his oath or having affirmed, says." It is not necessary in an information to state the reason why the proceeding is by information rather than indictment.

(g) This section applies to a traffic offense (as defined in IC 9-13-2-183) if the traffic offense is:

- (1) a felony; or
- (2) a misdemeanor.

As added by Acts 1981, P.L.298, SEC.3. Amended by Acts 1982, P.L.204, SEC.19; P.L.320-1983, SEC.11; P.L.158-1994, SEC.1; P.L.2-2005, SEC.119; P.L.85-2013, SEC.115.

IC 35-34-1-2.4

Verified or sworn documents; form of oath; administration; false affirmation or verification

Sec. 2.4. (a) If an indictment, information, pleading, motion, petition, probable cause affidavit, or other document is required to be verified or sworn under oath before it is submitted to the court in a criminal action, the document meets the requirements of the law as a sworn document if the following form or a substantially similar form is used:

I swear (affirm), under penalty of perjury as specified by IC 35-44.1-2-1, that the foregoing (the following) representations are true.

Signed _____

(b) If a document complies with subsection (a), the swearing or affirming need not be done before a notary or other officer empowered to administer oaths.

(c) A person who makes a false affirmation or verification under this section may be prosecuted under IC 35-44.1-2-1.

As added by P.L.181-1988, SEC.1. Amended by P.L.126-2012, SEC.47.

IC 35-34-1-2.5

Prior convictions

Sec. 2.5. If the penalty for an offense is, by the terms of the statute, increased because the person was previously convicted of the offense, the state may seek to have the person sentenced to receive the increased penalty by alleging, on a page separate from the rest of the charging instrument, that the person was previously convicted of the offense.

As added by P.L.50-1984, SEC.7.

IC 35-34-1-3

Illegible or lost indictment or information

Sec. 3. When an indictment or information which has been returned or presented to a court as authorized by law has become illegible or cannot be produced, the defendant may be tried using a copy certified by the clerk of the court.

As added by Acts 1981, P.L.298, SEC.3.

IC 35-34-1-4

Motion to dismiss by defendant; grounds; requisites; disposition; effect of order

Sec. 4. (a) The court may, upon motion of the defendant, dismiss the indictment or information upon any of the following grounds:

- (1) The indictment or information, or any count thereof, is defective under section 6 of this chapter.
- (2) Misjoinder of offenses or parties defendant, or duplicity of allegation in counts.
- (3) The grand jury proceeding was defective.
- (4) The indictment or information does not state the offense

with sufficient certainty.

(5) The facts stated do not constitute an offense.

(6) The defendant has immunity with respect to the offense charged.

(7) The prosecution is barred by reason of a previous prosecution.

(8) The prosecution is untimely brought.

(9) The defendant has been denied the right to a speedy trial.

(10) There exists some jurisdictional impediment to conviction of the defendant for the offense charged.

(11) Any other ground that is a basis for dismissal as a matter of law.

(b) Except as otherwise provided, a motion under this section shall be made no later than:

(1) twenty (20) days if the defendant is charged with a felony;
or

(2) ten (10) days if the defendant is charged only with one (1) or more misdemeanors;

prior to the omnibus date. A motion made thereafter may be summarily denied if based upon a ground specified in subdivision (a)(1), (a)(2), (a)(3), (a)(4), or (a)(5) of this section. A motion to dismiss based upon a ground specified in subdivision (a)(6), (a)(7), (a)(8), (a)(9), (a)(10), or (a)(11) of this section may be made or renewed at any time before or during trial. A motion to dismiss based upon lack of jurisdiction over the subject matter may be made at any time.

(c) Upon the motion to dismiss, a defendant who is in a position adequately to raise more than one (1) ground in support thereof shall raise every ground upon which he intends to challenge the indictment or information. A subsequent motion based upon a ground not properly raised may be summarily denied. However, the court, in the interest of justice and for good cause shown, may entertain and dispose of such a motion on the merits.

(d) Upon the motion to dismiss, the court shall:

(1) overrule the motion to dismiss;

(2) grant the motion to dismiss and discharge the defendant; or

(3) grant the motion to dismiss and deny discharge of the defendant if the court determines that the indictment or information may be cured by amendment under section 5 of this chapter and the prosecuting attorney has moved for leave to amend.

If the court grants the motion under subdivision (3) and grants the prosecuting attorney leave to amend, any prior order imposing conditions of release pending trial shall stand unless otherwise modified or removed by order of the court.

(e) If the court grants a motion under subsection (a)(3) and the prosecuting attorney informs the court on the record that the charges will be refiled within seventy-two (72) hours by information:

(1) the court may not discharge the defendant; and

(2) any prior order concerning release pending trial remains in

force unless it is modified or removed by the court.

(f) An order of dismissal does not, of itself, constitute a bar to a subsequent prosecution of the same crime or crimes except as otherwise provided by law.

As added by Acts 1981, P.L.298, SEC.3. Amended by Acts 1982, P.L.204, SEC.20; P.L.320-1983, SEC.12.

IC 35-34-1-5

Amendment of charge; procedures; limitations

Sec. 5. (a) An indictment or information which charges the commission of an offense may not be dismissed but may be amended on motion by the prosecuting attorney at any time because of any immaterial defect, including:

- (1) any miswriting, misspelling, or grammatical error;
- (2) any misjoinder of parties defendant or offenses charged;
- (3) the presence of any unnecessary repugnant allegation;
- (4) the failure to negate any exception, excuse, or provision contained in the statute defining the offense;
- (5) the use of alternative or disjunctive allegations as to the acts, means, intents, or results charged;
- (6) any mistake in the name of the court or county in the title of the action, or the statutory provision alleged to have been violated;
- (7) the failure to state the time or place at which the offense was committed where the time or place is not of the essence of the offense;
- (8) the failure to state an amount of value or price of any matter where that value or price is not of the essence of the offense; or
- (9) any other defect which does not prejudice the substantial rights of the defendant.

(b) The indictment or information may be amended in matters of substance and the names of material witnesses may be added, by the prosecuting attorney, upon giving written notice to the defendant at any time:

- (1) up to:
 - (A) thirty (30) days if the defendant is charged with a felony;
 - or
 - (B) fifteen (15) days if the defendant is charged only with one (1) or more misdemeanors;before the omnibus date; or
- (2) before the commencement of trial;

if the amendment does not prejudice the substantial rights of the defendant. When the information or indictment is amended, it shall be signed by the prosecuting attorney or a deputy prosecuting attorney.

(c) Upon motion of the prosecuting attorney, the court may, at any time before, during, or after the trial, permit an amendment to the indictment or information in respect to any defect, imperfection, or omission in form which does not prejudice the substantial rights of the defendant.

(d) Before amendment of any indictment or information other than amendment as provided in subsection (b), the court shall give all parties adequate notice of the intended amendment and an opportunity to be heard. Upon permitting such amendment, the court shall, upon motion by the defendant, order any continuance of the proceedings which may be necessary to accord the defendant adequate opportunity to prepare the defendant's defense.

(e) An amendment of an indictment or information to include a habitual offender charge under IC 35-50-2-8 must be made at least thirty (30) days before the commencement of trial. However, upon a showing of good cause, the court may permit the filing of a habitual offender charge at any time before the commencement of the trial if the amendment does not prejudice the substantial rights of the defendant. If the court permits the filing of a habitual offender charge less than thirty (30) days before the commencement of trial, the court shall grant a continuance at the request of the:

- (1) state, for good cause shown; or
- (2) defendant, for any reason.

As added by Acts 1981, P.L.298, SEC.3. Amended by Acts 1982, P.L.204, SEC.21; P.L.320-1983, SEC.13; P.L.164-1993, SEC.7; P.L.178-2007, SEC.1; P.L.24-2013, SEC.1; P.L.158-2013, SEC.389.

IC 35-34-1-6

Defective indictment or information; dismissal; exceptions

Sec. 6. (a) An indictment or information is defective when:

- (1) it does not substantially conform to the requirements of section 2(a) of this chapter;
- (2) the allegations demonstrate that the court does not have jurisdiction of the offense charged; or
- (3) the statute defining the offense charged is unconstitutional or otherwise invalid.

(b) An information is defective if:

- (1) the defendant was a grand jury target identified under IC 35-34-2-12(a)(1);
- (2) the offense alleged was identified on the record under IC 35-34-2-12(a)(2) as an offense that the defendant allegedly committed; and
- (3) the grand jury proceeded to deliberate on whether to issue an indictment, and voted not to indict the defendant for the offense identified on the record under IC 35-34-2-12(a)(2).

However, if the prosecuting attorney shows that there is newly discovered material evidence that was not presented to the grand jury before the grand jury's failure to indict, then the information is not defective.

(c) Except as provided in section 5 of this chapter, an indictment or information or a count thereof shall be dismissed upon motion when it is defective.

As added by Acts 1981, P.L.298, SEC.3. Amended by P.L.312-1985, SEC.1; P.L.3-1990, SEC.121.

IC 35-34-1-7

Grand jury proceedings; violation of IC 35-34-2; dismissal

Sec. 7. An indictment shall be dismissed upon motion when the grand jury proceeding which resulted in the indictment was conducted in violation of IC 35-34-2.

As added by Acts 1981, P.L.298, SEC.3.

IC 35-34-1-8

Motion to dismiss by defendant; requisites; affidavits; documentary evidence; hearing; disposition; procedures

Sec. 8. (a) A motion to dismiss an indictment or information under section 4 of this chapter shall be in writing. The prosecutor must be given reasonable notice of a motion to dismiss. If the motion is expressly or impliedly based upon the existence or occurrence of facts, the motion shall be accompanied by affidavits containing sworn allegations of these facts. The sworn allegations may be based upon personal knowledge of the affiant or upon information and belief, provided that in the latter event the affiant discloses the sources of the information and the grounds for the belief. If the motion is expressly or impliedly based upon the existence of any question of law, the motion shall be accompanied by a memorandum stating specifically the legal question in issue. The defendant may also submit documentary evidence tending to support the allegations of the motion.

(b) The prosecutor may:

- (1) file with the court an answer denying or admitting any or all of the allegations of the motion; and
- (2) submit documentary evidence tending to refute the allegations.

(c) After all papers of both parties have been filed, and after all documentary evidence has been submitted, the court shall determine whether, under subsections (d) and (e) of this section, a hearing is necessary to resolve questions of fact.

(d) The court shall grant the motion without conducting a hearing only if:

- (1) the motion alleges a ground constituting a legal basis for the motion under section 4 of this chapter;
- (2) the ground, if expressly or impliedly based upon the existence or occurrence of facts, is supported by sworn allegations of all facts essential to support the motion; and
- (3) the sworn allegations of fact essential to support the motion are admitted as true by the prosecutor or are conclusively established by documentary evidence.

(e) The court may deny the motion without conducting a hearing only if:

- (1) the motion does not allege a ground constituting a legal basis for the motion under section 4 of this chapter;
- (2) the motion is expressly or impliedly based upon the existence or occurrence of facts, and the motion does not contain sworn allegations supporting all the essential facts; or

(3) an allegation of fact essential to support the motion is conclusively refuted by documentary evidence.

(f) If a hearing is necessary to resolve questions of fact, the court shall conduct a hearing and make findings of fact essential to the determination of the motion. The defendant has a right to be present and represented by counsel at the hearing but may waive this right. The defendant has the burden of proving by a preponderance of the evidence every fact essential to support the motion.

As added by Acts 1981, P.L.298, SEC.3.

IC 35-34-1-9

Joinder of offenses or defendants

Sec. 9. (a) Two (2) or more offenses may be joined in the same indictment or information, with each offense stated in a separate count, when the offenses:

- (1) are of the same or similar character, even if not part of a single scheme or plan; or
- (2) are based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan.

(b) Two (2) or more defendants can be joined in the same indictment or information when:

- (1) each defendant is charged with each offense included;
- (2) each of the defendants is charged as a conspirator or party to the commission of the offense and some of the defendants are also charged with one (1) or more offenses alleged to be in furtherance of the conspiracy or common scheme or plan; however, a party to the commission of an offense or conspirator need not be designated as such in the indictment or information; or
- (3) conspiracy is not charged and not all of the defendants are charged in each count, if it is alleged in the indictment or information that the offenses charged:
 - (A) were part of a common scheme or plan; or
 - (B) were so closely connected in respect to time, place, and occasion that it would be difficult to separate proof of one (1) charge from proof of the others.

As added by Acts 1981, P.L.298, SEC.3.

IC 35-34-1-10

Motions; joinder of offenses; dismissal of offense joinable for trial or of related offenses; requisites; orders

Sec. 10. (a) When a defendant has been charged with two (2) or more offenses in two (2) or more indictments or informations and the offenses could be joined in the same indictment or information under section 9(a)(1) of this chapter, the court, upon motion of the defendant, may order that the indictments or informations be joined for trial. Such motion shall be made before commencement of trial on either of the offenses charged.

(b) When a defendant has been charged with two (2) or more

offenses in two (2) or more indictments or informations and the offenses could have been joined in the same indictment or information under section (9)(a)(2) of this chapter, the court, upon motion of the defendant or the prosecuting attorney, or on its own motion, shall join for trial all of such indictments or informations unless the court, in the interests of justice, orders that one (1) or more of such offenses shall be tried separately. Such motion shall be made before commencement of trial on either of the offenses charged.

(c) A defendant who has been tried for one (1) offense may thereafter move to dismiss an indictment or information for an offense which could have been joined for trial with the prior offenses under section 9 of this chapter. The motion to dismiss shall be made prior to the second trial, and shall be granted if the prosecution is barred by reason of the former prosecution.

(d) A defendant who has been sentenced on a plea of guilty to one (1) offense may move to dismiss an indictment or information for a related offense. The motion shall be granted if the plea of guilty was entered on the basis of a plea agreement in which the prosecutor agreed to seek or not to oppose dismissal of other related offenses or not to prosecute other potential related offenses.

(e) Subject to the provisions of section 11(a) of this chapter, two (2) or more offenses which are within the jurisdiction of the same court and which could have been joined in one (1) prosecution constitute related offenses.

As added by Acts 1981, P.L.298, SEC.3.

IC 35-34-1-11

Severance of offenses or separate trial of defendants joined

Sec. 11. (a) Whenever two (2) or more offenses have been joined for trial in the same indictment or information solely on the ground that they are of the same or similar character, the defendant shall have a right to a severance of the offenses. In all other cases the court, upon motion of the defendant or the prosecutor, shall grant a severance of offenses whenever the court determines that severance is appropriate to promote a fair determination of the defendant's guilt or innocence of each offense considering:

- (1) the number of offenses charged;
- (2) the complexity of the evidence to be offered; and
- (3) whether the trier of fact will be able to distinguish the evidence and apply the law intelligently as to each offense.

(b) Whenever two (2) or more defendants have been joined for trial in the same indictment or information and one (1) or more defendants move for a separate trial because another defendant has made an out-of-court statement which makes reference to the moving defendant but is not admissible as evidence against him, the court shall require the prosecutor to elect:

- (1) a joint trial at which the statement is not admitted into evidence;
- (2) a joint trial at which the statement is admitted into evidence only after all references to the moving defendant have been

effectively deleted; or

(3) a separate trial for the moving defendant.

In all other cases, upon motion of the defendant or the prosecutor, the court shall order a separate trial of defendants whenever the court determines that a separate trial is necessary to protect a defendant's right to a speedy trial or is appropriate to promote a fair determination of the guilt or innocence of a defendant.

(c) The court may order the prosecutor to disclose in camera any information concerning statements made by the defendants which the prosecutor intends to introduce in evidence at the trial if this information would assist the court in ruling on a motion for a separate trial.

As added by Acts 1981, P.L.298, SEC.3.

IC 35-34-1-12

Motion for severance or separate trial; time; waiver or bar

Sec. 12. (a) A defendant's motion for severance of crimes or motion for a separate trial must be made before commencement of trial, except that the motion may be made before or at the close of all the evidence during trial if based upon a ground not previously known. The right to severance of offenses or separate trial is waived by failure to make the motion at the appropriate time.

(b) If a defendant's pretrial motion for severance of offenses or motion for a separate trial is overruled, the motion may be renewed on the same grounds before or at the close of all the evidence during trial. The right to severance of offenses or separate trial is waived by failure to renew the motion.

(c) If a defendant's motion for severance of offenses or separate trial is granted during the trial, the granting of the motion shall not bar a subsequent trial of that defendant on the offenses charged.

As added by Acts 1981, P.L.298, SEC.3.

IC 35-34-1-13

Motion to dismiss by prosecuting attorney

Sec. 13. (a) Upon motion of the prosecuting attorney, the court shall order the dismissal of the indictment or information. The motion may be made at any time before sentencing and may be made on the record or in writing. The motion shall state the reason for dismissal.

(b) In any case where an order sustaining a motion to dismiss would otherwise constitute a bar to further prosecution of the crime charged, unless the defendant objects to dismissal, the granting of the motion does not bar a subsequent trial of the defendant on the offense charged.

As added by Acts 1981, P.L.298, SEC.3. Amended by Acts 1982, P.L.204, SEC.22.

IC 35-34-1-14

Pleading special matters; sufficiency

Sec. 14. In any indictment or information, an averment substantially in compliance with the provisions of this section shall

be sufficient.

(a) The age of the defendant or the victim need not be alleged, except where the age of the defendant or the victim is an essential element of the offense charged.

(b) Averments as to any money or bills or notes or postal orders issued by any lawful authority and intended to pass and circulate as money are sufficient to be alleged simply as money without further identification.

(c) It is sufficient to describe a written instrument by any name or designation by which it is usually known or to aver generally the contents of such instrument.

(d) Averments of dates and numbers may be by words or figures or both.

As added by Acts 1981, P.L.298, SEC.3.

IC 35-34-1-15

Incorrect name of defendant immaterial

Sec. 15. (a) If the stated name of the defendant in the indictment or information is incorrect:

(1) this defect shall not be a ground for dismissal of the indictment or information; and

(2) any variance between the allegations and the proof of the defendant's name shall not be considered material.

(b) If at any time during the proceedings the true name of the defendant becomes known, the court shall order the indictment or information amended to show both the name by which the defendant was first charged and the name later alleged to be true.

As added by Acts 1981, P.L.298, SEC.3.

IC 35-34-1-16

Perjury; requisites

Sec. 16. (a) In an indictment or information for perjury, it is necessary to set forth only:

(1) the substance of the controversy or the matter in respect to which the alleged offense was committed; and

(2) in what court or before whom the false statement was made.

It is not necessary to set forth any part of any record or proceeding, or the commission or authority of the court or person before whom the perjury was allegedly committed.

(b) In an indictment or information for perjury, in swearing to any written instrument, it is necessary to set forth only that part of the instrument alleged to have been falsely sworn to, and to negative the same, with the name of the officer or court before whom the instrument was sworn.

As added by Acts 1981, P.L.298, SEC.3.

IC 35-34-1-17

Forgery; misdescription of instrument destroyed or withheld by defendant immaterial

Sec. 17. When an instrument which is the subject of an indictment

or information for forgery has been destroyed, or is withheld by the act or procurement of the defendant, and the fact of the destruction or withholding is alleged in the indictment or information, and established at trial, the misdescription of the instrument is immaterial.
As added by Acts 1981, P.L.298, SEC.3.

IC 35-34-1-18

Names of owners of property

Sec. 18. The indictment or information for an offense which was committed upon or in relation to any property belonging to partners, or to several joint owners, or property which, when the offense was committed, was in possession of a bailee or tenant, is sufficient if it alleges the ownership of the property to be in the name of:

- (1) the partnership or any partner;
- (2) an owner;
- (3) a bailor;
- (4) a bailee; or
- (5) a tenant.

As added by Acts 1981, P.L.298, SEC.3.

IC 35-34-1-19

Rules of construction

Sec. 19. The words used in an indictment or information shall be construed using their ordinary and common meaning, except words and phrases defined by law, which are to be construed according to their legal meaning.

As added by Acts 1981, P.L.298, SEC.3.