

THE CODE OF CRIMINAL PROCEDURE (EXCERPT)
Act 175 of 1927

767.76 Indictment; time of objection to defect; amendment; discharge of jury; continuance of cause; double jeopardy; review of action by court.

Sec. 76.

No indictment shall be quashed, set aside or dismissed or motion to quash be sustained or any motion for delay of sentence for the purpose of review be granted, nor shall any conviction be set aside or reversed on account of any defect in form or substance of the indictment, unless the objection to such indictment, specifically stating the defect claimed, be made prior to the commencement of the trial or at such time thereafter as the court shall in its discretion permit. The court may at any time before, during or after the trial amend the indictment in respect to any defect, imperfection or omission in form or substance or of any variance with the evidence. If any amendment be made to the substance of the indictment or to cure a variance between the indictment and the proof, the accused shall on his motion be entitled to a discharge of the jury, if a jury has been impaneled and to a reasonable continuance of the cause unless it shall clearly appear from the whole proceedings that he has not been misled or prejudiced by the defect or variance in respect to which the amendment is made or that his rights will be fully protected by proceeding with the trial or by a postponement thereof to a later day with the same or another jury. In case a jury shall be discharged from further consideration of a case under this section, the accused shall not be deemed to have been in jeopardy. No action of the court in refusing a continuance or postponement under this section shall be reviewable except after motion to and refusal by the trial court to grant a new trial therefor and no writ of error or other appeal based upon such action of the court shall be sustained, nor reversal had, unless from consideration of the whole proceedings, the reviewing court shall find that the accused was prejudiced in his defense or that a failure of justice resulted.

History: 1927, Act 175, Eff. Sept. 5, 1927 ;-- CL 1929, 17290 ;-- CL 1948, 767.76

Former Law: See section 34 of Ch. 164 of R.S. 1846, being CL 1857, Â§ 6043; CL 1871, Â§ 7912; How., Â§ 9523; CL 1897, Â§ 11908; CL 1915, Â§ 15735; and sections 9, 11, 12, and 14 of Act 77 of 1855, being CL 1857, Â§Â§ 6055, 6057, 6058, and 6060; CL 1871, Â§Â§ 7924, 7926, 7927, and 7929; How., Â§Â§ 9535, 9537, 9538, and 9540; CL 1897, Â§Â§ 11920, 11922, 11923, and 11925; CL 1915, Â§Â§ 15747, 15749, 15750, and 15752.