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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Appellant, vs. CODY WADE HENSON, Defendant and Respondent.	S252702 Court of Appeal No. F075101 Superior Court Complaint Nos. F16903119 and F16901499

REQUEST FOR JUDICIAL NOTICE OF LEGISLATIVE HISTORY MATERIALS FROM GOVERNOR'S CHAPTERED BILL FILE REGARDING SB543, STATS. 1951, Chapter 1674

TO THE HONORABLE TANI CANTIL-SAKAUYE, PRESIDING JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

This Court will review published materials regarding legislative history, to determine the purpose and meaning of an ambiguous statute. (*People v. Eubanks* (1996) 14 Cal.4th 580, 591.) The majority opinion on review in *People v. Henson* (2018) 28 Cal. App.5th 490 finds a latent ambiguity in Penal Code section 954, via the enactment of

Proposition 220, consolidating the courts. Penal Code section 954 was last amended in SB 543 (Stats. 1951, Chapter 1674), and petitioner and the dissenting opinion both argue that there was no ambiguity in that legislative enactment, and that in fact the legislative history refutes the majority opinion. (RBOM 18-65; *People v. Henson, supra*, 28 Cal.App.5th at pp. 514-533 [Smith, J., dissenting].) Such legislative materials can be merely cited, without a request for judicial notice, if they are published materials and/or readily available, through the Legislative History Information website, which is http://leginfo.ca.gov/index.html. (*Quelimane Company, Inc. V. Stewart Title Guar. Co.* (1998) 19 Cal. 4th 26, 46.)

However, SB 543 is too old to be included in that database, or readily available, so petitioner and respondent's counsel obtained certified copies of materials from the Governor's Chaptered Bill file, from the Secretary of State Archives, He requests that this Court take judicial notice of the materials, all cited in Justice Smith's dissenting opinion, and also in Respondent's Brief on the Merits, filed this same date. (RBOM 21, 23, 31-34, 55.)

There are three items contained in the certified packet, attached. Appendix A contains the front Secretary of State Archives certification page (for all 35 pages of materials), and the bill itself (SB 543, Stats. 1951, Chapter 1674), which is 21 pages long. It is properly noticed as a legislative enactment. (Ev. Code, sec. 452, subd. (b) and 459, subd. (a).) Appendix B is a Legislative Counsel Report on the bill, of which judicial notice is also proper taken. (*Quelimane Company, Inc. v. Stewart Title Guar. Co., supra,*

9 Cal. 4th at pp. 45-46, fn. 9; citing *People v. Cruz* (1996) 13 Cal.4th 764, 773-774, fn.5.) It is 13 pages long. Appendix C (J.F. Coakley, District Attorney of Alameda County, letter to Beach Vasey, Legislative Secretary, July 3, 1951) is the very last page of the materials. It is also judicially noticeable, as materials available to the Legislature while the bill was under consideration. (*Quelimane Company, Inc. v. Stewart Title Guar. Co., supra*, 9 Cal. 4th at pp. 45-46, fn. 9; citing *People v. Cruz, supra*, 13 Cal.4th at pp. 7773-774, fn.5.) The letter was cited by the dissenting opinion in this case. (*People v. Henson, supra*, 28 Cal.App.5th at p. 528.)

Therefore, petitioner Henson respectfully requests that this Court take judicial notice of the attached materials from the Secretary of State Archives, Governor's Chaptered Bill file for SB 543, which is highly relevant to the issue on review. Not only Penal Code section 954 but also Penal Code sections 949 and 739 were amended and/or renumbered in SB 543, This history of all three Penal Code sections is central to the determination of whether a prosecutor can avoid the necessity for a motion to consolidate if he files a "unitary information" combining separately bound over complaints.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Sacramento, California, on August 5, 2019.

Barbara A. Smith

Barbara A. Smith
Attorney for Defendant and Respondent
Cody Wade Henson

APPENDIX A

State of California
Secretary of State

I, ALEX PADILLA, Secretary of State of the State of California, hereby certify: Selected Pages; GCBF Ch. 1674, SB 543, 1951

That the attached transcript of 35 page(s) is a full, true and correct copy of the original record in the custody of this office.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

May 29th, 2019

ALEX PADILLA
Secretary of State

SENATE BILL NO. 543 CHAPTER 1674 1951

AUTHOR Regan

RECEIVED 6/23 1951

LAST DAY 7/28 1951

ACTION OF GOVERNOR 7/23 1951

		Sent	Received
Requests for Digests	Legislative Counsel	✓	✓
	Attorney General	✓	✓
	Adjutant General		
Recommendations	Aeronautics Commission		
	Agriculture		
	Banks		
	Building and Loan Commissioner		
	Civil Defense		
	Controller		
	Corporation Commissioner		✓
	Corrections	✓	✓
	Disaster Council		
	Education		
	Employment		
	Equalization		
	Finance		
	Franchise Tax Board		
	Highway Patrol		
	Industrial Relations		
	Insurance		
	Legislative Auditor		
	Mental Hygiene		
	Motor Vehicles		
	Natural Resources		
	Personnel Board		
	Professional & Vocational Standards		
	Public Health		
	Public Works		
	Recreation Commission		
	Secretary of State		
	Social Welfare		
	State Lands Commission		
	Treasurer		
	Veterans Affairs		
	Water Pollution Control Board		
	Youth Authority	✓	✓
	American Legion		
	Associated Sportsmen		
	County Counsel		
	County Supervisors' Association		
	C.S.E.A.		
	Disabled American Veterans		
	League California Cities	✓	✓
	State Bar		
	Veterans of Foreign Wars		

Dist Attys ✓ G. M. Mull ✓

Justices & Constables ✓ ✓ Kenneth McGilvray ✓

Judge Survey Ltr ✓ ✓ Frank Mackin ✓

30976 11-60 IM Ⓐ BPG

Senate Bill No. 543

Passed the Senate June 22, 1951

Secretary of the Senate

Passed the Assembly June 20, 1951

Chief Clerk of the Assembly

This bill was received by the Governor this 23rd day of June, 1951, at 10 o'clock P. M.

Private Secretary of the Governor

CHAPTER 1674

An act to amend Sections 671, 689, 777, 778, 781, 782, 783, 784, 784a, 785, 786, 789, 791, 792, 794, 795, 802, 806, 813, 814, 815, 816, 826, 827, 828, 829, 949, 950, 953, 954, 955, 957, 958, 959, 960, 961, 963, 964, 966, 967, 968, 969, 969c, 970, 971, 976, 977, 979, 980, 983, 988, 989, 990, 1004, 1005, 1007, 1008, 1009, 1010, 1012, 1016, 1017, 1019, 1021, 1022, 1023, 1024, 1025, 1033, 1043, 1053, 1057, 1059, 1093, 1095, 1099, 1100, 1119, 1127, 1130, 1135, 1136, 1138, 1150, 1151, 1155, 1157, 1158, 1159, 1160, 1164, 1165, 1180, 1181, 1185, 1186, 1187, 1191, 1193, 1195, 1196, 1197, 1198, 1199, 1205, 1207, 1213, 1235, 1237, 1238, 1243, 1262, 1326, 1382, 1385, 1387, 1427, 1428, 1429, 1447, 1449, 1458, 1461, 1466, and 1468 and the headings of Title 3, Chapter 3 of Title 3, Title 4, Title 5, Chapter 2 of Title 5, Title 6, Chapter 2 of Title 6, Chapter 3 of Title 6, Chapter 4 of Title 7, Title 9, Chapter 8 of Title 10, Title 11, and of Chapter 1 of Title 11, of Part 2 of the Penal Code, to renumber the headings of Chapters 2 and 3 of Title 4 of Part 2 of said code and to repeal the heading of Title 2, Part 2 and Sections 809, 810, 811, 812, 818, Chapter 1, consisting of Sections 888 to 890, inclusive, of Title 4, Part 2, Sections 1011, 1144, 1247e, 1426, 1426.1, 1428.1, 1428.2, 1428.3, 1430, 1433, 1434, 1435, 1436, 1437, 1438, 1439, 1440, 1441, 1442, 1443, 1444, 1446, 1450, 1451, 1452, 1453, 1454, 1455, 1456, 1459, 1460, 1461a, and 1467, of said code, and to add Sections 690, and 691, a new Title 2, consisting of Sections 737 to 740, inclusive, to Part 2 of said code, and Sections 777a, 973, 1167, and 1467 to said code, relating to proceedings in criminal cases.

The people of the State of California do enact as follows:

SECTION 1. Section 671 of the Penal Code is amended to read:

671. Whenever any person is declared punishable for a crime by imprisonment in the state prison for a term not less than any specified number of years, and no limit to the duration of such imprisonment is declared, punishment of such offender shall be imprisonment during his natural life subject to the provisions of Part 3 of this code.

SEC. 2. Section 689 of said code is amended to read:

689. No person can be convicted of a public offense unless by verdict of a jury, accepted and recorded by the court, by a finding of the court in a case where a jury has been waived, or by a plea of guilty.

SEC. 3. Section 690 is added to said code, to read:

690. The provisions of Part 2 of this code shall apply to all criminal actions and proceedings in all courts, except where jurisdictional limitations or the nature of specific provisions prevent, or special provision is made for particular courts or proceedings.

SEC. 4. Section 691 is added to said code, to read:

691. Definitions. The following words have in Part 2 of this code the signification attached to them in this section, unless it is otherwise apparent from the context:

1. The words "inferior court" or "inferior courts" include municipal courts, justices' courts, city courts, police courts, police judges' courts, and all courts other than superior courts, having jurisdiction to try misdemeanor charges.

2. The words "competent court" when used with reference to the jurisdiction over any public offense, mean any court the subject matter jurisdiction of which includes the offense so mentioned.

3. The words "jurisdictional territory" when used with reference to a court, mean the city and county, county, city, township or other limited territory over which the criminal jurisdiction of such court extends, as provided by law, and in case of a superior court mean the county in which such court sits.

4. The words "accusatory pleading" include an indictment, an information, an accusation, a complaint filed with a magistrate charging a public offense of which the superior court has original trial jurisdiction, and a complaint filed with an inferior court charging a public offense of which such inferior court has original trial jurisdiction.

5. The words "prosecuting attorney" include any attorney, whether designated as district attorney, city attorney, city prosecutor, prosecuting attorney, or by any other title, having by law the right or duty to prosecute, in behalf of the people, any charge of a public offense.

6. The word "county" includes county, city and county, and city.

SEC. 5. The heading of Title 2, Part 2 of said code is repealed.

SEC. 6. A new Title 2, consisting of Sections 737 to 740, inclusive, is added to Part 2 of said code, to read:

TITLE 2. MODE OF PROSECUTION

737. All public offenses triable in the superior court must be prosecuted therein by indictment or information, except as provided in the Government Code, the Juvenile Court Law and Section 859a of this code.

738. Before an information is filed there must be a preliminary examination of the case against the defendant and an order holding him to answer made under Section 872. The proceeding for a preliminary examination must be commenced by written complaint, as provided elsewhere in this code.

739. When a defendant has been examined and committed, as provided in Section 872, it shall be the duty of the district attorney of the county in which the offense is triable to file in the superior court of that county within 15 days after the commitment, an information against the defendant which may charge the defendant with either the offense or offenses named in the order of commitment or any offense or offenses shown by the evidence taken before the magistrate to have been committed. The information shall be in the name of the people of the State of California and subscribed by the district attorney.

740. Except as otherwise provided by law, all public offenses triable in the inferior courts must be prosecuted by written complaint under oath subscribed by the complainant. Such complaint may be verified on information and belief.

SEC. 7. The heading of Title 3, Part 2 of said code is amended to read:

TITLE 3. ADDITIONAL PROVISIONS REGARDING CRIMINAL PROCEDURE

SEC. 8. Section 777 of said code is amended to read:

777. Every person is liable to punishment by the laws of this State, for a public offense committed by him therein, except where it is by law cognizable exclusively in the courts of the United States; and except as otherwise provided by law the jurisdiction of every public offense is in any competent court within the jurisdictional territory of which it is committed.

SEC. 9. Section 777a is added to Chapter 1, Title 3, Part 2 of said code, to read:

777a. If a parent violates the provisions of Section 270 of this code, the jurisdiction of such offense is in any competent court of either the jurisdictional territory in which the minor child is cared for or in which such parent is apprehended.

SEC. 10. Section 778 of said code is amended to read:

778. When the commission of a public offense, commenced without the State, is consummated within its boundaries by a defendant, himself outside the State, through the intervention of an innocent or guilty agent or any other means proceeding directly from said defendant, he is liable to punishment therefor in this State in any competent court within the jurisdictional territory of which the offense is consummated.

SEC. 11. Section 781 of said code is amended to read:

781. When a public offense is committed in part in one jurisdictional territory and in part in another, or the acts or effects thereof constituting or requisite to the consummation of the offense occur in two or more jurisdictional territories, the jurisdiction of such offense is in any competent court within either jurisdictional territory.

SEC. 12. Section 782 of said code is amended to read:

782. When a public offense is committed on the boundary of two or more jurisdictional territories, or within 500 yards thereof, the jurisdiction of such offense is in any competent court within either jurisdictional territory.

SEC. 13. Section 783 of said code is amended to read:

783. When a public offense is committed in this State, on board a vessel navigating a river, bay, slough, lake, or canal, or lying therein, in the prosecution of its voyage, or on a railroad train or car, motor vehicle, common carrier transporting passengers or on an aircraft prosecuting its trip, the jurisdiction is in any competent court, through, on, or over the jurisdictional territory of which the vessel, train, car, motor vehicle, common carrier or aircraft passes in the course of its voyage or trip, or in the jurisdictional territory of which the voyage or trip terminates.

SEC. 14. Section 784 of said code is amended to read:

784. The jurisdiction of a criminal action:

1. For forcibly and without lawful authority seizing and confining another, or inveigling or kidnaping him, with intent, against his will, to cause him to be secretly confined or imprisoned in this State, or to be sent out of the State, or from one county to another, or to be sold as a slave, or in any way held to service;

2. For decoying, taking, or enticing away any minor child, with intent to detain and conceal it from its parent, guardian, or other person having the lawful charge of the child;

3. For inveigling, enticing, or taking away any female for the purpose of concubinage or prostitution;

Is in any competent court within the jurisdictional territory in which the offense was committed, or in the jurisdictional territory out of which the person upon whom the offense was committed was taken or within the jurisdictional territory in which an act was done by the defendant in instigating, procuring, promoting, or aiding in the commission of the offense, or in abetting the parties concerned therein.

SEC. 15. Section 784a of said code is amended to read:

784a. The jurisdiction of a criminal action for slander which is uttered into, or is communicated through or by any radio, or connected radios or any other mechanical or other devices, is in any competent court within the jurisdictional

territory of which the slander is so uttered, or in any competent court within the jurisdictional territory of which the person slandered resided, or the educational, literary, social, fraternal, benevolent or religious corporation, association or organization slandered was located, at the time of the utterance of the alleged slanderous words.

SEC. 16. Section 785 of said code is amended to read:

785. When the offense of incest is committed in the jurisdictional territory of one competent court and the defendant is apprehended in the jurisdictional territory of another competent court the jurisdiction is in either court.

When the offense of bigamy is committed, the jurisdiction is in any competent court within the jurisdictional territory of which the marriage took place, or cohabitation occurred or the defendant was apprehended.

SEC. 17. Section 786 of said code is amended to read:

786. When property taken in one jurisdictional territory by burglary, robbery, theft, or embezzlement has been brought into another, the jurisdiction of the offense is in any competent court within either jurisdictional territory.

SEC. 18. Section 789 of said code is amended to read:

789. The jurisdiction of a criminal action for stealing or embezzling, in any other state, the property of another, or receiving it knowing it to have been stolen or embezzled, and bringing the same into this State, is in any competent court into or through the jurisdictional territory of which such stolen or embezzled property has been brought.

SEC. 19. Section 791 of said code is amended to read:

791. In the case of an accessory, as defined in Section 32, in the commission of a public offense, the jurisdiction is in any competent court within the jurisdictional territory of which the offense of the accessory was committted, notwithstanding the principal offense was committed in another jurisdictional territory.

SEC. 20. Section 792 of said code is amended to read:

792. The jurisdiction of a criminal action against a principal in the commission of a public offense, when such principal is not present at the commission of the offense is in the same court it would be under this code if he were so present and aiding and abetting therein.

SEC. 21. Section 794 of said code is amended to read:

794. Where an offense is within the jurisdiction of two or more courts, a conviction or acquittal thereof in one court is a bar to a prosecution therefor in another.

SEC. 22. Section 795 of said code is amended to read:

795. The jurisdiction of a violation of Sections 412, 413, or 414, or a conspiracy to violate any of said sections, is in any competent court within the jurisdictional territory of which:

First. Any act is done towards the commission of the offense; or,

Second. The offender passed, whether into, out of, or through it, to commit the offense; or,

Third. The offender is arrested.

SEC. 23. Section 802 of said code is amended to read:

802. If, when or after the offense is committed, the defendant is out of the State, an indictment may be found, a complaint or an information filed or a case certified to the superior court, in any case originally triable in the superior court, or a complaint may be filed, in any case originally triable in any other court, within the term limited by law; and no time during which the defendant is not within this State, is a part of any limitation of the time for commencing a criminal action.

SEC. 24. The heading of Chapter 3, Title 3, Part 2 of said code is amended to read:

CHAPTER 3. COMPLAINTS BEFORE MAGISTRATES

SEC. 25. Section 806 of said code is amended to read:

806. A proceeding for the examination before a magistrate of a person on a charge of an offense originally triable in a superior court must be commenced by written complaint under oath subscribed by the complainant and filed with the magistrate. Such complaint may be verified on information and belief. When the complaint is used as a pleading to which the defendant pleads guilty under Section 859a of this code, the complaint shall contain the same allegations, including the charge of prior conviction or convictions of crime, as are required for indictments and informations and, wherever applicable, shall be construed and shall have substantially the same effect as provided in this code for indictments and informations.

SEC. 26. Sections 809, 810, 811, and 812 of said code are repealed.

SEC. 27. Section 813 of said code is amended to read:

813. When a complaint is filed with a magistrate charging a public offense originally triable in the superior court of the county in which he sits, if such magistrate is satisfied from the complaint that the offense complained of has been committed and that there is reasonable ground to believe that the defendant has committed it, he must issue a warrant for the arrest of the defendant.

SEC. 28. Section 814 of said code is amended to read:

814. A warrant of arrest issued under Section 813 may be in substantially the following form:

County of _____

The people of the State of California to any peace officer of said State:

Complaint on oath having this day been laid before me that the crime of _____ (designating it generally) has been committed and accusing _____ (naming defendant) thereof, you are therefore commanded forthwith to arrest the above named defendant and bring him before me at _____ (naming the place), or in case of my absence or inability to act, before the nearest or most accessible magistrate in this county.

Dated at _____ (place) this _____ day of _____, 19___.

_____

(Signature and full official title of magistrate.)

SEC. 29. Section 815 of said code is amended to read:

815. A warrant of arrest must specify the name of the defendant or, if it is unknown to the magistrate, judge or justice, the defendant may be designated therein by any name. It must also state the time of issuing it, and the city and county, county, city, town or township where it is issued and be signed by the magistrate, judge or justice issuing it with the title of his office.

SEC. 30. Section 816 of said code is amended to read:

816. A warrant of arrest must be directed generally to any peace officer in the State, and may be executed by any of those officers to whom it may be delivered.

SEC. 31. Section 818 of said code is repealed.

SEC. 32. Section 826 of said code is amended to read:

826. If on a warrant issued under Section 813 the defendant is brought before a magistrate other than the one who issued the warrant, the complaint on which the warrant was issued must be sent to that magistrate, or if it cannot be procured, a new complaint may be filed before that magistrate.

SEC. 33. Section 827 of said code is amended to read:

827. When a complaint is filed with a magistrate of the commission of a public offense originally triable in the superior court of another county of the State than that in which he sits, but showing that the defendant is in the county where the complaint is filed, the same proceedings must be had as prescribed in this chapter, except that the warrant must require the defendant to be taken before the nearest or most accessible magistrate of the county in which the offense is triable, and the complaint must be delivered by the magistrate to the officer to whom the warrant is delivered.

SEC. 34. Section 828 of said code is amended to read:

828. The officer who executes the warrant must take the defendant before the nearest or most accessible magistrate of the county in which the offense is triable, and must deliver to him the complaint and the warrant, with his return endorsed thereon, and the magistrate must then proceed in the same manner as upon a warrant issued by himself.

SEC. 35. Section 829 of said code is amended to read:

829. When a complaint is filed with a magistrate of the commission of a public offense triable in an inferior court of another county of the State than that in which he sits, but showing that the defendant is in the county where the complaint is filed, the officer must, upon being required by the defendant, take him before a magistrate of the county in which the warrant was issued, who must admit the defendant to bail in the amount specified in the endorsement referred to in Section 815a, and immediately transmit the warrant, complaint, and undertaking, to the clerk of the court in which the defendant is required to appear.

SEC. 36. The heading of Title 4, Part 2, of said code is amended to read:

TITLE 4. PROCEEDINGS OF THE GRAND JURY

SEC. 37. Chapter 1, Title 4, Part 2, consisting of Sections 888 to 890, inclusive, is repealed.

SEC. 38. The heading of Chapter 2, Title 4, Part 2 of said code is renumbered, to read:

CHAPTER 1. FORMATION OF THE GRAND JURY

SEC. 39. The heading of Chapter 3, Title 4, Part 2 of said code is renumbered, to read:

CHAPTER 2. POWERS AND DUTIES OF A GRAND JURY

SEC. 40. The heading of Title 5, Part 2, of said code is amended to read:

TITLE 5. THE PLEADINGS

SEC. 41. The heading of Chapter 2, Title 5, Part 2 of said code is amended to read:

CHAPTER 2. RULES OF PLEADING

SEC. 42. Section 949 of said code is amended to read:

949. The first pleading on the part of the people in the superior court is the indictment, information, accusation or

the complaint in any case certified to the superior court under the provisions of Section 859a or the complaint filed in accordance with the provisions of Section 702 of the Welfare and Institutions Code. The first pleading on the part of the people in all inferior courts is the complaint except as otherwise provided by law.

SEC. 43. Section 950 of said code is amended to read:

950. The accusatory pleading must contain:

1. The title of the action, specifying the name of the court to which the same is presented, and the names of the parties;

2. A statement of the public offense or offenses charged therein.

SEC. 44. Section 953 of said code is amended to read:

953. When a defendant is charged by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it must be inserted in the subsequent proceedings, referring to the fact of his being charged by the name mentioned in the accusatory pleading.

SEC. 45. Section 954 of said code is amended to read:

954. An accusatory pleading may charge two or more different offenses connected together in their commission, or different statements of the same offense or two or more different offenses of the same class of crimes or offenses, under separate counts, and if two or more accusatory pleadings are filed in such cases in the same court, the court may order them to be consolidated. The prosecution is not required to elect between the different offenses or counts set forth in the accusatory pleading, but the defendant may be convicted of any number of the offenses charged, and each offense of which the defendant is convicted must be stated in the verdict or the finding of the court; provided, that the court in which a case is triable, in the interests of justice and for good cause shown, may in its discretion order that the different offenses or counts set forth in the accusatory pleading be tried separately or divided into two or more groups and each of said groups tried separately. An acquittal of one or more counts shall not be deemed an acquittal of any other count.

SEC. 46. Section 955 of said code is amended to read:

955. The precise time at which the offense was committed need not be stated in the accusatory pleading, but it may be alleged to have been committed at any time before the finding or filing thereof, except where the time is a material ingredient in the offense.

SEC. 47. Section 957 of said code is amended to read:

957. The words used in an accusatory pleading are construed in their usual acceptance in common language, except

such words and phrases as are defined by law, which are construed according to their legal meaning.

SEC. 48. Section 958 of said code is amended to read:

958. Words used in a statute to define a public offense need not be strictly pursued in the accusatory pleading, but other words conveying the same meaning may be used.

SEC. 49. Section 959 of said code is amended to read:

959. The accusatory pleading is sufficient if it can be understood therefrom:

1. That it is filed in a court having authority to receive it, though the name of the court be not stated.

2. If an indictment, that it was found by a grand jury of the county in which the court was held, or if an information, that it was subscribed and presented to the court by the district attorney of the county in which the court was held.

3. If a complaint, that it is made and subscribed by some natural person and sworn to before some officer entitled to administer oaths.

4. That the defendant is named, or if his name is unknown, that he is described by a fictitious name, with a statement that his true name is to the grand jury, district attorney, or complainant, as the case may be, unknown.

5. That the offense charged therein is triable in the court in which it is filed, except in case of a complaint filed with a magistrate for the purposes of a preliminary examination.

6. That the offense was committed at some time prior to the filing of the accusatory pleading.

SEC. 50. Section 960 of said code is amended to read:

960. No accusatory pleading is insufficient, nor can the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in matter of form which does not prejudice a substantial right of the defendant upon the merits.

SEC. 51. Section 961 of said code is amended to read:

961. Neither presumptions of law, nor matters of which judicial notice is taken, need be stated in an accusatory pleading.

SEC. 52. Section 963 of said code is amended to read:

963. In pleading a private statute, or an ordinance of a county or a municipal corporation, or a right derived therefrom, it is sufficient to refer to the statute or ordinance by its title and the day of its passage, and the court must thereupon take judicial notice thereof.

SEC. 53. Section 964 of said code is amended to read:

964. An accusatory pleading charging libel or slander need not set forth any extrinsic facts for the purpose of showing

the application to the party libeled or slandered of the defamatory matter on which the accusatory pleading is founded; but it is sufficient to state generally that the same was spoken or published concerning him, and the fact that it was so spoken or published must be established at the trial.

SEC. 54. Section 966 of said code is amended to read:

966. In an accusatory pleading for perjury, or subornation of perjury, it is sufficient to set forth the substance of the controversy or matter in respect to which the offense was committed, and in what court and before whom the oath alleged to be false was taken, and that the court, or the person before whom it was taken, had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the accusatory pleading need not set forth the pleadings, records, or proceedings with which the oath is connected, nor the commission or authority of the court or person before whom the perjury was committed.

SEC. 55. Section 967 of said code is amended to read:

967. In an accusatory pleading charging the theft of money, bank notes, certificates of stock or valuable securities, or a conspiracy to cheat or defraud a person of any such property, it is sufficient to allege the theft, or the conspiracy to cheat or defraud, to be of money, bank notes, certificates of stock or valuable securities without specifying the coin, number, denomination, or kind thereof.

SEC. 56. Section 968 of said code is amended to read:

968. An accusatory pleading charging exhibiting, publishing, passing, selling, or offering to sell, or having in possession, with such intent, any lewd or obscene book, pamphlet, picture, print, card, paper, or writing, need not set forth any portion of the language used or figures shown upon such book, pamphlet, picture, print, card, paper, or writing; but it is sufficient to state generally the fact of the lewdness or obscenity thereof.

SEC. 57. Section 969 of said code is amended to read:

969. In charging the fact of a previous conviction of felony, or of an attempt to commit an offense which, if perpetrated, would have been a felony, or of theft, it is sufficient to state, "That the defendant, before the commission of the offense charged herein, was in (giving the title of the court in which the conviction was had) convicted of a felony (or attempt, etc., or of theft)." If more than one previous conviction is charged, the date of the judgment upon each conviction may be stated, and all known previous convictions, whether in this State or elsewhere, must be charged.

SEC. 58. Section 969c of said code is amended to read:

969c. Whenever a defendant is armed with a firearm or other weapon under such circumstances as to bring said defendant within the operation of Section 3024 of the Penal Code relating to certain minimum penalties or of Section 3 of the Dangerous Weapons Control Law, the fact that the defendant was so armed shall be charged in the accusatory pleading. This charge shall be added to and be a part of the count or each of the counts of the accusatory pleading which charge the offense at the time of the commission of which or at the time of the arrest for which the defendant was armed with a weapon. That portion of any count which charges that the defendant was armed shall be sufficient if it can be understood therefrom that at the time of his commission of the offense set forth in the count, the defendant was armed with a weapon, or that at the time of his arrest therefor he was armed with a concealed deadly weapon. The nature of the weapon must be set forth but it shall be sufficient if this is done substantially in the wording of either of the above mentioned statutes, as a blackjack or a razor with an unguarded blade, or a pistol capable of being concealed upon the person without having a license or permit to carry such pistol. One such charge may name more than one weapon and may allege that the defendant was armed both at the time of his commission of the offense and at the time of his arrest. If the defendant pleads not guilty of the offense charged in any count which alleges that the defendant was armed either at the time of his commission of the offense or at the time of his arrest, or both, the question whether or not he was armed as alleged must be tried by the court or jury which tries the issue upon the plea of not guilty. If the defendant pleads guilty of the offense charged the question whether or not he was armed as alleged must be determined by the court before pronouncing judgment.

SEC. 59. Section 970 of said code is amended to read:

970. When several defendants are named in one accusatory pleading, any one or more may be convicted or acquitted.

SEC. 60. Section 971 of said code is amended to read:

971. The distinction between an accessory before the fact and a principal, and between principals in the first and second degree is abrogated; and all persons concerned in the commission of a crime, who by the operation of other provisions of this code are principals therein, shall hereafter be prosecuted, tried and punished as principals and no other facts need be alleged in any accusatory pleading against any such person than are required in an accusatory pleading against a principal.

SEC. 61. Section 973 is added to said code, to read:

973. If the accusatory pleading in any criminal action has heretofore been lost or destroyed or shall hereafter be lost or

destroyed, the court must, upon the application of the prosecuting attorney or of the defendant, order a copy of such pleading to be filed and substituted for the original, and when filed and substituted, as provided in this section, the copy shall have the same force and effect as if it were the original pleading.

SEC. 62. The heading of Title 6, Part 2, is amended to read:

TITLE 6. PLEADINGS AND PROCEEDINGS BEFORE TRIAL

SEC. 63. Section 976 of said code is amended to read:

976. When the accusatory pleading is filed, the defendant must be arraigned thereon before the court in which it is filed, unless the action is transferred to some other court for trial.

SEC. 64. Section 977 of said code is amended to read:

977. The defendant must be personally present at the arraignment, except that if the accusatory pleading charges a misdemeanor only he may appear by counsel.

SEC. 65. Section 979 of said code is amended to read:

979. If the defendant has been discharged on bail or has deposited money or other property instead thereof, and does not appear to be arraigned when his personal presence is necessary, the court, in addition to the forfeiture of the undertaking of bail or of the money or other property deposited, may order the issuance of a bench warrant for his arrest.

SEC. 66. Section 980 of said code is amended to read:

980. At any time after the order for a bench warrant is made, whether the court is sitting or not, the clerk, or if there is no clerk, the judge or justice of the court, may, on application of the prosecuting attorney, issue a bench warrant to one or more counties.

SEC. 67. Section 983 of said code is amended to read:

983. The bench warrant may be served in any county in the same manner as a warrant of arrest.

SEC. 68. Section 988 of said code is amended to read:

988. The arraignment must be made by the court, or by the clerk or prosecuting attorney under its direction, and consists in reading the accusatory pleading to the defendant and delivering to him a true copy thereof, and of the endorsements thereon, if any, including the list of witnesses, and asking him whether he pleads guilty or not guilty to the accusatory pleading; provided, that where the accusatory pleading is a complaint charging a misdemeanor triable in an inferior court, a copy of the same need not be delivered to any defendant unless requested by him.

SEC. 69. Section 989 of said code is amended to read:

989. When the defendant is arraigned, he must be informed that if the name by which he is prosecuted is not his true name, he must then declare his true name, or be proceeded against by the name in the accusatory pleading. If he gives no other name, the court may proceed accordingly; but if he alleges that another name is his true name, the court must direct an entry thereof in the minutes of the arraignment, and the subsequent proceedings on the accusatory pleading may be had against him by that name, referring also to the name by which he was first charged therein.

SEC. 70. Section 990 of said code is amended to read:

990. If on the arraignment, the defendant requires it, he must be allowed a reasonable time to answer, which shall be not less than one day for an offense originally triable in the superior court and not more than seven days for an offense originally triable in an inferior court.

SEC. 71. The heading of Chapter 2, Title 6, Part 2 of said code is amended to read:

CHAPTER 2. SETTING ASIDE THE INDICTMENT OR INFORMATION

SEC. 72. The heading of Chapter 3, Title 6, Part 2 of said code is amended to read:

CHAPTER 3. DEMURRER AND AMENDMENT

SEC. 73. Section 1004 of said code is amended to read:

1004. The defendant may demur to the accusatory pleading at any time prior to the entry of a plea, when it appears upon the face thereof either:

1. If an indictment, that the grand jury by which it was found had no legal authority to inquire into the offense charged, or, if an information or complaint that the court has no jurisdiction of the offense charged therein;

2. That it does not substantially conform to the provisions of Sections 950 and 952, and also Section 951 in case of an indictment or information;

3. That more than one offense is charged, except as provided in Section 954;

4. That the facts stated do not constitute a public offense;

5. That it contains matter which, if true, would constitute a legal justification or excuse of the offense charged, or other legal bar to the prosecution.

SEC. 74. Section 1005 of said code is amended to read:

1005. The demurrer must be in writing, signed either by the defendant or his counsel, and filed. It must distinctly specify

the grounds of objection to the accusatory pleading or it must be disregarded.

SEC. 75. Section 1007 of said code is amended to read:

1007. Upon considering the demurrer, the court must make an order either overruling or sustaining it. If the demurrer is overruled, the court must permit the defendant, at his election, to plead, which he must do forthwith, unless the court extends the time. If the demurrer is sustained, by a superior court, the court must, if the defect can be remedied by amendment, permit the indictment or information to be amended, either forthwith or within such time, not exceeding 10 days, as it may fix, or, if the defect or insufficiency therein cannot be remedied by amendment, the court may direct the filing of a new information or the submission of the case to the same or another grand jury. If the demurrer is sustained by an inferior court, the court must, if the defect can be remedied, permit the filing of an amended complaint within such time not exceeding 10 days as it may fix. The orders made under this section shall be entered in the docket or minutes of the court.

SEC. 76. Section 1008 of said code is amended to read:

1008. If the demurrer is sustained, and no amendment of the accusatory pleading is permitted, or, in case an amendment is permitted, no amendment is made or amended pleading is filed within the time fixed therefor, the action shall be dismissed, and, except as provided in Section 1010, the court must order, if the defendant is in custody, that he be discharged or if he has been admitted to bail, that his bail be exonerated, or, if money or other property has been deposited instead of bail for his appearance, that such money or other property be refunded to him or to the person or persons found by the court to have deposited such money or other property on his behalf.

SEC. 77. Section 1009 of said code is amended to read:

1009. An indictment, accusation or information may be amended by the district attorney, and an amended complaint may be filed by the prosecuting attorney in any inferior court, without leave of court at any time before the defendant pleads or a demurrer to the original pleading is sustained. The court in which an action is pending may order or permit an amendment of an indictment, accusation or information, or the filing of an amended complaint, for any defect or insufficiency, at any stage of the proceedings, or if the defect in an indictment or information be one that cannot be remedied by amendment, may order the case submitted to the same or another grand jury, or a new information to be filed. The defendant shall be required to plead to such amendment or amended pleading forthwith, or, at the time fixed for pleading, if he has not yet pleaded

and the trial or other proceeding shall continue as if the pleading had been originally filed as amended, unless the substantial rights of the defendant would be prejudiced thereby, in which event a reasonable postponement, not longer than the ends of justice require, may be granted. An indictment or accusation cannot be amended so as to change the offense charged, nor an information so as to charge an offense not shown by the evidence taken at the preliminary examination. A complaint cannot be amended to charge an offense not attempted to be charged by the original complaint, except that separate counts may be added which might properly have been joined in the original complaint. The amended complaint must be verified but may be verified by some person other than the one who made oath to the original complaint.

SEC. 78. Section 1010 of said code is amended to read:

1010. When a criminal action in the superior court is dismissed after the sustaining of a demurrer, or at any other stage of the proceedings because of any defect or insufficiency of the indictment or information, if the court directs that the case be resubmitted to the same or another grand jury or that a new information be filed, the defendant shall not be discharged from custody, nor his bail exonerated nor money or other property deposited instead of bail on his behalf refunded, but the same proceedings must be had on such direction as are prescribed in Sections 997 and 998.

SEC. 79. Section 1011 of said code is repealed.

SEC. 80. Section 1012 of said code is amended to read:

1012. When any of the objections mentioned in Section 1004 appears on the face of the accusatory pleading, it can be taken only by demurrer, and failure so to take it shall be deemed a waiver thereof, except that the objection to the jurisdiction of the court and the objection that the facts stated do not constitute a public offense may be taken by motion in arrest of judgment.

SEC. 81. Section 1016 of said code is amended to read:

1016. There are five kinds of pleas to an indictment or an information, or to a complaint charging an offense triable in any inferior court:

1. Guilty.
2. Not guilty.
3. A former judgment of conviction or acquittal of the offense charged.
4. Once in jeopardy.
5. Not guilty by reason of insanity.

A defendant who does not plead guilty may enter one or more of the other pleas. A defendant who does not plead not guilty by reason of insanity shall be conclusively presumed to have been sane at the time of the commission of the offense

charged; provided, that the court may for good cause shown allow a change of plea at any time before the commencement of the trial. A defendant who pleads not guilty by reason of insanity, without also pleading not guilty, thereby admits the commission of the offense charged.

SEC. 82. Section 1017 of said code is amended to read:

1017. Every plea must be made in open court and may be oral or in writing, and must be entered upon the minutes of the court and must be taken down in shorthand by the official reporter if there is one present. The plea, whether oral or in writing, must be in substantially the following form:

1. If the defendant plead guilty: "The defendant pleads that he is guilty of the offense charged."

2. If he plead not guilty: "The defendant pleads that he is not guilty of the offense charged."

3. If he plead a former conviction or acquittal: "The defendant pleads that he has already been convicted (or acquitted) of the offense charged, by the judgment of the court of _____ (naming it), rendered at _____ (naming the place), on the _____ day of _____."

4. If he plead once in jeopardy: "The defendant pleads that he has been once in jeopardy for the offense charged (specifying the time, place, and court)."

5. If he plead not guilty by reason of insanity: "The defendant pleads that he is not guilty of the offense charged because he was insane at the time that he is alleged to have committed the unlawful act."

SEC. 83. Section 1019 of said code is amended to read:

1019. The plea of not guilty puts in issue every material allegation of the accusatory pleading, except those allegations regarding previous convictions of the defendant to which an answer is required by Section 1025.

SEC. 84. Section 1021 of said code is amended to read:

1021. If the defendant was formerly acquitted on the ground of variance between the accusatory pleading and the proof or the accusatory pleading was dismissed upon an objection to its form or substance, or in order to hold the defendant for a higher offense, without a judgment of acquittal, it is not an acquittal of the same offense.

SEC. 85. Section 1022 of said code is amended to read:

1022. Whenever the defendant is acquitted on the merits, he is acquitted of the same offense, notwithstanding any defect in form or substance in the accusatory pleading on which the trial was had.

SEC. 86. Section 1023 of said code is amended to read:

1023. When the defendant is convicted or acquitted or has been once placed in jeopardy upon an accusatory pleading,

the conviction, acquittal, or jeopardy is a bar to another prosecution for the offense charged in such accusatory pleading, or for an attempt to commit the same, or for an offense necessarily included therein, of which he might have been convicted under that accusatory pleading.

SEC. 87. Section 1024 of said code is amended to read:

1024. If the defendant refuses to answer the accusatory pleading, by demurrer or plea, a plea of not guilty must be entered.

SEC. 88. Section 1025 of said code is amended to read:

1025. When a defendant who is charged in the accusatory pleading with having suffered a previous conviction pleads either guilty or not guilty of the offense charged against him, he must be asked whether he has suffered such previous conviction. If he answers that he has, his answer must be entered in the minutes of the court, and must, unless withdrawn by consent of the court, be conclusive of the fact of his having suffered such previous conviction in all subsequent proceedings. If he answers that he has not, his answer must be entered in the minutes of the court, and the question whether or not he has suffered such previous conviction must be tried by the jury which tries the issue upon the plea of not guilty, or in case of a plea of guilty, by a jury impaneled for that purpose, or by the court if a jury is waived. The refusal of the defendant to answer is equivalent to a denial that he has suffered such previous conviction. In case the defendant pleads not guilty, and answers that he has suffered the previous conviction, the charge of the previous conviction must not be read to the jury, nor alluded to on the trial.

SEC. 89. Section 1033 of said code is amended to read:

1033. A criminal action pending in a superior court may be removed from the court in which it is pending on application of the defendant, on the ground that a fair and impartial trial cannot be had in the county. This chapter does not apply to actions pending in other courts.

SEC. 90. Section 1043 of said code is amended to read:

1043. The defendant must be personally present at the trial; provided, that in case of a misdemeanor charge, if he absents himself with full knowledge that a trial is to be or is being had, the trial may proceed in his absence. If the defendant in a felony case fails to appear at any time during the course of the trial and before the jury has retired for its deliberations or the case has been finally submitted to the judge, and after the exercise of reasonable diligence his presence cannot be procured, the court shall declare a mistrial and the cause may be again tried.

SEC. 91. Section 1053 of said code is amended to read:

1053. If after the commencement of the trial of a criminal action or proceeding in any court the judge or justice presiding at such trial shall die, become ill, or for any other reason be unable to proceed with the trial, any other judge or justice of the court in which the trial is proceeding may proceed with and finish the trial; or if there be no other judge or justice of that court available, then the clerk, sheriff, marshal or constable shall adjourn the court and notify the Chairman of the Judicial Council of the facts, and shall continue the case from day to day until such time as said chairman shall designate and assign a judge or justice of some other court, and such judge or justice shall arrive, to proceed with and complete the trial, or until such time as by stipulation in writing between the prosecuting attorney and the attorney for the defendant, filed with the court, a judge or justice shall be agreed upon by them, and such judge or justice shall arrive to complete said trial. The judge or justice authorized by the provision of this section to proceed with and complete the trial shall have the same power, authority and jurisdiction as if the trial had been commenced before such judge or justice.

SEC. 92. Section 1057 of said code is amended to read:

1057. A panel is a list of jurors returned by a sheriff, marshal, constable, or other proper officer, to serve at a particular court, or for the trial of a particular action.

SEC. 93. Section 1059 of said code is amended to read:

1059. 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, marshal, constable, or other officer, to summon one or more of the jurors drawn.

SEC. 94. Section 1093 of said code is amended to read:

1093. The jury having been impaneled and sworn, unless waived, the trial must proceed in the following order, unless otherwise directed by the court:

1. If the accusatory pleading be for a felony, the clerk must read it, and state the plea of the defendant to the jury, and in cases where it charges a previous conviction, and the defendant has confessed the same, the clerk in reading it shall omit therefrom all that relates to such previous conviction. In all other cases this formality may be dispensed with.

2. The district attorney, or other counsel for the people, must open the cause and offer the evidence in support of the charge.

3. The defendant or his counsel may then open the defense, and offer his evidence in support thereof.

4. The parties may then respectively offer rebutting testimony only, unless the court, for good reason, in furtherance of justice, permit them to offer evidence upon their original case.

5. When the evidence is concluded, unless the case is submitted on either side, or on both sides, without argument, the district attorney, or other counsel for the people, and counsel for the defendant, may argue the case to the court and jury; the district attorney, or other counsel for the people, opening the argument and having the right to close.

6. The judge may then charge the jury, and must do so on any points of law pertinent to the issue, if requested by either party; and he may state the testimony, and may comment on the failure of the defendant to explain or deny by his testimony any evidence or facts in the case against him, whether the defendant testifies or not, and he may make such comment on the evidence and the testimony and credibility of any witness as in his opinion is necessary for the proper determination of the case and he may declare the law. At the beginning of the trial or from time to time during the trial, and without any request from either party, the trial judge may give the jury such instructions on the law applicable to the case as he may deem necessary for their guidance on hearing the case. The trial judge may cause copies of instructions so given to be delivered to the jurors at the time they are given.

SEC. 95. Section 1095 of said code is amended to read:

1095. If the offense charged is punishable with death, two counsel on each side may argue the cause. In any other case the court may, in its discretion, restrict the argument to one counsel on each side.

SEC. 96. Section 1099 of said code is amended to read:

1099. When two or more defendants are included in the same accusatory pleading, the court may, at any time before the defendants have gone into their defense, on the application of the prosecuting attorney, direct any defendant to be discharged, that he may be a witness for the people.

SEC. 97. Section 1100 of said code is amended to read:

1100. When two or more defendants are included in the same accusatory pleading, and the court is of opinion that in regard to a particular defendant there is not sufficient evidence to put him on his defense, it must order him to be discharged before the evidence is closed, that he may be a witness for his codefendant.

SEC. 98. Section 1119 of said code is amended to read:

1119. When, in the opinion of the court, it is proper that the jury should view the place in which the offense is charged to have been committed, or in which any other material fact occurred, or any personal property which has been referred to

in the evidence and cannot conveniently be brought into the courtroom, it may order the jury to be conducted in a body, in the custody of the sheriff, marshal or constable, as the case may be, to the place, or to such property, which must be shown to them by a person appointed by the court for that purpose; and the officer must be sworn to suffer no person to speak or communicate with the jury, nor to do so himself, on any subject connected with the trial, and to return them into court without unnecessary delay, or at a specified time.

SEC. 99. Section 1127 of said code is amended to read:

1127. All instructions given shall be in writing, unless there is a phonographic reporter present and he takes them down, in which case they may be given orally; provided however, that in all misdemeanor cases oral instructions may be given pursuant to stipulation of the prosecuting attorney and counsel for the defendant. In charging the jury the court may instruct the jury regarding the law applicable to the facts of the case, and may make such comment on the evidence and the testimony and credibility of any witness as in its opinion is necessary for the proper determination of the case and in any criminal case, whether the defendant testifies or not, his failure to explain or to deny by his testimony any evidence or facts in the case against him may be commented upon by the court. The court shall inform the jury in all cases that the jurors are the exclusive judges of all questions of fact submitted to them and of the credibility of the witnesses. Either party may present to the court any written charge on the law, but not with respect to matters of fact, and request that it be given. If the court thinks it correct and pertinent, it must be given; if not, it must be refused. Upon each charge presented and given or refused, the court must endorse and sign its decision and a statement showing which party requested it. If part be given and part refused, the court must distinguish, showing by the endorsement what part of the charge was given and what part refused.

SEC. 100. Section 1130 of said code is amended to read:

1130. If the prosecuting attorney fails to attend at the trial in the superior court, the court must appoint some attorney at law to perform the duties of the prosecuting attorney on such trial.

SEC. 101. Section 1135 of said code is amended to read:

1135. A room must be provided by the board of supervisors of each county for the use of the jury, in superior and municipal courts only, upon their retirement for deliberation, with suitable furniture, fuel, lights and stationery. If the board of supervisors neglect to do so any such court may order the sheriff or marshal to do so, and the expenses incurred

by him in carrying the order into effect, when certified by the court, are a county charge; provided, however, that said board of supervisors shall provide a room for the female members of the jury which shall be separate and apart from the room provided for the male members.

SEC. 102. Section 1136 of said code is amended to read:

1136. While the jury are kept together, either during the progress of the trial or after their retirement for deliberation, the court must direct the sheriff, marshal or constable to provide the jury with suitable and sufficient food and lodging, or other reasonable necessities. In the superior, municipal and justice's courts, the expenses incurred under the provisions of this section shall be a charge against the county or city and county in which said court is held. In all other courts such expenses shall be a charge against the city in which the court is held. All such expenses shall be paid on the order of the court.

SEC. 103. Section 1138 of said code is amended to read:

1138. After the jury have retired for deliberation, if there be any disagreement between them as to the testimony, or if they desire to be informed on any point of law arising in the case, they must require the officer to conduct them into court. Upon being brought into court, the information required must be given in the presence of, or after notice to, the prosecuting attorney, and the defendant or his counsel, or after they have been called.

SEC. 104. Section 1144 of said code is repealed.

SEC. 105. The heading of Chapter 4, Title 7, Part 2 of said code is amended to read:

CHAPTER 4. THE VERDICT OR FINDING

SEC. 106. Section 1150 of said code is amended to read:

1150. The jury must render a general verdict, except that in a superior court, when they are in doubt as to the legal effect of the facts proved, they may, except upon a trial for libel, find a special verdict.

SEC. 107. Section 1151 of said code is amended to read:

1151. A general verdict upon a plea of not guilty is either "guilty" or "not guilty," which imports a conviction or acquittal of the offense charged in the accusatory pleading. Upon a plea of a former conviction or acquittal of the offense charged, or upon a plea of once in jeopardy, the general verdict is either "for the people" or "for the defendant." When the defendant is acquitted on the ground of a variance between the accusatory pleading and the proof, the verdict is "not guilty by reason of variance between charge and proof."

SEC. 108. Section 1155 of said code is amended to read:

1155. The court must give judgment upon the special verdict as follows:

1. If the plea is not guilty, and the facts prove the defendant guilty of the offense charged in the indictment or information, or of any other offense of which he could be convicted under that indictment or information, judgment must be given accordingly. But if otherwise, judgment of acquittal must be given.

2. If the plea is a former conviction or acquittal or once in jeopardy of the same offense, the court must give judgment of acquittal or conviction, as the facts prove or fail to prove the former conviction or acquittal or jeopardy.

SEC. 109. Section 1157 of said code is amended to read:

1157. Whenever a defendant is convicted of a crime which is distinguished into degrees, the jury, or the court if a jury trial is waived, must find the degree of the crime of which he is guilty. Upon the failure of the jury or the court to so determine, the degree of the crime of which the defendant is guilty, shall be deemed to be of the lesser degree.

SEC. 110. Section 1158 of said code is amended to read:

1158. Whenever the fact of a previous conviction of another offense is charged in an accusatory pleading, and the defendant is found guilty of the offense with which he is charged, the jury, or the judge if a jury trial is waived, must unless the answer of the defendant admits such previous conviction, find whether or not he has suffered such previous conviction. The verdict or finding upon the charge of previous conviction may be: "We (or I) find the charge of previous conviction true" or "We (or I) find the charge of previous conviction not true," according as the jury or the judge find that the defendant has or has not suffered such conviction. If more than one previous conviction is charged a separate finding must be made as to each.

SEC. 111. Section 1159 of said code is amended to read:

1159. The jury, or the judge if a jury trial is waived, may find the defendant guilty of any offense, the commission of which is necessarily included in that with which he is charged, or of an attempt to commit the offense.

SEC. 112. Section 1160 of said code is amended to read:

1160. On a charge against two or more defendants jointly, if the jury cannot agree upon a verdict as to all, they may render a verdict as to the defendant or defendants in regard to whom they do agree, on which a judgment must be entered accordingly, and the case as to the other may be tried again.

Where two or more offenses are charged in any accusatory pleading, if the jury cannot agree upon a verdict as to all of them, they may render a verdict as to the charge or charges upon which they do agree, and the charges on which they do not agree may be tried again.

SEC. 113. Section 1164 of said code is amended to read:

1164. When the verdict given is such as the court may receive, the clerk, or if there is no clerk, the judge or justice, must record it in full upon the minutes, and if requested by any party must read it to the jury, and inquire of them whether it is their verdict. If any juror disagrees, the fact must be entered upon the minutes and the jury again sent out; but if no disagreement is expressed, the verdict is complete, and the jury must be discharged from the case.

SEC. 114. Section 1165 of said code is amended to read:

1165. Where a general verdict is rendered or a finding by the court is made in favor of the defendant, except on a plea of not guilty by reason of insanity, a judgment of acquittal must be forthwith given. If such judgment is given, or a judgment imposing a fine only, without imprisonment for nonpayment is given, and the defendant is not detained for any other legal cause, he must be discharged, if in custody, as soon as the judgment is given, except that where the acquittal is because of a variance between the pleading and the proof which may be obviated by a new accusatory pleading, the court may order his detention, to the end that a new accusatory pleading may be preferred, in the same manner and with like effect as provided in Section 1117.

SEC. 115. Section 1167 is added to said code, to read:

1167. When a jury trial is waived, the judge or justice before whom the trial is had shall, at the conclusion thereof, announce his findings upon the issues of fact, which shall be in substantially the form prescribed for the general verdict of a jury and shall be entered upon the minutes.

SEC. 116. Section 1180 of said code is amended to read:

1180. The granting of a new trial places the parties in the same position as if no trial had been had. All the testimony must be produced anew, and the former verdict or finding cannot be used or referred to, either in evidence or in argument, or be pleaded in bar of any conviction which might have been had under the accusatory pleading.

SEC. 117. Section 1181 of said code is amended to read:

1181. When a verdict has been rendered or a finding made against the defendant, the court may, upon his application, grant a new trial, in the following cases only:

1. When the trial has been had in his absence except in cases where the trial may lawfully proceed in his absence;

2. When the jury has received any evidence out of court, other than that resulting from a view of the premises, or of personal property;

3. When the jury has separated without leave of the court after retiring to deliberate upon their verdict, or been guilty of any misconduct by which a fair and due consideration of the case has been prevented;

4. When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of all the jurors;

5. When the court has misdirected the jury in a matter of law, or has erred in the decision of any question of law arising during the course of the trial, and when the district attorney or other counsel prosecuting the case has been guilty of prejudicial misconduct during the trial thereof before a jury;

6. When the verdict or finding is contrary to law or evidence, but if the evidence shows the defendant to be not guilty of the degree of the crime of which he was convicted, but guilty of a lesser degree thereof, or of a lesser crime included therein, the court may modify the verdict, finding or judgment accordingly without granting or ordering a new trial, and this power shall extend to any court to which the cause may be appealed;

7. When the verdict or finding is contrary to law or evidence, but in any case wherein authority is vested by statute in the trial court or jury to recommend or determine as a part of its verdict or finding the punishment to be imposed, the court may modify such verdict or finding by imposing the lesser punishment without granting or ordering a new trial, and this power shall extend to any court to which the case may be appealed;

8. When new evidence is discovered material to the defendant, and which he could not, with reasonable diligence, have discovered and produced at the trial. When a motion for a new trial is made upon the ground of newly discovered evidence, the defendant must produce at the hearing, in support thereof, the affidavits of the witnesses by whom such evidence is expected to be given, and if time is required by the defendant to procure such affidavits, the court may postpone the hearing of the motion for such length of time as, under all circumstances of the case, may seem reasonable.

SEC. 118. Section 1185 of said code is amended to read:

1185. A motion in arrest of judgment is an application on the part of the defendant that no judgment be rendered on a plea, finding, or verdict of guilty, or on a finding or verdict against the defendant, on a plea of a former conviction, former acquittal or once in jeopardy. It may be founded on any of the defects in the accusatory pleading mentioned in Section 1004, unless the objection has been waived by a failure to demur, and must be made and determined before the judgment is pronounced. When determined, the order must be immediately entered in the minutes.

SEC. 119. Section 1186 of said code is amended to read:

1186. The court may, on its own motion, at any time before judgment is pronounced, arrest the judgment for any of the defects in the accusatory pleading upon which a motion in arrest of judgment may be founded as provided in Section 1185, by order for that purpose entered upon its minutes.

SEC. 120. Section 1187 of said code is amended to read:

1187. The effect of an order arresting judgment, in a superior court, is to place the defendant in the same situation in which he was immediately before the indictment was found or information filed. In any other court the effect is to place the defendant in the situation in which he was before the trial was had.

SEC. 121. Section 1191 of said code is amended to read:

1191. In the superior court, after a plea, finding or verdict of guilty, or after a finding or verdict against the defendant on a plea of a former conviction or acquittal, or once in jeopardy, the court must appoint a time for pronouncing judgment, which must be within 21 days after the verdict, finding or plea of guilty, during which time the court shall refer the case to the probation officer for a report if eligible to probation and pursuant to Section 1203 of this code; provided, however, that the court may extend the time not more than 10 days for the purpose of hearing or determining any motion for a new trial, or in arrest of judgment, and may further extend the time until the probation officer's report is received and until any proceedings for granting or denying probation have been disposed of. If in the opinion of the court there is a reasonable ground of believing a defendant insane, the court may extend the time for pronouncing sentence until the question of insanity has been heard and determined, as provided in this code.

SEC. 122. Section 1193 of said code is amended to read:

1193. Judgment upon persons convicted of commission of crime shall be pronounced as follows:

1. If the conviction be for a felony, the defendant must be personally present when judgment is pronounced against him, unless, after the exercise of reasonable diligence to procure the presence of the defendant, the court shall find that it will be in the interest of justice that judgment be pronounced in his absence; provided, that when any judgment imposing the death penalty has been affirmed by the appellate court, sentence may be reimposed upon the defendant in his absence by the court from which such appeal was taken, and in the manner following, to wit: Upon receipt by the superior court from which such appeal is taken of the certificate of the appellate court affirming such judgment, the judge of the said superior court shall forthwith make and cause to be entered an order pronouncing sentence against the defendant, and a warrant

signed by the judge, and attested by the clerk under the seal of the court, must be drawn, and it must state the conviction and judgment and appoint a day upon which the judgment shall be executed, which must not be less than 60 days nor more than 90 days from the time of making such order; and that, within five days thereafter, a certified copy of such order, attested by the clerk under the seal of the court, and attached to the warrant, must, for the purpose of execution, be transmitted by registered mail to the warden of the state prison having the custody of the defendant and certified copies thereof must be transmitted by registered mail to the Governor; and provided further, that when any judgment imposing the death penalty has been affirmed and sentence has been reimposed as above provided there shall be no appeal from the order fixing the time for and directing the execution of such judgment as herein provided.

2. If the conviction be of a misdemeanor, judgment may be pronounced against the defendant in his absence.

SEC. 123. Section 1195 of said code is amended to read:

1195. If the defendant has been released on bail, or has deposited money or property instead thereof, and does not appear for judgment when his personal appearance is necessary, the court, in addition to the forfeiture of the undertaking of bail, or of the money or property deposited, must, on application of the prosecuting attorney, direct the issuance of a bench warrant for the arrest of the defendant.

SEC. 124. Section 1196 of said code is amended to read:

1196. The clerk, or the judge or justice, if there is no clerk, on application of the prosecuting attorney, must at any time after the order issue a bench warrant into one or more counties.

SEC. 125. Section 1197 of said code is amended to read:

1197. The bench warrant must be substantially in the following form:

County of _____

The people of the State of California to any peace officer in this State: _____ (name of defendant) having been on the _____ day of _____, 19___, duly convicted in the _____ court of _____ (naming the court) of the crime of _____ (designating it generally), you are therefore commanded forthwith to arrest the above named defendant and bring him before that court for judgment.

Given under my hand with the seal of said court affixed, this _____ day of _____, 19___.

By order of said court.

_____

(SEAL) Clerk (or Judge, or Justice)

SEC. 126. Section 1198 of said code is amended to read:

1198. The bench warrant may be served in any county in the same manner as a warrant of arrest.

SEC. 127. Section 1199 of said code is amended to read:

1199. Whether the bench warrant is served in the county in which it was issued or in another county, the officer must arrest the defendant and bring him before the court, or deliver him to any peace officer of the county from which the warrant issued, who must bring him before said court according to the command thereof.

SEC. 128. Section 1205 of said code is amended to read:

1205. A judgment that the defendant pay a fine, with or without other punishment, may also direct that he be imprisoned until the fine is satisfied and may further direct that such imprisonment begin at and continue after the expiration of any imprisonment imposed as a part of the punishment or of any other imprisonment to which he may theretofore have been sentenced. Every such judgment must specify the extent of the imprisonment for nonpayment of the fine, which must not be more than one day for each two dollars ($2) of the fine, nor exceed in any case the term for which the defendant might be sentenced to imprisonment for the offense of which he has been convicted. A defendant held in custody for nonpayment of a fine shall be entitled to credit on the fine for each day he is so held in custody, at the rate specified in the judgment. When the defendant has been convicted of a misdemeanor, a judgment that the defendant pay a fine may also direct that he pay the fine within a limited time or in installments on specified dates and that in default of payment as therein stipulated he be imprisoned until the fine is satisfied in full; but unless such direction is given in the judgment, the fine shall be payable forthwith.

Except as otherwise provided in case of fines imposed as conditions of probation, the defendant must pay the fine to the clerk of the court, or to the judge or justice thereof if there is no clerk, unless the defendant is taken into custody for nonpayment of the fine, in which event payments made while he is in custody shall be made to the officer who holds him in custody and all amounts so paid shall be forthwith paid over by such officer to the court which rendered the judgment. The clerk shall report to the court every default in payment of a fine or any part thereof, or if there is no clerk, the court shall take notice of such default. If time has been given for payment of a fine or it has been made payable in installments, the court shall, upon any default in payment immediately order the arrest of the defendant and order him to show cause why he should not be imprisoned until the fine is satisfied in full. If

the fine is payable forthwith and it is not so paid, the court shall, without further proceedings, immediately commit the defendant to the custody of the proper officer to be held in custody until the fine is satisfied in full. The provisions of this section shall apply to any violation of any of the codes or statutes of the State of California punishable by a fine or by a fine and imprisonment.

SEC. 129. Section 1207 of said code is amended to read:

1207. When judgment upon a conviction is rendered, the clerk, or if there is no clerk, the judge or justice, must enter the same in the minutes, stating briefly the offense for which the conviction was had, and the fact of a prior conviction, if any. A copy of the judgment of conviction shall be filed with the papers in the case.

SEC. 130. Section 1213 of said code is amended to read:

1213. When a judgment, other than of death, has been pronounced, a copy of the entry thereof or if the judgment is for imprisonment in a state prison, an abstract thereof as provided in Section 1213.5, certified by the clerk of the court, or by the judge or justice if there is no clerk, must be forthwith furnished to the officer whose duty it is to execute the judgment, and no other warrant or authority is necessary to justify or require its execution.

SEC. 131. The heading of Title 9, Part 2 of said code is amended to read:

TITLE 9. APPEALS FROM SUPERIOR COURTS

SEC. 132. Section 1235 of said code is amended to read:

1235. Either party to a criminal action within the original trial jurisdiction of a superior court may appeal from that court on questions of law alone, as prescribed in this title and in rules adopted by the Judicial Council. The provisions of this title apply only to such appeals.

SEC. 133. Section 1237 of said code is amended to read:

1237. An appeal may be taken by the defendant:

1. From a final judgment of conviction; an order granting probation shall be deemed to be a final judgment within the meaning of this section;

2. From an order denying a motion for a new trial;

3. From any order made after judgment, affecting the substantial rights of the party.

SEC. 134. Section 1238 of said code is amended to read:

1238. An appeal may be taken by the people:

1. From an order setting aside the indictment, information, or complaint;

2. From a judgment for the defendant on a demurrer to the indictment, accusation or information;

3. From an order granting a new trial;

4. From an order arresting judgment;

5. From an order made after judgment, affecting the substantial rights of the people;

6. From an order modifying the verdict or finding by reducing the degree of the offense or the punishment imposed.

SEC. 135. Section 1243 of said code is amended to read:

1243. An appeal to the Supreme Court or to a district court of appeal from a judgment of conviction stays the execution of the judgment in all cases where sentence of death has been imposed, but does not stay the execution of the judgment in any other case unless the trial or appellate court shall so order. The granting or refusal of such order shall rest in the discretion of the court. If such order is made, the clerk of the court shall issue a certificate stating that such order has been made.

SEC. 136. Section 1247e of said code is repealed.

SEC. 137. Section 1262 of said code is amended to read:

1262. If a judgment against the defendant is reversed, such reversal shall be deemed an order for a new trial, unless the appellate court shall otherwise direct. If the appellate court directs a final disposition of the action in the defendant's favor, the court must, if he is in custody, direct him to be discharged therefrom; or if on bail that his bail may be exonerated; or if money or other property was deposited instead of bail, that it be refunded to the defendant or to the person or persons found by the court to have deposited said money or other property on behalf of said defendant.

SEC. 138. Section 1326 of said code is amended to read:

1326. The process by which the attendance of a witness before a court or magistrate is required is a subpena; it may be signed and issued by:

1. A magistrate before whom a complaint is laid, for witnesses in the State, either on behalf of the people or of the defendant.

2. The district attorney, or, upon request of the grand jury, any judge of the superior court, for witnesses in the State, in support of the prosecution, for those witnesses whose testimony, in his opinion, is material in an investigation before the grand jury, and for such other witnesses as the grand jury, upon an investigation pending before them, may direct.

3. The district attorney, or, upon request of the grand jury, any judge of the superior court, for witnesses in the State, in support of an indictment or information, to appear before the court in which it is to be tried.

4. The clerk of the court in which a criminal action is to be tried, or if there is no clerk, the judge or justice of the court; and he must, at any time, upon application of the defendant,

and without charge, issue as many blank subpenas, subscribed by him, for witnesses in the State, as the defendant may require.

SEC. 139. The heading of Chapter 8, Title 10, Part 2 of said code is amended to read:

CHAPTER 8. DISMISSAL OF THE ACTION FOR WANT OF PROSECUTION OR OTHERWISE

SEC. 140. Section 1382 of said code is amended to read:

1382. The court, unless good cause to the contrary is shown, must order the action to be dismissed in the following cases:

1. When a person has been held to answer for a public offense and an information is not filed against him, within 15 days thereafter.

2. If a defendant, whose trial has not been postponed upon his application, is not brought to trial in a superior court within 60 days after the finding of the indictment, or filing of the information, or in case a new trial is to be had following an appeal from the superior court within 60 days after the filing of the remittitur in the trial court.

3. Where the trial has not been postponed upon the defendant's application, if the defendant in a misdemeanor case in an inferior court, is not brought to trial within 30 days after he is arrested and brought within the jurisdiction of the court, unless by his own neglect or failure to appear in court when his presence is lawfully required, his trial must be postponed or in case a new trial is to be had following an appeal from an inferior court, if the defendant is not brought to trial within 30 days after the remittitur is filed in the trial court or within 30 days after the judgment on appeal becomes final, if the new trial is to be held in the superior court.

SEC. 141. Section 1385 of said code is amended to read:

1385. The court may, either of its own motion or upon the application of the prosecuting attorney, and in furtherance of justice, order an action to be dismissed. The reasons of the dismissal must be set forth in an order entered upon the minutes. No dismissal shall be made for any cause which would be ground of demurrer to the accusatory pleading.

SEC. 142. Section 1387 of said code is amended to read:

1387. An order for the dismissal of the action, made as provided in this chapter, is a bar to any other prosecution for the same offense if it is a misdemeanor, but not if it is a felony.

SEC. 143. The heading of Title 11, Part 2 of said code is amended to read:

TITLE 11. PROCEEDINGS IN INFERIOR COURTS AND APPEALS TO SUPERIOR COURTS

SEC. 144. The heading of Chapter 1, Title 11, Part 2 of said code is amended to read:

CHAPTER 1. PROCEEDINGS IN INFERIOR COURTS

SEC. 145. Sections 1426 and 1426.1 of said code are repealed.

SEC. 146. Section 1427 of said code is amended to read:

1427. (a) When a complaint is presented to a judge or justice of an inferior court of the commission of a public offense appearing to be triable in his court, he must, if satisfied therefrom that the offense complained of has been committed and that there is reasonable ground to believe that the defendant has committed it, issue a warrant, for the arrest of the defendant.

(b) Such warrant of arrest and proceedings upon it, shall be in conformity to the provisions of this code regarding warrants of arrest, and it may be in the following form:

County of _____

The people of the State of California, to any peace officer in this State:

Complaint upon oath having been this day made before me that the offense of _____ (designating it generally) has been committed and accusing _____ (name of defendant) thereof you are therefore commanded forthwith to arrest the above named defendant and bring him forthwith before the _____ court of _____ (stating full title of court) at _____ (naming place).

Witness my hand and the seal of said court this _____ day of _____, 19___.

(Signed)

_____

Judge (or justice) of said court

If it appears that the offense complained of has been committed by a corporation, no warrant of arrest shall issue, but the judge or justice must issue a summons substantially in the form prescribed in Section 1391. Such summons must be served at the time and in the manner designated in Section 1392. At the time stated in the summons the corporation may appear by counsel and answer the complaint.

SEC. 147. Section 1428 of said code is amended to read:

1428. A docket must be kept by the judge or justice of each inferior court having jurisdiction of criminal actions or

proceedings, or by the clerk of such court, if there is one, in which must be entered the title of each criminal action or proceeding and under each title all the orders and proceedings in such action or proceeding. Wherever by any other section of this code made applicable to such courts an entry of any judgment, order or other proceeding in the minutes is required, an entry thereof in the docket shall be made and shall be deemed a sufficient entry in the minutes for all purposes, except in the cases provided for by Section 1428a.

SEC. 148. Sections 1428.1, 1428.2, and 1428.3 of said code are repealed.

SEC. 149. Section 1429 of said code is amended to read:

1429. In the case of a misdemeanor triable in any inferior court the plea of the defendant may be made by said defendant or by his counsel. If such defendant pleads guilty, the court may, before entering such plea or pronouncing judgment, examine witnesses to ascertain the gravity of the offense committed; and if it appear to the court that a higher offense has been committed than the offense charged in the complaint, the court may order the defendant to be committed or admitted to bail, to answer any indictment which may be found against him by the grand jury, or any complaint which may be filed charging him with such higher offense.

SEC. 150. Sections 1430, 1433, 1434, 1435, 1436, 1437, 1438, 1439, 1440, 1441, 1442, 1443, 1444, and 1446 of said code are repealed.

SEC. 151. Section 1447 of said code is amended to read:

1447. When the defendant is acquitted in an inferior court, if the court certify in the minutes that the prosecution was malicious and without probable cause, it may order the complainant to pay the costs of the action, or to give satisfactory security by a written undertaking with one or more sureties, to pay the same within 30 days after the trial.

SEC. 152. Section 1449 of said code is amended to read:

1449. In inferior courts, after a plea, finding or verdict of guilty, or after a finding or verdict against the defendant on a plea of former conviction or acquittal, or once in jeopardy, the court must appoint a time for pronouncing judgment which must not be less than six hours, nor more than five days, after the verdict or plea of guilty, unless the defendant waives the postponement; provided, however, that the court may extend the time not more than 10 days for the purpose of hearing or determining any motion for a new trial, or in arrest of judgment; and, provided, further, that the court may extend the time not more than 20 days in any case where the question of probation is considered; provided, however, that upon request of the defendant such time may be further extended not more than 90 days additional. In case of a postponement, the court

may hold the defendant to bail to appear for judgment. If in the opinion of the court there is a reasonable ground for believing a defendant insane, the court may extend the time of pronouncing judgment and may commit the defendant to custody until the question of insanity has been heard and determined.

In the event that the defendant is a veteran who was discharged from service for mental disability, upon his request his case shall be referred to the probation officer, who shall secure a military medical history of such defendant and present it to the court together with his recommendation for or against probation.

SEC. 153. Sections 1450, 1451, 1452, 1453, 1454, 1455, and 1456 of said code are repealed.

SEC. 154. Section 1458 of said code is amended to read:

1458. The provisions of this code relative to bail are applicable to bail in cases triable in inferior courts. The defendant, at any time after his arrest and before conviction, may be admitted to bail. The undertaking of bail in such a case shall be in substantially the following form:

A complaint having been filed on the _____ day of _____ 19____ in the _____ court of_____ County of _____ (stating title and location of court) charging _____ (naming defendant) as defendant with the crime of _____ (designating it generally) and he having been admitted to bail in the sum of _____ dollars ($_____) (stating amount);

We _____ and _____ of _____ (stating their places of residence and occupation) hereby undertake that the above named defendant will appear and answer the complaint above mentioned and all duly authorized amendments thereof, in whatever court it may be prosecuted, and will at all times hold himself amenable to the orders and process of the court, and, if convicted, will appear for judgment and render himself in execution thereof; or if he fails to perform either of these conditions, that we will pay to the people of the State of California the sum of _____ dollars ($_____) (inserting the sum in which the defendant is admitted to bail). If the forfeiture of this bond is ordered by the court, judgment may be summarily made and entered forthwith against the said _____ (naming the sureties and the defendant if he is a party to the bond) for the amount of their respective undertakings herein, as provided by Sections 1305 and 1306 of this code.

SEC. 155. Sections 1459 and 1460 of said code are repealed.

SEC. 156. Section 1461 of said code is amended to read:

1461. The term "police court" as used in this chapter, includes police judges' courts, police courts, city courts and all courts held by mayors or recorders in incorporated cities or towns; provided, that while hearing and disposing of cases of which such police courts have concurrent jurisdiction with justices' courts, said police courts shall function as police courts and not as justices' courts, and all fines collected in such cases shall be paid to the city treasurer of the city in which such court is located, as expressly provided in Sections 1457 and 1570 of this code.

SEC. 157. Section 1461a of said code is repealed.

SEC. 158. Section 1466 of said code is amended to read:

1466. An appeal may be taken from a judgment or order of an inferior court, in a criminal case, to the superior court of the county in which such inferior court is located, in the following cases:

1. By the people:

(a) From an order or judgment dismissing or otherwise terminating the action before the defendant has been placed in jeopardy or where the defendant has waived jeopardy;

(b) From a judgment for the defendant upon the sustaining of a demurrer;

(c) From an order granting a new trial;

(d) From an order arresting judgment;

(e) From any order made after judgment affecting the substantial rights of the people.

2. By the defendant:

(a) From a final judgment of conviction;

(b) From any order made after judgment affecting his substantial rights;

(c) From an order denying a motion for a new trial;

(d) From an order granting or denying probation.

SEC. 159. Section 1467 of said code is repealed.

SEC. 160. Section 1467 is added to said code, to read:

1467. An appeal to the superior court from a judgment of conviction does not stay the execution of the judgment in any case unless the trial or superior court shall so order. The granting or refusal of such order shall rest in the discretion of the court.

SEC. 161. Section 1468 of said code is amended to read:

1468. Appeals to the superior courts shall be taken, heard and determined, the decisions thereon shall be remitted to the inferior courts, and the records on such appeals shall be made up and filed in such time and manner as shall be prescribed in rules adopted by the Judicial Council.

Hadwin J Kruger
President of the Senate

Gene C Collins
Speaker of the Assembly

Approved July 22, 1951

Earl Warren
Governor

APPENDIX B

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July 12, 1951

REPORT ON SENATE BILL NO. 543. REGAN.

SUMMARY: Amends, adds and repeals various Secs., titles and chap. headings, Pen. C., re proceedings in criminal cases.

FORM: Approved. TITLE: Approved.

CONSTITUTIONALITY: Approved.

ANALYSIS: Bill provides that such part of the code as relates to criminal procedure is to apply to all criminal actions and proceedings, save those excepted therefrom. Terms within the procedure section are defined as follows:

(a) Inferior courts--courts other than superior courts, and having misdemeanor jurisdiction.

(b) Competent court--re jurisdiction, such court as has subject-matter jurisdiction of an offense.

(c) Jurisdictional territory--for superior courts, county where court sits; for inferior, city or county or city and county or other limited territory over which its criminal jurisdiction extends.

(d) Accusatory pleading--includes indictment, information, accusation, and complaint filed with court having original trial jurisdiction of offense stated therein.

(e) Prosecuting attorney--one having the right or duty to prosecute on people's behalf.

(f) County--includes county, city and county, and city (Secs. 690, 691).

1. Jurisdiction

In the present code, the criterion for the vesting of jurisdiction over a public offense is the county in which such offense is committed; in the bill, it is the jurisdictional territory in which such offense was committed, the offense being cognizable by any competent court therein. Present provisions relating to jurisdiction in cases where offenses are committed during travel are expanded to specifically include cars, motor vehicles and aircraft (Secs. 777, 778, 781, 782, 783, 784, 784a, 785, 786, 789, 791, 792, 794 and 795).

An exception to present general rule of jurisdiction being in county in which offense is committed lies in child non-support cases, in which case jurisdiction is in either county in which commitment of child was made or county in which he is kept pursuant thereto.

Bill provides jurisdiction in above situation is in competent court in jurisdictional territory in which minor is cared for or in which parent is apprehended (Sec. 777a).

Bill provides that jurisdiction over offense of bigamy is in any competent court in jurisdictional territory in which marriage took place, cohabitation occurred, or defendant apprehended (Sec. 785).

The provisions for the institution of actions against absent defendants, and those concerning limitation of actions under such circumstances, are made applicable to inferior courts also (Sec. 802).

2. Superior Courts

Bill provides that all public offenses triable in superior court must, except as otherwise provided, be prosecuted by indictment or information. Present provisions for preliminary examination, order holding defendant to answer, and for procedure to be followed by district attorney in filing information, are retained (Secs. 737, 738 and 739).

Bill repeals provisions for taking of depositions following the complaint, making changes in sections not repealed to make them conform thereto. Instead of depositions and testimony, provision is made to utilize complaints (Secs. 826, 827 and 828).

Proceedings for offenses originally triable in superior courts must be commenced by written complaint under oath subscribed by complainant and filed with magistrate, verification thereof on information and belief being allowed. If magistrate is satisfied that complaint shows offense has been committed, and there is reasonable ground to believe defendant committed it, he must issue warrant of arrest, the contents of which are set forth in the form now to be substantially followed (Secs. 806, 813, 814).

Present law allows appeal by defendant from final judgment of conviction; bill provides that order granting probation is to be deemed such a final judgment for purposes of appeal (Sec. 1237).

Bill specifies as an additional ground for appeal by the people an appeal from an order modifying verdict or finding by reducing degree of offense or punishment imposed (Sec. 1238).

Bill deletes provision stating that no printing of any record on appeal or briefs in a criminal case shall be required or ordered (Sec. 1247e).

Present law provides that where judgment against defendant is reversed without ordering new trial, release of defendant or money or bail shall obtain.

Bill provides that such reversal of judgment shall be deemed an order for new trial unless appellate court directs otherwise; if final disposition has obtained in defendant's favor, then discharge or exoneration or refunds shall obtain (Sec. 1262).

3. Inferior Courts

Unless otherwise provided, all offenses triable in inferior courts must be prosecuted by written complaint under oath subscribed by complainant, verification on information and belief being authorized (Sec. 740).

Sections conflicting with new procedure for inferior courts are repealed; technical changes are made in the various sections to make them conform to present definition of inferior court, to provide for complaints rather than for informations, to provide for findings by such courts, and to provide that present code provisions relating to bail are applicable to such inferior courts. A police court is defined to include city courts. (Secs. 1427, 1428, 1429, 1447, 1449, 1458, 1461 and 1466.)

Provides that an inferior court may commit defendant to custody if it finds reasonable grounds for believing him insane (Sec. 1449).

Additional grounds for appeal from inferior courts are provided. The people may appeal from a judgment for the defendant upon sustaining a demurrer, or from an order or judgment dismissing or otherwise terminating the action before defendant has been placed in jeopardy or where he has waived jeopardy, rather than from such termination without trial as presently provided for (Sec. 1466).

Bill provides that appeal to superior court from judgment of conviction does not stay execution of judgment unless trial or superior court, in its discretion, shall so order. Rules adopted by Judicial Council shall govern taking, as well as hearing and determination of, appeals (Secs. 1467, 1468).

4. Pleadings and Trial Proceedings

Present law provides that the first pleading on the part of the people is the indictment or information; bill provides such first pleading may be indictment, information, accusation or complaint certified to superior court pursuant to other provisions of law or, in inferior courts, the complaint, unless otherwise provided (Sec. 949).

Bill deletes references to indictment or information, substituting therefor references to accusatory pleading, as defined above; sections are amended to conform with new usage (Secs. 950, 953, 954, 955, 957, 958, 959, 960, 964, 966, 967, 968, 969, 969c, 970, 976, 977, 988, 989, 990, 1004, 1012, 1016, 1019, 1021, 1022, 1023, 1024, 1025, 1093, 1100, 1151, 1158, 1165, 1180, 1185, and 1186).

Bill provides that accusatory pleading suffices if the offense charged therein is triable in court in which filed, except for complaints filed with magistrates for preliminary examinations; an accusatory pleading which is a complaint suffices if made and subscribed by a natural person and sworn to before officer entitled to administer oaths (Sec. 959).

Present law provides that one pleading a private statute or right derived therefrom may merely refer to statute by title and day of passage, after which court must take judicial notice thereof. Bill makes such provisions apply to ordinances of a county or municipal corporation also (Sec. 963).

Present provisions relating to pleadings charging libel are expanded to include slander; references to larceny or embezzlement are changed to speak of theft (Secs. 964, 967).

Present law makes no distinction in felony cases between accessories before the fact and principals, or between principals first and second, and provides that all persons concerned with committing a felony shall be tried as principals without need of additional allegations in pleadings.

Bill abrogates such distinction as to all crimes, and provides that all persons concerned with commission of a crime who are under the code principals may be tried and punished as principals without such additional allegations (Sec. 971).

Bill provides that court must, upon application of either party to a criminal action, order copy of accusatory pleading substituted for original when such original has been lost or destroyed, copy to have same force and effect as original pleadings (Sec. 973).

Present law providing that clerk may issue bench warrant to one or more counties which may be served in any county and, when served in another county, need not be endorsed by magistrate of the latter is changed to provide for issuance of such warrant by judge or justice when there is no clerk; provision not requiring endorsement by magistrate of another county when warrant is served therein is deleted (Secs. 980, 983, 1198).

Bill provides that when accusatory pleading is a complaint charging a misdemeanor triable in inferior court, copy thereof need not be delivered to defendant unless he so requests (Sec. 988).

Code provides that, on arraignment, and if defendant so requires, he must be allowed a reasonable time to answer indictment or information, which time may not be less than one day. He is allowed in such answer to move to set aside, dem ur to, or plead to, indictment or information.

Bill provides that time mentioned above applies to offenses originally triable in superior court; as to inferior courts, defendant may not receive more than seven days in which to answer. Provisions relating to content of answer are deleted (Sec. 990).

Bill allows demurrer by defendant to accusatory pleading at any time prior to entry of a plea if one of requirements as set forth in present code are met. Section is made to conform with changes worked elsewhere by bill with reference to complaint, indictment and information (Sec. 1004).

Present law provides that grounds for demurrer mentioned in code can be taken only by demurrer, except for objections based on lack of jurisdiction of subject of pleading or those stating no facts are shown showing commission of a public offense, either of which may be taken during trial under not guilty plea or after trial in arrest of judgment; bill provides any such grounds for demurrer appearing on face of accusatory pleading are waived if no demurrer is interposed, except for two exceptions here noted, which may be raised by motion in arrest of judgment (Sec. 1012).

Provisions of present law regarding mechanics of demurrers and amendments to pleadings are retained for most part, with bill providing for new sections and changes in old sections to make the whole more cohesive. Among innovations worked by bill are the following: Amendment of pleading by district attorney without leave of court, or filing of an amended complaint without such leave, is confined to inferior courts only; separate counts may be added to complaint which might properly have been joined in original complaint; amended complaint must be verified, but verification may be by one other than the party

to the original complaint. Present provisions for amending defects are clarified by correlating such provisions with use of demurrer by defendant, and a ten day limitation is placed upon attempted remedying of pleadings (Secs. 1007, 1008, 1009, 1010, and 1012).

Present law provides that pleas must be oral, must be entered upon minutes of court in substantially the form prescribed, and need not be taken in shorthand by official reporter unless court so orders; bill provides such pleas must be made in open court, may be oral or in writing, must be entered upon minutes and must be taken in shorthand by official reporter if one is present. Form for plea is unchanged (Sec. 1017).

Present law providing that plea of not guilty puts in issue every material allegation is changed to except such allegations re previous convictions of defendant which the code requires to be answered (Sec. 1019).

Bill provides that criminal actions may be removed from court in which pending on application of defendant, on ground that a fair and impartial trial cannot be had in county, only if the court in which action is pending is a superior court (Sec. 1033).

Code provides that felony trials may not take place without presence of defendant; that a misdemeanor trial may proceed without defendant unless his presence is necessary for identification.

Bill provides that defendant must be personally present at trial. In misdemeanor cases, defendant's absence with full knowledge of trial will allow it to proceed without him; in felony cases, failure of defendant to appear at any time before jury has retired or case has been finally submitted to judge demands declaration of mistrial, cause to be again tried (Sec. 1043).

Bill allows marshal, constable or other proper officer, in addition to sheriff, to handle matters pertaining to jury (Secs. 1057, 1059, 1119 and 1136).

Present law provides that charge not given in writing must be taken down by phonographic reporter; bill deletes such provision. Bill makes new provision allowing judge to give jury such instructions on law applicable to case as he may deem necessary for their guidance at any time during trial or at its beginning, and without request from either party; copies of such instructions may be delivered to jurors at time they are given (Sec. 1093).

Present law, as set forth in Ch. 26, Stats. 1951, states that all instructions given, except those given incidentally during admission of evidence, shall be in writing unless both parties request the giving of oral instructions or consent thereto, in which case they must be taken down by phonographic reporter.

Bill provides that all instructions given shall be in writing unless there is a phonographic reporter to take them down or unless, in misdemeanor cases, oral instructions have been agreed to by stipulation of prosecuting attorney and defendant's counsel(Sec. 1127).

Bill changes present provision requiring court to appoint one to undertake duties of district attorney when he fails to attend trial to make same apply to superior court trials only (Sec. 1130). Provisions referring to district attorney are changed to refer to prosecuting attorney (Secs. 980, 988, 1099, 1130, 1136 and 1138).

Bill provides that supervisors of county must make available suitable furnishings for jury's use upon retirement for deliberation in superior and municipal courts only. Expenses for food and lodging for jury in superior, municipal and justice's courts shall be a charge against county or city and county in which court is held and in other courts, against city in which court is held, expenses to be paid on court order (Secs. 1135, 1136).

5. Verdict or Finding

Present law allowing jury to find special verdict when in doubt as to legal effect of facts proved, except upon trial for libel, is confined to superior courts (Sec. 1150).

Present law provides that general verdict for people or for defendant shall obtain upon plea of former conviction or acquittal of same offense; in case of special verdict, court must give judgment thereon. Bill includes plea of once in jeopardy (Secs. 1151, 1155).

Present law provides only for jury findings where defendant is found guilty of crime which has various degrees, where previous convictions are charged, and where other offenses or an attempt may be found with regard to offenses charged. Bill provides for court to make decisions on such matters where jury trial has been waived. As to cases where more than one previous conviction is charged, requires separate finding be made as to each and provides that if jury cannot agree upon a verdict as to all offenses when two or more are charged, they may decide as to those upon which they do agree and those upon which they do not agree may be tried again (Secs. 1157, 1158, 1159, 1160).

Code requires clerk to record such verdicts as court may receive; bill provides that judge or justice may so act if there is no clerk, and that verdict must be read to jury upon request by any party (Sec. 1164).

Code provides that where judgment of acquittal is given on general verdict and defendant is not detained for any other legal cause, he must, unless acquittal is based on defects between pleading and proof which may be obviated by new pleadings, be discharged.

Bill provides that where general verdict or finding favors defendant, except on plea of not guilty by reason of insanity, a judgment of acquittal must be given. If such judgment or a judgment imposing a fine only without imprisonment for nonpayment is given, defendant must, subject to present exception noted above, be discharged (Sec. 1165).

Bill provides that judge or justice before whom trial is had shall announce findings upon issues of fact in substantially the form prescribed for general verdict of jury, which shall be entered on minutes in cases where jury trial is waived (Sec. 1167).

Bill provides when verdict or finding is against defendant, court may on his application grant new trial under circumstances now specified by code, with qualification that a verdict or finding contrary to law or evidence may be the basis for new trial except where court or jury has statutory authority to recommend or determine as part of verdict or finding the punishment to be imposed, in which case court may modify verdict or finding by imposing lesser punishment without providing for new trial. This power extends to any court to which case may be appealed (Sec. 1181).

Code now provides that the effect of an order arresting judgment is to place defendant in same situation in which he was before indictment was found or information filed; bill provides that effect of such order is to place him in same situation in which he was immediately before indictment or information if order issues from superior court; in inferior courts, effect is to place him in situation in which he was before trial (Sec. 1187).

Present law allowing court to issue bench warrant for arrest of defendant for failure to appear for judgment when his personal appearance is necessary, in addition to declaring forfeiture of money or property deposited as guaranty for appearance, is changed to make mandatory the issuance of such warrant on application of prosecuting attorney; the present permissive provision for issuance of bench warrant into one or more counties on application of prosecution is also made mandatory (Secs. 1195, 1196).

Present code provides that judgment directing that defendant pay fine may also direct his imprisonment until it is satisfied. In misdemeanor cases, judgment that defendant pay fine may also direct payment within a limited time or in installments and may provide for imprisonment for default. Defendant is to pay clerk, who shall report defaults upon which court is to order defendant's arrest and is to order him to show cause why he should not be imprisoned until fine is fully satisfied. All judgments under this section are to specify extent of imprisonment, which must not exceed one day for every two dollars of fine, nor in any case exceed term for which defendant might be sentenced to

imprisonment for offense for which convicted.

Bill provides that judgment directing payment of fine, with or without other punishment, may also direct imprisonment until fine is satisfied, and may direct that such imprisonment begin at and continue after other imprisonment to which he may have been sentenced. Such judgments must specify extent of imprisonment for nonpayment of fine, which must not exceed one day for each two dollars nor in any case the term for which defendant might be sentenced for offense for which convicted. Defendants held in custody for such nonpayment are entitled to credit on fine for each day so held at rate specified in judgment.

Present provision for fines in misdemeanor cases is retained with further provision that, if no limited time or installment payments are specified, fine is to be paid forthwith.

Bill also provides that, except as otherwise provided in cases of fines imposed as conditions of probation, defendant must pay fine to clerk or to judge or justice if there is no clerk, unless he is taken into custody for nonpayment, when payments shall be made to officer holding him in custody, who shall see that such are paid to court which rendered judgment.

Bill provides that where fines are payable forthwith and are not so paid, court shall without further proceedings immediately commit defendant to custody until fines are paid (Sec. 1205).

6. Dismissal of Actions

Present law provides that court must order prosecution dismissed, unless good cause to contrary is shown, if defendant is not brought to trial within sixty days after indictment or information and such postponement was not upon his application; bill makes

this provision apply to superior court trials, or to cases where a new trial is to be had following an appeal from superior court within sixty days after filing of remittitur in trial court.

Present law provides for such dismissal if defendant in misdemeanor case in justice's court, whose trial has not been postponed on his application, is not tried within thirty days after being arrested and b rought within court's jurisdiction, unless by his own neglect or failure to appear, his trial must be postponed; bill provides that in such misdemeanor cases in inferior courts, same provision shall apply as it shall in case a new trial is to be had following appeal from an inferior court, if defendant is not brought to trial within thirty days after remittitur is filed in trial court, or within thirty days after judgment on appeal becomes final, if new trial is to be held in superior court (Sec. 1382).

Bill provides that no dismissal shall be made for any cause which would be ground of demurrer to accusatory pleading (Sec. 1385).

Provision of present law that order of dismissal made for purpose of amending the complaint shall not bar prosecution upon such amended complaint in misdemeanor cases is deleted (Sec. 1387).

7. General Provisions

When term of not less than any specified number of years imprisonment is punishment for a crime, and no limit to duration of such imprisonment is declared, present law allows court to pronounce sentence for life or for any number of years not less than that prescribed; bill makes life imprisonment in such cases mandatory, subject to provisions for determining and redetermining terms of imprisonment as provided for elsewhere in code (Sec. 671).

Bill deletes provision of present law allowing conviction of public offense upon judgment after demurrer is disallowed, and adds provision for such conviction by finding of court when jury has been waived (Sec. 689).

COMMENT: The declared purpose of this bill is to make all the procedural provisions of the Penal Code applicable to all proceedings in all courts, so far as is possible and practicable (Report of Senate Interim Judiciary Committee, p. 25, transmitted June 19, 1951).

Ch. 1404, Stats. 1951 (S.B. 1732), adds Sec. 1033.5 to the Penal Code, which section provides for a change of venue from one county to an adjoining county when jury panels in original county have been exhausted and it appears that it will be impossible to secure a jury in original county.

This bill contains amendments to Sec. 1033 of the Penal Code which make the section provide that the chapter in which it is contained shall apply to actions in superior courts only.

The effect of signing this bill, therefore, will be to confine the operation of Sec. 1033.5, as added by Ch. 1404, to criminal actions in superior courts.

Ralph N. Kleps
Legislative Counsel

Richard M. Grossberg

By
Richard M. Grossberg
Deputy

RMG:bc

APPENDIX C

J. F. COAKLEY
DISTRICT ATTORNEY

OFFICE OF
DISTRICT ATTORNEY
OF
ALAMEDA COUNTY
OAKLAND 7, CALIFORNIA

RICHARD H. CHAMBERLAIN
CHIEF ASSISTANT

IN YOUR REPLY KINDLY
REFER TO FILE NO.

July 3, 1951

Mr. Beach Vasey
Legislative Secretary
Governor's Office
State Capitol
Sacramento 14, California

Re: Senate Bill 543.

The above captioned bill was sponsored by the District Attorneys' and Peace Officers' Associations, and we request that it receive the favorable consideration of the Governor. At the 1949 session, this bill, which has often been referred to as the "Shaw Bill", was sponsored by the Governor's Commission on Criminal Law and Procedure.

In general, this bill proposes to bring together, reorganize and consolidate all of the Pen. C. provisions having to do with matters of procedure. It disposes of a number of obsolete sections, has the virtue of providing uniformity of pleadings in criminal cases in all courts, and in many cases provides authority for what is actually practice.

The bill enacts "proposed Pen. C. changes affecting procedures in the inferior courts of California," submitted by The Honorable Hartley Shaw, Presiding Justice, Appellate Court, Los Angeles County, to the Commission for the Study of Criminal Law and Procedure. Judge Shaw writes that the principal purpose of these changes is to make all the procedural provisions of the code applicable to all proceedings in all courts, except where this is impossible or impracticable. The reason for this change is, in brief, the paucity of the provisions of the code expressly applicable to procedure in the courts below the superior courts and their inadequacy under modern conditions. A reference to the final report of The Special Crime Study Commission on Criminal Law and Procedure filed June 30, 1949 will show the reasons for each individual change, and also case annotations and pertinent statutory history.

I am enclosing for your use a short mimeographed summary of the bill which was prepared for use by the District Attorneys' and Peace Officers' Associations.

Very truly yours,

J.F. COAKLEY,
District Attorney.

By Alan A. Lindsay
Alan A. Lindsay,
Deputy District Attorney.

AAL:dc

ATTORNEY'S CERTIFICATE OF ELECTRONIC SERVICE AND SERVICE BY MAIL

I, Barbara A. Smith, certify:

I am an active member of the State Bar of California, not a party to this cause. My electronic service address is smith78223@gmail.com. My business address is 8359 Elk Grove Florin Road., Suite #103-305, Sacramento, CA 98529. On August 5, 2019, I served the persons and/or entities listed below by the method indicated. For those "Served Electronically," I transmitted a PDF version of this request for judicial notice by e-mail to the e-mail service addresses provided below. For those marked "Served by Mail," I deposited in a post office mail slot regularly maintained by the United States Postal Service at Sacramento, California, a copy of the above document in a sealed envelope, with postage fully prepaid, addressed as provided below:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 5, 2019, at Sacramento, California.

Barbara A. Smith

Barbara A. Smith, Declarant