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COMMENTS

ENACTMENTS OF THE 1927 GENERAL ASSEMBLY FOR THE IMPROVEMENT OF THE ADMINISTRATION OF CRIMINAL JUSTICE IN INDIANA¹

The seventy-fifth general assembly of the State of Indiana has met and adjourned. A part of its work was directed toward improving the administration of criminal justice in Indiana. Most of the statutory enactments will become effective by the Governor's proclamation, probably about May 1, 1927. The following summaries are necessarily brief, but are designed to give adequate notice of changes made.

Chapter 268, Acts 1927, is the Senate Joint Resolution to amend the Constitution by striking out section 21 of article VII, so that the general assembly and the courts may be permitted to control the admission and practice of lawyers without interference from Indiana's present unique and notorious section 21. Section 21 now goes far toward making the attainment of 21 years of age the only attainment requisite for admission to the bar in Indiana.

Chapter 132, Acts 1927, is the State Bar Association Criminal Procedure Act, which, as recently stated by President Pickens, is considered by many to be one of the "most important laws that have been adopted in Indiana in this generation." By promoting this Act, and some other acts which are set out in this comment, the lawyers of Indiana undoubtedly have made several strides toward a more economical and effective code. Any lack of perfection in the new laws, as well as in the old laws, will no doubt continue to receive the attention of the Indiana bar, as the bar works toward a reorganized and perfected criminal code for Indiana.

Section 1 of this Act amends section 81 of the 1905 Act, section 2111, Burns' 1926. Appeals from convictions in justice's courts, or city courts, shall be by filing recognizance, within 10 days after judgment, for appearance at the current term of the circuit or criminal court, if in session, or at the next term, if in vacation. The old law omitted provision for appearance at the current term, if in session. The amendment also requires defendant to cause the other papers necessary to complete his appeal to be filed in the higher court within fifteen days after

¹ Some of the considerations underlying most of the following enactments are set out in the writer's article in II Ind. Law Jour., 217, Dec. 1926, "Proposals for the Improvement of the Administration of Criminal Justice in Indiana." See, also, "A Report on the Progress of the Criminal Law Referendum," II Ind. Law Jour., 316, Jan., 1927.

judgment. Co-operation with the defendant by the justice, or judge of the lower court, or by the prosecuting attorney, in perfecting such appeal, is not precluded, but is obviously necessary, and in fact may necessarily be volunteered in perfecting within ten days an appeal from a judgment rendered in the lower court more than ten days but less than fifteen days before the end of the current term of the higher court. Section 2113, Burns 1926, is amended by section 3 of this Act, to remove from the justice of the peace or city judge the sole responsibility for filing the appeal papers, and puts on the defendant the responsibility for seeing that his appeal is perfected, similar to his duty in appealing from the circuit court to the Supreme Court. The legislature apparently acted to discourage all appeals which are made only for delay until next term of court, or are made in the expectation that the appeal will not be perfected by the lower court, as has frequently occurred.

Section 2112, Burns' 1926, is amended by section 2 of this Act to provide that all recognizances for the appearance of prisoners, in all cases, and in all courts, shall be in writing. The form of bond is set out. It is a continuing bond, to be signed by the prisoner and freehold or corporate surety. In it the surety gives the address to which notice of forfeiture shall be mailed to him, and agrees that if the surety fails to produce defendant within 10 days, the court shall enter judgment on the bond, and execution shall issue forthwith. In an accompanying affidavit each personal surety, under oath, and under penalty of perjury for false statements, states what he is worth, what other bonds he is surety on, with amounts, and that he is not surety on any forfeited and unpaid bond. The section requires forms of the bond to be supplied by clerks of courts to sheriffs, justices and other officers. The section enacts provisions for the giving and the collecting of such bonds.

Section 2150, Burns' 1926, is amended by section 4 of the Act to permit prosecutions by affidavit filed when the grand jury is in session, or filed in vacation with approval of the judge, who may arraign, and admit to bail, or may receive a plea of guilty and proceed forthwith as in term time.

Section 2177, Burns' 1926, is repealed by Section 5 of the Act, so that oral recognizance may no longer be taken in open court. All recognizances are to be written, and continuing, as provided by section 2 of this act, so as to save time and expense and to reduce uncertainty and error.

Section 2184, Burns' 1926, is amended by section 6 of the Act to conform to section 2 of this act, making bond conditions substantially the same for circuit courts and justices' courts.

Section 2185, Burns' 1926, is amended by section 7 of the Act to make clear that all recognizances are continuing. No other change is made in the section, so the recorded recognizances are still to be entered on the judgment docket and bind the real estate of recognizers from date of recording and entry.

Section 2194, Burns' 1926, is repealed by section 8 of the Act in so far as it requires suit on the forfeited recognizance by the prosecuting attorney. The court simply enters judgment as provided by previous sections of this Act. Payment by the surety before judgment is expressly provided for.

Section 2232, Burns' 1926, is amended by section 9 of this Act, so that failure of the record to show an arraignment and plea, or either of them, shall no longer invalidate any conviction, unless the record shows objection by defendant, before the trial, to entering upon the trial without such arraignment and plea. Competent critics predict that this provision will save the taxpayers of Indiana many thousands of dollars by avoiding new trials. Of course, competent prosecutors will continue to see that arraignment is recorded, but oversights will no longer be reversible error. Indiana hereby adopts the Federal rule and that of many of the states.

Section 2235, Burns' 1926, is amended by section 10 of the Act, by adding the requirement that any affidavit for change of judge shall be filed at least ten days before the day set for trial, or, if a date less than ten days ahead is set for trial, then such affidavit shall be filed within two days after the setting of the case for trial. In this section the legislature tries to avoid the abuse of the change of judge affidavit as a means of delay. The allegation of "late discovery" of the judge's prejudice is not provided to be an exception to the statutory time limit. The legislature omitted such an exception apparently on the ground that such a clause might nullify this statute, just as it has nullified similar rules of court, and on the further ground that such "late discoveries" of judicial prejudice within the ten day period preceding trial would be relatively rare in actual fact. However, upon adequate proof of such a case, judges may expect to act subject to appellate review.

Section 2250, Burns' 1926, is amended by section 11 of this Act, to permit the prosecuting attorney to avoid a continuance by admitting, not, as now provided, the truth of the facts which defendant's affidavit alleges defendant can prove by the absent witness, or by the written evidence, but that the witness, if present, will testify to such facts or that such written evidence exists. The new section also requires that defendant shall file his affidavit for continuance at least five days before the date set

for trial, or shall sustain the burden of satisfying the court that defendant is not at fault in not filing earlier.

Section 2251, Burns' 1926, is amended by section 12 of the Act, to make the same provisions for the prosecuting attorney's motion for continuance, as the preceding section makes for the defense motion.

Section 2265, Burns' 1926, is amended by section 13 of the Act, to provide for the reciprocal enforcement by this state of the process of other states for witnesses for criminal cases. The conditions are: that such other state shall have provided by statute for the enforcement of Indiana process, and that expenses be provided for the witnesses subpoenaed by such other state. New York is one state now having such a reciprocal statute.

Section 2301, Burns' 1926, is amended by section 14, to permit the defendant to state his defense only after the opening statement by the prosecution, an amendment which abolishes the defendant's privilege to wait until he has heard the evidence for the prosecution, before making his opening statement. Indiana here adopts the rule used in New York and other states.

Section 2355, Burns' 1926, is amended by section 15 of the Act, to meet the following situation. Suppose that a convicted defendant has taken advantage of section 2352, Burns' 1926, by entering replevin bail and thereby securing a stay of execution of the judgment for fine and costs for ninety days. Suppose that the defendant, or his stay bail, fails to pay the judgment within the ninety days. The present law provides that the defendant shall be rearrested, and "lay or pay" the judgment. The amendment adds a provision that the sheriff or constable shall, also, or in the alternative if the defendant be not found, levy on the property of the stay bail, or defendant, or both, and shall sell the same, to meet the judgment. The legislature's intention apparently is to make more sure the collection of stay bail, of which many thousands of dollars are estimated to be outstanding and not collected in behalf of the state. A penal clause to punish officers failing to act under the present statute is omitted from the new statute, perhaps inadvertently.

Section 2382, Burns' 1926, is amended by section 16 of the Act to cut down the time for taking criminal appeals from one year to one hundred and eighty days, and the time for filing transcripts is reduced from ninety days to sixty days.

In addition to the Criminal Procedure Act, other acts require notice. Chapter 216, Acts 1927, establishes a Bureau of Crim-

inal Identification and Investigation. The act provides for the installation and maintenance of identification systems and records of individual criminals, and for co-operation by the local Bureau and its officers with local Indiana peace officers and prosecutors, and with national and state bureaus and officers, in identifying and prosecuting criminals. The act takes effect July 1, 1927. It marks one of the most progressive steps ever taken by an American state toward scientific control of crime. Like President Pickens' eugenics statute, it goes to the roots of the causes of crime.

Section 2291, Burns' 1926, is amended by Chapter 102, Acts 1927, to require the court when a defense issue is insanity at time of trial or at time of act alleged, to appoint two, or three, competent, disinterested physicians to examine defendant, and to testify at the trial, following testimony, expert and otherwise, of both the state and the defense. Section 2294, Burns' 1926, is amended by the same chapter to increase, from six months, to two years from commitment, the period required to precede the first application for discharge on behalf of one who has successfully pleaded an insanity defense; and subsequent applications shall not be made within five years of a previous application, supplanting the present two-year limit. These amendments are designed to give the court and jury scientific, rather than partisan, testimony on insanity, and to discourage insanity pleas not made in good faith.

This comment is limited chiefly to procedural changes, which fact prevents consideration of eighteen other criminal law enactments, including statutes re-defining certain offenses, creating new offenses, and changing penalties, place of confinement, suspension of sentence, and pardons. A separate and complete consideration of them would be valuable.

As to the procedural changes noted in this comment, it is submitted that the legislature has acted carefully and conservatively and without having been stampeded by any alleged "radical reformers shouting about a theoretical crime wave." It is apparent that the 1927 legislators have tried to do two things. First, they have tried to make Indiana not less safe for citizens unjustly accused of crime, but distinctly more safe for law-abiding citizens and for their homes and property. Second, they have tried to save dollars for the Indiana taxpayer by improving the business efficiency of the methods of administering the criminal law. For this work the 1927 general assembly deserves the appreciation and the continued co-operation of the judges, lawyers and other citizens of the state.

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