

Iowa (Terr.) laws, statutes, etc. Revised 1842

REVISED STATUTES

OF THE

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TERRITORY OF IOWA

Revised and Compiled by a Joint Committee of the
Legislature—Session 1842-'43

AND ARRANGED BY
THE SECRETARY OF THE TERRITORY

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SEC. 9. In trials for misdemeanors, the court may permit the jury to separate for food and refreshment; but in trials for felonies, the jury shall not be separated until there is no prospect of their agreement to a verdict, and it shall be the duty of the court to provide them all suitable refreshments.

[162] CHAPTER 48.

COURTS.

AN ACT supplemental to an act regulating criminal proceedings.

SECTION.

1. Power of justices to issue warrants to search for counterfeits.

SECTION.

2. Proceeding to be had.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That when an affidavit is filed with a justice of the peace, stating that the affiant suspects and believes that counterfeit money, whether bank notes or coin, is concealed in any particular house or place, or about the person of anyone, and stating also that such affiant believes that such person knows it to be counterfeit, the justice if he thinks there is sufficient ground for such suspicion, shall issue his warrant to search for such property.

SEC. 2. That if such counterfeit money be found, then the same proceedings shall be had as is provided for in the second chapter of the act to which this is amendatory, providing for the arrest, examination, and entering into recognizance of prisoners in other cases.

Approved, February 17, 1842.

CHAPTER 49.

CRIMES AND PUNISHMENTS.

AN ACT defining crimes and punishments.

SECTION.

1. Murder defined.
2. Manner of killing.
3. Malice implied.
4. Time of death of the person injured, essential to constitute the crime.
5. Punishment for murder.
6. Manslaughter defined.
7. Voluntary manslaughter defined.
8. Must be the result of irresistible passion.
- [163] 9. Involuntary manslaughter defined.
10. Farther defined.

SECTION.

11. Time of death of person injured essential to constitute the crime.
12. Persons indicted for murder may be convicted of manslaughter.
13. Punishment for manslaughter.
14. Justifiable homicide defined.
15. Circumstances necessary to justify the act.
16. Killing another in self defense.
17. In what case an officer shall be justified.
18. Unavoidable necessity.

SECTION.

19. Excusable homicide defined, instances and action upon the same.
20. Assault with intent to commit bodily injury, and its punishment.
21. Duelling and its punishment.
22. Death ensuing therefrom adjudged murder.
23. Certain provision relative to trial for violation 21st section of this act.
24. Rape defined.
25. Forcible marriage or defilement and their punishment.
26. Seduction of females of a certain age and its punishment.
27. Rape in the case of a child and its punishment.
28. Bigamy defined and its punishment.
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30. Perjury defined and its punishment.
31. Subornation of perjury and its punishment.
32. Directions relative to trial for perjury or subornation of perjury.
33. Arson defined.
34. Its punishment.
35. Death ensuing from arson offender guilty of murder.
36. Burglary defined and its punishment.
37. Robbery defined and its punishment.
38. Robbery with intent to kill and its punishment.
39. Assault with intent to commit robbery.
40. Larceny defined.
41. Farther defined.
42. Taking away with intent to steal made larceny.
43. Value of property stolen when in notes, bonds, bills, drafts, etc.
44. Punishment and civil suit.
45. Petit larceny defined and its punishment.
46. Buying or receiving stolen goods and its punishment.
47. Persons charged may be tried before arrest of principal.
48. Property received shall be restored to owner.
49. Forgery defined and its punishment.
50. Maiming and its punishment.
51. Intent to kill, wound or maim, and its punishment.
52. Defacing or counterfeiting public seals and its punishment.
53. Competent witnesses to prove a forgery of notes or bills of chartered companies.
54. Counterfeiting coin and its punishment.

SECTION.

55. Counterfeiting, altering or disposing of counterfeit or altered bills of any bank and its punishment.
56. Altering or disposing of or circulating altered coin and its punishment.
57. Engraving or having in possession plates for counterfeiting bank notes and its punishment.
58. Knowingly circulating or attempting to circulate base coin or counterfeit bank notes and its punishment.
59. Fraudulent conveyances and its punishment.
60. Poisoning with intent to injure or kill and its punishment.
61. False imprisonment defined and its punishment.
- [164] 62. Kidnapping and its punishment.
63. Destroying and effacing deeds, etc., and its punishment.
64. Punishment for misprison of felony.
65. Punishment of officers or other persons aiding prisoners charged with felony to escape.
66. Punishment for aiding in or procuring the commission of any offenses made criminal by this act.
67. Place of trial of persons committing an act in one county which produces death in another.
68. Punishment of jailor for inhumanity or oppression to prisoners.
69. Punishment of persons resisting any officer in the discharge of his duty. Proviso.
70. Punishment for rescue of persons convicted of crimes punishable with death or otherwise.
71. Fine for rescue of persons from civil process.
72. Punishment for aiding prisoners to escape from jail.
73. Punishment of officer for refusing to arrest, etc.
74. Fine for compounding criminal offenses.
75. Conspiracy and its punishment.
76. Discretion of judge as to the duration of confinement, etc., for crimes made punishable by imprisonment under this act.
77. Degree of the crime of murder how determined, and sentence.
78. Manner in which the punishment of death shall be inflicted.
79. Effects of sentence upon persons convicted of crime under this act, and of pardon by Governor.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

That the following shall hereafter be the code of criminal jurisprudence in the territory of Iowa.

MURDER.

SECTION 1. Murder is the unlawful killing of a human being in the peace of the United States, with malice aforethought, and either express or implied.

[166] SEC. 2. The manner of the killing is not material, further than it may show the disposition of mind, or the intent with which the act was committed.

SEC. 3. Malice shall be implied when no considerable provocation appears, or when all the circumstances of the killing manifest an abandoned and wicked disposition.

SEC. 4. In order to make the killing murder, it is requisite that the person injured die within a year and a day after the stroke received, or the cause of death administered, in the computation of which, the whole of the day on which the offense was committed shall be reckoned the first day.

SEC. 5. The punishment of every person convicted of the crime of murder, shall be death.

MANSLAUGHTER.

SEC. 6. Manslaughter shall consist in the unlawful killing of a human being without malice express or implied, and without deliberation. It must be voluntary, upon a sudden heat of passion, caused by a provocation apparently sufficient to make the passion irresistible, in the commission of an unlawful act or a lawful act, without due caution or circumspection.

SEC. 7. In cases of voluntary manslaughter there must be a serious and highly provoking injury inflicted upon the person killing, sufficient to excite an irresistible passion in a reasonable person, or an attempt by the person killed to commit a serious personal injury on the person killing, endangering the life or limb of such person.

SEC. 8. The killing must be the result of that sudden, violent impulse of passion, supposed to be irresistible, for if there should appear to have been an interval between the assault or provocation given and the killing, sufficient for the voice of reason and humanity to be heard, the killing shall be attributed to deliberate revenge and punished as murder.

SEC. 9. Involuntary manslaughter shall consist in the killing of a human being without an intent so to do, in the commission of an unlawful act, or in a lawful act, which might probably produce such a consequence in an unlawful manner: provided always, that when such involuntary killing shall happen in the commission of an unlawful act, which in its consequences naturally tends to destroy the life of a human [167] being, or is committed in the prosecution of a felonious intent, the offense shall be deemed and adjudged to be murder.

SEC. 10. The wilful killing of an unborn quick child, by any injury to the mother of such child, which would be murder if it resulted in the death of such mother, shall be adjudged manslaughter, and every person who shall administer to any woman, pregnant with a child, any medicine, drug, or substance whatever, or shall employ any other means with intent thereby to destroy such child, and thereby cause its death, unless the same shall be necessary to preserve the life of the mother, shall be deemed guilty of manslaughter.

EXCUSEABLE HOMICIDE.

SEC. 19. Excuseable homicide by misadventure, is when a person is doing a lawful act, without any intention of killing, yet unfortunately kills another, as where a man is at work with an axe and the head flies off and kills a bystander, or where a parent or master is moderately correcting a child, or an officer punishing his criminal, and happens to occasion death, it shall only be misadventure, for the act of correction was lawful; but if such parent or master exceed the bounds of moderation, or the officer exceed the sentence under which he acts, either in the manner, the instrument, or quality of punishment, and [169] death ensues, it will be manslaughter or murder, according to the circumstances of the case. And provided, that all other instances which stand upon the same footing of reason and justice, as specified in this section, shall be considered as excuseable homicide, and provided always, the homicide appearing excuseable or justifiable, the person or persons so indicted upon his, her or their trial shall be fully acquitted and discharged.

ASSAULT WITH INTENT TO INFLICT A BODILY INJURY.

SEC. 20. If any person or persons, in this territory, shall make an assault with a deadly weapon, instrument, or other thing, with an intent to inflict upon the person of another, a bodily injury, where no considerable provocation appears, or where the circumstances of the assault show an abandoned and malignant heart, shall be adjudged to be a high misdemeanor, and any person who shall be duly convicted thereof, shall be fined in any sum not exceeding one thousand dollars, and imprisoned in the penitentiary, at hard labor, for a term not exceeding three years.

DUELLING.

SEC. 21. If any person shall challenge any other person to fight a duel in this territory, or elsewhere, such person being a resident of this territory, or shall accept a challenge to fight a duel, or shall knowingly be the bearer of a challenge, for the purpose aforesaid, or shall be a second to any person who fights a duel, or shall aid, promote, or assist any duel, every such person so offending, upon conviction thereof, shall forfeit and pay any sum not exceeding two thousand dollars, nor less than five hundred dollars, and shall moreover be rendered incapable of holding or being elected to any office of profit, trust, or emolument, either civil or military, in this territory, or of voting at any election within the same, and shall be imprisoned in the penitentiary, at hard labor, not less than one nor more than three years.

SEC. 22. Every person who shall fight a duel with any deadly weapon or weapons, and death ensues, shall be adjudged guilty of murder.

SEC. 23. On the trial of any person for any offense under the provisions of the twenty-first section of this act, if there was a written challenge to fight, or any other paper, it shall not be necessary, on the part of the prosecution, to produce such challenge or paper, but shall [170] be sufficient to prove that there was a challenge or agreement to fight, either verbal or written, or that such person did fight or did agree to fight, as the case may be.

RAPE.

SEC. 24. Rape is the carnal knowledge of a female, forcibly and against her will.

SEC. 41. That all prosecutions, under the provisions of this act, shall be by indictment before the district court, in the county where the offense shall have been committed, except in cases otherwise provided for by law, and all persons imprisoned under the same, shall be imprisoned in the jail of the proper county, except when otherwise provided by law.

PUNISHMENT BY IMPRISONMENT.

SEC. 42. In all cases of imprisonment for offenses under this act, it shall and may be lawful for the sheriff or keeper of every prison, to compel the prisoner to labor at some useful employment, within or without the prison, under such directions and regulations as may from time to time be given by the district courts within their respective counties, and if any such prisoners shall be ordered by the court aforesaid, to labor upon any public works without the prison, it shall be lawful and is made the duty of the sheriff or keeper of any such con-[193]-viets, to secure them, without cruelty, by ball and chain or block, and also to have a sufficient guard to prevent their escape.

PUNISHMENT BY FINE.

SEC. 43. In all cases of conviction under this act, the party convicted shall remain in confinement until all the costs attending his prosecution are paid, and his sentence has been fully complied with.

PROPERTY OF OFFENDER BOUND.

SEC. 44. The property, real and personal, of every person charged under this act, shall be bound at least so far as will be sufficient to pay to the extent of his condemnation.

EXECUTION TO ISSUE FOR FINES.

SEC. 45. It shall be the duty of the clerk of each court at the end of each term, to issue an execution and deliver the same to the sheriff of the county where the court is held, commanding him to collect each and every fine imposed during the term as in case of execution on civil process, and it shall be the duty of the sheriff to make due return of all executions, and pay over all moneys so collected, without delay, into the county treasury of the proper county, unless otherwise directed by this act.

SEC. 46. That all fines and forfeitures incurred under this act, shall be paid into the county treasury where the crime was committed.

SEC. 47. That in all cases under the provisions of this act, where the prosecutors name is endorsed and the bill found a true bill by the grand jury, the prosecutor or injured party may be admitted as a witness, and his credibility left to the jury.

SEC. 48. That the act, entitled an act, defining crimes and punishments, approved January 25, one thousand eight hundred and thirty-nine, be and the same is hereby repealed; provided, that any person or persons who may have committed any crime, punishable under the provisions of the act hereby repealed, prior to the taking effect of this act, shall be prosecuted and punished according to the act hereby repealed, in the same manner such person or persons might or ought to be prosecuted and punished if this act had not been passed.

Approved, February 16, A. D. 1843.