

# AMENDING THE CHARGING INSTRUMENT

“An indictment, information or complaint which charges the commission of an offense in accordance with Section 111-3 of this Code shall not be dismissed and may be amended on motion by the State's Attorney or defendant at any time because of formal defects, including:

- (a) Any miswriting, misspelling or grammatical error;
- (b) Any misjoinder of the parties defendant;
- (c) Any misjoinder of the offense charged;
- (d) The presence of any unnecessary allegation;
- (e) The failure to negative any exception, any excuse or proviso contained in the statute defining the offense; or
- (f) The use of alternative or disjunctive allegations as to the acts, means, intents or results charged.” 725 ILCS 5/111-5 (West 2022).

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The list of defects identified in this statute “is not intended to be exclusive.”

In general terms, “[f]ormal defects are distinguished from substantive changes that alter the nature and elements of the offense charged.”

[A]n amendment is substantive and therefore improper if (1) it materially alters the charge, and (2) it cannot be determined whether the grand jury intended the alteration.’

By contrast, formal amendments are “warranted especially where there is no resulting surprise or prejudice to the defendant or where the record clearly shows that he was otherwise aware of the charge against him.

People v. Bonnette, 2025 IL App (4th) 240827, ¶ 39, 269 N.E.3d 1160, 1171, appeal denied, No. 132163, 2025 WL 3302554 (Ill. Nov. 26, 2025)

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Section 111–5 of the Criminal Code of 1961 permits the amendment of an indictment at any time on motion by defendant or the State to correct formal defects, including a miswriting. (Ill.Rev.Stat.1989, ch. 38, par. 111–5; People v. Wallace (1991), 210 Ill.App.3d 325, 335, 154 Ill.Dec. 883, 568 N.E.2d 1332.)

People v. Flores, 250 Ill. App. 3d 399, 621 N.E.2d 142 (1993)

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Such amendment is permissible if the change is not material or does not alter the nature and elements of the offense charged. (People v. Hirsch (1991), 221 Ill.App.3d 772, 777, 164 Ill.Dec. 284, 582 N.E.2d 1228.)

People v. Flores, 250 Ill. App. 3d 399, 621 N.E.2d 142 (1993)

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According to Kincaid, the third thing the trial court should do, after granting the State's motion to amend the information so as to add a missing element, is to "afford[ ] [the defendant] a reasonable time to further prepare his defense." if the defendant requests additional time. (Kincaid, 87 Ill.2d at 125, 57 Ill.Dec. 610, 429 N.E.2d 508.)

People v. Smith, 2012 IL App (4th) 100901, ¶ 137, 968 N.E.2d 1271, 1288

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Formal amendment is warranted especially where there is no resulting surprise or prejudice to the defendant or where the record clearly shows that he was otherwise aware of the actual charge against him. People v. Jones (1973), 53 Ill.2d 460, 292 N.E.2d 361; Wallace, 210 Ill.App.3d 325, 154 Ill.Dec. 883, 568 N.E.2d 1332; People v. Wise (1984), 128 Ill.App.3d 330, 83 Ill.Dec. 735, 470 N.E.2d 1155.

People v. Flores, 250 Ill. App. 3d 399, 621 N.E.2d 142 (1993)

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This court has repeatedly held that an error in the citation of the statute giving rise to a charge is a mere technical defect which is subject to amendment (People v. House (1990), 202 Ill.App.3d 893, 148 Ill.Dec. 627, 560 N.E.2d 1224; People v. McBrien (1986), 144 Ill.App.3d 489, 98 Ill.Dec. 610, 494 N.E.2d 732), particularly where the sections involved are not separate and distinct offenses but are simply different ways in which the same offense may be committed. (People v. Castro (1983), 113 Ill.App.3d 265, 68 Ill.Dec. 870, 446 N.E.2d 1267.)

People v. Flores, 250 Ill. App. 3d 399, 621 N.E.2d 142 (1993)

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Additionally, in People v. Clark (1981), 96 Ill.App.3d 491, 51 Ill.Dec. 955, 421 N.E.2d 590, the court upheld an amendment at the close of the State's case to correct a charge of a certain substance as a non-narcotic, Class 3 felony, when it had been erroneously charged under a section encompassing narcotic drugs, which was a Class 2 felony.

Where the victim of a crime has been misidentified, it is permissible to revise the indictment to reflect the correct person.

People v. Flores, 250 Ill. App. 3d 399, 401–02, 621 N.E.2d 142, 143–44 (1993)

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Here, the trial court allowed the State to amend the child pornography charge during trial to correct the name of the file that defendant allegedly possessed on March 6, 2018. The prosecutor explained to the court that defendant had multiple files on his phone containing the same image, with different modified dates for the files. The original indictment referenced the incorrect file name. The court deemed this to be a formal defect. For the following reasons, we agree and deem the file name to be a misnomer that was correctable pursuant to section 111-5 of the Code

People v. Bonnette, 2025 IL App (4th) 240827, ¶ 41, 269 N.E.3d 1160, 1171–72, appeal denied, No. 132163, 2025 WL 3302554 (Ill. Nov. 26, 2025)

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Where “no hint of surprise or prejudice to the defendant is shown,” an amendment to a charging instrument will be deemed proper. People v. Jones, 53 Ill. 2d 460, 465, 292 N.E.2d 361 (1973).

People v. Bonnette, 2025 IL App (4th) 240827, ¶ 40, 269 N.E.3d 1160, 1171, appeal denied, No. 132163, 2025 WL 3302554 (Ill. Nov. 26, 2025)

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A complaint may be amended on motion of the defendant or the State to correct formal defects, including a miswriting. 725 ILCS 5/111–5 (West 1992). Such amendment is permissible if the change is not material or does not alter the nature and elements of the offense charged. An error in the citation of the statute giving rise to the charge is merely a formal defect that is subject to amendment. Formal amendment is warranted especially where there is no resulting surprise or prejudice to the defendant or where the record shows that he was otherwise aware of the actual charge.

People v. Duskus, 282 Ill. App. 3d 912, 916–17, 668 N.E.2d 1138, 1142 (1996)

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