

*James C. Child*  
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THE

PUBLIC STATUTES

OF THE

STATE OF MINNESOTA.

(1849—1858.)

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CHAPTER 104.

GRAND-JURIES.

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✓ [Chapter 115, Revised Statutes.]

(1.) SEC. I. A grand-jury is a body of men not less than sixteen, nor more than twenty-three in number, returned at stated periods from the citizens of the county, before a court of competent jurisdiction, chosen by lot, and sworn to inquire of public offenses, committed or triable in the county. Grand-jury defined.

(2.) SEC. II. A grand-jury must be drawn for every term of the district court, in each of the organized counties in this territory. Grand-jury how drawn.

(3.) SEC. III. All persons who are qualified electors of this territory shall be liable to be drawn as grand-jurors, except as hereinafter provided. Who liable to be drawn as grand-jurors.

(4.) SEC. IV. The following persons shall be exempt from serving as grand-jurors; all United States officers, all judges of courts of record, commissioners of public buildings, auditor and treasurer of the territory, territorial librarian, clerks of courts, registers of deeds, sheriffs and their deputies, coroners, constables, attorneys and counsellors at law, and solicitors in chancery, ministers of the gospel, preceptors and Who exempt from serving on juries.

teachers of incorporated academies, one teacher in each common school, practising physicians and surgeons, one miller to each grist mill, one ferryman to each licensed ferry, all members of companies of firemen organized according to law, all persons more than sixty years of age, and all persons not of sound mind or discretion, and persons subject to any bodily infirmity amounting to any disability; and all persons shall be disqualified from serving as grand-jurors who have been convicted of any infamous crime.

**Grand-jury how drawn.** (5.) SEC. V. On receiving the list of grand-jurors from the register of deeds, as selected by the board of county commissioners, the clerk of the district court shall write names of the persons contained therein, on separate pieces of paper, and shall fold up such pieces of paper, each in the same manner as near as possible, so that the name written thereon shall not be visible, and shall deposit the same in a box to be drawn as hereinafter provided.

**Duties of clerk.** (6.) SEC. VI. At least fifteen days before the sitting of any district court, the clerk thereof, in the presence of the sheriff, or his deputy, and a justice of the peace, shall proceed to draw the names of twenty-three persons from the box, to serve as grand-jurors at such court.

**Jurors to be drawn fifteen days before court.** (7.) SEC. VII. The clerk of the district court shall, twelve days at least before the first day of the court, issue and deliver to the sheriff or his deputy, a venire under the seal of the court, commanding him to summon the persons so drawn, to appear before the said court, at or before the hour of eleven o'clock, A. M., on the first day of the term thereof, to serve as grand-jurors.

**Clerk to issue venire.** (8.) SEC. VIII. The sheriff or his deputy, shall summon the persons so named in the venire, to attend such court as grand-jurors, at least six days before the sitting of such court, by giving personal notice to each person, or by leaving a written notice at his place of residence, with some person of proper age. He shall return such venire to the court at the opening thereof, specifying those who were summoned, and the manner in which each person was notified.

**Grand-jury how summoned.** (9.) SEC. IX. If any person duly drawn and summoned to attend as a grand-juror in any court, shall neglect to attend, without any sufficient excuse, he shall pay a fine not exceeding thirty dollars, which shall be imposed by the court to which the juror was summoned, and shall be paid into the county treasury.

**Penalty for refusal to attend.** (10.) SEC. X. In case of a deficiency of grand-jurors in any court, writs of venire facias may be issued to the proper officer, to return forthwith such further number of grand-jurors as may be required.

**Proceeding where a deficiency of jurors exists.** (11.) SEC. XI. The proper officer shall summon such persons accordingly, who shall be bound forthwith to attend and serve, unless excused by the court, in the same manner and subject to the same penalties for neglect, as persons duly drawn by the clerk of the district court, and summoned as herein provided.

**Proceeding where a deficiency of jurors exists.** (12.) SEC. XII. No more than twenty-three, nor less than sixteen persons can be sworn on a grand-jury, nor can a grand-jury proceed to any business unless sixteen members at least be present.

**How many grand-jurors to be sworn.** (13.) SEC. XIII. [As amended on page 27 of the amendments of 1852 to the revised statutes:] A person held to answer a charge for a public offense, may challenge the panel of the grand-jury, or any individual grand-juror, before they retire, after being sworn and charged by the court.

**Persons held to answer charges for public offenses, may challenge the panel.** (14.) SEC. XIV. A challenge to the panel may be interposed for one or more of the following causes only:

**Challenge to grand-jury for what reason interposed.**

1. That the requisite number of ballots was not drawn from the grand-jury box of the county ;

2. That the drawing was not had in the presence of the officer designated in section six of this chapter ;

3. That the drawing was not had at least fifteen days before the court.

(15.) SEC. XV. A challenge to an individual grand-juror may be interposed for one or more of the following causes only :

Challenge to individual juror for what cause interposed.

1. That he is a minor ;

2. That he is an alien, and has not resided in the United States two years, and in this territory six months, and has not declared his intention to become a citizen according to the laws of this territory ;

3. That he is insane ;

4. That he is the prosecutor upon a charge against the defendant ;

5. That he is a witness on the part of the prosecution, and has been served with process, or bound by an undertaking as such ;

6. That a state of mind exists on his part in reference to the case, or to either party which satisfies the court in the exercise of a sound discretion, that he cannot act impartially and without prejudice to the substantive rights of the party challenging.

(16.) SEC. XVI. The challenges mentioned in the last three sections, may be had, and must be entered upon the minutes, and tried by the court.

Challenge must be entered in minutes of the court.

(17.) SEC. XVII. The court must allow or disallow the challenge, and the clerk must enter its decision upon the minutes.

Decision of court to be entered by the clerk in minutes.

(18.) SEC. XVIII. If a challenge to the panel be allowed, the grand-jury are prohibited from inquiring into the charges against the defendant by whom the challenge was interposed ; if they should notwithstanding do so, and find an indictment against him, the court must direct it to be set aside.

If challenge allowed, jury not to find indictment against defendant.

(19.) SEC. XIX. If a challenge to an individual grand-juror be allowed, he cannot be present at, or take part in the consideration of the charge against the defendant who interposed the challenge, or the deliberation of the grand-jury thereon.

If a challenge to an individual juror be allowed, he cannot take part in action of the jury.

(20.) SEC. XX. The grand-jury must inform the court of a violation of the last section, and it is punishable by the court as a contempt.

Jury must inform court of a violation of last section.

(21.) SEC. XXI. From the persons summoned to serve as grand-jurors and appearing, the court must appoint a foreman. The court must also appoint a foreman, when a person already appointed is discharged or excused, before the grand-jury are dismissed.

Court must appoint foreman.

(22.) SEC. XXII. The following oath must be administered to the foreman of the grand-jury :

Oath to be administered to foreman of grand-jury.

You, as foreman of this grand-jury, shall diligently inquire, and true presentment make of all public offenses against the people of the United States, or this territory, committed or triable within this county, of which you shall have or obtain legal evidence, you shall present no person through malice, hatred, or ill will ; nor leave any unrepresented, through fear, favor, or affection, or for any reward or the promise or hope thereof ; but in all your presentments or indictments you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding, so help you God.

(23.) SEC. XXIII. The following oath must immediately thereupon be administered to the other grand-jurors present :

Oath to be administered to grand-jury.

The same oath which your foreman has now taken before you on his part, you, and each of you, shall well and truly observe on your part, so help you God.

Oath to be administered to grand-jury.

(24.) SEC. XXIV. If after the foreman is sworn, any grand-juror appear and be admitted as such, the oath as prescribed in section twenty-two, must be administered to him, commencing: "you, as one of this grand-jury," and so on to the end.

Court must charge jury.

(25.) SEC. XXV. The grand-jury being impaneled and sworn, must be charged by the court; in doing so, the court must read to them the provisions of chapter one hundred and sixteen, from section twenty-nine, to section forty-five, both inclusive, and must give them such information as it may deem proper, as to the nature of their duties, and any charges for public offenses returned to the court, or likely to come before the grand-jury, the court need not however charge, them respecting the violation of a particular statute, unless made expressly its duty to do so by the provisions of such statute.

Grand-jury must then retire to their room.

(26.) SEC. XXVI. The grand-jury then must retire to a private room and inquire into the offenses cognizable by them.

Grand-jury must appoint clerk. Duties of clerk.

(27.) SEC. XXVII. The grand-jury must appoint one of their number as clerk, who must preserve the minutes of their proceedings, except of the votes of the individual members on a presentment or indictment, and of the evidence given before them.

Grand-jury when to be discharged.

(28.) SEC. XXVIII. The grand-jury on the completion of the business before them, must be discharged by the court, but whether the business be completed or not, they are discharged by the final adjournment of the court.

Powers and duties of grand-juries

(29.) SEC. XXIX. The grand-jury has power and it is their duty to inquire into all public offenses committed or triable in the county, and to present them to the court, either by presentment or indictment, as provided in the next two sections.

Duty of grand-jury

(30.) SEC. XXX. [Sections 30 and 31, as amended on page 24 of the laws of 1853;] Upon such inquiry, if from the evidence, the grand-jury believe any person charged with a public offense to be guilty of the same or any other public offense, they shall find an indictment against such person.

Presentment.

(31.) SEC. XXXI. In all other cases, if upon investigation, the grand-jury believe that a person is probably guilty of such offense, the grand-jury shall proceed by presentment only.

Indictment defined.

(32.) SEC. XXXII. An indictment is an accusation in writing presented by a grand-jury, to a competent court, charging a person with a public offense.

Presentment defined.

(33.) SEC. XXXIII. A presentment is an informal statement in writing, by the grand-jury, representing to the court that a public offense has been committed which is triable in the county, and that there is reasonable ground for believing that a particular individual, named or described, has committed it.

Foreman may administer oath

(34.) SEC. XXXIV. The foreman may administer an oath to any witness appearing before the grand-jury.

What evidence can be received.

(35.) SEC. XXXV. In the investigation of a charge for the purpose of either presentment or indictment, the grand-jury can receive no other evidence than:

1. Such as is given by witnesses, produced and sworn before them; or,
2. [As amended on page 27 of the amendments of 1852 to the revised statutes:] By legal, documentary or written evidence.

Legal and documentary evidence.

Grand-jury to receive none but legal evidence, &c.

(36.) SEC. XXXVI. [As amended on page 27 of the amendments of 1852 to the revised statutes:] The grand-jury can receive none but legal evidence, and the best evidence in degree, to the exclusion of hearsay, or secondary evidence, except when such evidence would be admissible on the trial of the accused, for the offense charged.

(37.) SEC. XXXVII. The grand-jury is not bound to hear evidence for the defendant; but it is their duty to weigh all the evidence submitted to them and when they have reason to believe that other evidence within their reach, will explain away the charge, they shall order such evidence to be produced, and for that purpose may require the district attorney to issue process for the witnesses.

Must weigh the evidence.

(38.) SEC. XXXVIII. The grand-jury ought to find an indictment when all the evidence taken together is such as in their judgment would, if unexplained or uncontradicted, warrant a conviction by the trial jury.

Grand-jury when to find indictment.

(39.) SEC. XXXIX. If a member of the grand-jury knows, or has reason to believe, that a public offense has been committed which is triable in the county, he must declare the same to his fellow jurors, who must thereupon investigate the same.

Grand-jury when to make complaint.

(40.) SEC. XL. The grand-jury must inquire:

Grand-jury into what to inquire.

1. Into the condition of every person imprisoned on a criminal charge triable in the county, and not indicted;

2. Into the condition and management of the public prisons in the county; and,

3. Into the willful and corrupt misconduct in office, of public officers of every description in the county.

(41.) SEC. XLI. They are also entitled to free access, at all reasonable times, to the public prisons, and to the examination without charge of all public records in the county.

Grand-jury to have access to prison.

(42.) SEC. XLII. The grand-jury may at all reasonable times ask the advice of the court, or of the district attorney of the county; and whenever required by the grand-jury, it shall be the duty of the district attorney of the county to attend them for the purpose of framing indictments, or of examining witnesses in their presence, but no district attorney, sheriff or other person, except the grand-jurors, shall be permitted to be present during the expression of their opinions, or the giving of their votes upon any matter before them.

May ask advice of court.

(43.) SEC. XLIII. Every member of the grand-jury must keep secret whatever he himself, or any other grand-juror may have said, or in what manner he or any other grand-juror may have voted on a matter before them.

Grand-juror must keep certain matters secret.

(44.) SEC. XLIV. A member of the grand-jury may, however, be required by any court to disclose the testimony of any witnesses examined before the grand-jury, for the purpose of ascertaining whether it is consistent with that given by the witnesses before the court, or to disclose the testimony given before them by any other person upon a charge against him for perjury, in giving his testimony, or upon his trial therefor.

What grand-juror may be required to disclose.

(45.) SEC. XLV. A grand-juror cannot be questioned for anything he may say, or any vote he may give in the grand-jury, relative to a matter legally pending before the jury, except for a perjury of which he may have been guilty in making an accusation, or giving testimony to his fellow jurors.

Grand-juror not liable for his proceedings before the grand-jury.

(46.) SEC. XLVI. A presentment cannot be found without the concurrence of at least twelve grand-jurors. When so found, it must be signed by the foreman.

When presentment may be made.

(47.) SEC. XLVII. The presentment, when found, must be presented by the foreman, in the presence of the grand-jury, to the court, and must be filed with the clerk.

When found, to be presented by foreman.

(48.) SEC. XLVIII. When the grand-jury make a presentment, they must return to the court therewith, the depositions of the witnesses examined before them, or the minutes, or a copy thereof, of the testimony on which the presentment is made.

Testimony must be returned with presentment.

(49.) SEC. XLIX. When the depositions are returned, as provided in

Deposition must

be filed and kept secret.

the last section, they must be filed with the clerk of the court, and cannot be inspected by any person except the court, the attorney general, the clerk and his deputies or assistants, and the district attorney, until after the arrest of the defendant.

Violation of last section a misdemeanor.

(50.) SEC. L. A violation of the provisions of the last section is punishable as a contempt, and as a misdemeanor.

When clerk to furnish copies of depositions.

(51.) SEC. LI. After the arrest of the defendant, the clerk must, on payment of his fees, at the rate of twenty-five cents for every hundred words, within two days after the demand, furnish a copy of the depositions to the defendant, or his counsel.

Grand-juror, &c., not to disclose the fact of a presentment.

(52.) SEC. LII. [*As amended on page 27 of the amendments of 1852 to the revised statutes:*] No grand-juror, district attorney, clerk, judge, or other officer, can disclose the fact of a presentment having been made, or indictment found, for a felony or other crime, until the defendant has been arrested, but this prohibition does not extend to a disclosure by the issuing or in the execution of a warrant to arrest the defendant.

Violation of last section, misdemeanor.

(53.) SEC. LIII. A violation of the provisions of this last section is punishable as a contempt, and as a misdemeanor.

When court to direct clerk to issue bench warrant.

(54.) SEC. LIV. If the court deem that the facts stated in the presentment constitute a public offense, triable in the county, it must direct the clerk to issue a bench warrant for the arrest of the defendant.

When clerk to issue bench warrant.

(55.) SEC. LV. The clerk, on the application of the district attorney, may accordingly, at any time after the order, whether the court be sitting or not, issue a bench warrant under his signature, and the seal of the court, into one or more counties.

Form of bench warrant.

(56.) SEC. LVI. The bench warrant upon a presentment, must be substantially in the following form:

Territory of Minnesota, }  
County of                   , }

To any sheriff or constable in the said territory, greeting:

A presentment having been made on the                    day of                   , A. D. 18                   , to the district court for the county of                   , in the territory aforesaid, charging C. D. with the crime of (here designate the charge generally.) Therefore in the name of the United States, you are commanded forthwith to arrest the above named C. D., and take him before E. F., a magistrate of this county, or in case of his absence or inability to act, before the nearest or most accessible magistrate in this county, there to be dealt with according to law.

Dated at                   , the                    day of                   , A. D. 18                   .

By order of the court.

C. H., clerk.

Bench warrant where and how served.

(57.) SEC. LVII. The bench warrant may be served in any county in the territory, and the officer serving it must proceed thereon in all respects, as upon a warrant of arrest on an information or complaint; and when served in another county, the warrant need not be indorsed by a magistrate of that county.

Magistrate how to proceed when defendant brought before him.

(58.) SEC. LVIII. The magistrate, when the defendant is brought before him, must proceed upon the charge contained in the presentment, in the same manner in all respects, as upon a warrant of arrest on an information or complaint.

Clerk must furnish copies of presentment and depositions.

(59.) SEC. LIX. Upon the arrest of the defendant, the clerk with whom the presentment and depositions are filed, must, without delay, furnish to the magistrate before whom the defendant is taken, a certified copy of the presentment and depositions.

Twelve jurors necessary to find true bill.

(60.) SEC. LX. An indictment cannot be found without the concurrence of at least twelve grand-jurors. When so found, it must be indorsed

“a true bill,” and the indorsement must be signed by the foreman of the grand-jury.

(61.) SEC. LXI. If twelve grand-jurors do not concur in finding an indictment or presentment, the charge must be dismissed.

When charge must be dismissed.

(62.) SEC. LXII. The dismissal of the charge does not, however, prevent its being again submitted to a grand-jury as often as the court may direct.

After dismissed, charge may again be brought before grand-jury.

(63.) SEC. LXIII. When an indictment is found, the names of the witnesses examined before the grand-jury, must in all cases be inserted at the foot of the indictment, or indorsed thereon, before it is presented to the court.

Names of witnesses must be inserted on indictment.

(64.) SEC. LXIV. When an indictment is found by the grand-jury, it must be immediately presented by their foreman in their presence to the court, and must be filed with the clerk and remain in his office as a public record.

Indictment must be presented by the foreman to the court.

CHAPTER 105.

INDICTMENTS.

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✓ [Chapter 119, Revised Statutes.]

(1.) SEC. LXV. The first pleading on the part of the United States is the indictment. Indictment.

(2.) SEC. LXVI. The indictment must contain :

Indictment what to contain.

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

2. A statement of the acts constituting the offense, in ordinary and concise language without repetition, and in such manner as to enable a person of common understanding to know what is intended.

(3.) SEC. LXVII. It may be substantially in the following form :

Forms of indictments.