

Statutes  
1878

THE  
GENERAL STATUTES  
OF THE  
STATE OF MINNESOTA,

As Amended by Subsequent Legislation.

PREPARED BY  
GEORGE B. YOUNG.

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WITH SUPPLEMENTS,  
CONTAINING ALL THE GENERAL LAWS IN FORCE UP TO THE END OF  
THE LEGISLATIVE SESSION OF 1883.

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party in custody is desirous of giving bail, the offence being bailable, and the district court is not in session in the county, he may apply to the judge thereof, or a judge of the supreme court, upon his affidavit showing the nature of the application and the names of the persons to be offered as bail, with a copy of the mittimus or papers upon which he is held in custody. The judge may thereupon by order direct the sheriff to bring up said party, at a time and place named, for the purpose of giving bail. Notice of such application shall be given to the county attorney, if he is within the county, and no matters can be inquired into except such as relate to the amount of bail and the sufficiency of the sureties.

§ 33. (SEC. 32.) **Bail to justify in all cases.** Bail shall in all cases justify by affidavit, or upon oral examination before the court, judge or magistrate, as the case may be.

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\* §§ 31, 35, 36, 37. See 1861 Sup'l. p. 111, 112.

§ 1. **Grand-jury defined.** 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 offences committed or triable in the county.

§ 2. **When to be drawn.** A grand-jury shall be drawn for every term of the district court in each of the organized counties of this state, except that in counties containing less than twelve thousand inhabitants, if it shall be made to appear to the judge of said court that there are no matters to be presented to such grand-jury not properly cognizable before a justice of the peace, the said judge may, in his discretion, by order direct that no grand-jury be drawn or summoned for such term. The census, state or national, as the case may be, next preceding any such term of said court, shall be resorted to in determining

the number of inhabitants in any county : *provided*, that nothing herein contained shall be so construed as to prevent the issuance of a special venire for a grand-jury, as now provided by law. (*As amended 1877, c. 37, § 1.*)

§ 3. **Who liable to be drawn.** All persons who are qualified electors of this state are liable to be drawn as grand-jurors, except as hereinafter provided.

§ 4. **Who are exempt.** The following persons are exempt from service as grand-jurors : all United States officers, all judges of courts of record, commissioners of public buildings, auditors and treasurer of state, state librarian, clerks of courts, registers of deeds, sheriffs and their deputies, coroners, constables, attorneys and counsellors at law, ministers of the gospel, preceptors and teachers of incorporated academies, one teacher in each common school, practicing physicians and surgeons, one miller to each grist-mill, one ferryman to each licensed ferry, all acting telegraph operators, all members of companies of firemen organized according to law, all persons of more than sixty years of age, all persons not of sound mind or discretion, persons subject to any bodily infirmity amounting to disability ; all persons are disqualified from serving as grand-jurors who have been convicted of any infamous crime. (*As amended 1873, c. 72, § 1.*)

§ 5. **Names for drawing, how prepared.** On receiving the list of grand-jurors from the county auditor, as selected by the board of county commissioners, the clerk of the district court shall write the names of the persons contained therein on separate pieces of paper, and 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.

§ 6. **When and how to be drawn.** 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.

§ 7. **Venire to issue—contents.** Said clerk shall, twelve days at least before the first day of the court, issue and deliver to the sheriff 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.

§ 8. **Same—service—return.** The sheriff shall summon the persons so named in the venire to attend such court as grand-jurors, at least six days before the sitting thereof, 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.

§ 9. **Neglecting to attend—penalty.** If any person duly drawn and summoned to attend as a grand-juror neglects to attend, without 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.

§ 10. **Deficiency, how supplied.** 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 are required.

§ 11. **Additional jurors bound to attend, etc.** 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.

§ 12. **Number necessary to form jury.** Not 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 are present.

§ 13. **Who may challenge panel or juror.** A person held to answer a charge for a public

offence may challenge the panel of the grand-jury, or any individual grand-juror, before they retire, after being sworn and charged by the court.

3 M. 329 (444) ; 4 M. 261 (345) ; 22 M. 423.

§ 14. **Causes of challenge to panel.** A challenge to the panel may be interposed for one or more of the following causes, only:

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

23 M. 209.

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

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

§ 15. **Causes of challenge to juror.** A challenge to an individual grand-juror may be interposed for one or more of the following causes only:

*First.* That he is a minor;

*Second.* That he is an alien, and has not resided in the United States one year, and in this state four months, and has not declared his intention to become a citizen according to the laws of the United States;

*Third.* That he is insane;

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

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

*Sixth.* 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 substantial rights of the party challenging.

§ 16. **Challenges to be tried by court.** The challenges mentioned in the last three sections, shall be entered upon the minutes, and tried by the court.

§ 17. **Clerk to enter decision of court.** The court shall allow or disallow the challenge, and the clerk shall enter its decision upon the minutes.

§ 18. **Effect of allowance of challenge to panel.** If a challenge to the panel is 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 shall direct it to be set aside.

§ 19. **Effect of allowance of challenge to juror.** If a challenge to an individual grand-juror is allowed, he cannot be present at, or take part in the consideration of the charge against the defendant who interposed the challenge, or the deliberations of the grand-jury thereon.

§ 20. **Same—penalty for ignoring.** The grand-jury shall inform the court of a violation of the provisions of the last section, and it is punishable by the court as a contempt.

§ 21. **Court shall appoint foreman.** From the persons summoned to serve as grand-jurors and appearing, the court shall appoint a foreman. The court shall also appoint a foreman, when a person already appointed is discharged or excused before the grand-jury are dismissed.

§ 22. **Jury shall be sworn.** The grand-jury shall then be sworn according to law, and if, afterward, any grand-juror appears and is admitted as such, the same oath shall be administered to him.

16 M. 313.

§ 23. **Charge of court.** The grand-jury, being impanelled and sworn, shall be charged by the court; in doing so, the court shall read to them the provisions of this chapter, from section twenty-seven to section forty-two, both inclusive, and give them such information as it may deem proper as to the nature of their duties, and any charges for public offences 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.

§ 24. **Jury to retire and inquire into offences.** The grand-jury shall then retire to a private room, and inquire into the offences cognizable by them.

§ 25. **Clerk of jury—duties.** They shall appoint one of their number clerk, who shall preserve the minutes of their proceedings, but shall not preserve a minute of the votes of the individual members on a presentment or indictment, or of the evidence given before them. (*As amended 1871, c. 59, § 1.*)

§ 26. **Jury to be discharged, when.** On the completion of the business before them, they shall be discharged by the court; but whether the business is completed or not, they are discharged by the final adjournment of the court.

§ 27. **Powers and duties of grand-jury.** The grand-jury have power, and it is their duty, to inquire into all public offences, committed or triable in the county, and to present them to the court, either by presentment or indictment, as provided in the next [two] section.

§ 28. **Indictment—presentment—when found.** Upon such inquiry, if, from the evidence, the grand jury believe any person charged with a public offence is guilty of the same or any other public offence, they shall find an indictment against him; but if they only believe that he is probably guilty of such offence, they shall proceed by presentment.

§ 29. **Indictment defined.** An indictment is an accusation in writing, presented by a grand-jury to a competent court, charging a person with a public offence.

§ 30. **Presentment defined.** A presentment is an informal statement in writing by the grand-jury, representing to the court that a public offence 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.

§ 31. **Foreman may administer oath to witness.** The foreman may administer an oath to any witness appearing before the grand-jury.

§ 32. **What evidence is receivable.** In the investigation of a charge, for the purpose of either presentment or indictment, the grand-jury can receive no other evidence than:

*First.* Such as is given by witnesses produced and sworn before them; or,

*Second.* Legal, documentary or written evidence.

§ 33. **Hearsay evidence, etc., admissible, when.** 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 offence charged.

§ 34. **Evidence for defendant, when received.** 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.

§ 35. **Indictment should be found, when.** 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.

§ 36. **Duty of juror to be complainant, when.** If a member of the grand-jury knows, or has reason to believe, that a public offence has been committed which is triable in the county, he shall declare the same to his fellow jurors, who shall thereupon investigate the same.

§ 37. **What matters shall be inquired into.** The grand-jury shall inquire:

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

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

*Third.* Into the wilful and corrupt misconduct in office of public officers of every description in the county.

§ 38. **Access to prisons and records.** They are 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.

§ 39. **County attorney to attend, when—duties.** The grand-jury may, at all reasonable times, ask the advice of the court, or of the county attorney; and, whenever required by the grand-jury, the county attorney of the county shall attend them for the purpose of framing indictments, or examining witnesses in their presence; but no county 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.

§ 40. **Jurors to observe secrecy.** Every grand-juror shall keep secret whatever he himself or any other grand juror said, or in what manner he or any other grand-juror voted on a matter before them.

§ 41. **Juror required to make disclosure, when.** Any grand-juror 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.

§ 42. **Juror's action not to be questioned—exception.** A grand-juror cannot be questioned for anything he says or any vote he gives in the grand-jury, relative to a matter legally pending before the jury, except for a perjury of which he may be guilty in making an accusation, or giving testimony to his fellow jurors.

§ 43. **Presentment, how found.** No presentment can be found without the concurrence of at least twelve grand-jurors. When so found, it shall be signed by the foreman.

§ 44. **Same—how disposed of.** The presentment when found, shall be presented by the foreman, in the presence of the grand-jury, to the court, and be filed with the clerk.

§ 45. **Same—depositions, etc., to be returned therewith.** When the grand-jury make a presentment, they shall 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.

§ 46. **Depositions to be filed—who may inspect them.** When the depositions are returned, as provided in the last section, they shall 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 county attorney, until after the arrest of the defendant.

§ 47. **Violation of last section, how punished.** A violation of the provisions of the last section is punishable as a contempt and as a misdemeanor.

§ 48. **Defendant may have copy of depositions.** After the arrest of the defendant, the clerk shall, on payment of his fees, within two days after demand, furnish a copy of the depositions to the defendant or his counsel.

§ 49. **Indictment or presentment to be kept secret until arrest.** No grand-juror, county attorney, clerk, judge, or other officer, can disclose the fact that a presentment has been made, or an indictment found, for a felony or other crime, until the defendant is arrested; but this prohibition does not extend to a disclosure by the issuing or in the execution of a warrant to arrest the defendant.

§ 50. **Violation of last section, how punished.** A violation of the provisions of this last section is punishable as a contempt and as a misdemeanor.

§ 51. **Clerk to issue bench warrant, when.** If the court thinks that the facts stated in the presentment constitute a public offence, triable in the county, it shall direct the clerk to issue a bench warrant, for the arrest of the defendant.

§ 52. **Same—how issued.** The clerk, on application of the county attorney, may accordingly, at any time after the order, whether the court is sitting or not, issue a bench warrant, under his signature and the seal of the court, into one or more counties.

§ 53. **Form of bench warrant.** The bench warrant upon a presentment shall be substantially in the following form :

