

CHAPTER 628

ACCUSATION

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628.01 INDICTMENT AND PRESENTMENT. An indictment is an accusation, in writing, presented by a grand jury to a competent court, charging a person with a public offense. A presentment is an informal statement, in writing, by a grand jury, representing to the court that a public offense has been committed, and that there is reasonable ground for believing that a particular individual, named or described, has committed it.

[R. L. s. 5278] (10620)

628.02 REPORTS BY INDICTMENT OR PRESENTMENT. The grand jury shall inquire into all public offenses committed or triable in the county, and report them to the court by presentment or indictment. Upon such inquiry, if, from the evidence, the grand jury believes the person charged to be guilty of that or any other public offense, it shall find an indictment against him; but, if it only believes that he is probably guilty, it shall proceed by presentment.

[R. L. s. 5279] (10621)

628.03 INDICTMENT FOUND, WHEN. The grand jury shall find an indictment when all the evidence taken together is such as, in its judgment, would, if unexplained or uncontradicted, warrant a conviction by the trial jury.

[R. L. s. 5281] (10623)

628.04 PRESENTMENT, HOW FOUND; PROCEDURE; VIOLATION, HOW PUNISHED; DEFENDANT TO HAVE COPY. No presentment shall be found without the concurrence of at least 12 grand jurors. When so found it shall be signed by the foreman, whether he be one of the 12 concurring or not, and by him, in the presence of the grand jury, presented to the court and filed with the clerk. When the grand jury shall make a presentment, it shall return to the court therewith the testimony, or a copy thereof, of each witness examined before it upon which such presentment is made, which shall be filed with the clerk of the court, and shall not be inspected by any person except the court, the clerk of the court, and his deputies and assistants, the attorney general, and the county attorney, until after the arrest of defendant. Every person who shall violate any provision thereof shall be guilty of contempt and of a misdemeanor, and be punished therefor as provided by law.

After the arrest of the defendant, the clerk, on payment of his fees within two days after demand, shall furnish a copy of the testimony so filed with him to the defendant or his counsel.

[R. L. ss. 5289, 5290] (10631) (10632)

628.05 BENCH WARRANT; ISSUANCE. If the court shall think that the facts stated in the presentment constitute a public offense triable in the county, it shall direct the clerk to issue a bench warrant for the arrest of the defendant; and the clerk, on application of the county attorney, may accordingly, at any time after

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such order, whether the court is in session or not, issue a bench warrant under his signature and the seal of the court, in substantially the form set forth in section 628.06.

[R. L. s. 5292]. (10634)

628.06 FORM OF WARRANT; HOW SERVED. The bench warrant upon a presentment shall be substantially in the following form:

"State of Minnesota
County of } ss.

The State of Minnesota, to any Sheriff or Constable in the said State, Greeting:

A presentment having been made on the day of, 19....., to the district court for the county of, in the state aforesaid, charging C.D. with the crime of (here designate the charge generally): Therefore, 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 and most accessible magistrate in this county, there to be dealt with according to law.

Witness the Honorable

At, the day of, 19.....

By order of the court. C.H., Clerk."

It may be served in any county in the state, and the officers serving it shall proceed therein in all respects as upon a warrant of arrest on complaint.

[R. L. s. 5293] (10635)

628.07 PROCEEDINGS ON ARREST. Upon arrest of defendant, the clerk with whom the presentment and testimony are filed shall, without delay, furnish to the magistrate before whom the defendant is taken a certified copy thereof. The magistrate shall proceed upon the charge contained in the presentment in the same manner in all respects as upon a warrant of arrest upon complaint.

[R. L. s. 5294] (10636)

628.08 INDICTMENT; HOW FOUND AND ENDORSED; NAMES OF WITNESSES. No indictment shall be found without the concurrence of at least 12 grand jurors. When so found, it shall be endorsed, "A true bill," and the endorsement signed by the foreman, whether he be one of the 12 concurring or not. If 12 grand jurors shall not concur in finding an indictment or presentment, the charge shall be dismissed, but such dismissal shall not prevent its being again submitted to a grand jury as often as the court shall direct. When an indictment is found, the names of the witnesses examined before the grand jury shall in all cases be inserted at the foot of the indictment, or endorsed thereon, before it shall be presented to the court.

[R. L. s. 5295] (10637)

628.09 INDICTMENT PRESENTED, FILED, AND RECORDED; EFFECT. When an indictment is found, it shall be immediately presented by the foreman, in the presence of the grand jury, to the court, filed with the clerk, recorded in a book kept for that purpose as soon as the arraignment shall have been made, and remain in the clerk's office as a public record. The clerk shall certify at the bottom of the record that he has compared the same with the original, and that it is a true copy thereof. Such record shall have all the force and effect of the original indictment, and, in case the indictment should be lost, mislaid, or for any reason not be before the court, any proceeding may be had upon such record in the same manner and with the same effect as if the original was before the court, and in such case no trial, conviction, or sentence shall be invalid by reason of the fact that the original indictment has disappeared from the files of the court after the recording thereof.

[R. L. s. 5296] (10638)

628.10 INDICTMENTS; CONTENTS. The first pleading on the part of the state is the indictment, which shall contain:

(1) The title of the action, specifying the name of the court to which the indictment is presented, and the names of the parties;

(2) A statement of the acts constituting the offense, in ordinary and concise language, without repetition.

[R. L. s. 5297] (10639)

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628.11 FORM. The indictment may be substantially in the following form:
"The District Court for the County of and State of Minnesota.
The State of Minnesota

vs.
A. B.

A. B. is accused by the grand jury of the county of by this indictment of the crime of (here insert the name of the offense, if it has one, such as murder, arson, or the like, or, if a misdemeanor having no general name, insert a brief description of it as given by law) committed as follows:

The said A. B., on the day of, 19....., at the town (city, or village, as the case may be) of in this county (here set forth the offense).

Dated at, in the county of, the day of, 19.....

(Endorsed) A true bill.

G. H., Foreman of the Grand Jury."

[R. L. s. 5298] (10640)

628.12 TO BE DIRECT AND CERTAIN. The indictment shall be direct and certain as it regards:

- (1) The party charged;
- (2) The offense charged;
- (3) The particular circumstances of the offense charged, when they are necessary to constitute a complete offense.

[R. L. s. 5299] (10641)

628.13 FICTITIOUS NAME. When a defendant shall be indicted by a fictitious or erroneous name, and in any stage of the proceedings his true name shall be discovered, it may be inserted in the subsequent proceedings, referring to the fact of his being indicted by the name mentioned in the indictment.

[R. L. s. 5300] (10642)

628.14 DIFFERENT COUNTS. When by law an offense comprises different degrees, an indictment may contain counts for the different degrees of the same offense, or for any of such degrees. The same indictment may contain counts for murder, and also for manslaughter, or different degrees of manslaughter. Where the offense may have been committed by the use of different means, the indictment may allege the means of committing the offense in the alternative. Where it is doubtful to what class an offense belongs, the indictment may contain several counts, describing it as of different classes or kinds.

[R. L. s. 5301] (10643)

628.15 TIME, HOW STATED. The precise time at which the offense was committed need not be stated in the indictment, but may be alleged to have been committed at any time before the finding thereof, except where the time shall be a material ingredient in the offense.

[R. L. s. 5302] (10644)

628.16 ERRONEOUS ALLEGATION AS TO PERSON INJURED. When the offense shall involve the commission of, or an attempt to commit, a private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to person injured, or intended to be injured, shall not be material.

[R. L. s. 5303] (10645)

628.17 WORDS OF STATUTE NEED NOT BE FOLLOWED. Words used in the statutes to define a public offense need not be strictly pursued in the indictment, but other words conveying the same meaning may be used.

[R. L. s. 5304] (10646)

628.18 TESTS OF SUFFICIENCY. The indictment shall be sufficient if it can be understood therefrom:

- (1) That it is entitled in a court having authority to receive it, though the name of the court is not accurately stated;
- (2) That it was found by a grand jury of the county in which the court was held;
- (3) That the defendant is named, or, if his name cannot be discovered, that he is described by a fictitious name, with the statement that he has refused to discover his real name;

(4) That the offense was committed at some place within the jurisdiction of the court, except where, as provided by law, the act, though done without the local jurisdiction of the county, is triable therein;

(5) That the offense was committed at some time prior to the time of finding the indictment;

(6) That the act or omission charged as the offense is clearly and distinctly set forth, in ordinary and concise language, without repetition;

(7) That the act or omission charged as the offense is stated with such a degree of certainty as to enable the court to pronounce judgment, upon a conviction, according to the right of the case.

[R. L. s. 5305] (10647)

628.19 FORMAL DEFECTS DISREGARDED. No indictment shall be insufficient, nor shall the trial, judgment, or other proceedings thereon be affected, by reason of a defect or imperfection in matter of form which does not tend to the prejudice of the substantial rights of the defendant upon the merits. At any time before the commencement of the trial the court may permit the amendment of an indictment by counsel for the state both as to form and substance; provided, no change is made in the name or identity of the crime charged; and, provided, that in case an amendment is made the defendant shall be given reasonable notice thereof, and shall have, if he desires it, such further reasonable time as the court may deem proper in which to prepare his defense, which further time shall be at least four days after notice of the amendment, if demanded by the defendant.

[R. L. s. 5306; 1927 c. 297] (10648)

628.20 JUDGMENT, HOW PLEADED. In pleading a judgment or other determination of, or proceeding before, a court or officer of special jurisdiction, it shall not be necessary to state the facts conferring jurisdiction, but the judgment or determination may be stated to have been duly given or made. The facts constituting jurisdiction shall, however, be established on trial.

[R. L. s. 5307] (10649)

628.21 PRIVATE STATUTE, HOW PLEADED. In pleading a private statute, or right derived therefrom, it shall be sufficient to refer to the statute by its title and the day of its passage, and the court shall thereupon take judicial notice thereof.

[R. L. s. 5308] (10650)

628.22 INDICTMENT FOR LIBEL. An indictment for libel need not set forth any extrinsic facts for the purpose of showing the application to the party libeled of the defamatory matter on which the indictment is founded, but it shall be sufficient to state generally that the same was published concerning him, and the fact that it was so published shall be established on the trial.

[R. L. s. 5309] (10651)

628.23 MISDESCRIPTION OF FORGED INSTRUMENT. When an instrument which is the subject of an indictment for forgery has been destroyed or withdrawn by the act or procurement of the defendant, and the fact of the destruction or withholding shall be alleged in the indictment and established on the trial, the misdescription of the instrument shall be immaterial.

[R. L. s. 5310] (10652)

628.24 INDICTMENT FOR PERJURY. In an indictment for perjury or subornation of perjury, it shall be sufficient to set forth the substance of the controversy or matter in respect to which the offense was committed, and what court or before whom the oath alleged to be false was taken, and that the court or person before whom it was taken had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment need not set forth the pleadings, record, or proceedings with which the oath is connected, nor the commission or authority of the court or person before whom the perjury was committed.

[R. L. s. 5311] (10653)

628.25 COMPOUNDING FELONY INDICTABLE. A person may be indicted for having, with the knowledge of the commission of a public offense, taken money or property of another, or a gratuity or reward, or an engagement or promise therefor, upon an agreement or understanding, express or implied, to compound or conceal the offense, or to abstain from a prosecution therefor, or to withhold any evidence thereof, though the person guilty of the original offense has not been indicted or tried.

[R. L. s. 5312] (10654)

628.26 LIMITATIONS. Indictments for murder may be found at any time after the death of the person killed; in all other cases, indictments shall be found and filed in the proper court within three years after the commission of the offense; but the time during which the defendant shall not be an inhabitant of, or usually resident within, this state, shall not constitute any part of the limitation of three years.

[R. L. s. 5313] (10655)

628.27 LARCENY BY CLERKS, AGENTS; EVIDENCE. In any prosecution for the larceny of money, bank notes, checks, drafts, bills of exchange, or other security for money, of any person, by a clerk, agent, or servant of such person, it shall be sufficient to allege generally in the indictment a larceny of money to a certain amount, without specifying any particulars of such larceny, and on the trial evidence may be given of any such larceny committed within six months next after the time stated in the indictment; and it shall be sufficient to maintain the charge in the indictment, and not be deemed a variance, if it is proved that any money, bank note, check, draft, bill of exchange, or other security for money of such person, of whatever amount, was stolen by such clerk, agent, or servant within such period of six months.

[R. L. s. 5320] (10662)

628.28 EVIDENCE OF OWNERSHIP. In the prosecution of any offense committed upon, or in relation to, or in any way affecting real estate, or any offense committed in stealing, destroying, injuring, or fraudulently receiving or concealing any money, goods, or other personal estate, it shall be sufficient, and shall not be deemed a variance, if it shall be proved on trial that, at the time when such offense was committed, either the actual or constructive possession, or the general or special property, in the whole or any part of such real or personal estate, was in the person or community alleged in the indictment or other accusation to be the owner thereof.

[R. L. s. 5321] (10663)

628.29 INFORMATIONS; POWERS OF DISTRICT COURT. The district courts of this state shall possess and may exercise the same power and jurisdiction to hear, try, and determine prosecutions upon informations for the crimes, misdemeanors, and offenses specified in section 628.32, and to issue writs and process and do all other acts therein as they possess and may exercise in cases of like prosecutions upon indictment.

[1905 c. 231 s. 1] (10664)

628.30 INFORMATION; CONTENTS; PROVISIONS APPLICABLE. The offense charged in any such information shall be stated in plain and concise language, without prolixity or unnecessary repetition, and all the provisions of law relating to indictments and for testing the validity thereof, shall apply to informations, and all provisions of law applying to prosecutions upon indictments, to writs and process thereon, and to the issuing and service thereof; to motions, pleadings, trials, and punishments, or to the passing or execution of any sentence thereon, and to all other proceedings in cases of indictment, whether in the court of original or appellate jurisdiction, shall to the same extent and in the same manner, as near as may be, apply to informations and all prosecutions and proceedings thereon.

[1905 c. 231 s. 2] (10665)

628.31 PRELIMINARY EXAMINATION. No information shall be filed against any person for any offense until such person shall have had a preliminary examination as provided by law, before a justice of the peace or other examining magistrate or officer, unless such person shall waive his right to such preliminary examination.

[1905 c. 231 s. 3] (10666)

628.32 COURT MAY DIRECT FILING OF INFORMATION, WHEN; PLEA. In all cases where a person charged with a criminal offense shall have been held to the district court for trial by any court or magistrate, and in all cases where any person shall have been committed for trial and is in actual confinement or in jail by virtue of an indictment or information pending against him, the court having trial jurisdiction of such offense or of such indictment or information or proceedings shall have the power at any time, whether in term or vacation, upon the application of the prisoner, in writing, stating that he desires to plead guilty to the charge made against him by the complaint, indictment, or information, or to a lesser degree of the same offense, to direct the county attorney to file an information against him for such offense, if any indictment or information had not been

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filed, and, upon the filing of such information and of such application, the court may receive and record a plea of guilty to offense charged in such indictment or information, or to a lesser degree of the same offense, and cause judgment to be entered thereon and pass sentence on such person pleading guilty, and such proceedings may be had either in term time or in vacation, at such place within the judicial district where the crime was committed as may be designated by the court.

When such plea shall be received at any place other than at a regular place of holding court in the county where such offense shall have been committed, the sheriff having such accused person in custody, or the deputy of such sheriff, shall take such person before the district court wherever such court may be in the judicial district wherein such crime shall have been committed. In such cases, and before such person shall be taken before the court in any other county than that in which the crime shall have been committed, he shall sign a petition in writing, asking leave to enter such plea, and such petition and request shall be approved, in writing, by the county attorney of the county wherein such crime shall have been committed. In case such county attorney shall decline to approve such petition and request, any judge of such court may nevertheless, in his discretion, direct that such accused person be brought before the court at such place as it may designate.

When such person shall be brought before the court in a county other than that in which the offense shall have been committed, unless the court shall otherwise order, it shall not be necessary for the county attorney or the clerk of the district court of the county wherein such offense was committed, to attend before the court; and in such cases the court shall cause due information of all proceedings before the court in any such matter to be communicated to such clerk of the district court, and therefrom such clerk shall be authorized to complete his records with reference to the matter.

The expense of the sheriff in taking any such person before the court and in attending on such proceedings, and the expense of the county attorney and the clerk of the district court when ordered by the court to attend, shall be a charge against the county wherein the crime charged in such indictment or information shall have been committed, and shall be allowed and paid in the same manner as other claims against such county.

Unless the person accused shall expressly waive the services of counsel, and unless the court shall concur therein, no plea of guilty shall be received or entered upon this section unless the person accused shall be represented by competent counsel; and, if he have no means with which to employ counsel, the court shall appoint such counsel and shall be authorized to provide and pay compensation therefor under the provisions of sections 611.07 and 611.12.

This section shall not apply to cases where the punishment for the offense to which the prisoner desires to plead guilty is imprisonment for life in the state prison.

[1905 c. 231 s. 4; 1909 c. 398; 1913 c. 65 s. 1; 1925 c. 136 s. 1; 1935 c. 194 s. 1] (10667)

628.33 FORM OF INFORMATION. Such information may be in the following form:

"State of Minnesota }
County of }

District Court
.....Judicial District

The State of Minnesota,
against
(The name of the accused)

I,, county attorney for said county, hereby inform the court that on the day of, in the year, at said county, A. B. (name or alias of accused) did (state the offense) against the peace and dignity of the State of Minnesota.

Dated,

.....
County Attorney."

[1905 c. 231 s. 5] (10668)