

CHAPTER 628

ACCUSATION

628.02 REPORTS BY INDICTMENT OR PRESENTMENT

Indictment proceedings before the grand jury; presence of unauthorized persons. 32 MLR 504.

628.04 PRESENTMENT, HOW FOUND; PROCEDURE; VIOLATION, HOW PUNISHED; DEFENDANT TO HAVE COPY

In drawing a list of names to constitute a petit jury panel or a grand jury panel, a deputy clerk of court or a deputy sheriff may act as clerk of the district court or sheriff, but a municipal judge may not act in place of a justice of the peace. OAG Oct. 29, 1953 (260-B).

628.05 BENCH WARRANT, ISSUANCE

It is the duty of the sheriff, if unable to serve a criminal warrant, to make thereon an appropriate endorsement and return the warrant to the issuing authority. OAG July 16, 1947 (193-B-1); OAG July 7, 1947 (390-B-3).

628.08 INDICTMENT, HOW FOUND AND ENDORSED; NAMES OF WITNESSES

Indictment proceedings before the grand jury; presence of unauthorized persons. 32 MLR 504.

628.10 INDICTMENTS; CONTENTS

HISTORY. RS 1851 c 119 s 65, 66; PS 1858 c 105 s 1, 2; GS 1866 c 108 s 1; GS 1878 c 108 s 1; GS 1894 s 7238; RL 1905 s 5297; GS 1913 s 9134.

A statute denouncing an "immoral act" must define it. What constitutes an "immoral act" within the concept of the community's accepted standard of "immoral" is for the legislature and not the courts to decide. *State v Vallery*, 34 So(2d) 329.

628.11 FORM

HISTORY. RS 1851 c 119 s 67; PS 1858 c 105 s 3; GS 1866 c 108 s 2; GS 1878 c 108 s 2; GS 1894 s 7239; RL 1905 s 5298; GS 1913 s 9135.

628.12 TO BE DIRECT AND CERTAIN

HISTORY. RS 1851 c 119 s 69; PS 1858 c 106 s 5; GS 1866 c 108 s 4; GS 1878 c 108 s 4; GS 1894 s 7241; RL 1905 s 5299; GS 1913 s 9136.

An information or indictment must aver every essential element of the crime, positively and not inferentially. A defendant must know from an information with what he is charged and against what he is required to defend himself. *State v Suess*, 236 M 174, 52 NW(2d) 409.

628.18 TESTS OF SUFFICIENCY

The information or indictment must be considered in its entirety and construed as such. It should not be dissected and a tax should not be predicated on portions by itself. *State v Suess*, 236 M 174, 52 NW(2d) 409.

628.19 FORMAL DEFECTS DISREGARDED

Where no question of fact was raised by the motion and the errors claimed were questions of law only the refusal of the trial court to grant a hearing on the motion

MINNESOTA STATUTES 1953 ANNOTATIONS

628.26 ACCUSATION

1630

was not error as an elaborate brief in support of his contention was filed. *Risken v U. S.*, 197 F(2d) 959.

An information or indictment must aver every essential element of the crime positively and not inferentially. Defendant must be advised with what he is charged and against what he is required to defend himself. *State v Suess*, 236 M 174, 52 NW(2d) 409.

628.26 LIMITATIONS

HISTORY. RS 1851 c 119 s 88; 1852 Amend p 27 s 130; PS 1858 c 105 s 24; GS 1866 c 108 s 18; GS 1878 c 108 s 18; GS 1894 s 7255; RL 1905 s 5313; GS 1913 s 9150.

Circumvention of statute of limitation by prosecution for perjury. 35 MLR 667.

Where one offers a bribe or promises a bribe to a public officer, and the offer or promise is made more than three years before indictment or information is filed in district court, but payment of the money pursuant to the promise was made within the three year period, the limitation runs from the date of the payment. OAG June 2, 1949 (133-B-19).

Where the conduct of which the complaint is made occurs more than three years before the complaint is made, the period of the limitation has run. The fact that a part of that time defendant was in the armed forces would not prevent the time of limitation from running. If the party was a resident of Minnesota when he became a member of the armed forces, he continued to be a resident of Minnesota during his period of service. He could have been indicted when he was a member of the armed forces but he was not. OAG March 18, 1953 (605-A-13).

628.29 INFORMATIONS, POWERS OF DISTRICT COURT

The future of the grand jury. 37 MLR 586.

The only time it is necessary to impanel a grand jury is to consider evidence of the commission of a crime involving punishment by life imprisonment in the state prison. OAG Oct. 29, 1952 (260-B).

628.30 INFORMATION; CONTENTS; PROVISIONS APPLICABLE

The names of witnesses need not be endorsed on an information. *State ex rel v Utecht*, 230 M 582, 40 NW(2d) 441.

Where the judgment roll fully complied with section 631.40 and where the information filed as part thereof disclosed the nature and extent of and all other essential information with reference to relator's three prior convictions, the relator was not unlawfully detained because the judgment itself did not set forth the nature of such prior convictions, but referred to them only as "three prior convictions." *State ex rel v Utecht*, 230 M 582, 43 NW(2d) 258.

Section 631.40 is fully complied with where copies of the informations charging an attempt to commit burglary in the the third degree and three prior felony convictions, minutes of the trial, pleas, convictions, judgment and sentence, were attached to the warrant of commitment and formed part of the judgment roll therein, and there was no charge to the panel of the grand jury or trial jury, or to any individual juror, and no bill of exceptions. *State ex rel v Utecht*, 231 M 329, 43 NW(2d) 258.

628.33 FORM OF INFORMATION

In setting forth the charge of a crime in an information the words of the statute defining the crime should be followed. OAG April 5, 1948 (133-B-64).

GRAND JURIES

628.43 EXEMPTION FROM SERVICE

Jury service is the compulsory duty required of every citizen unless exempted therefrom by law. County officers are so exempt. In the absence of a proper rule

MINNESOTA STATUTES 1953 ANNOTATIONS

1631

EXTRADITION, ARREST, AND BAIL 629.02

governing jury service, county employees cannot be paid their salaries when they are not performing the services for which they have been engaged. OAG Aug. 21, 1951 (120).

A village may require that the amount of fees and compensation received by an employee for services as juror or otherwise during the period of municipal employment shall be deducted from the salary of the employee. OAG Nov. 4, 1952 (260-A-5).

Members of a fire company organization are exempt from jury service. OAG June 2, 1952 (260-A-7).

628.49 GROUNDS OF EXCUSE, RECORD

HISTORY. Amended, 1951 c 433 s 1.

628.52 CHALLENGE

HISTORY. RS 1851 c 115 s 13; 1852 Amend p 27 s 125; PS 1858 c 104 s 13; GS 1866 c 107 s 13; GS 1878 c 107 s 13; 1889 c 98 s 3; 1889 c 110 s 3; 1891 c 32 s 3; GS 1894 s 7188; RL 1905 s 5271; GS 1913 s 9108.

628.59 EVIDENCE; FOR DEFENDANT

Evidence that a person committed a similar but distinct crime, or civil wrong, on a different occasion, is inadmissible for the purpose of proving that he is possessed of a propensity or a state of mind that would naturally dispose him to commit the particular crime or civil wrong with which he is charged. Luley v Luley, 234 M 324, 48 NW(2d) 328.

CHAPTER 629

EXTRADITION, ARREST, AND BAIL

EXTRADITION

NOTE: Sections 629.01 to 629.29 are the Uniform Criminal Extradition Act as revised in 1936 and adopted in Minnesota by Laws 1939, Chapter 240. The Act is in force in the following states: California, Delaware, Florida, Hawaii, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Utah, Virginia, West Virginia, Wisconsin.

629.01 DEFINITIONS

Extradition. 31 MLR 703.

Criminal jurisdiction of a state over a defendant based upon presence secured by force or fraud. 37 MLR 91.

629.02 DUTIES OF GOVERNOR IN EXTRADITION MATTERS

A convicted person whose parole has been revoked because of a violation of a condition that he is not to leave the state without permission of the parole officer, is subject to extradition as a fugitive from justice. State ex rel v Ryan, 235 M 161, 50 NW(2d) 259.

Where a Minnesota man and woman moved to another state and married there and the wife moved back to Minnesota where she gave birth to a child, to the support