

CHAPTER 629

EXTRADITION, ARREST, BAIL

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EXTRADITION

629.01 DEFINITIONS. Where appearing in sections 629.01 to 629.29, the term "governor" includes any person performing the functions of governor by authority of the law of this state. The term "executive authority" includes the governor, and any person performing the functions of governor in a state other than this state. The term "state," referring to a state other than this state, includes any other state or territory, organized or unorganized, of the United States.

[1939 c. 240 s. 1] (10547-11)

629.02 DUTIES OF GOVERNOR IN EXTRADITION MATTERS. Subject to the provisions of sections 629.01 to 629.29, the provisions of the Constitution of the United States controlling, and any and all acts of congress enacted in pursuance thereof, it is the duty of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and if found in this state.

[1939 c. 240 s. 2] (10547-12)

629.03 DEMAND IN WRITING. No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing alleging, except in cases arising under section 629.06, that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state, and accompanied by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a state-

ment by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation, or parole. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of the indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the executive authority making the demand.

[1939 c. 240 s. 3] (10547-13)

629.04 ATTORNEY GENERAL TO INVESTIGATE. When a demand shall be made upon the governor of this state by the executive authority of another state for the surrender of a person so charged with crime, the governor may call upon the attorney general or any prosecuting officer in this state to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered.

[1939 c. 240 s. 4] (10547-14)

629.05 EXTRADITION BY AGREEMENT. When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.

The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state who is charged in the manner provided in section 629.23 with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily.

[1939 c. 240 s. 5] (10547-15)

629.06 MAY EXTRADITE PERSONS CAUSING CRIME. The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in section 629.03 with committing an act in this state, or in a third state, intentionally resulting in a crime in the state, whose executive authority is making the demand, and the provisions of sections 629.01 to 629.29 not otherwise inconsistent, shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom.

[1939 c. 240 s. 6] (10547-16)

629.07 WARRANT OF ARREST. If the governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance.

[1939 c. 240 s. 7] (10547-17)

629.08 ACCUSED TURNED OVER TO DEMANDING STATE. Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the state and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of sections 629.01 to 629.29, to the duly authorized agent of the demanding state.

[1939 c. 240 s. 8] (10547-18)

629.09 POWERS OF OFFICER. Every such peace officer or other person empowered to make the arrest shall have the same authority, in arresting the accused, to command assistance therein, as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance.

[1939 c. 240 s. 9] (10547-19)

629.10 ACCUSED TAKEN BEFORE COURT. No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court of record in this state, who shall inform him of the demand made for his surrender and of the crime with which he is charged, and that he has the right to demand and procure legal counsel; and, if the prisoner or

his counsel shall state that he or they desire to test the legality of his arrest, the judge of such court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the agent of the demanding state.

[1939 c. 240 s. 10] (10547-20)

629.11 VIOLATION A GROSS MISDEMEANOR. Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the governor's warrant in wilful disobedience to section 629.10 shall be guilty of a gross misdemeanor; and upon conviction shall be fined not more than \$1,000 or be imprisoned for not more than six months.

[1939 c. 240 s. 11] (10547-21)

629.12 ACCUSED MAY BE CONFINED IN JAIL. The officer or persons executing the governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered, may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person being chargeable with the expense of keeping.

The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this state with such a prisoner for the purpose of immediately returning such prisoner to the demanding state, may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent being chargeable with the expense of keeping; provided, that such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this state.

[1939 c. 240 s. 12] (10547-22)

629.13 WHO MAY BE APPREHENDED. When any person within this state shall be charged on the oath of any credible person before any judge or magistrate of this state with the commission of any crime in any other state and, except in cases arising under section 629.06, with having fled from justice, with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation, or parole, or when complaint shall have been made before any judge or magistrate in this state setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime and, except in cases arising under section 629.06, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation, or parole, and is believed to be in this state, the judge or magistrate shall issue a warrant directed to any peace officer commanding him to apprehend the person named therein, wherever he may be found in this state, and to bring him before the same or any other judge, magistrate, or court who or which may be available in or convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

[1939 c. 240 s. 13] (10547-23)

629.14 ARREST WITHOUT WARRANT. The arrest of a person may be lawfully made also by any peace officer or a private person, without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in section 629.13; and thereafter his answer shall be heard as if he had been arrested on a warrant.

[1939 c. 240 s. 14] (10547-24)

629.15 COURT MAY COMMIT TO JAIL. If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under section 629.06, that he has fled from justice, the judge or magistrate must, by a warrant reciting the accusation, commit him to the county jail for such a time, not exceeding 30 days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in section 629.16, or until he shall be legally discharged.

[1939 c. 240 s. 15] (10547-25)

629.16 MAY BE ADMITTED TO BAIL. Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or magistrate in this state may admit the person arrested to bail by bond, with sufficient sureties, and in such sum as he deems proper, conditioned for his appearance before him at a time in such bond, and for his surrender, to be arrested upon the warrant of the governor of this state.

[1939 c. 240 s. 16] (10547-26)

629.17 MAY BE DISCHARGED; WHEN. If the accused is not arrested under warrant of the governor by the expiration of the time specified in the warrant or bond, a judge or magistrate may discharge him or may recommit him for a further period not to exceed 60 days, or a judge or magistrate may again take bail for his appearance and surrender, as provided in section 629.16, but within a period not to exceed 60 days after the date of such new bond.

[1939 c. 240 s. 17] (10547-27)

629.18 MAY DECLARE BOND FORFEITED. If the prisoner is admitted to bail, and fails to appear and surrender himself according to the conditions of his bond, the judge, or magistrate by proper order, shall declare the bond forfeited and order his immediate arrest without warrant if he be within this state. Recovery may be had on such bond in the name of the state as in the case of other bonds given by the accused in criminal proceedings within this state.

[1939 c. 240 s. 18] (10547-28)

629.19 MAY EITHER HOLD OR SURRENDER PRISONER. If a criminal prosecution has been instituted against such person under the laws of this state and is still pending, the governor, in his discretion, either may surrender him on demand of the executive authority of another state or hold him until he has been tried and discharged or convicted and punished in this state.

[1939 c. 240 s. 19] (10547-29)

629.20 GOVERNOR NOT TO INQUIRE INTO GUILT OR INNOCENCE. The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the governor or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form, as provided, shall have been presented to the governor, except as it may be involved in identifying the person held as the person charged with the crime.

[1939 c. 240 s. 20] (10547-30)

629.21 MAY RECALL WARRANT. The governor may recall his warrant of arrest or may issue another warrant when he deems proper.

[1939 c. 240 s. 21] (10547-31)

629.22 WARRANT FOR PAROLEES OR PROBATIONERS. When the governor of this state shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation, or parole in this state, from the executive authority of any other state, or from the chief justice or an associate justice of the supreme court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this state, to some agent, commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county in this state in which the offense was committed.

[1939 c. 240 s. 22] (10547-32)

629.23 PROSECUTING ATTORNEY TO MAKE WRITTEN APPLICATION.
Subdivision 1. Contents. When the return to this state of a person charged with crime in this state is required, the prosecuting attorney shall present to the governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime

charged against him, the approximate time, place, and circumstances of its commission, the state in which he is believed to be, including the location of the accused therein at the time the application is made, and certifying that, in the opinion of the prosecuting attorney, the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not instituted to enforce a private claim.

Subd. 2. Return of fugitive. When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation, or parole, the prosecuting attorney of the county in which the offense was committed, the parole board, or the warden of the institution or sheriff of the county, from which the escape was made, shall present to the governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation, or parole, the state in which he is believed to be, including the location of the person therein at the time application is made.

Subd. 3. Procedural requirements. The application shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge or magistrate, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer, parole board, warden, or sheriff may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application, with the action of the governor indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information, and affidavits, or of the judgment of conviction or of the sentence shall be filed in the office of the secretary of state to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition.

[1939 c. 240 s. 23] (10547-33)

629.24 MAY NOT BE SERVED WITH CIVIL PROCESS. A person brought into this state by, or after waiver of, extradition based on a criminal charge, shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceedings to answer which he is being or has been returned, until he has been convicted in the criminal proceeding, or, if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited.

Any person arrested in this state charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his bail, probation, or parole, may waive the issuance and service of the warrant provided for in sections 629.07 and 629.08 and all other procedure incidental to extradition proceedings, by executing or subscribing, in the presence of a judge of any court of record within this state, a writing which states that he consents to return to the demanding state; provided, that before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of his rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus, as provided for in section 629.10.

If and when such consent has been duly executed, it shall forthwith be forwarded to the office of the governor of this state and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of such consent; provided, that nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights, or duties of the officers of the demanding state or of this state.

Nothing in sections 629.01 to 629.29 shall be deemed to constitute a waiver by this state of its right, power, or privilege to try such demanded person for crime committed within this state, or of its right, power, or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence, or punishment for any crime committed within this state, nor shall any

proceedings had under sections 629.01 to 629.29 which result in, or fail to result in, extradition be deemed a waiver by this state of any of its rights, privileges, or jurisdiction in any way.

[1939 c. 240 s. 24] (10547-34)

629.25 MAY BE TRIED FOR OTHER CRIMES. After a person has been brought back to this state by or after waiver of extradition proceedings, he may be tried in this state for other crimes which he may be charged with having committed here, as well as that specified in the requisition for his extradition.

[1939 c. 240 s. 25] (10547-35)

629.26 UNIFORMITY. The provisions of sections 629.01 to 629.29 shall be so interpreted and construed as to effectuate their general purposes to make uniform the laws of those states which enact them.

[1939 c. 240 s. 26] (10547-36)

629.27 GOVERNOR MAY APPOINT AGENT. In every case authorized by the constitution and laws of the United States, the governor may appoint an agent, who shall be the sheriff of the county from which the application for extradition shall come, when he can act, to demand of the executive authority of any state or territory any fugitive from justice or any person charged with a felony or other crime in this state; and when an application shall be made to the governor for that purpose, the attorney general, when so required by him, shall forthwith investigate or cause to be investigated by any county attorney the grounds of such application, and report to the governor all material circumstances which shall come to his knowledge, with an abstract of the evidence, and his opinion as to the expediency of the demand. The accounts of agents so appointed shall in each case be audited by the county board of the county wherein the crime upon which extradition proceedings are based shall be alleged to have been committed, and every such agent shall receive from the treasury of such county \$4.00 for each calendar day, and the necessary expenses incurred by him in the performance of such duties.

[1939 c. 240 s. 28] (10547-38)

629.28 POWERS OF OFFICERS. Any person who has been or shall be convicted of or charged with a crime in any other state, and who shall be lawfully in the custody of any officer of the state where such offense is claimed to have been committed, may be by such officer conveyed through or from this state, for which purpose such officer shall have all the powers in regard to his control or custody that an officer of this state has over a prisoner in his charge.

[1939 c. 240 s. 29] (10547-39)

629.29 CITATION. Sections 629.01 to 629.29 may be cited as the uniform criminal extradition act.

[1939 c. 240 s. 31] (10547-41)

ARRESTS

629.30 ARRESTS; BY WHOM MADE; AIDING OFFICER. Arrest is the taking of a person into custody that he may be held to answer for a public offense, and may be made:

- (1) By a peace officer under a warrant;
- (2) By a peace officer without a warrant;
- (3) By a private person.

Every person shall aid an officer in the execution of a warrant when requested so to do by such officer, who is himself present and acting in its execution.

[R. L. s. 5225] (10566)

629.31 WHEN MADE. If the offense charged be a felony, arrest may be made on any day and at any time of the day or night; if it be a misdemeanor, arrest shall not be made on Sunday or at night, unless upon the direction of the magistrate endorsed upon the warrant.

[R. L. s. 5226] (10567)

629.32 HOW MADE; RESTRAINT; SHOW WARRANT. An arrest is made by the actual restraint of the person of the defendant or by his submission to the custody of the officer; but he shall not be subjected to any more restraint than shall be necessary for his arrest and detention, and the officer shall inform the defendant that he is acting under the authority of a warrant, and shall show him the warrant if so required. An arrest by a peace officer acting under a warrant is lawful even though the officer does not have the warrant in his possession at the

time of the arrest, but if the person so requests the warrant shall be shown to him as soon as possible and practicable. An arrest may lawfully be made by a peace officer when advised by any other peace officer in the state that a warrant has been issued for that person.

[R. L. s. 5227; 1947 c. 316 s. 1] (10568)

629.33 MEANS USED. If, after notice of intention to arrest defendant, he shall flee or forcibly resist, the officer may use all necessary means to effect his arrest. He may break open an inner or outer door or window of a dwelling house to execute the warrant if, after notice of his authority and purpose, he shall be refused admittance, or when necessary for his own liberation, or for the purpose of liberating another person who, having entered to make an arrest, shall be detained therein.

[R. L. s. 5228] (10569)

629.34 ARREST WITHOUT WARRANT. A peace officer may, without warrant, arrest a person:

- (1) For a public offense committed or attempted in his presence;
- (2) When the person arrested has committed a felony, although not in his presence;
- (3) When a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it; or
- (4) Upon a charge made upon reasonable cause of the commission of a felony by the person arrested.

To make such arrest the officer may break open an outer or inner door or window of a dwelling house if, after notice of his office and purpose, he shall be refused admittance.

[R. L. s. 5229] (10570)

629.35 ARREST AT NIGHT. Such peace officer may at night, without a warrant, arrest any person whom he has reasonable cause for believing to have committed a felony, and shall be justified in making such arrest, though it shall afterwards appear that no felony has been committed; but when so arresting a person without a warrant, the officer shall inform him of his authority and the cause of the arrest, except when he shall be in the actual commission of a public offense, or shall be pursued immediately after an escape.

[R. L. s. 5230] (10571)

629.36 ARREST BY BYSTANDER. Such peace officer may take before a magistrate a person who, being engaged in a breach of the peace, shall be arrested by a bystander and delivered to him; and, when a public offense shall be committed in the presence of a magistrate, he may, by written or verbal order, command any person to arrest the offender, and thereupon proceed as if the offender had been brought before him on a warrant of arrest.

[R. L. s. 5231] (10572)

629.37 ARREST BY PRIVATE PERSON. A private person may arrest another:

- (1) For a public offense committed or attempted in his presence;
 - (2) When such person has committed a felony, although not in his presence;
- or
- (3) When a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it.

[R. L. s. 5232] (10573)

629.38 DISCLOSURE OF CAUSE; MEANS USED. Before making an arrest such private person shall inform the person to be arrested of the cause thereof and require him to submit, except when he is in the actual commission of the offense or when he shall be arrested on pursuit immediately after its commission. If such person has committed a felony, such private person, after notice of his intention to make the arrest, if he shall be refused admittance, may break open an outer or inner door or window of a dwelling house for the purpose of making the same.

[R. L. s. 5233] (10574)

629.39 PRIVATE PERSON MAKING ARREST, PROCEEDINGS. Every private person who shall have arrested another for the commission of a public offense shall, without unnecessary delay, take him before a magistrate or deliver him to a peace officer. If a person arrested shall escape or be rescued, the person from whose custody he has escaped may immediately pursue and retake him, at any time and

in any place in the state, and for that purpose, after notice of his intention and refusal of admittance, may break open an outer or inner door or window of a dwelling house.

[R. L. s. 5234] (10575)

629.40 ARRESTS ANY PLACE IN STATE; WHEN ALLOWED. In any case wherein any sheriff, deputy sheriff, police officer, marshal, constable, or other peace officer shall have authority by law, either with or without a warrant, to arrest any person for or upon a charge of any criminal offense committed within the local jurisdiction of such peace officer, and the person to be arrested shall escape from or be out of the county, city, town, or village in which such authority originated, the officer having such authority shall have power to pursue and apprehend the person to be arrested anywhere in this state.

[1927 c. 256] (10575-1)

WARRANTS; BAIL BONDS

629.41 PROCESS, ISSUANCE: The judges of the several courts of record, in vacation as well as in term time, court commissioners, and all justices of the peace, are authorized to issue process to carry into effect the provisions of law for the apprehension of persons charged with offenses.

[R. L. s. 5235] (10576)

629.42 PROCEEDINGS ON COMPLAINT; WARRANT. Upon complaint made to any such magistrate that a criminal offense has been committed, he shall examine, on oath, the complainant and any witnesses who shall appear before him, reduce the complaint to writing, and cause it to be subscribed by the complainant; and, if it shall appear that such offense has been committed, he shall issue a warrant, reciting the substance of the complaint, and requiring the officer to whom it is directed to forthwith bring the accused before him, or some other court or magistrate of the county, to be dealt with according to law, and in such warrant require him to summon the witnesses therein named to appear and give evidence on the examination.

[R. L. s. 5236] (10577)

629.43 WARRANT, EXECUTION OF. If any person against whom a warrant is issued for an alleged offense committed in any county, either before or after the issuing of such warrant, shall escape from or be out of the county, the sheriff or other officer to whom such warrant is directed may pursue and apprehend the party charged, in any county in this state, and for that purpose may command aid, and exercise the same authority, as in his own county.

[R. L. s. 5237] (10578)

629.44 RECOGNIZANCE BY OFFENDER, DUTY OF MAGISTRATE. In every case where the offense charged in the warrant shall not be punishable by death or imprisonment in the state prison, upon request of the person arrested, the officer making the arrest shall take him before a magistrate of the county in which the arrest shall be made, for the purpose of entering into a recognizance without trial or examination, and such magistrate may take from him a recognizance with sufficient sureties for his appearance before the court having cognizance of the offense and next holden in such county, and thereupon he shall be liberated. The magistrate taking bail shall certify that fact upon the warrant, and deliver the same, with the recognizance so taken, to the person making the arrest, who shall cause the same to be delivered, without unnecessary delay, to the clerk of the court before which the accused was recognized to appear; and, on application of the complainant, the magistrate who issued the warrant, or the county attorney, shall cause such witnesses to be summoned as he deems necessary.

[R. L. s. 5238] (10579)

629.45 BAIL REFUSED; PROCEEDINGS. If the magistrate in the county where the arrest was made shall refuse to bail the person so arrested and brought before him, or if no sufficient bail shall be offered, the person having him in charge shall take him before the magistrate who issued the warrant, or, in his absence, before some other magistrate of the county in which the warrant was issued, to be proceeded with as directed.

[R. L. s. 5239] (10580)

629.46 PROCEDURE IN CASE OF FELONY. When the offense charged in any warrant is punishable by death or imprisonment in the state prison, the officer making the arrest in some other county shall convey the prisoner to the county

where the warrant issued, and take him before the magistrate who issued the same, or, in case of his inability to attend, before some other magistrate of the same county, and also deliver to such magistrate the warrant, with the proper return thereon signed by him.

[R. L. s. 5240] (10581)

629.47 EXAMINATION ADJOURNED; RECOGNIZANCE. Every magistrate may adjourn an examination or trial pending before himself, from time to time, as occasion shall require, not exceeding ten days at one time, without consent of the accused, and at the same or a different place in the county as he shall think proper; and in such case, if the person is charged with an offense not bailable, he shall be committed in the meantime, otherwise he may be recognized in a sum and with sureties satisfactory to the magistrate for his appearance for further examination, and for want of such recognizance he shall be committed; but in a case where a person shall be brought before the judge of a municipal court charged with a misdemeanor, such court may receive cash bail for his appearance in an amount not more than double the highest cash fine which can be imposed for the offense, and within such limit he may, from time to time thereafter, increase or reduce such sum.

[R. L. s. 5241] (10582)

629.48 PROCEEDINGS ON FAILURE TO APPEAR. If the person so recognized shall not appear before the magistrate at the time appointed for such further examination, according to the conditions of such recognizance, the magistrate shall record the default and certify the recognizance, with the record of such default, to the district court, and like proceedings shall be had thereon as upon the breach of the condition of a recognizance for appearance before that court.

[R. L. s. 5242] (10583)

629.49 FAILURE TO RECOGNIZE, COMMITMENT. When such person shall fail to recognize, he shall be committed to prison by an order under the hand of the magistrate, stating concisely that he is committed for further examination on a future day, to be named in the order; and on the day appointed he may be brought before the magistrate, by his verbal order to the same officer by whom he was committed, or by an order, in writing, to a different person.

[R. L. s. 5243] (10584)

629.50 EXAMINATION; RIGHTS OF ACCUSED. The magistrate before whom any person shall be brought upon a charge of having committed an offense shall, as soon as may be, examine the complainant and the witnesses in support of the prosecution, on oath, in the presence of the party charged, in relation to any pertinent matter connected with such charge, after which the witnesses for the prisoner, if he has any, shall be sworn and examined, and he may be assisted by counsel in such examination, and also in the cross-examination of the witnesses in support of the prosecution.

[R. L. s. 5244] (10585)

629.51 WITNESSES KEPT SEPARATE; TAKING TESTIMONY. While examining any witness, the magistrate may in his discretion exclude all other witnesses from the place of examination, and upon request, or if he sees cause, he may direct the witnesses for and against the prisoner to be kept separate, so that they cannot converse with each other until they have been examined. He shall reduce the testimony to writing, or cause it to be done, and, when he shall so require, have it signed by the witnesses.

[R. L. s. 5245] (10586)

629.52 DISCHARGE OF PRISONER; OFFENSE NOT BAILABLE. If upon the whole examination it shall appear that no offense has been committed, or that there is not probable cause for charging the prisoner with it, he shall be discharged. A person charged with an offense punishable by death shall not be admitted to bail if the proof is evident or the presumption great, nor shall any person charged with an offense punishable by death, or imprisonment in the state prison for more than seven years, be admitted to bail by a justice of the peace; in all other cases bail may be taken in such sum as in the opinion of the judge or magistrate will secure the appearance of the accused at the court where he is to be tried.

[R. L. s. 5246] (10587)

629.53 BAIL; COMMITMENT. When at the close of an examination it shall appear that an offense has been committed, and that there is probable cause to believe the prisoner to be guilty, if the offense be bailable by the magistrate, and

the prisoner shall offer sufficient bail or money in lieu thereof, it shall be taken, and he shall be discharged; but if no sufficient bail be offered, or the offense shall not be bailable by the magistrate, he shall be committed for trial. When cash bail shall be deposited in lieu of other bail, such cash shall be the property of the accused, whether deposited by him personally or by any third person in his behalf. When cash bail shall be accepted by a judge of a court of record, he shall order the same to be deposited with the clerk, there to remain until the final disposition of the case and the further order of the court relative thereto. Upon release, in whole or in part, the amount so released shall be paid to the accused personally or upon his written order. In case of conviction the magistrate may order such deposit to be applied upon any fine imposed and, if such fine be less than the deposit, the balance shall be paid to the defendant. If the fine exceeds the deposit, the deposit shall be applied thereon and the defendant committed until the balance is paid, but such commitment shall not exceed one day's time for each dollar of such unpaid balance. Cash bail in the hands of the court or any officer thereof shall be exempt from garnishment or levy under attachment or execution.

[R. L. s. 5247] (10588)

629.54 WITNESSES TO RECOGNIZE, WHEN; COMMITMENT. When a prisoner shall be admitted to bail, or committed by the magistrate, he shall also bind by recognizance such witnesses against the prisoner as he shall deem material, to appear and testify at the court to which the prisoner is held to answer. If the magistrate shall be satisfied that there is good reason to believe that any witness will not perform the conditions of his recognizance unless other security shall be given, he may order him to enter into a recognizance for his appearance, with such sureties as he shall deem necessary; but, except in case of murder in the first degree, arson where human life is destroyed, and cruel abuse of children, he shall not commit any witness who shall offer to recognize, without sureties, for his appearance.

[R. L. s. 5248] (10589)

629.55 REFUSAL TO RECOGNIZE. Every witness required to recognize, with or without sureties, who shall refuse so to do, shall be committed by the magistrate until he shall comply with such order, or be otherwise discharged according to law. Every person held as a witness shall receive such compensation during confinement as the court before whom the case is pending shall direct, not exceeding regular witness fees. When a married woman or a minor shall be a material witness, any other person may recognize for the appearance of such witness, or the magistrate may take recognizance of such witness in a sum of not more than \$50, which shall be valid and binding in law notwithstanding such disability.

[R. L. s. 5249] (10590)

629.56 MAGISTRATES POWERS. Any magistrate to whom a complaint shall be made, or before whom any prisoner shall be brought, may associate with himself one or more magistrates of the same county, and they may together execute the powers and duties mentioned; but no fees shall be taxed for such associates.

[R. L. s. 5250] (10591)

629.57 CERTIFYING TESTIMONY. All examinations and recognizances, taken by any magistrate in pursuance of the provisions of this chapter, shall be certified and returned by him to the clerk of the court, before which the party charged is bound to appear, within ten days after such examination has been had or the recognizance taken, and shall be filed in such court; and, if the magistrate neglects or refuses to return the same, he may be compelled forthwith by rule of court, and, in case of disobedience, may be proceeded against by attachment as for contempt.

[R. L. s. 5251; 1905 c. 179 s. 1] (10592)

629.58 PROCEEDINGS ON DEFAULT. When any person, in any criminal prosecution, under recognizance either to appear and answer, to prosecute an appeal, or to testify in any court, shall fail to perform the conditions of such recognizance, his default shall be recorded, and process issued against the persons bound thereby, or such of them as the prosecuting officer shall direct; and any surety may, by leave of court, after default, and either before or after process shall be issued against him, pay to the county treasurer or clerk of court the amount for which he was bound as surety, with such costs as the court shall direct, and be thereupon forever discharged.

[R. L. s. 5252] (10593)

629.59 RECOGNIZANCE; WHEN PENALTY REMITTED. When any action shall be brought in the name of the state against a principal or surety in any recognizance entered into by a party or witness in any criminal prosecution, and the penalty thereof shall be adjudged forfeited, the court may, upon application of any party defendant, remit the whole or any part of such penalty, and may render judgment thereon for the state, according to the circumstances of the case and the situation of the party, and upon such terms and conditions as it may deem just and reasonable.

[R. L. s. 5253] (10594)

629.60 RECOGNIZANCE; WHEN ACTION NOT BARRED. No action brought on any recognizance shall be barred or defeated, nor judgment thereon arrested, by reason of any neglect or omission to note or record the default of any principal or surety at the term when it occurs, or by reason of any defect in the form of the recognizance, if it shall sufficiently appear from the tenor thereof at what court the party or witness was bound to appear, and that the court or magistrate before whom it was taken was authorized by law to require and take it; and when upon action brought upon any recognizance to prosecute an appeal the penalty thereof shall be adjudged to be forfeited, or when by leave of court such penalty has been paid to the county treasurer or clerk of court without suit or before judgment in a manner provided by law, if by law any forfeiture accrues to any person by reason of the offense of which appellant was convicted, the court may award him such sum as he may be entitled to out of such forfeiture.

[R. L. s. 5254] (10595)

629.61 ARREST OF DEFAULTER. When a defendant in any indictment has been admitted to bail after verdict or trial, and shall neglect to appear before any court or officer at any time or place at which he is bound to appear and submit to the jurisdiction of the proper court or officer, such court or officer may cause him to be arrested in the same manner as upon the finding of an indictment, and may forfeit his recognizance and direct the same to be prosecuted.

[R. L. s. 5255] (10597)

629.62 APPLICATION FOR BAIL, JUSTIFICATION. When a party in custody shall desire to give bail, the offense beingailable, and the district court shall not be in session in the county, he may apply to a 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. Such judge may thereupon, by order, direct the sheriff to bring up such party, at a time and place named, for the purpose of giving bail. Notice of the application shall be given to the county attorney, if within the county, and no matters shall be inquired into except such as relate to the amount of bail and the sufficiency of the sureties. Sureties shall in all cases justify by affidavit, or upon oral examination before the court, judge, or magistrate, as the case may be.

[R. L. s. 5256] (10598)

629.63 SURRENDER OF PRINCIPAL; NOTICE TO SHERIFF. When a surety for any person held to answer, upon any charge or otherwise, shall believe that his principal is about to abscond, or that he will not appear as required by his recognizance, or not otherwise perform the conditions thereof, he may arrest and take such principal, or cause him to be arrested and taken, before the officer who admitted him to bail, or the judge of the court before which such principal was by his recognizance required to appear, and surrender him up to such officer or judge; or any such surety may have such person arrested by the sheriff of the county by delivering to him a certified copy of the recognizance or instrument of bail under which he is held as surety, with a direction to such sheriff, endorsed thereon, requiring him to arrest such principal and bring him before such officer or judge to be so surrendered, and on the receipt thereof, and a tender or payment to him of his fees therefor, such sheriff shall arrest such principal and bring him before such officer or judge, to be so surrendered. Before any surety shall personally surrender such person, the sheriff shall be notified, and he or one of his deputies be present to take him into custody if he shall fail to give new bail as herein provided.

[R. L. s. 5257] (10599)

