

**629.60 RECOGNIZANCE, WHEN ACTION NOT BARRED**

HISTORY. RS 1851 c 114 s 31; RS 1851 c 129 s 217; PS 1858 c 103 s 31; PS 1858 c 115 s 5; GS 1866 c 106 s 28, 29; GS 1878 c 106 s 29, 30; GS 1894 s 7160, 7161; RL 1905 s 5254; GS 1913 s 9091.

**629.61 ARREST OF DEFAULTER**

HISTORY. 1852 Amend p 29 s 141; PS 1858 c 118 s 47; GS 1866 c 106 s 30; GS 1878 c 106 s 31; GS 1894 s 7162; RL 1905 s 5255; GS 1913 s 9092.

**629.62 APPLICATION FOR BAIL; JUSTIFICATION**

HISTORY. RS 1851 c 114 s 23; RS 1851 c 132 s 264; 1852 Amend p 29; PS 1858 c 103 s 23; PS 1858 c 118 s 30; GS 1866 c 106 s 31, 32; GS 1878 c 106 s 32, 33; GS 1894 s 7163, 7164; RL 1905 s 5256; GS 1913 s 9093.

**CHAPTER 630****PRETRIAL PROCEDURE****ARRAIGNMENT****630.01 ARRAIGNMENT, PRESENCE OF DEFENDANT**

On the petition, return, reply, and stipulation relative to evidence taken below in a habeas corpus proceeding, the question before us is whether the absence of relator as the accused from his trial for murder in the district court was voluntary or involuntary. In a prosecution for a felony, the accused has the right to be present in person at all stages of the trial, from arraignment to and including the pronouncement of sentence. If after arraignment, plea, and the commencement of the trial in his presence he voluntarily flees the court, he thereby waives his right to be present at the further proceedings up to and including the rendition of the verdict. The absence of the accused from the court, voluntarily or involuntarily, when sentence is pronounced in such a case, results in an illegal sentence without due process of law, requiring a resentencing when his presence is secured. *State ex rel v Utecht*, 228 M 44, 36 NW(2d) 126.

The court before arraignment should inform the defendant in precise terms of his constitutional right to the assistance of counsel and such informative action to be made a matter of record. The denial of certain constitutional rights where the right to due process of the law is left unimpaired is not fatal to the jurisdiction of the court. The error resulting from such denial must be corrected through appeal, and not by resorting to the extraordinary remedy of habeas corpus. *State ex rel Schwanke v Utecht*, 233 M 434, 47 NW(2d) 99.

Where an accused is in the custody of one county a court may direct the officer having accused in custody to bring him before it for arraignment. OAG Oct. 30, 1951 (133-A-2).

When defendant in a criminal case testifies in his own behalf he thereby assumes the position of an ordinary witness and may be discredited on cross-examination by inquiries as to his previous prosecution or conviction of crime in the same manner and under the same rules as any other witness. OAG Dec. 6, 1948 (494-A).

**630.10 DEFENDANT INFORMED OF HIS RIGHT TO COUNSEL**

A "warrant" in a criminal case has the sole function of giving the court jurisdiction over the person of the accused by bringing him in person before the court

# MINNESOTA STATUTES 1953 ANNOTATIONS

## 630.11 PRETRIAL PROCEDURE

1636

to answer the charge made against him; and unless the accused is before the court the warrant becomes wholly inoperative and defects therein cease to be material. By entering a plea of guilty or not guilty in a criminal prosecution the criminal waives objection to the jurisdiction of the court over his person. State ex rel Schwanke v Utecht, 233 M 434, 47 NW(2d) 99.

### 630.11 ARRAIGNMENT, HOW MADE

The trial judge is master of his court. Of necessity he regulates the procedure. It is desirable that rules of practice and procedure be elastic. Within reason, the trial judge sets the order of trial of cases. As to criminal cases, if the prosecuting attorney has a case in which he is holding witnesses who are ready to testify, especially if they have come from a distance, the court might consider an early setting of the case. While the court, on application of the county attorney, may advance the time in a criminal case, such advancement is governed by the law which permits the defendant the time to plead and time to prepare for trial. When under the rules of the court, or when the public interests require that a criminal case be tried before civil cases on the same calendar, the trial court will consider the public interest and act accordingly. OAG Feb. 10, 1948 (141-F).

### 630.13 TIME TO PLEAD; DEMURRER; PLEA; MOTION TO SET ASIDE

The trial judge is master of his court. Of necessity he regulates the procedure. It is desirable that rules of practice and procedure be elastic. Within reason, the trial judge sets the order of trial of cases. As to criminal cases, if the prosecuting attorney has a case in which he is holding witnesses who are ready to testify, especially if they have come from a distance, the court might consider an early setting of the case. While the court, on application of the county attorney, may advance the time in a criminal case, such advancement is governed by the law which permits the defendant the time to plead and time to prepare for trial. When under the rules of the court, or when the public interests require that a criminal case be tried before civil cases on the same calendar, the trial court will consider the public interest and act accordingly. OAG Feb. 10, 1948 (141-F).

## SETTING ASIDE INDICTMENT

### 630.18 GROUNDS FOR SETTING ASIDE, WAIVER

Presence of unauthorized persons before the grand jury as ground for setting aside indictment. 32 MLR 504.

## DEMURRER

### 630.23 GROUNDS OF DEMURRER

Criminal complaints charging that defendants did wilfully and unlawfully then and there attempt to take mink with the use of a dog and by digging, and did molest and injure a muskrat runway by digging into the same with a shovel, contrary to conservation order No. 1244 and section 100.27, subdivision 4, alleged two separate offenses and demurrers thereto should have been sustained. State v Hedstrom, 233 M 17, 45 NW(2d) 715.

### 630.25 PROCEEDINGS ON ALLOWANCE; DEFENDANT, WHEN DISCHARGED

HISTORY. RS 1851 c 122 s 122, 123; 1852 Amend p 28 s 133, 134; PS 1858 c 108 s 7, 8; GS 1866 c 111 s 7, 8; GS 1878 c 111 s 7, 8; GS 1894 s 7297, 7298; RL 1905 s 5345; GS 1913 s 9187.

# MINNESOTA STATUTES 1953 ANNOTATIONS

1637

PRETRIAL PROCEDURE 630.36

## **630.26 PROCEEDINGS WHERE DISALLOWED OR CASE IS SUBMITTED ANEW.**

HISTORY. RS 1851 c 122 s 124, 125; 1852 Amend p 28 s 135; PS 1858 c 108 s 9, 10; GS 1866 c 111 s 9, 10; GS 1878 c 111 s 9, 10; GS 1894 s 7299, 7300; RL 1905 s 5346; GS 1913 s 9188.

## **PLEAS**

### **630.29 PLEA OF GUILTY**

Anything a court may do to bring about a plea of guilty in order to expedite or convenience the process of the court generally is condemned. State v Boulton, 229 M 576, 40 NW(2d) 417.

In a criminal prosecution, by entering a plea of guilty or not guilty the accused waived objection to the jurisdiction of the court over his person. State ex rel v Utecht, 233 M 434, 47 NW(2d) 99.

It is within the discretion of the trial court under section 630.29 to permit a defendant in a criminal case, at any time before judgment, to withdraw a plea of guilty and substitute therefor a plea of not guilty. Based upon the record, defendant's motion made before judgment or sentence, to withdraw his plea of guilty and enter a plea of not guilty should have been granted. State v Jones, 234 M 438, 48 NW(2d) 662.

### **630.31 PLEA OF NOT GUILTY; EVIDENCE UNDER**

HISTORY. RS 1851 c 123 s 132, 133; 1852 Amend p 28 s 136; PS 1858 c 109 s 6, 7; GS 1866 c 112 s 6, 7; GS 1878 c 112 s 6, 7; GS 1894 s 7307, 7308; RL 1905 s 5350; GS 1913 s 9192.

### **630.32 ACQUITTAL, WHEN A BAR**

Decision of trial judge after an errorless trial is not subject to review. 34 MLR 344.

## **CALENDAR**

### **630.36 ISSUES, HOW DISPOSED OF**

Where in the civic interest criminal cases should be tried before criminal cases and civil cases on the same calendar and where defendant has been given time to plead and prepare for trial, the court may, on motion of the county attorney, advance the time for trial in a criminal case. OAG Feb. 10, 1948 (141-F).

The trial judge is master of his court. Of necessity he regulates the procedure. It is desirable that rules of practice and procedure be elastic. Within reason, the trial judge sets the order of trial of cases. As to criminal cases, if the prosecuting attorney has a case in which he is holding witnesses who are ready to testify, especially if they have come from a distance, the court might consider an early setting of the case. While the court, on application of the county attorney, may advance the time in a criminal case, such advancement is governed by the law which permits the defendant the time to plead and time to prepare for trial. When under the rules of the court, or when the public interests require that a criminal case be tried before civil cases on the same calendar, the trial court will consider the public interest and act accordingly. OAG Feb. 10, 1948 (141-F).