

633.35 SECURITY FOR COSTS

There is no provision for taxation of statutory costs by a village upon appeal to the district court and an affirmance of a judgment and sentence in an action instituted for violation of a village ordinance. OAG July 23, 1948 (199-A-3).

633.36 FINES, HOW COLLECTED AND PAID OVER

A fine collected in pursuance of the penalty imposed by section 232.02 should be paid by the justice of the peace to the county treasurer under the provisions of section 633.36. OAG Jan. 18, 1951 (199-B-4).

CHAPTER 634**SPECIAL RULES, EVIDENCE, PRIVILEGES, WITNESSES****634.02 BANK NOTES**

Drawer's negligence, precipitating forgery. 37 MLR 201.

Delay in notifying prior party. 37 MLR 201.

A complaint, 12 years after conviction, that the indictment charging defendant with unlawfully procuring to be made a certain plate in the likeness of a plate used for printing by the federal government, was defective because it failed to name the persons from whom the plate was procured, and that defendant might therefore be subject to a second conviction went to a matter of form and came too late, in the absence of a showing that defendant was prejudiced. *Michener v United States*, 170 F(2d) 973.

634.04 CONFESSION, INADMISSIBLE WHEN

Admissibility of confessions obtained by enforcement officers. 36 MLR 271, 274.

Evidence of a test made upon the defendant with a so-called "lie detector" whereupon emotional disturbances of the person questioned are recorded, is not admissible on behalf of a defendant in a criminal action in support of his claim of innocence. Neither is a test made upon the defendant by a hypnotist who placed the defendant in a hypnotic trance and questioned him. Subject to certain limitations, evidence of experiments made out of court is admissible, the matter resting largely in the discretion of the trial court. *State v Pusch*, 46 NW(2d) 508.

634.05 IN PROSECUTIONS FOR LIBEL, RIGHT OF JURY

Banks and banking; libel and slander; bank's negligent dishonor of a depositor's check. 33 MLR 528.

Printed words which tend to injure the reputation of a person, expose him to contempt, degrade him in society, or lessen him in the esteem and confidence of his neighbors are, if untrue, libelous per se, though they involve no imputation of crime. The word "deficit" is broad enough to cover shortages due to defalcations and misappropriations, although it also may relate to losses occasioned by mistakes or shrinkage. Until the claimed deficit in funds for which obligor on plaintiff's bond became responsible is established as a check, published article expressing such a conclusion cannot be said to be a publication of the truth so as to bar an action for libel based thereon. *Gadach v Benton County Assn.*, 236 M 507, 53 NW(2d) 230.

634.06 SUBPOENAS; NONRESIDENTS; WITNESSES TESTIFYING IN ANOTHER STATE, SUMMONS

HISTORY. 1935 c 140 s 1; 1953 c 34 s 1.

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NOTE: In 1931 the National Conference promulgated an "act to secure the attendance of witnesses from without the state in criminal cases." This was adopted by the following 16 states: Arkansas, Idaho, Indiana, Michigan, Minnesota, Nevada, New Jersey, North Dakota, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Dakota, West Virginia, Wisconsin, and Wyoming. In 1936 the original act was rewritten and promulgated as an "act to secure the attendance of witnesses from without a state in criminal proceedings," and this has been adopted by the following 30 states: Arizona, California, Colorado, Connecticut, Delaware, Florida, New Hampshire, Iowa, Maine, Maryland, Massachusetts, Mississippi, Montana, Nebraska, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, and Wisconsin. The most important changes made by the 1936 revision were: (a) the extension of the application of the act so as to provide for the possibility of securing the attendance of witnesses in connection with the grand jury proceedings as well as in criminal cases; and (b) a provision that, when expedient a witness might be arrested, held in custody, and delivered over to an officer of the requesting state.

Where a criminal prosecution is pending in the municipal court and the testimony of the witness residing outside of the boundaries of the county is required, the county attorney may apply to the court for subpoena under sections 357.32 and 634.06. OAG March 30, 1951 (196-N).

634.07 WITNESSES FROM ANOTHER STATE TO TESTIFY IN THIS STATE

To secure attendance of out of state witnesses. 31 MLR 707.

REHABILITATION

CHAPTER 636

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636.02 STAY OF SENTENCE

HISTORY. 1889 c 154 s 4; 1901 c 102 s 1; 1903 c 270 s 4; RL 1905 s 5499; GS 1913 s 9388.

636.03 DUTIES; CONTINGENT FUND

HISTORY. 1901 c 102 s 1; 1903 c 270 s 2; 1905 c 321 s 2; RL 1905 s 5497; 1907 c 342; 1909 c 426; 1913 c 205 s 2; GS 1913 s 9386.

636.04 DUTY OF PROBATION OFFICER

HISTORY. 1899 c 154 s 3; 1903 c 270 s 3; RL 1905 s 5498; GS 1913 s 9387.

Admissibility in state courts of evidence obtained by unreasonable searches and seizures. 35 MLR 457.

Searches and seizures; the exclusionary rule. 35 MLR 458.

Searches and seizures; the admissibility rule. 35 MLR 464.

636.05 REPORT OF PROBATION OFFICER

HISTORY. 1899 c 154 s 6; 1903 c 270 s 5; RL 1905 s 5500; 1907 c 342; 1913 c 205 s 3; GS 1913 s 9389.