

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 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 orig-

inal 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)

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) 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; 1973 c 123 art 5 s 7] (10640)

628.12 REQUIREMENTS OF INDICTMENT. 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 CRIMINAL DEFAMATION. An indictment for criminal defamation need not set forth any extrinsic facts for the purpose of showing the application to the party defamed 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; 1965 c. 45 s. 70] (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 THEFT BY CLERKS, AGENTS; EVIDENCE. In any prosecution for the theft 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 theft of money to a certain amount, without specifying any particulars of such theft, and on the trial evidence may be given of any such theft 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; 1965 c. 35 s. 12] (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. Subdivision 1. 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 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.

Subd. 2. 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.

Subd. 3. 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.

Subd. 4. 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.

Subd. 5. Unless the person accused shall expressly waive the services of counsel in writing or open court, 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.

Subd. 6. 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; 1965 c. 869 s. 17] (10667)

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

"State of Minnesota
County of } ss.

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) contrary to the form of the statute in such case made and provided, the same being section, said acts constituting (state crime and degree of) and against the peace and dignity of the State of Minnesota. Dated,

County Attorney."

[1905 c 231 s 5; 1953 c 631 s 1] (10668)

GRAND JURIES

NOTE: See Chapter 593 Juries, Jurors.

628.41 GRAND JURIES; MEMBERS; QUORUM. A grand jury is a body of men or women, or both, returned at stated periods from the citizens of the county before a court of competent jurisdiction, chosen by lot, and sworn to inquire as to public offenses committed or triable in the county. It shall consist of not more than 23, nor less than 16, persons, and shall not proceed to any business unless at least 16 members are present.

[R. L. s. 5261; 1921 c. 365 s. 2] (10603)

628.42 DRAWN BY COURT ORDER. A grand jury shall be drawn and summoned for any general term of the district court when the judge of such court shall so direct by an order made and filed with the clerk of court at least 15 days before the term begins. The judge, by an order filed with the clerk, may cause a grand jury to be drawn, summoned and convened at any time during the term. In districts composed of but one county, with a population exceeding 100,000, wherein but one term is held annually, the court may prescribe by written order that a grand jury shall be drawn to attend at any specified time and for any designated period.

[R. L. s. 5262; 1909 c 221 s 2; 1923 c 257 s 1; 1955 c 255 s 1] (10604)

628.43 EXEMPTION FROM SERVICE. In addition to the persons otherwise exempted therefrom by law, the following persons shall be exempt from service as grand jurors: United States officers, judges of courts of record, commissioners of public buildings, the state auditor, treasurer, and librarian, all county and city officers, including members of school boards in cities of the first class, constables, attorneys at law, ministers of the gospel, preceptors, and teachers of high and graded schools and academies, one teacher in each common school, practicing physicians and surgeons, duly licensed embalmers, one miller to each grist mill, one ferryman to each licensed ferry, all acting telegraph operators, all members of fire companies organized according to law, all engineers actively engaged as locomotive or stationary engineers, all persons more than 60 years of age, all persons not of sound mind or discretion, and all persons subject to any bodily infirmity amounting to disability. All persons unable to speak and understand the English language, all persons whose names have been placed on any jury list at the request or suggestion, direct or indirect, of any person other than the officer charged with preparing such list, and all persons who shall have been convicted of any infamous crime, shall be disqualified from serving as grand jurors.

[R. L. s. 5263; 1915 c. 15 s. 1] (10605)

NOTE: See section 593.18.

628.44 DIRECTOR OF LANDS AND FORESTRY AND EMPLOYEES EXEMPTED FROM JURY SERVICE. The director of lands and forestry, and all persons at any time employed by him or under his direction, are hereby exempted from jury service during the period of such service or employment. No person hereby exempted shall be drawn on, or have his name placed in any list of persons eligible to jury service in any court.

[1927 c 279 s 1; 1967 c 905 s 5] (10605-1)

628.45 GRAND JURORS; PREPARATION AND DRAWING OF NAMES; FEE AND MILEAGE OF JUSTICE OF PEACE. On receiving from the jury commission the list of grand jurors selected by the jury commission, the clerk shall write the names in such list on separate pieces of paper, and fold each as nearly as

possible in the same manner, so that the name written shall not be visible, and deposit them in a box. At least 15 days before the sitting of any district court, the clerk thereof, in the presence of the sheriff or his deputy and a justice of the peace, or judge of the district court, a municipal judge, court commissioner, or probate judge in place of the justice of the peace, shall draw from the box the names of 23 persons to serve as grand jurors at such term of court. The justice of the peace shall receive \$5 for his attendance and services and for necessary travel in the performance thereof ten cents per mile. The clerk shall deliver to him a certificate therefor and this compensation and mileage shall be paid out of the county treasury.

[*R L s 5264; 1955 c 13 s 1; 1963 c 51 s 1; 1969 c 514 s 3*] (10606)

NOTE: See as to selection of jurors, section 593.13.

628.46 VENIRE; SERVICE; RETURN. At least 12 days before the first day of the court, the clerk shall issue and deliver to the sheriff a venire under the seal of the court, commanding him to summon the persons so drawn to appear before the court at or before the hour of 11 o'clock a. m., on the first day of the term thereof, to serve as grand jurors, except that when that day shall fall on a legal holiday the venire shall be made returnable on the succeeding day. The sheriff, at least ten days before the sitting thereof, shall summon the persons named in such venire to attend such court as grand jurors, by mailing a notice to each person named therein at his last known address, or leave written notice at the place of residence of such person with some person of proper age. He shall return such venire to the court at the opening thereof, specifying who were summoned, and the manner in which each was notified.

[*R L s 5265; 1913 c 451 s 1; 1965 c 683 s 1; 1967 c 518 s 1*] (10607)

628.47 NEGLECT TO ATTEND; HOW PUNISHED. When any person duly drawn and summoned to attend as a grand juror shall, without sufficient excuse, neglect to attend, the court to which he was summoned shall impose a fine upon him of not more than \$30, which shall be paid into the county treasury.

[*R. L. s. 5266*] (10608)

628.48 FAILURE TO REPORT; ATTACHMENT. Every grand and petit juror drawn and summoned to attend and serve at any term of a district court shall report to such court at the time and place designated in such summons. A failure to so report shall constitute contempt of court. On the first day of the term fixed for the attendance of either the grand or the petit jurors, or as soon thereafter as may be, the court shall ascertain whether the persons summoned to attend at such term as grand or petit jurors, as the case may be, have reported for duty as required by law; and, if it shall find a failure on the part of any person so summoned to report, it shall at once cause an attachment to issue against him, which shall be served by the sheriff or his deputy, and he shall be forthwith arrested and brought before the court to be dealt with according to law. Nothing in this section contained shall render liable to jury duty any person who is exempt by law.

[*R. L. s. 5267*] (10609)

628.49 GROUNDS OF EXCUSE; RECORD. The court shall not excuse from service upon either grand or petit jury any person duly drawn and summoned, except upon the ground that he is either physically or mentally unable or unfit, in the opinion of the court, to attend or serve as a juror, or by reason of serious sickness of some immediate member of his family, or there is a showing and the court believes that extraordinary hardship will result if one summoned is not excused; provided, in counties having more than two terms of court a year the court may, for other sufficient causes, excuse a juror from service at the term of court or period of service for which he was so drawn and summoned until a later term or period during the same year, and in such case such juror shall report for service and serve at such later term or period with the same force and effect as though he had been regularly drawn and summoned for such later term or period. The name of each person excused, with the ground thereof, shall be entered by the clerk among the proceedings of the court, preserved, and open to inspection by all parties.

[*R L s 5268; 1909 c 407 s 1; 1921 c 370 s 1; 1951 c 433 s 1; 1973 c 60 s 1*] (10610)

628.50 CONTEMPT; HOW PUNISHED. Every law in reference to contempts shall apply equally to those committed under the provisions of this chapter, and

the cases of persons charged with contempt thereunder shall be summarily disposed of by the court. Every person guilty of contempt under the provisions hereof shall be punished by imprisonment in the county jail for not more than 90 days or by fine of not more than \$500 or by both.

[R. L. s. 5269] (10611)

628.51 SPECIAL VENIRE. In case of a deficiency of grand jurors, a special venire may be issued to the proper officer to return forthwith such further number of grand jurors as shall be required, and he shall summon such persons, who shall be bound forthwith to attend and serve, unless excused by the court in the same manner and subject to the same penalties for neglect as those duly drawn by the clerk and summoned as provided by law.

[R. L. s. 5270] (10612)

628.52 CHALLENGE. Any person held to answer a charge for a public offense may challenge the panel of the grand jury or any individual grand juror before they retire, after having been sworn and charged by the court.

[R. L. s. 5271] (10613)

628.53 CAUSES OF CHALLENGE TO PANEL. A challenge to the panel may be interposed for one or more only of the following causes:

- (1) That the requisite number of ballots was not drawn from the grand jury box of the county;
- (2) That the drawing was not had in the presence of the officers designated by law;
- (3) That the drawing was not had at least 15 days before the court.

[R. L. s. 5272] (10614)

628.54 CAUSES OF CHALLENGE TO JUROR; HOW TRIED; DECISION ENTERED. A challenge to an individual grand juror may be interposed for one or more only of the following causes:

- (1) That he is less than 18 years of age;
- (2) That he is not a citizen of the United States;
- (3) That he has not resided in this state 30 days;
- (4) That he is insane;
- (5) That he is a prosecutor upon a charge against the defendant;
- (6) That he is a witness on the part of the prosecution, and has been served with process or bound by recognizance as such;
- (7) That a state of mind exists on his part in reference to the case or to either party which shall satisfy the court, in the exercise of a sound discretion, that he cannot act impartially and without prejudice to the substantial rights of the party challenging.

All challenges shall be entered upon the minutes and tried by the court, and the clerk shall enter its decision allowing or disallowing the challenge upon the minutes.

[R. L. s. 5273; 1973 c 468 s 1] (10615)

628.55 EFFECT OF ALLOWANCE OF CHALLENGE. If a challenge to the panel be allowed, the grand jury is prohibited from inquiring into the charges against the defendant by whom the challenge was interposed; if it should, notwithstanding, do so, and find an indictment against him, the court shall direct it to be set aside. If a challenge to an individual grand juror is allowed, he shall not be present at or take part in the consideration of the charge against the defendant who interposed the challenge, or the deliberations of the grand jury thereon but his place may be filled as provided in case of a deficiency of grand jurors. The grand jury shall inform the court of any violation of the provisions of this section, which shall be punished as a contempt.

[R. L. s. 5274] (10616)

628.56 FOREMAN; JURY SWORN; CHARGE OF COURT. From the persons summoned to serve as grand jurors and appearing, the court shall appoint a foreman, and it shall also appoint a foreman whenever one already appointed shall be discharged or excused before such jury is dismissed. The grand jury shall then be sworn according to law, and the same oath shall be administered to any grand juror afterwards appearing and admitted as such. The grand jury shall then be charged by the court, who, in doing so, shall read to it the provisions of sections 628.01 to 628.03, and 628.59 to 628.66, and may give it such other information as it

may deem proper as to the nature of its duties, and any charges for public offenses returned to the court, or likely to come before the grand jury; but it need not charge it respecting the violation of any particular statute unless expressly made its duty by the provisions of such statute.

[R. L. s. 5275] (10617)

628.57 JURY TO RETIRE; CLERK; DUTIES. The grand jury shall then retire to a private room and inquire into the offenses cognizable by it. It shall appoint one of its number clerk, who shall preserve the minutes of its proceedings, but not of the votes of the individual members on a presentment or indictment, or of the evidence given before them.

[R. L. s. 5276] (10618)

628.58 DISCHARGE AND ADJOURNMENT. On the completion of the business before it, the court may discharge a grand jury or adjourn its session, from time to time, during the same term. Whether the business shall be completed or not, it shall be discharged by the final adjournment of the court. In counties where six or more regular terms of court are provided for by law in a year, and where a grand jury is not required to be returned to every term of court, the court may, by an order entered upon the minutes, continue the grand jury to another subsequent term to which no grand jury is required to be returned, and at such subsequent term may again continue such grand jury to another subsequent term to which no grand jury is required; and the court, in its order of continuance, shall fix the time in such subsequent term for its meeting. A grand jury so continued shall have the same power at such subsequent term as if returned to the same term and if, for any reason, less than a quorum be then present, additional jurors may be returned forthwith to supply the deficiency.

[R. L. s. 5277] (10619)

628.59 EVIDENCE; FOR DEFENDANT. In the investigation of a charge for the purpose of indictment or presentment, the grand jury shall receive no other evidence than:

- (1) Such as is given by witnesses produced and sworn before it; and
- (2) Legal, documentary, or written evidence.

It shall receive none but legal evidence, and the best in degree to the exclusion of hearsay or secondary evidence, except when such evidence would be admissible on the trial of the accused for the offense charged. It is not bound to hear evidence for the defendant; but if, in weighing the evidence submitted to it, it have reason to believe that other evidence within its reach will explain away the charge, it shall order such evidence produced, and for that purpose may require the prosecuting attorney to issue process for the necessary witnesses. The oath to witnesses may be administered by the foreman.

[R. L. s. 5280] (10622)

628.60 JUROR COMPLAINANT, WHEN. If a member of the grand jury shall know or have reason to believe that a public offense has been committed which is triable in the county, he shall declare the same to his fellow jurors, who shall thereupon investigate the same.

[R. L. s. 5282] (10624)

628.61 MATTERS INQUIRED INTO. The grand jury shall inquire:

- (1) Into the condition of every person imprisoned on a criminal charge triable in the county, and not indicted;
- (2) Into the condition and management of the public prisons in the county; and
- (3) Into the wilful and corrupt misconduct in office of all public officers in the county.

[R. L. s. 5283] (10625)

628.62 ACCESS TO PRISONS AND RECORDS. The grand jury shall be entitled to free access at all reasonable times to the public prisons, and to the examination, without charge, of all public records in the county.

[R. L. s. 5284] (10626)

628.63 COUNTY ATTORNEY TO ATTEND; DUTIES. The grand jury may at all reasonable times ask the advice of the court, or of the county attorney, and, when required by the grand jury, the county attorney shall attend it for the purpose of framing indictments or examining witnesses in its presence; but no

county attorney, sheriff, or other person, except the grand jurors, shall be permitted to be present during the expression of its opinions or the giving of their votes upon any matter before them.

[R. L. s. 5285] (10627)

628.64 OBSERVE SECRECY. Every grand juror shall keep secret whatever he himself or any other grand juror said, or in what manner he or any other grand juror voted, on a matter before them.

[R. L. s. 5286] (10628)

628.65 MAKE DISCLOSURE, WHEN. Any grand juror may be required by any court to disclose the testimony of any witnesses examined before the grand jury, for the purpose of ascertaining whether it is consistent with that given by the witnesses before the court, or to disclose the testimony given before it by any other person, upon a charge against him for perjury in giving his testimony, or upon his trial therefor.

[R. L. s. 5287] (10629)

628.66 ACTION NOT TO BE QUESTIONED; EXCEPTION. A grand juror shall not be questioned for anything he may say or any vote he may give in the grand jury relative to a matter legally pending before the jury, except for a perjury of which he may be guilty in making an accusation, or giving testimony to his fellow jurors.

[R. L. s. 5288] (10630)

628.67 [Repealed, 1965 c 45 s 73]

628.68 DISCLOSURE OF TRANSACTIONS OF GRAND JURY. Every judge, grand juror, county attorney, clerk, or other officer, who, except in the due discharge of his official duty, shall disclose, before an accused person shall be in custody, the fact that a presentment has been made or an indictment found or ordered against him, and every grand juror who, except when lawfully required by a court or officer, shall wilfully disclose any evidence adduced before the grand jury, or anything which he himself or any other member of the grand jury said, or in what manner he or any other grand juror voted upon any matter before them, shall be guilty of a misdemeanor. Provided, however, disclosure may be made by the county attorney, by notice to the defendant or his attorney of the indictment and the time of defendant's appearance in the district court, if in the discretion of the judge such notice is sufficient to insure defendant's appearance.

[R L s 4862; 1969 c 197 s 1] (10050)