

CHAPTER 628

ACCUSATION; CHARGING INSTRUMENTS

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INDICTMENTS; COMPLAINTS

628.01 INDICTMENT.

An indictment is an accusation in writing, presented by a grand jury to a competent court, charging a person with a public offense.

History: (10620) *RL s 5278; 1979 c 233 s 27*

628.02 REPORTS BY INDICTMENT.

The grand jury shall inquire into all public offenses committed or triable in the county, and report them to the court by indictment.

History: (10621) *RL s 5279; 1979 c 233 s 28*

628.03 [Repealed, 1979 c 233 s 42]

628.04 [Repealed, 1979 c 233 s 42]

628.05 [Repealed, 1979 c 233 s 42]

628.06 [Repealed, 1979 c 233 s 42]

628.07 [Repealed, 1979 c 233 s 42]

628.08 [Repealed, 1979 c 233 s 42]

628.09 INDICTMENT PRESENTED, FILED, AND RECORDED; EFFECT.

When an indictment is found, it shall be immediately presented by the foreperson, in the presence of the grand jury, to the court, filed with the court administrator, recorded in a book kept for that purpose as soon as the arraignment shall have been made, and remain in the court administrator's office as a public record. The court administrator shall certify at the bottom of the record that the court administrator 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 original indictment has disappeared from the files of the court after the recording thereof.

History: (10638) *RL s 5296; 1986 c 444; ISp1986 c 3 art 1 s 82*

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.

History: (10639) *RL s 5297*

628.11 [Repealed, 1979 c 233 s 42]

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.

History: (10641) *RL s 5299*

628.13 FICTITIOUS NAME.

When a defendant shall be indicted by a fictitious or erroneous name, and in any stage of the proceedings the true name shall be discovered, it may be inserted in the subsequent proceedings, referring to the fact of the defendant's being indicted by the name mentioned in the indictment.

History: (10642) *RL s 5300; 1986 c 444*

628.14 [Repealed, 1979 c 233 s 42]

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.

History: (10644) *RL s 5302*

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.

History: (10645) *RL s 5303*

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.

History: (10646) *RL s 5304*

628.18 TESTS OF SUFFICIENCY.

The indictment shall be sufficient if it is drafted in accordance with the provisions of rule 17.02 of the Rules of Criminal Procedure and 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 the name cannot be discovered, is described by a fictitious name, with the statement that the defendant has refused to discover the 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.

History: (10647) *RL s 5305; 1979 c 233 s 29; 1986 c 444*

628.19 [Repealed, 1979 c 233 s 42]**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.

History: (10649) *RL s 5307*

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.

History: (10650) *RL s 5308*

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 the party defamed, and the fact that it was so published shall be established on the trial.

History: (10651) *RL s 5309; 1965 c 45 s 70; 1986 c 444*

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.

History: (10652) *RL s 5310*

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.

History: (10653) *RL s 5311*

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.

History: (10654) *RL s 5312*

628.26 LIMITATIONS.

(a) Indictments or complaints for any crime resulting in the death of the victim may be found or made at any time after the death of the person killed.

(b) Indictments or complaints for a violation of section 609.25 may be found or made at any time after the commission of the offense.

(c) Indictments or complaints for violation of section 609.282 may be found or made at any time after the commission of the offense if the victim was under the age of 18 at the time of the offense.

(d) Indictments or complaints for violation of section 609.282 where the victim was 18 years of age or older at the time of the offense, or 609.42, subdivision 1, clause (1) or (2), shall be found or made and filed in the proper court within six years after the commission of the offense.

(e) Indictments or complaints for violation of sections 609.322 and 609.342 to 609.345, if the victim was under the age of 18 years at the time the offense was committed, shall be found or made and filed in the proper court within the later of nine years after the commission of the offense or three years after the offense was reported to law enforcement authorities.

(f) Notwithstanding the limitations in paragraph (e), indictments or complaints for violation of sections 609.322 and 609.342 to 609.344 may be found or made and filed in the proper court at any time after commission of the offense, if physical evidence is collected and preserved that is capable of being tested for its DNA characteristics. If this evidence is not collected and preserved and the victim was 18 years old or older at the time of the offense, the prosecution must be commenced within nine years after the commission of the offense.

(g) Indictments or complaints for violation of sections 609.466 and 609.52, subdivision 2, clause (3), item (iii), shall be found or made and filed in the proper court within six years after the commission of the offense.

(h) Indictments or complaints for violation of section 609.2335, 609.52, subdivision 2, clause (3), items (i) and (ii), (4), (15), or (16), 609.631, or 609.821, where the value of the property or services stolen is more than \$35,000, or for violation of section 609.527 where the offense involves eight or more direct victims or the total combined loss to the direct and indirect victims is more than \$35,000, shall be found or made and filed in the proper court within five years after the commission of the offense.

(i) Except for violations relating to false material statements, representations or omissions, indictments or complaints for violations of section 609.671 shall be found or made and filed in the proper court within five years after the commission of the offense.

(j) Indictments or complaints for violation of sections 609.561 to 609.563, shall be found or made and filed in the proper court within five years after the commission of the offense.

(k) In all other cases, indictments or complaints shall be found or made and filed in the proper court within three years after the commission of the offense.

(l) The limitations periods contained in this section shall exclude any period of time during which the defendant was not an inhabitant of or usually resident within this state.

(m) The limitations periods contained in this section for an offense shall not include any period during which the alleged offender participated under a written agreement in a pretrial diversion program relating to that offense.

(n) The limitations periods contained in this section shall not include any period of time during which physical evidence relating to the offense was undergoing DNA analysis, as defined in section 299C.155,

unless the defendant demonstrates that the prosecuting or law enforcement agency purposefully delayed the DNA analysis process in order to gain an unfair advantage.

History: (10655) *RL s 5313; 1976 c 184 s 1; 1982 c 432 s 1; 1984 c 419 s 2; 1984 c 496 s 1; 1986 c 351 s 21; 1Sp1986 c 3 art 1 s 78; 1987 c 254 s 12; 1987 c 267 s 4; 1988 c 712 s 20; 1989 c 290 art 4 s 17; 1991 c 232 s 3; 1993 c 326 art 4 s 36; art 5 s 12; 1994 c 636 art 2 s 64; 1995 c 226 art 2 s 35; 2000 c 311 art 4 s 9; 2001 c 7 s 89; 2005 c 136 art 17 s 52; 2009 c 59 art 5 s 20; 2009 c 119 s 18; 2015 c 65 art 6 s 21; 2016 c 121 s 1*

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.

History: (10662) *RL s 5320; 1965 c 35 s 12*

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.

History: (10663) *RL s 5321*

628.29 [Repealed, 1979 c 233 s 42]

628.30 [Repealed, 1979 c 233 s 42]

628.31 [Repealed, 1979 c 233 s 42]

628.32 [Repealed, 1979 c 233 s 42]

628.33 [Repealed, 1979 c 233 s 42]

GRAND JURIES

628.41 GRAND JURIES; MEMBERS; QUORUM; COMPENSATION.

Subdivision 1. **Definition.** A grand jury is a body of persons returned at stated periods from the citizens of the county, or counties as provided in subdivision 2, before a court of competent jurisdiction, chosen by lot, and sworn to inquire as to public offenses committed or triable in the county or counties. 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.

Subd. 2. **Venue.** If subject matter of the grand jury inquiry concerns activity, events, or other matters in more than one county, a grand jury may be selected, in reasonable proportion, from the counties in which the activity, events, or other matters occurred. A judge of the district court from any judicial district which includes one of the counties involved in an inquiry may convene a multicounty grand jury, without regard to judicial district boundaries, and may designate which county attorney or county attorneys shall attend upon the grand jury. The judge shall designate where a grand jury drawn from more than one county shall sit.

Subd. 3. **Designation of venue.** All indictments, reports or other returns returned by a grand jury drawn from more than one county shall be returned without any designation of venue. Thereupon, the judge ordering the impaneling of the grand jury shall designate the county of venue for purposes of trial.

Subd. 4. **Designation of prosecuting authority.** If a grand jury drawn from more than one county was impaneled pursuant to the request of a county attorney, that county attorney shall prosecute indictments returned thereby, except that the county attorney of the county in which venue was designated pursuant to subdivision 3 may file a written request to prosecute with the judge impaneling the grand jury within 15 days, in which case the judge shall designate the prosecuting authority. In all other cases, the prosecuting authority shall be designated by the judge impaneling the grand jury.

Subd. 5. **Cost apportionment.** The costs of a grand jury drawn from more than one county shall be apportioned between the counties from which the grand jury was drawn as may be ordered by the judge impaneling the grand jury.

Subd. 6. **Compensation.** Members of grand juries drawn from more than one county shall be compensated as provided in section 593.48. In addition, grand jurors residing more than 50 miles from the place where the grand jury sits shall be reimbursed for expenses actually incurred for meals and lodging, not to exceed \$35 per day.

History: (10603) *RL s 5261; 1921 c 365 s 2; 1977 c 208 s 1; 1980 c 509 s 182*

628.42 [Repealed, 1977 c 286 s 21]

628.43 [Repealed, 1977 c 286 s 21]

628.44 [Repealed, 1977 c 286 s 21]

628.45 [Repealed, 1977 c 286 s 21]

628.46 [Repealed, 1977 c 286 s 21]

628.47 [Repealed, 1977 c 286 s 21]

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 the juror, which shall be served by the sheriff or a deputy, and 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.

History: (10609) *RL s 5267; 1986 c 444*

628.49 [Repealed, 1977 c 286 s 21]

628.50 [Repealed, 1977 c 286 s 21]

628.51 [Repealed, 1977 c 286 s 21]

628.52 [Repealed, 1977 c 286 s 21]

628.53 [Repealed, 1977 c 286 s 21]

628.54 CAUSES OF OBJECTION TO JUROR; HOW TRIED; DECISION ENTERED.

An objection to an individual grand juror may be based on the cause that the grand juror:

- (1) is less than 18 years of age;
- (2) is not a citizen of the United States;
- (3) has not resided in this state 30 days;
- (4) lacks mental capacity;
- (5) is a prosecutor upon a charge against the defendant;

(6) is a witness on the part of the prosecution, and has been served with process or bound by recognizance as such; or

(7) is of a state of mind in reference to the case or to either party which shall satisfy the court, in the exercise of a sound discretion, that the juror cannot act impartially and without prejudice to the substantial rights of the party objecting.

History: (10615) *RL s 5273; 1973 c 468 s 1; 1979 c 233 s 30; 1986 c 444; 2013 c 59 art 3 s 19*

628.55 [Repealed, 1979 c 233 s 42]

628.56 FOREPERSON; JURY SWORN; CHARGE BY COURT.

From the persons summoned to serve as grand jurors and appearing, the court shall appoint a foreperson, and it shall also appoint a foreperson 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, 628.02, 628.60 to 628.66, and rules 18.05, subdivisions 1 and 2, and 18.07 of the Rules of Criminal Procedure, 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.

History: (10617) *RL s 5275; 1Sp1981 c 4 art 1 s 184; 1986 c 444; 2011 c 76 art 3 s 3*

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 an indictment.

History: (10618) *RL s 5276; 1979 c 233 s 31*

628.58 [Repealed, 1979 c 233 s 42]

628.59 [Repealed, 1979 c 233 s 42]

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, the member shall declare the same to the other jurors, who shall thereupon investigate the same.

History: (10624) *RL s 5282; 1986 c 444*

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 willful and corrupt misconduct in office of all public officers in the county.

History: (10625) *RL s 5283*

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.

History: (10626) *RL s 5284*

628.63 GRAND JURY; WHO MAY BE PRESENT; 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 the county attorney shall attend it for the purpose of framing indictments or examining witnesses in its presence.

The persons specified in rule 18.03 of the Rules of Criminal Procedure may, subject to the conditions specified in that rule, be present before the grand jury when it is in session, but no person other than the jurors may be present while the grand jury is deliberating or voting.

History: (10627) *RL s 5285; 1979 c 233 s 32; 2011 c 76 art 3 s 4*

628.64 [Repealed, 1979 c 233 s 42]

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 the person for perjury in giving the testimony, or upon the trial therefor.

History: (10629) *RL s 5287; 1986 c 444*

628.66 ACTION NOT TO BE QUESTIONED; EXCEPTION.

A grand juror shall not be questioned for anything the juror may say or any vote the juror may give in the grand jury relative to a matter legally pending before the jury, except for a perjury of which the juror may be guilty in making an accusation, or giving testimony to the other jurors.

History: (10630) *RL s 5288; 1986 c 444*

628.67 [Repealed, 1965 c 45 s 73]

628.68 DISCLOSURE OF TRANSACTIONS OF GRAND JURY.

Except as otherwise provided in rule 18.07 of the Rules of Criminal Procedure, every judge, grand juror, county attorney, court administrator, or other officer, who, except in the due discharge of official duty, shall disclose, before an accused person shall be in custody, the fact that an indictment found or ordered against the accused person, and every grand juror who, except when lawfully required by a court or officer, shall willfully disclose any evidence adduced before the grand jury, or anything which the juror or any other member of the grand jury said, or in what manner any grand juror voted upon any matter before them, shall be guilty of a misdemeanor. Disclosure may be made by the county attorney, by notice to the defendant or the defendant's attorney of the indictment and the time of defendant's appearance in the district court, if in the discretion of the judge notice is sufficient to insure defendant's appearance.

History: (10050) *RL s 4862; 1969 c 197 s 1; 1979 c 233 s 33; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 2011 c 76 art 3 s 5*

PRETRIAL DIVERSION**628.69 PRETRIAL DIVERSION PROGRAM FOR WRITERS OF DISHONORED CHECKS.**

Subdivision 1. **Definitions.** As used in this section:

(1) a person is an "offender" if the person is charged with, or probable cause exists to arrest or charge the person with, a violation of section 609.535, but the person has not yet entered a plea in the proceedings;

(2) "pretrial diversion" means the decision of a prosecutor to refer an offender to a diversion program on condition that the criminal charges against the offender will be dismissed after a specified period of time, or the case will not be charged, if the offender successfully completes the program; and

(3) "prosecutor" means a city or county attorney.

Subd. 2. **Establishment of program.** A prosecutor may establish a pretrial diversion program for offenders. The program may be conducted by the prosecutor or by a private entity under contract with the prosecutor.

Subd. 3. **Diversion of offender.** In determining whether to accept an offender for pretrial diversion, the prosecutor shall consider:

- (1) the value of the dishonored check or checks;
- (2) whether the offender has a criminal record or has previously been diverted under this section or any other diversion program;
- (3) the number of dishonored check grievances against the offender previously received by the prosecutor;
- (4) whether there are other dishonored check grievances currently pending against the offender;
- (5) the strength of the evidence, if any, of intent to defraud the victim; and
- (6) the wishes of the victim regarding placement in the program.

Subd. 4. **Program components.** (a) At a minimum, the pretrial diversion program must require offenders to:

- (1) successfully complete an appropriate educational class or classes at their own expense which includes information on writing checks and managing money;
- (2) make full restitution to the victim of the offense; and
- (3) pay appropriate penalties under section 604.113, subdivision 2, paragraph (a).

(b) If the prosecutor determines that requiring an offender to pay for the educational class described in paragraph (a), clause (1), would result in an economic hardship to the offender or the offender's family, the prosecutor may waive the requirement.

Subd. 5. **No civil liability.** A victim of an offender who successfully completes a pretrial diversion program under this section may not recover the penalties described in section 604.113, subdivision 2, paragraph (b), if the penalties relate to the offense resulting in completion of the diversion program.

Subd. 6. **Reporting of data to Bureau of Criminal Apprehension.** Every county attorney who has established a pretrial diversion program under this section shall report the following information to the Bureau of Criminal Apprehension:

- (1) the name and date of birth of each diversion program participant, and any other identifying information the superintendent considers necessary;
- (2) the date on which the individual began to participate in the diversion program;
- (3) the date on which the individual is expected to complete the diversion program;
- (4) the date on which the individual successfully completed the diversion program, where applicable; and
- (5) the date on which the individual was removed from the diversion program for failure to successfully complete the individual's goals, where applicable.

The superintendent shall cause the information described in this subdivision to be entered into and maintained in the criminal history file as defined in section 13.87.

Subd. 7. **Reports.** By January 15 of each odd-numbered year, each prosecutor shall report to the Supreme Court and the chairs of the senate and house of representatives committees having jurisdiction over criminal justice policy on the operation of any pretrial diversion program established under this section. The report must include a description of the program, the number of offenders participating in the program, the number and characteristics of the offenders who successfully complete the program, the number and characteristics of the offenders who fail to complete the program, and an evaluation of the program's effect on the operation of the criminal justice system within the prosecutor's jurisdiction.

History: *1999 c 218 s 6; 2009 c 59 art 6 s 24*