

GENERAL STATUTES

OF THE

STATE OF MINNESOTA,

IN FORCE JANUARY, 1891.

VOL. 2.

CONTAINING ALL THE LAW OF A GENERAL NATURE NOW IN FORCE AND NOT IN
VOL. 1, THE SAME BEING THE CODE OF CIVIL PROCEDURE AND ALL REME-
DIAL LAW, THE PROBATE CODE, THE PENAL CODE AND THE CRIM-
INAL PROCEDURE, THE CONSTITUTIONS AND ORGANIC ACTS.

COMPILED AND ANNOTATED

BY

JNO. F. KELLY,

OF THE ST. PAUL BAR.

SECOND EDITION.

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1891.

CHAPTER 93 (G. S. ch. 107).

GRAND-JURIES.

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CONSTITUTED.

SEC. 6651. **How.**— A grand-jury is a body of men, not less than thirteen nor more than fifteen in number, returned at stated periods from the citizens of the county, before a court of competent jurisdiction, chosen by lot, and sworn to inquire of public offences committed or triable in the county.

G. S. ch. 107, § 1, as amended 1889, ch. 98, § 1 (March 22); 1889, ch. 110. Approved April 15th. First amendment struck out "not less than sixteen nor more than twenty-three" and inserted "The grand-jury is a body of eleven men," and second amendment, "not less than thirteen nor more than fifteen."

SEC. 6652. **Number to be sworn.**— Not more than fifteen, nor less than thirteen persons, can be sworn on a grand jury, nor can a grand jury proceed to any business unless thirteen members at least are present.

G. S. ch. 107, § 12, as amended 1889, ch. 98; 1889, ch. 110. Acts 1889, ch. 98, struck out twenty-three and sixteen and inserted eleven and nine, and 1889, ch. 110, increased number to fifteen and thirteen.

SEC. 6653. **Qualification.**— All persons who are qualified electors of this state are liable to be drawn as grand-jurors, except as hereinafter provided.

G. S. ch. 107, § 3.

SEC. 6654. **Limitation.**— No person shall be drawn as a grand or petit juror, nor shall any person be competent to serve as either a grand or petit juror at more than one term of the district court in any one year.

1889, ch. 68: "An act to further define the qualifications of jurors." Approved March 20, 1889.

SEC. 6655. **Exemption from.**— The following persons are exempt from service as grand-jurors: All members and officers of the legislature while in session, all United States officers, all judges of courts of record, commissioners of public buildings, auditor and treasurer of state, state librarian, clerks of courts, registers of deeds, sheriffs and their deputies, coroners, constables, attorneys and counselors at law, ministers of the gospel, preceptors and teachers of incorporated academies, one teacher in each common school, practicing physicians and surgeons, one miller of each grist mill, one ferryman to each licensed ferry, all acting telegraph operators, all members of companies of firemen organized according to law, all persons of more than sixty years of age, all persons not of sound mind or discretion, persons subject to any bodily infirmity amounting to disability, all persons unable to speak and understand the English language; all persons are disqualified from serving as grand-jurors who have been convicted of any infamous crime.

G. S. ch. 107, § 4, as amended 1873, ch. 72; 1887, ch. 186; 1889, ch. 51; 1889, ch. 74; 1889, ch. 83. Approved April 6th. Amendment 1873 inserted telegraph operators; 1887, ch. 186, added postmasters and deputies; 1889, ch. 51, added members, officers and employees of legislature during sessions; 1889, ch. 74, inserted all engineers having charge of stationary and locomotive engines, and all undertakers and assistants; 1889, ch. 83, eliminated the amendments of 1887, ch. 186, and 1889, ch. 74, and added "all persons unable to speak and understand the English language."

SUMMONING.

SEC. 6656. **When.**— A grand-jury shall be drawn for every term of the district court in each of the organized counties of this state,† provided, however, that whenever it shall be made to appear to the judge of said court that there are no matters to be presented to such grand-jury not properly cognizable before a justice of the peace, in counties containing twenty-five thousand or less inhabitants, the said judge may, in his discretion, by order, direct that no grand-jury be summoned for such term;* provided, further, that in counties containing less than fifteen thousand inhabitants no such grand-jury shall be summoned for any such term of court unless the judge of said court shall at least fifteen days before the first day of such term, make and file with the clerk of said court, an order directing the summoning of such grand-jury.* The census, state and national, as the case may be, next preceding any such term of said court shall be resorted to in determining the number of inhabitants in any county; and, provided further, that nothing herein contained shall be so construed as to prevent the issuance of a special venire for a grand-jury as now provided by law.

G. S. ch. 107, § 2, as amended 1877, ch. 37; 1889, ch. 84. Approved April 24th. Below † is act 1877, except between * *, which is act 1889.

SEC. 6657. **How drawn.**— On receiving the list of grand-jurors from the county auditor, as selected by the board of county commissioners, the clerk of the district court shall write the names of the persons contained therein on separate pieces of paper, and fold up such pieces of paper, each in the same manner as near as possible, so that the name written thereon shall not be visible, and shall deposit the same in a box, to be drawn as hereinafter provided.

G. S. ch. 107, § 5. 23 M. 209.

SEC. 6658. **Same.**— At least fifteen 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, shall proceed to draw the names of fifteen persons from the box, to serve as grand-jurors at such court.

G. S. ch. 107, § 6, as amended 1889, ch. 98; 1889, ch. 110. Approved April 15th. First amendment struck out "twenty-three" and inserted "eleven." Second amendment struck out "eleven" and inserted "fifteen."

SEC. 6659. **Issuance of venire.**— Said clerk shall, twelve days at least before the first day of the court, 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 said court, at or before the hour of eleven o'clock A. M., on the first day of the term thereof, to serve as grand-jurors.

G. S. ch. 107, § 7.

SEC. 6660. **Service and return of venire.**— The sheriff shall summon the persons so named in the venire to attend such court as grand-jurors, at least six days before the sitting thereof, by giving personal notice to each person, or by leaving a written notice at his place of residence, with some person of proper age. He shall return such venire to the court, at the opening thereof, specifying those who were summoned, and the manner in which each person was notified.

G. S. ch. 107, § 8. 36 M. 194.

SEC. 6661. **Failure to attend.**— If any person duly drawn and summoned to attend as a grand-juror neglects to attend, without sufficient excuse, he shall pay a fine not exceeding thirty dollars, which shall be imposed by the court to which the juror was summoned, and shall be paid into the county treasury.

G. S. ch. 107, § 9.

SEC. 6662. **Contempt.**— All grand and petit jurors drawn and summoned to attend and serve at any and all general and special terms of the district

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courts of this state shall report to the court wherein drawn at the time and place designated in the summons. A failure to so report upon the part of any person duly drawn and summoned to attend as a grand or petit juror at any general or special term of said court shall constitute a contempt of the court upon the part of the person so failing.

1883, ch. 103, § 1: "An act relating to jurors." Approved March 2, 1883.

SEC. 6663. **Same.**—The law in reference to contempts which now is or hereafter may be in force, in so far as may be necessary to carry this act into effect, shall apply equally to contempts committed under the provisions of this act.

1883, ch. 103, § 5.

SEC. 6664. **Attachments for contempt.**—On the first day of the term fixed for the attendance of either the grand or petit jurors, or as soon thereafter as may be, the court shall ascertain whether the persons summoned to attend at said term as grand or petit jurors, as the case may be, have reported to the court for duty as required by law. If the court shall ascertain that there is a failure upon the part of any person or persons duly summoned as a juror or as jurors to report for duty as required by law, attachments shall at once issue under the direction of the court against the person of the delinquent or delinquents. The attachments issued as hereinbefore provided shall be served by the sheriff or his deputy, and the person named therein shall be forthwith arrested and brought before the court, then to be dealt with according to law; *provided*, that this act shall not be construed to render liable to jury duty any person or class of persons who now are or hereafter may be exempted from jury duty by any law of this state or of the United States.

1883, ch. 103, § 2.

SEC. 6665. **Excuse from service.**—The court shall not excuse from service upon either the grand or petit jury any person duly drawn and summoned to serve thereon, except upon the ground that the person so summoned and seeking to be excused 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 the family of the person so summoned.

1883, ch. 103, § 3.

SEC. 6666. **Entry of excuse.**—The name of each person drawn and summoned to serve as a juror, if he be by the court for any cause excused from such service, shall be entered by the clerk among the proceedings of the court, and under the direction of the court the clerk shall also make an entry of the grounds upon which the excuse is based, and the record, when so much of [made up] shall be preserved and open to inspection by all persons.

1883, ch. 103, § 4.

SEC. 6667. **Punishment for contempt.**—Persons charged with contempt of court under the provisions of this act shall be dealt with and their cases disposed of summarily by the court, and each person found guilty of a contempt under the provisions hereof shall be punished by fine in a sum not exceeding five hundred dollars, or by imprisonment in the county jail for a term not exceeding ninety days, or by both such fine and imprisonment in the discretion of the court.

1883, ch. 103, § 6.

SEC. 6668. **Deficiency of grand-jurors.**—In case of a deficiency of grand-jurors in any court, writs of *venire facias* may be issued to the proper officer, to return forthwith such further number of grand-jurors as are required.

G. S. ch. 107, § 10. 16 M. 313; 17 M. 76; 23 M. 209.

SEC. 6669. Additional jurors bound to attend.—The proper officer shall summon such persons accordingly, 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 persons duly drawn by the clerk of the district court, and summoned as herein provided.

G. S. ch. 107, § 11.

IMPANELING.

SEC. 6670. Court appoint foreman.—From the persons summoned to serve as grand-jurors and appearing, the court shall appoint a foreman. The court shall also appoint a foreman, when a person already appointed is discharged or excused before the grand-jury are dismissed.

G. S. ch. 107, § 21.

SEC. 6671. Jury to be sworn.—The grand-jury shall then be sworn according to law,* and if, afterward, any grand-juror appears and is admitted as such, the same oath shall be administered to him.

G. S. ch. 107, § 22, as amended 1889, ch. 98, § 5; 1889, ch. 110, § 5. Acts 1889, ch. 98, struck out all after *, and 1889, ch. 110, restored it. 16 M. 313.

SEC. 6672. To be charged by court.—The grand-jury, being impaneled and sworn, shall be charged by the court; in doing so, the court shall read to them the provisions of this chapter, from section twenty-seven to section forty-two, both inclusive, and give them such information as it may deem proper as to the nature of their duties, and any charges for public offences returned to the court, or likely to come before the grand-jury; the court need not, however, charge them respecting the violation of a particular statute, unless made expressly its duty to do so by the provisions of such statute.

G. S. ch. 107, § 23.

SEC. 6673. Clerk of jury.—They shall appoint one of their number clerk, who shall preserve the minutes of their proceedings, but shall not preserve a minute of the votes of the individual members on a presentment or indictment, or of the evidence given before them.

G. S. ch. 107, § 25, as amended 1871, ch. 59. Amendment changed the phraseology.

SEC. 6674. County attorney to attend.—The grand-jury may, at all reasonable times, ask the advice of the court, or of the county attorney; and, whenever required by the grand-jury, the county attorney of the county shall attend them for the purpose of framing indictments, or examining witnesses in their presence; but no county attorney, sheriff or other person, except the grand-jurors, shall be permitted to be present during the expression of their opinions, or the giving of their votes, upon any matter before them.

G. S. ch. 107, § 39.

CHALLENGING.

SEC. 6675. Challenge of panel or juror.—A person held to answer a charge for a public offence may challenge the panel of the grand-jury, or any individual grand-juror, before they retire, after being sworn and charged by the court.

G. S. ch. 107, § 13. 3 M. 444; 4 M. 345; 22 M. 423.

SEC. 6676. Causes of challenge to panel.—A challenge to the panel may be interposed for one or more of the following causes only:

First. That the requisite number of ballots was not drawn from the grand jury box of the county;

Second. That the drawing was not had in the presence of the officer designated in section six of this chapter;

Third. That the drawing was not had at least fifteen days before the court.

G. S. ch. 107, § 14. 23 M. 209.

SEC. 6677. **Causes of challenge to juror.**—A challenge to an individual grand-juror may be interposed for one or more of the following causes only:

- First. That he is a minor;
- Second. That he is an alien, and has not resided in the United States one year, and in this state four months, and has not declared his intention to become a citizen according to the laws of the United States;
- Third. That he is insane;
- Fourth. That he is a prosecutor upon a charge against the defendant;
- Fifth. That he is a witness on the part of the prosecution, and has been served with process, or bound by a recognizance as such;
- Sixth. That a state of mind exists on his part in reference to the case, or to either party, which satisfies 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.

G. S. ch. 107, § 15.

SEC. 6678. **Same—Tried by court.**—The challenges mentioned in the last three sections, shall be entered upon the minutes, and tried by the court.

G. S. ch. 107, § 16.

SEC. 6679. **Decision of court.**—The court shall allow or disallow the challenge, and the clerk shall enter its decision upon the minutes.

G. S. ch. 107, § 17.

SEC. 6680. **Allowance of challenge to panel.**—If a challenge to the panel is allowed, the grand-jury are prohibited from inquiring into the charges against the defendant by whom the challenge was interposed; if they should notwithstanding do so, and find an indictment against him, the court shall direct it to be set aside.

G. S. ch. 107, § 18.

SEC. 6681. **Allowance of challenge to juror.**—If a challenge to an individual grand juror is allowed he can not be present at or take part in the consideration of the charge against the defendant who interposed the challenge, or the deliberation of the grand jury thereon,* but his place may be filled as provided for in case of a deficiency of grand jurors in section ten of said chapter.

G. S. ch. 107, § 19, as amended 1889, ch. 98, § 4; 1889, ch. 110, § 4. Amendment below *, which was added by 1889, ch. 98.

SEC. 6682. **Same—Penalty for ignoring.**—The grand-jury shall inform the court of a violation of the provisions of the last section, and it is punishable by the court as a contempt.

G. S. ch. 107, § 20.

POWERS AND DUTIES.

SEC. 6683. **Inquire into offences.**—The grand-jury shall then retire to a private room, and inquire into the offences cognizable by them.

G. S. ch. 107, § 24.

SEC. 6684. **General powers.**—The grand-jury have power, and it is their duty, to inquire into all public offences, committed or triable in the county, and to present them to the court, either by presentment or indictment, as provided in the next [two] section.

G. S. ch. 107, § 27. 26 M. 149.

SEC. 6685. **Indictment—Presentment.**—Upon such inquiry, if, from the evidence, the grand-jury believe any person charged with a public offence is guilty of the same or any other public offence, they shall find an indictment against him; but if they only believe that he is probably guilty of such offence, they shall proceed by presentment.

G. S. ch. 107, § 28.

SEC. 6686. Indictment defined.—An indictment is an accusation in writing, presented by a grand-jury to a competent court, charging a person with a public offence.

G. S. ch. 107, § 29.

SEC. 6687. Presentment defined.—A presentment is an informal statement in writing by the grand-jury, representing to the court that a public offence has been committed, which is triable in the county, and that there is reasonable ground for believing that a particular individual, named or described has committed it.

G. S. ch. 107, § 30.

SEC. 6688. Number to indict.—No indictment can be found without the concurrence of at least twelve grand-jurors; when so found it shall be indorsed "a true bill" and the indorsement signed by the foreman of the grand jury whether he is one of the twelve so concurring or not.

G. S. ch. 107, § 57, as amended 1889, ch. 98, § 7; 1889, ch. 110, § 7. Acts 1889, ch. 98, struck out twelve and inserted seven; and acts 1889, ch. 110, restored number to twelve.

SEC. 6689. Presentment.—No presentment can be found without the concurrence of at least twelve grand-jurors. When so found, it shall be signed by the foreman, whether he is one of the twelve so concurring or not.

G. S. ch. 107, § 43, as amended 1889, ch. 98, § 6; 1889, ch. 110, § 6. Acts 1889, ch. 98, struck out twelve and inserted seven; and acts 1889, ch. 110, restored the number to twelve.

SEC. 6690. Same.—The presentment when found, shall be presented by the foreman, in the presence of the grand-jury, to the court, and be filed with the clerk.

G. S. ch. 107, § 44.

SEC. 6691. Same.—When the grand-jury make a presentment, they shall return to the court therewith the depositions of the witnesses examined before them, or the minutes, or a copy thereof, of the testimony on which the presentment is made.

G. S. ch. 107, § 45.

SEC. 6692. Depositions — Inspection.—When the depositions are returned, as provided in the last section, they shall be filed with the clerk of the court, and cannot be inspected by any person except the court, the attorney-general, the clerk and his deputies or assistants, and the county attorney, until after the arrest of the defendant.

G. S. ch. 107, § 46.

SEC. 6693. Violation of last section.—A violation of the provisions of the last section is punishable as a contempt and as a misdemeanor.

G. S. ch. 107, § 47.

SEC. 6694. Defendant have copy of depositions.—After the arrest of the defendant, the clerk shall, on payment of his fees, within two days after demand, furnish a copy of the depositions to the defendant or his counsel.

G. S. ch. 107, § 48.

SEC. 6695. Foreman administer oaths.—The foreman may administer an oath to any witness appearing before the grand jury.

G. S. ch. 107, § 31.

SEC. 6696. Evidence receivable.—In the investigation of a charge, for the purpose of either presentment or indictment, the grand-jury can receive no other evidence than:

First. Such as is given by witnesses produced and sworn before them; or
Second. Legal, documentary or written evidence.

G. S. ch. 107, § 32.

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SEC. 6697. **When hearsay admissible.**—The grand-jury can receive none but legal evidence, and the best evidence 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 offence charged.

G. S. ch. 107, § 33.

SEC. 6698. **Evidence for defendant.**—The grand-jury is not bound to hear evidence for the defendant; but it is their duty to weigh all the evidence submitted to them; and when they have reason to believe that other evidence within their reach will explain away the charge, they shall order such evidence to be produced, and for that purpose may require the district attorney to issue process for the witnesses.

G. S. ch. 107, § 34.

SEC. 6699. **Evidence sufficient.**—The grand-jury ought to find an indictment when all the evidence taken together is such as, in their judgment, would, if unexplained or uncontradicted, warrant a conviction by the trial jury.

G. S. ch. 107, § 35.

SEC. 6700. **When charge to be dismissed.**—If twelve grand-jurors do not concur in finding an indictment or presentment, the charge shall be dismissed. The dismissal of the charge does not, however, prevent its being again submitted to a grand-jury as often as the court directs.

G. S. ch. 107, § 58.

SEC. 6701. **Subjects of inquiry.**—The grand-jury shall inquire:

First. Into the condition of every person imprisoned on a criminal charge triable in the county, and not indicted;

Second. Into the condition and management of the public prisons in the county; and,

Third. Into the wilful and corrupt misconduct in office of public officers of every description in the county.

G. S. ch. 107, § 37.

SEC. 6702. **Access to prisons and records.**—They are 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.

G. S. ch. 107, § 38.

SEC. 6703. **Duty of juror.**—If a member of the grand-jury knows, or has reason to believe, that a public offence has been committed which is triable in the county, he shall declare the same to his fellow-jurors, who shall thereupon investigate the same.

G. S. ch. 107, § 36.

SEC. 6704. **Jurors to 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.

G. S. ch. 107, § 40.

SEC. 6705. **Juror required to make disclosure.**—Any grand-juror may, however, 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 them by any other person, upon a charge against him for perjury in giving his testimony, or upon his trial therefor.

G. S. ch. 107, § 41. 27 M. 283.

SEC. 6706. **Not to disclose finding.**—No grand-juror, county attorney, clerk, judge, or other officer, can disclose the fact that a presentment has been made, or an indictment found, for a felony or other crime, until the defendant

is arrested; but this prohibition does not extend to a disclosure by the issuing or in the execution of a warrant to arrest the defendant.

G. S. ch. 107, § 49.

SEC. 6707. Violation of last section.— A violation of the provisions of this last section is punishable as a contempt and as a misdemeanor.

G. S. ch. 107, § 50.

SEC. 6708. Action not to be questioned, when.— A grand-juror cannot be questioned for anything he says or any vote he gives in the grand-jury, relative to a matter legally pending before the jury, except for perjury of which he may be guilty in making an accusation, or giving testimony to his fellow jurors.

G. S. ch. 107, § 42.

SEC. 6709. Names of witnesses to be on indictment.— 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 is presented to the court.

G. S. ch. 107, § 59.

SEC. 6710. Filing of indictment.— Whenever an indictment is found it shall be immediately presented by the foreman, in the presence of the grand-jury, to the court, and filed with the clerk,* to be recorded in a book kept for that purpose, as soon as the arraignment shall have been made,* the same to remain in the office of said clerk as a public record.†

The clerk shall certify at the bottom of the record that he has compared the same with the original indictment, and that it is a true copy thereof.

The record of such indictment shall have all the force and be of the same effect for all the purposes required as the original indictment, and although such indictment should be lost, mislaid, or should for any reason not be before the court, any proceeding may be had upon the record aforesaid, in the same manner and with the same effect as if the original indictment was before the court; and in such case no trial, conviction or sentence shall be invalid by reason of the fact that such original indictment has disappeared from the files of the court, in such case, after the recording of such indictment.

G. S. ch. 107, § 60, as amended 1891, ch. 47. Approved February 9th. Amendment between * * and below †.

SEC. 6711. Discharge of jury.— The jury to be discharged on the completion of the business before them, they shall be discharged by the court,* or the court may in its discretion adjourn their session from time to time during the same term,* but whether the business is completed or not, they are discharged by the final adjournment of the court.

G. S. ch. 107, § 26, as amended 1885, ch. 21. Approved March 9th. Amendment between * *.

BENCH WARRANT.

SEC. 6712. Clerk to issue.— If the court thinks that the facts stated in the presentment constitute a public offence, triable in the county, it shall direct the clerk to issue a bench warrant, for the arrest of the defendant.

G. S. ch. 107, § 51.

SEC. 6713. Same — How issued.— The clerk, on application of the county attorney, may accordingly, at any time after the order, whether the court is sitting or not, issue a bench warrant, under his signature and the seal of the court, into one or more counties.

G. S. ch. 107, § 52.

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SEC. 6714. **Form of bench warrant.**—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 —, A. D. 18—, 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 —, A. D. 18—.

By order of the court.

C. H., Clerk.

G. S. ch. 107, § 53.

SEC. 6715. **How served.**—The bench warrant may be served in any county in the state, and the officer serving it shall proceed thereon, in all respects, as upon a warrant of arrest on complaint.

G. S. ch. 107, § 54.

SEC. 6716. **Proceedings on arrest.**—The magistrate, when the defendant is brought before him, shall proceed upon the charge contained in the presentment, in the same manner, in all respects, as upon a warrant of arrest on complaint.

G. S. ch. 107, § 55.

SEC. 6717. **Magistrate to have copy.**—Upon the arrest of the defendant, the clerk with whom the presentment and depositions are filed, shall, without delay, furnish to the magistrate before whom the defendant is taken, a certified copy of the presentment and depositions.

G. S. ch. 107 § 56.