

THE
GENERAL STATUTES

OF THE
STATE OF MINNESOTA

As Amended by Subsequent Legislation, with which are Incorporated
All General Laws of the State in Force December 31, 1894

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REPORTER SYSTEM

COMPLETE IN TWO VOLUMES

VOL. 2

CONTAINING

Sections 4822 to 8054 of the General Statutes, and the General Index

ST. PAUL, MINN.
WEST PUBLISHING CO.

1894

CHAPTER 118.

JUDGMENTS IN CRIMINAL CASES, AND THE EXECUTION THEREOF.

§ 7398. Judgment on conviction, how entered—Judgment roll.

When judgment upon a conviction is rendered, the clerk shall enter the same upon the minutes, stating briefly the offence for which the conviction was had, and immediately annex together and file the following papers, which constitute the judgment roll:

First. A copy of the minutes of challenge interposed by the defendant to the panel of the grand-jury, or to an individual grand-juror, and the proceedings and decisions thereon;

Second. The indictment, and a copy of the minutes of the plea or demurrer;

Third. A copy of the minutes of any challenge interposed to the panel of the trial jury, to an individual juror, and the proceedings and decision thereon;

Fourth. A copy of the minutes of the trial;

Fifth. A copy of the minutes of the judgment;

Sixth. The bill of exceptions, if there is one.

(G. S. 1866, c. 118, § 1; G. S. 1878, c. 118, § 1.)

See *State v. Colwell*, 43 Minn. 378, 379, 45 N. W. Rep. 847.

Supp. 4. See *State v. Lessing*, 16 Minn. 75, (Gil. 64, 65.)

§ 7399. Clerk to deliver transcript to sheriff.

Whenever any person convicted of an offence is sentenced to pay a fine, or costs, or to be imprisoned in the county jail, or state prison, the clerk of the court shall, as soon as may be, make out and deliver to the sheriff of the county, or his deputy, a transcript from the minutes of the court, of such conviction and sentence, duly certified by such clerk, which shall be a sufficient authority for such sheriff to execute such sentence; and he shall execute the same accordingly.

(G. S. 1866, c. 118, § 2; G. S. 1878, c. 118, § 2.)

§ 7400. Capital cases—Record to be certified to governor—Executive warrant.

When any person is convicted of any crime for which sentence of death is awarded against him, the clerk of the court, as soon as may be, shall make out and deliver to the sheriff of the county, a certified copy of the whole record of the conviction and sentence; and the sheriff shall forthwith transmit the same to the governor; and the sentence of death shall not be executed upon such convict until a warrant is issued by the governor, under the seal of the state, with a copy of the record thereto annexed, commanding the sheriff to cause the execution to be done; and the sheriff shall thereupon cause to be executed the judgment and sentence of the law upon such convict.

(G. S. 1866, c. 118, § 3; G. S. 1878, c. 118, § 3.)

The provision of this section that sentence of death shall not be executed until the issuance of a warrant by the governor is not repealed by the Penal Code. *State v. Holong*, 38 Minn. 368, 37 N. W. Rep. 587; *State v. Barrett*, 40 Minn. 65, 75, 41 N. W. Rep. 459.

This section and § 7401 are not repealed by Laws 1889, c. 20 (post, § 7403 et seq.), which substantially re-enacts these two sections, adds other provisions as to the time and mode of execution, provides for the solitary confinement of the convict after the issuance of the warrant, and then repeals prior inconsistent statutes; and therefore one sentenced to death after the passage of the act of 1889, for a murder committed before, may be imprisoned and executed under the statute of 1878 without invoking the provisions of the act of 1889 requiring solitary confinement. *Holden v. State of Minnesota*, 137 U. S. 483, 11 Sup. Ct. Rep. 143.

It is competent, and consistent with due process of law, for the state to confer on the governor the power of fixing the day on which a convict sentenced to death by a court of competent jurisdiction shall be executed. *Id.*

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§ 7401. Same—Judge to send statement to governor.

The judge of the court at which a conviction requiring judgment of death is had, shall, immediately after conviction, transmit to the governor, by mail, a statement of the conviction and judgment, and of the testimony given at the trial.

(G. S. 1866, c. 118, § 4; G. S. 1878, c. 118, § 4.)

See *Holden v. State of Minnesota*, cited in note to § 7400.

§ 7402. Form of sentence to state prison—Expiration of term.

In every case in which punishment in the state prison is awarded against any convict, the form of the sentence shall be, that he be punished by confinement at hard labor: provided, that whenever practicable, the term of imprisonment shall be so fixed that it will expire between the first day of April and the first day of November.

(G. S. 1866, c. 118, § 5; G. S. 1878, c. 118, § 5.)

See § 6832.

The proviso is directory only. *Mims v. State*, 26 Minn. 494, 5 N. W. Rep. 369.

§ 7403. Sentence, when not provided by statute.

In any case of legal conviction, where no punishment is provided by statute, the court shall award such sentence as is according to the degree and aggravation of the offence, not cruel or unusual, nor repugnant to the constitutional rights of the party.

(G. S. 1866, c. 118, § 6; G. S. 1878, c. 118, § 6.)

§ 7404. Recognizance to be given, when.

Every court before whom any person is convicted upon an indictment for any offence not punishable with death, or by imprisonment in the state prison, or county jail, may, in addition to the punishment prescribed by law, require such person to recognize, with sufficient sureties, in a reasonable sum, to keep the peace, or to be of good behavior, or both, for any term not exceeding two years, and to stand committed until he shall so recognize.

(G. S. 1866, c. 118, § 7; G. S. 1878, c. 118, § 7.)

§ 7405. Proceedings on breach of recognizance.

In case of the breach of the conditions of any such recognizance, the same proceedings shall be had that are by law prescribed in relation to recognizances to keep the peace.

(G. S. 1866, c. 118, § 8; G. S. 1878, c. 118, § 8.)

§ 7406. Sentence, how executed where there is no jail in the county.

Whenever it appears to the court, at the time of passing sentence upon any convict who is to be punished by confinement in the state prison, or county jail, that there is no jail in the county in which the offence was committed, suitable for the confinement of such convict, the court may order the sentence to be executed in any county in this state, in which there is a jail suited to that purpose; and the expenses of supporting such convict shall be borne, if such convict was sentenced to imprisonment in the county jail, by the county in which the offence was committed.

(G. S. 1866, c. 118, § 9; G. S. 1878, c. 118, § 9.)

§ 7407. Governor may delay issuing warrant, when.

If it appears to the satisfaction of the governor, that any convict who is under sentence of death has become insane, the warrant for his execution may be delayed, or, if such warrant has been issued, the execution thereof may be respited from time to time, so long as the governor thinks proper; and if any female convict who is under sentence of death shall be quick with child, the governor shall forbear to issue a warrant for the execution, or, if such warrant has been issued, the execution thereof shall be respited,

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until it appears to the satisfaction of the governor that such female is no longer quick with child.

(G. S. 1866, c. 118, § 10; G. S. 1878, c. 118, § 10.)

§ 7408. Punishment by death.

The mode of inflicting the punishment of death shall in all cases be hanging by the neck until the person is dead.

(1889, c. 20, § 1.)

G. S. 1866, c. 118, § 11; G. S. 1878, c. 118, § 11, appears to be repealed by this chapter.

As to the effect of Laws 1889, c. 20, on G. S. 1878, c. 118, §§ 3, 4 (ante, §§ 7400, 7401), see *Holden v. State of Minnesota*, cited in note to § 7400.

§ 7409. Execution of warrant in capital cases.

Whenever the punishment of death is inflicted upon any convict, in obedience to a warrant from the governor of the state, the sheriff of the county shall be present at the execution, unless prevented by sickness or other casualty; and he may have such military guard as he may think proper. He shall return the warrant with a statement under his hand of doings thereon, as soon as may be after the said execution, to the governor, and shall also file in the clerk's office of the court where the conviction was had, an attested copy of the warrant and statement aforesaid, and the clerk shall subjoin a brief abstract of such statement to the record of conviction and sentence.

(1889, c. 20, § 2, substantially a re-enactment of G. S. 1866, c. 118, § 12; G. S. 1878, c. 118, § 12.)

§ 7410. Same—Time and place.

The warrant of execution shall be executed before the hour of sunrise of the day designated in the warrant and within the walls of the jail in all cases where the jail is so constructed that it can be conveniently done therein; but when the jail is not so constructed, the warrant shall be executed within an enclosure which shall be higher than the gallows, and shall exclude the view of persons outside, and which shall be prepared for that purpose, under the direction of the sheriff, in the immediate vicinity of the jail, or if there be no jail in the county, at some convenient place at the county seat, to be selected by the sheriff.

(1889, c. 20, § 3.)

This section and § 7412 are regulations which do not affect the substantial rights of the convict, and cannot be regarded as *ex post facto* legislation, even when applied to offenses committed before their passage. *Holden v. State of Minnesota*, 137 U. S. 483, 11 Sup. Ct. Rep. 143.

§ 7411. Who may visit prisoner.

After the issue of the warrant for execution by the governor, the prisoner shall be kept in solitary confinement, and the following persons shall be allowed to visit him, but none other, viz: The sheriff and his deputies, the prisoner's counsel, any priest or clergyman the prisoner may select, and the members of his immediate family.

(1889, c. 20, § 4.)

§ 7412. Who may witness execution—Newspaper publication.

Besides the sheriff and his assistants, the following persons may be present at the execution, but none other: The clergyman or priest in attendance upon the prisoner and such other persons as the prisoner may designate, not exceeding three in number, a physician or surgeon, to be selected by the sheriff, and such other persons as the sheriff may designate, not exceeding six in number, but no person so admitted shall be a newspaper reporter or representative. No account of the details of such execution, beyond the state-

¹An act providing the mode of inflicting the punishment of death, the manner in which the same shall be carried into effect, and declaring a violation of any of the provisions of this act to be a misdemeanor. Approved April 24, 1889. § 7 repeals all acts and parts of acts inconsistent with this act.

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ment of the fact that such convict was on the day in question duly executed according to law, shall be published in any newspaper.

(Id. § 5.)

See Holden v. State of Minnesota, cited in note to § 7410.

§ 7413. Violation.

Any person who shall violate or omit to comply with any of the provisions of this act shall be guilty of a misdemeanor.

(1889, c. 20, § 6.)

§ 7414. Ball and chain, etc., prohibited.

That it shall be unlawful for the authorities of any city, village, town, or other municipal corporation, or other person, to require any person, as a punishment for crime, or the violation of any ordinance or municipal regulation, to labor upon the streets, parks, or other public works, with ball and chain attached; or to cause or require any such person, as a punishment for crime, to be held, tied or bound in public: provided, that this act shall not be so construed as to prevent any person under arrest being tied or bound, for the purpose of taking such person to or to and from any jail, prison, or other place used for holding in custody persons under arrest.

(1874, c. 45, § 1; G. S. 1878, c. 118, § 13.)

(1931)