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CHAPTER 94

RIGHTS OF ACCUSED

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9951. To know ground of arrest—Every person arrested by virtue of process, or taken into custody by an officer, has a right to know from such officer the true ground of his arrest; and every such officer who shall refuse to answer relative thereto, or shall answer untruly, or neglect on request to exhibit to him, or to any person acting in his behalf, the precept by virtue of which such arrest is made, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding one year. (4783) [8507]

9952. Presumption of innocence—Conviction of lowest degree, when—Every defendant in a criminal action is presumed innocent until the contrary is proved, and in case of a reasonable doubt is entitled to acquittal; and when an offense has been proved against him, and there exists a reasonable doubt as to which of two or more degrees he is guilty, he shall be convicted only of the lowest. (4784) [8508]

1. Burden of proof on state—The state has the burden of proving beyond a reasonable doubt every essential element of the offence charged (10-407, 325; 22-514; 90-7, 95+578). The doubt entitling to acquittal must result from a consideration of all the evidence; each evidentiary fact need not be proved beyond a reasonable doubt (29-193, 12+524; 37-493, 35+493; 90-183, 96+330). See 121-405, 141+483.

2. Definition of reasonable doubt—It is not desirable for the court to attempt an explanation of the term "reasonable doubt" unless requested by the jury. It is impossible to make the meaning of the expression more clear by any circumlocution (14-105, 75; 38-438, 38+355). The following definition, if any, should be given: "Proof beyond a reasonable doubt is such as would impress the judgment of ordinarily prudent men with a conviction upon which they would act without hesitation in their own most important affairs and concerns of life" (56-226, 239, 55+652, 57+1065). The court is not required to explain to the jury the reason for the rule (37-493, 35+373). Instructions defining reasonable doubt considered (10-407, 325; 12-293, 191; 14-105, 75; 18-208, 191; 37-493, 35+373; 38-438, 38+355; 72-296, 75+235; 90-183, 96+330; 93-393, 101+499).

3. Doubt as to degree of crime—If the jury have a reasonable doubt whether the accused is guilty of a higher or lower degree of crime they must find him guilty of the latter (4-368, 277).

4. To what applicable—The rule requiring proof beyond a reasonable doubt is applicable to all grades of crime (10-407, 325), and to proceedings for criminal contempt (65-146, 67+796). It is not applicable to bastardy proceedings (29-357, 13+153), or to civil actions, although the issues involve a charge of crime (22-206; 29-107, 12+154; 29-357, 13+153).

5. Requests—Defendant not having asked for an instruction upon the presumption of innocence cannot now complain that none was given. (130-84, 153+271). See 123-128, 143+119; 130-84, 153+271; 130-347, 153+845, 135-479, 160+486.

9953. Conviction—When had—No person indicted for any offense shall be convicted thereof, unless by admitting the truth of the charge in his demurrer or plea, by confession in open court, or by verdict of a jury, accepted and recorded by the court. (4785) [8509]

9954. Dismissal, when—Whenever any person has been held to answer for a public offense, if an indictment is not found against him at the next term of the court to which he is held, said court shall order the prosecution to be dismissed, unless good cause to the contrary be shown. If indicted, and trial is not postponed upon his own application, unless tried at the next term of the court in which it is triable, the indictment shall be dismissed, unless good cause to the contrary be shown. (4786) [8510]

Dismissal on failure to prosecute seasonably (66-294, 69+25). Cited as to when a prosecution is pending (18-398, 359). Cited (109-437, 124+13). Cited (127-505, 150+171; 147-272, 180+99; 189+408; 191+607).

9955. Continuance—Effect—Bail—Whenever the defendant is not indicted or tried as herein provided, and good reasons therefor are shown, the court may order the action continued from term to term, and in the meantime commit the defendant, or, in case the offense is bailable, admit him to bail, on his furnishing satisfactory sureties. Whenever the action is dismissed, the defendant shall be discharged from custody, or, if admitted to bail, his bail shall be exonerated, and, if money has been deposited for bail, that shall be refunded. (4787) [8511]

Cited (109-437, 124+13). Cited (147-272, 180+99).

9956. Defendant entitled to blank subpoenas—The clerk of the court in which any indictment is to be tried shall at all times, upon application of defendant, and without charge, issue as many blank subpoenas, under the seal of the court, and subscribed by him as clerk, for witnesses in the state, as are required by such defendant. (4788) [8512]

9957. Public defender for Hennepin county, to be appointed of unanimous vote of judges—That section 8513, General Statutes of 1913, be and the same is hereby amended so as to read as follows: Whenever a defendant shall be arraigned upon indictment or information for any felony or gross misdemeanor, and shall request the court to appoint counsel to assist in his defense, and satisfied it by his own oath or other required proof that he is unable, by reason of poverty, to procure counsel, such court shall appoint counsel, not exceeding two for such defendant, to be paid, upon his order, by the county in which the indictment was found. Compensation, not exceeding ten (\$10.00) dollars per day for each counsel, for the number of days he is actually employed in the court, shall be fixed by the court in each case; provided that in counties now or hereafter having a population of 300,000 or over the judges of the district court of such county may by a unanimous vote, appoint an attorney at law, a member of the bar in such county to appear for and defend all persons charged with a felony or gross misdemeanor in such county who are unable by reason of poverty to employ counsel. (R. L. '05 § 4789, G. S. '13 § 8513, amended '17 c. 496 § 1)

90-348, 97+101. Compensation order under this section in favor of an attorney for defending an indigent accused of crime, is not exempt from garnishment as being fees of a state or public officer (126-264, 148+66).

9958. Duties of public defender—The attorney so appointed as aforesaid shall be known as the public defender of county. He shall appear for and defend all persons charged with any felony or gross misdemeanor whenever it shall appear to the court that the person accused is unable by reason of poverty to procure counsel. ('17 c. 496 § 2)

9959. To appear before board of pardons and parole—Whenever the committing judge, or the judge in charge of the criminal court, shall deem it advisable he may by order direct the said public defender to appear before the board of pardons, or parole for and on behalf of any applicant for pardon or parole who was committed from such county. ('17 c. 496 § 3)

9960. Compensation to be fixed by judges—He shall receive compensation for his services as the judges of the district court shall fix, said compensation to be paid by the county in the same manner and at the same time as the salary of other county officials. ('17 c. 496 § 4)

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9961. To be appointed for four years—The term of office of the public defender shall be four (4) years, but he may be re-appointed as often as the majority of the judges of the district court shall concur in such re-appointment. ('17 c. 496 § 5)

9962. Given power to appoint and remove assistants—He shall have the power to appoint and remove his assistants and number and compensation of which shall be fixed by the judges of the district court, by an order filed with the county auditor. Their compensation shall be paid by the county in the same manner and at the same time as the salaries of other county officials. ('17 c. 496 § 6)

9963. To appear for criminals who have plead guilty on information—The public defender shall also appear for and on behalf of criminals who shall have pleaded guilty on information as provided in section 9162, General Statutes of 1913, in counties now or hereafter having a population of 300,000 or over. ('17 c. 496 § 7)

9964. Depositions for accused—Upon cause shown to the court in which any criminal action is pending, a judge thereof may by order allow depositions of witnesses on behalf of the prisoner to be taken in the

same manner and in like cases where they may be taken in civil actions; and the depositions so taken may be used upon the trial of the defendant, in his behalf, as depositions are now allowed and used in civil actions; but the expense attending the taking and return thereof shall be paid by the defendant, except when otherwise directed by the court, by order duly entered upon its minutes. (4790) [8514]

13-341, 315.

9965. Acquittal on part of charge—Whenever any person indicted for felony is acquitted by verdict of part of the offense charged and convicted on the residue, such verdict may be received and recorded by the court, and thereupon he shall be adjudged guilty of the offense, if any, which appears to be substantially charged by the residue of the indictment, and sentenced accordingly. (4791) [8515]

9966. Acquittal—When a bar—Whenever a defendant shall be acquitted or convicted upon an indictment for a crime consisting of different degrees, he cannot thereafter be indicted or tried for the same crime in any other degree, nor for an attempt to commit the crime so charged, or any degree thereof. (4792) [8516]

CHAPTER 95

CRIMES AGAINST THE SOVEREIGNTY OF THE STATE

9967. Treason—Every person who shall commit treason against the state shall be punished by imprisonment in the state prison for life. (4793) [8517]
Petit treason does not exist in this state (3-246, 169).

9968. Misprision of treason—Every person having knowledge of the commission of treason, who conceals the same, and does not, as soon as may be, disclose such treason to the governor or a judge of the supreme or a district court, shall be guilty of misprision of treason, and punished by a fine not exceeding one thousand dollars, or by imprisonment in the state prison not exceeding five years, or in a common jail not exceeding two years. (4794) [8518]

9969. Levying war—To constitute levying war against the state, an actual act of war must be committed. To conspire to levy war is not enough. Where persons rise in insurrection, with intent to prevent, in general, by force and intimidation, the execution of a statute of the state, or to force its repeal, they shall be guilty of levying war. But an endeavor, although by numbers and force of arms, to resist the execution of a law in a single instance and for a private purpose, is not levying war. (4795) [8519]

9970. Wilful neglect of official duty—Whenever any duty is enjoined by law upon any public officer or person holding public trust or employment, every wilful neglect to perform such duty, and every malfeasance in office, for the punishment of which no special provision has been made, shall be a gross misdemeanor, and punished by fine and imprisonment. (4796) [8520]

9971. Acting in public office without having qualified—Every person who performs any of the functions of a public office without having executed and duly filed the required security shall be guilty of a gross misdemeanor, and, in addition to the punishment pre-

scribed therefor, he shall forfeit his right to the office. (4797) [8521]

139-144, 165+962.

9972. False reports declared unlawful—It shall be unlawful when the United States is at war, from and after the passage of this act, for any person within the confines of this state wilfully to make or convey false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States or of this state, or to promote the success of the enemies of the United States, or wilfully to make or convey false reports or false statements, or say or do anything, except by way of bona fide and not disloyal advice to an investor or investors, with intent to obstruct the sale by the United States of bonds or other securities of the United States, or the making of loans by or to the United States. ('19 c. 93 § 1)

'19 c. 93 § 5, provides that this act shall supersede the provisions of '17 c. 463, as to all offenses committed subsequent to the passage thereof, but shall not affect offenses committed prior thereto. See 139-270, 166+181; 140-203, 167+547; 140-350, 168+24; 140-413, 168+591; 141-264, 169+700; 141-494, 169+790; 142-328, 171+931; 143-24, 172+777; 143-52, 172+919; 143-204, 173+426; 147-128, 179+646; 149-5, 182+773; 252 Fed. 216.

9973. Insubordination, etc., declared unlawful—It shall be unlawful when the United States is at war for any person within the confines of this state wilfully to cause or attempt to cause, or incite or attempt to incite, insubordination, disloyalty, mutiny, or refusal of duty in the military or naval forces of the United States or of this state, or wilfully to obstruct or attempt to obstruct the recruiting or enlistment service of the United States or of this state. ('19 c. 93 § 2)

9974. Other acts declared unlawful—It shall be unlawful when the United States is at war for any per-