

## CHAPTER 613

## OFFENSES AGAINST PUBLIC JUSTICE

**613.01 DEFINITIONS.**

**HISTORY.** Penal Code ss. 73, 74, 83, 95, 116; G.S. 1894 ss. 6357, 6358; 6367; 6379; 6401; R.L. 1905 s. 4798; G.S. 1913 s. 8522; G.S. 1923 s. 9979; M.S. 1927 s. 9979.

If, in the prosecution of a party for subornation of perjury, it is sought to establish the fact that perjury was committed by the person suborned, his testimony must be corroborated as to such fact. But the alleged fact that he was induced to commit the crime by the accused may be established by his uncorroborated testimony if it satisfies the jury beyond a reasonable doubt. *State v Renswick*, 85 M 19, 88 NW 22.

Upon a conviction for the crime of subornation of perjury, a new trial should be granted in the furtherance of justice because of the doubtful character of the testimony and the insufficiency of the evidence. *State v Smith*, 159 M 514, 199 NW 427.

## BRIBERY AND CORRUPTION

**613.02 BRIBERY OF PUBLIC OFFICER OR LEGISLATOR.**

**HISTORY.** Penal Code ss. 42, 59, 64, 71; G.S. 1894 ss. 6326, 6343, 6348, 6355; R.L. 1905 s. 4799; G.S. 1913 s. 8523; G.S. 1923 s. 9980; M.S. 1927 s. 9980.

1. What constitutes
2. Indictment

**1. What constitutes**

The essential elements of the crime of offering a bribe to a juror or judicial officer include knowledge on the part of the accused of the official character or capacity of the person to whom the bribe is offered, the fact that the thing offered is something of value, and that it is offered with the intent to influence the officer's official action. *State v Howard*, 66 M 309, 68 NW 1096, overruled by *State v Lopes*, 201 M 20, 275 NW 374.

**2. Indictment**

An indictment for offering a bribe to a juror must allege that the person to whom the bribe was offered was a juror; that the accused knew it; what was offered; that it was of value, and was offered with intent to influence the action of the juror as such. *State v Howard*, 66 M 309, 68 NW 1096.

Information was not defective because its charge was that the offeree of the bribe "was about to charge" defendant with crime, it being averred in that connection that the offer was on condition that the offeree, an officer, "would not arrest" and would "not prosecute" defendant. *State v Lopes*, 201 M 20, 275 NW 374.

**613.03. BRIBERY OF MEMBER OF LEGISLATURE.**

**HISTORY.** Penal Code s. 59; G.S. 1894 s. 6343; R.L. 1905 c. 31 s. 1; G.S. 1913 s. 8524; G.S. 1923 s. 9981; M.S. 1927 s. 9981.

**613.04 BRIBERY OF PUBLIC OFFICER OR LEGISLATOR.**

**HISTORY.** 1907 c. 353 s. 1; G.S. 1913 s. 8525; G.S. 1923 s. 9982; M.S. 1927 s. 9982.

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Section 613.04, providing that no person shall be excused from testifying in a prosecution for bribery upon the ground or for the reason that his evidence may tend to convict him of crime or subject him to prosecution and also that no person shall be prosecuted for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, is constitutional. *State v Ruff*, 176 M 308, 223 NW 144.

A conviction cannot be had upon the uncorroborated testimony of an accomplice. A witness is an accomplice if he himself could be convicted as a principal or accessory. One who gives a bribe is not an accomplice to the crime of receiving a bribe. *State v Sweeney*, 180 M 454, 231 NW 225.

Overruling *State v Howard*, 66 M 309, 68 NW 1096, an information for bribery averring the official character of the offeree and that the bribe was offered to him "as an officer" is good as against the objection that it did not charge that the accused knew that the offeree was "such officer." *State v Lopes*, 201 M 22, 275 NW 374.

## 613.05 ASKING OR RECEIVING BRIBES.

HISTORY. Penal Code ss. 43, 60, 63, 65; G.S. 1894 ss. 6327, 6344, 6347, 6349; R.L. 1905 s. 4800; G.S. 1913 s. 8526; G.S. 1923 s. 9983; M.S. 1927 s. 9983.

1. What constitutes
2. Indictment
3. Generally

### 1. What constitutes

Two persons must necessarily co-operate in bribery, the bribe-giver and the bribe-taker. Asking for a bribe and offering and giving a bribe are distinct offenses. The asking for a bribe by a member of the city council, with the understanding that he will corruptly use it to bribe or influence the votes on official actions of his colleagues is a bribe under this section. *State v Durnam*, 73 M 150, 75 NW 1127.

To constitute the crime of asking for a bribe by a public officer "with the understanding or agreement that his vote \* \* \* shall be influenced thereby," it is not necessary that the party solicited for the bribe shall consent to give it, or that there shall be any meeting of minds or mutual understanding or agreement between him and the party asking for a bribe. It is sufficient if the latter is ready and willing to enter into a corrupt agreement or understanding that his vote or influence, shall be influenced by the bribe. *State v Durnam*, 73 M 150, 75 NW 1127.

A police officer of a municipality is an executive officer within this section. *State v Gardner*, 88 M 130, 92 NW 529.

### 2. Indictment

Defendant was indicted for accepting a bribe upon the agreement or understanding that he would not, as a police officer, arrest or prosecute swindlers. *State v Gardner*, 88 M 130, 92 NW 529.

Defendant was indicted for having received a bribe under an agreement to protect a lawbreaker from arrest because of the lawbreaker's unlawful occupation. *State v Ames*, 90 M 183, 96 NW 330; 91 M 365, 98 NW 190.

It was charged that the defendant, an alderman, did "ask, agree to receive, and receive" a bribe is not bad for duplicity. *State v Ekberg*, 178 M 438, 227 NW 497.

There was no variance between the proof and the indictment. Objection to variance cannot be raised for the first time on appeal. *State v Sweeney*, 180 M 454, 231 NW 225.

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### 3. Generally

The words which defendant is charged to have used (inferring bribery) are not actionable in the light of the proof as to the meaning in which they were understood. *Sweaas v Evenson*, 110 M 304, 125 NW 272.

#### 613.06 RECEIVING BRIBE BY MEMBER OF LEGISLATURE.

HISTORY. Penal Code s. 60; G.S. 1894 s. 6344; 1905 c. 32 s. 1; G.S. 1913 s. 8527; G.S. 1923 s. 9984; M.S. 1927 s. 9984.

#### 613.07 ACCEPTING OR RECEIVING BRIBES.

HISTORY. 1907 c. 325 s. 1; G.S. 1913 s. 8528; G.S. 1923 s. 9985; M.S. 1927 s. 9985.

#### 613.08 JURORS ACCEPTING BRIBES.

HISTORY. Penal Code s. 67; G.S. 1894 s. 6351; R.L. 1905 s. 4801; G.S. 1913 s. 8529; G.S. 1923 s. 9986; M.S. 1927 s. 9986.

The defendant chose plaintiff as his arbitrator for the purpose of determining the rental value of property. He used certain words in effect charging plaintiff with accepting a bribe. The words used were actionable per se. *Earle v Johnson*, 81 M 472, 84 NW 332.

#### 613.09 BRIBING WITNESS.

HISTORY. Penal Code s. 100; G.S. 1894 s. 6385; R.L. 1905 s. 4802; G.S. 1913 s. 8530; G.S. 1923 s. 9987; M.S. 1927 s. 9987.

One accused of bribing a witness to absent himself from a trial, cannot be convicted under General Statutes 1894, Sections 6385 or 6386, (sections 613.09, 613.10) and can only be convicted under General Statutes 1894, Section 6383 (section 613.48). *State ex rel v Sargent*, 71 M 28, 73 NW 626.

It is not improper for the accused or his counsel, prior to the trial, to interview physician who testified before the grand jury, nor to offer him \$50.00 to testify as a witness for the accused, provided no effort is made to influence his testimony. *State v Gorman*, 219 M 163, 17 NW(2d) 42.

#### 613.10 ACCEPTING BRIBE BY WITNESS.

HISTORY. Penal Code s. 101; G.S. 1894 s. 6386; R.L. 1905 s. 4803; G.S. 1913 s. 8531; G.S. 1923 s. 9988; M.S. 1927 s. 9988.

See: *State v Sargent*, 71 M 28, 73 NW 626.

#### 613.11 INFLUENCING JUROR.

HISTORY. Penal Code s. 68; G.S. 1894 s. 6352; R.L. 1905 s. 4804; G.S. 1913 s. 8532; G.S. 1923 s. 9989; M.S. 1927 s. 9989.

#### 613.12 JUROR PROMISING VERDICT.

HISTORY. Penal Code s. 66; G.S. 1894 s. 6350; R.L. 1905 s. 4805; G.S. 1913 s. 8533; G.S. 1923 s. 9990; M.S. 1927 s. 9990.

SEE: *Earle v Johnson*, 81 M 472, 84 NW 332, (section 613.08).

#### 613.13 MISCONDUCT OF OFFICER DRAWING JURY.

HISTORY. Penal Code s. 69; G.S. 1894 s. 6353; 1897 c. 352 s. 2; R.L. 1905 s. 4806; G.S. 1913 s. 8534; G.S. 1923 s. 9991; M.S. 1927 s. 9991.

#### 613.14 JUROR PLACED ON LIST BY SOLICITATION.

HISTORY. 1897 c. 352 ss. 1, 4; R.L. 1905 s. 4807; G.S. 1913 s. 8535; G.S. 1923 s. 9992; M.S. 1927 s. 9992.

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## 613.15 MISCONDUCT OF OFFICER IN CHARGE OF JURY.

HISTORY. Penal Code s. 70; G.S. 1894 s. 6354; R.L. 1905 s. 4808; G.S. 1913 s. 8536; G.S. 1923 s. 9993; M.S. 1927 s. 9993.

## 613.16 OFFENDER A COMPETENT WITNESS.

HISTORY. Penal Code s. 72; G.S. 1894 s. 6356; R.L. 1905 s. 4809; G.S. 1913 s. 8537; G.S. 1923 s. 9994; M.S. 1927 s. 9994.

Promise of immunity from prosecution. 17 MLR 437, 439.

## 613.17 INTERFERING WITH PUBLIC OFFICERS.

HISTORY. Penal Code ss. 44, 45; G.S. 1894 ss. 6328, 6329; R.L. 1905 s. 4810; G.S. 1913 s. 8538; G.S. 1923 s. 9995; M.S. 1927 s. 9995.

The evidence sustains the verdict finding defendant guilty of resisting an officer in the performance of his duty. State v Keehn, 135 M 211, 160 NW 666.

## 613.18 OFFERING REWARD FOR APPOINTMENTS.

HISTORY. Penal Code s. 49; G.S. 1894 s. 6333; R.L. 1905 s. 4811; G.S. 1913 s. 8539; G.S. 1923 s. 9996; M.S. 1927 s. 9996.

## 613.19 MISCONDUCT OF PUBLIC OFFICERS.

HISTORY. Penal Code ss. 46, 47, 48, 50; G.S. 1894 ss. 6330, 6331, 6332, 6334; R.L. 1905 s. 4812; G.S. 1913 s. 8540; G.S. 1923 s. 9997; M.S. 1927 s. 9997.

In the case of defendant, a judge of probate, it was held that extortion is made a misdemeanor by statute, and is therefore indictable. State v Brown, 12 M 490 (393).

Defendant, a justice of the peace, was indicted for the crime of receiving greater fees than allowed by law for his services. The indictment was set aside because he had testified before the grand jury and his name appears on the indictment as a witness. State v Froiseth, 16 M 296 (260).

Defendant was convicted of the offense of taking a reward to procure an appointment for another to a public office. The effect of the evidence was sufficient to convict, but a new trial was granted because certain evidence was admitted that was legally inadmissible. State v Fitchette, 88 M 145, 92 NW 527.

## 613.20 GRANT OF OFFICIAL POWERS.

HISTORY. Penal Code ss. 51, 52; G.S. 1894 ss. 6335, 6336; R.L. 1905 s. 4813; G.S. 1913 s. 8541; G.S. 1923 s. 9998; M.S. 1927 s. 9998.

## 613.21 INTRUSION INTO AND REFUSAL TO SURRENDER PUBLIC OFFICE.

HISTORY. Penal Code ss. 53, 54; G.S. 1894 ss. 6337, 6338; R.L. 1905 s. 4814; G.S. 1913, s. 8542; G.S. 1923 s. 9999; M.S. 1927 s. 9999.

Defendant was indicted and convicted of refusing to surrender papers and books to his successor. There was a reversal because the description of the crime was too general to support a conviction. State v Cook, 141 M 495, 169 NW 599.

## 613.22 DISTURBING LEGISLATURE OR INTIMIDATING MEMBER.

HISTORY. Penal Code ss. 55, 56; G.S. 1894 ss. 6339, 6340; R.L. 1905 s. 4815; G.S. 1913 s. 8543; G.S. 1923 s. 10000; M.S. 1927 s. 10000.

## 613.23 ALTERING DRAFT OF BILL.

HISTORY. Penal Code s. 57; G.S. 1894 s. 6341; R.L. 1905 s. 4816; G.S. 1913 s. 8544; G.S. 1923 s. 10001; M.S. 1927 s. 10001.

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### 613.24 ALTERING ENGROSSED BILL.

HISTORY. Penal Code s. 58; G.S. 1894 s. 6342; R.L. 1905 s. 4817; G.S. 1913 s. 8545; G.S. 1923 s. 10002; M.S. 1927 s. 10002.

### 613.25 WITNESSES REFUSING TO ATTEND LEGISLATURE OR COMMITTEE, OR TO TESTIFY.

HISTORY. Penal Code ss. 61, 62; G.S. 1894 ss. 6345, 6346; R.L. 1905 s. 4818; G.S. 1913 s. 8546; G.S. 1923 s. 10003; M.S. 1927 s. 10003.

## RESCUES AND ESCAPES

### 613.26 RESCUE OF PRISONERS.

HISTORY. Penal Code s. 74; G.S. 1894 s. 6358; R.L. 1905 s. 4819; G.S. 1913 s. 8547; G.S. 1923 s. 10004; M.S. 1927 s. 10004.

### 613.27 TAKING PROPERTY FROM OFFICER.

HISTORY. Penal Code s. 75; G.S. 1894 s. 6359; R.L. 1905 s. 4820; G.S. 1913 s. 8548; G.S. 1923 s. 10005; M.S. 1927 s. 10005.

When growing crops have been levied upon, the judgment debtor violates this section by feeding the crop to his live stock. OAG March 9, 1929.

### 613.28 ESCAPED PRISONER RECAPTURED.

HISTORY. Penal Code s. 76; G.S. 1894 s. 6360; R.L. 1905 s. 4821; G.S. 1913 s. 8549; G.S. 1923 s. 10006; M.S. 1927 s. 10006.

### 613.29 ESCAPED PRISONERS.

HISTORY. Penal Code s. 77; G.S. 1894 s. 6361; R.L. 1905 s. 4822; G.S. 1913 s. 8550; 1923 c. 47 s. 1; G.S. 1923 s. 10007; M.S. 1927 s. 10007.

The law has long recognized a relation between punishment for breach of prison and the offense for which the prisoner is held, and it has more severely punished prison-breaking by one undergoing imprisonment for grievous crime than if done by one held for a lesser offense. *Pennsylvania ex rel v Ashe*, 302 US 54 (note).

### 613.30 ATTEMPT TO ESCAPE FROM STATE PRISON.

HISTORY. Penal Code s. 78; G.S. 1894 s. 6362; R.L. 1905 s. 4823; G.S. 1913 s. 8551; G.S. 1923 s. 10008; M.S. 1927 s. 10008.

### 613.31 AIDING PRISONER TO ESCAPE.

HISTORY. Penal Code ss. 79, 80; G.S. 1894 ss. 6363, 6364; R.L. 1905 s. 4824; G.S. 1913 s. 8552; G.S. 1923 s. 10009; M.S. 1927 s. 10009.

### 613.32 CUSTODIAN SUFFERING ESCAPE.

HISTORY. Penal Code s. 81; G.S. 1894 s. 6365; R.L. 1905 s. 4825; G.S. 1913 s. 8553; G.S. 1923 s. 10010; M.S. 1927 s. 10010.

### 613.33 MINISTERIAL OFFICERS PERMITTING ESCAPES.

HISTORY. Penal Code s. 103; G.S. 1894 s. 6388; R.L. 1905 s. 4826; G.S. 1913 s. 8554; G.S. 1923 s. 10011; M.S. 1927 s. 10011.

### 613.34 CONCEALING ESCAPED PRISONER.

HISTORY. Penal Code s. 82; G.S. 1894 s. 6366; R.L. 1905 s. 4827; G.S. 1913 s. 8555; G.S. 1923 s. 10012; M.S. 1927 s. 10012.

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## 613.35 JUMPING BAIL A GROSS MISDEMEANOR.

HISTORY. 1935 c. 196; M. Supp. s. 10012-1.

### AFFECTING PUBLIC RECORDS

## 613.36 INJURY TO PUBLIC RECORDS.

HISTORY. Penal Code s. 85; G.S. 1894 s. 6369; R.L. 1905 s. 4828; G.S. 1913 s. 8556; G.S. 1923 s. 10013; M.S. 1927 s. 10013; 1941 c. 553 s. 7.

This section applies only to public records. The high bids for the construction of highways are not public records, but are more or less preliminary to the making of a contract. It is not necessary for the commissioner of highways to retain them after they have served their usefulness. 1936 OAG 223, June 13, 1935 (707a-1B).

A municipal corporation may destroy papers of no value, such as old letters and invoices. OAG April 14, 1944 (851f).

## 613.37 INJURIES TO AND MISAPPROPRIATION OF RECORDS.

HISTORY. Penal Code s. 102; G.S. 1894 s. 6387; R.L. 1905 s. 4829; G.S. 1913 s. 8557; G.S. 1923 s. 10014; M.S. 1927 s. 10014.

## 613.38 OFFERING FALSE INSTRUMENTS FOR FILING OR RECORD.

HISTORY. Penal Code s. 86; G.S. 1894 s. 6370; R.L. 1905 s. 4830; G.S. 1913 s. 8558; G.S. 1923 s. 10015; M.S. 1927 s. 10015.

### PERJURY

## 613.39 PERJURY.

HISTORY. Penal Code s. 87; G.S. 1894 s. 6371; R.L. 1905 s. 4831; G.S. 1913 s. 8559; G.S. 1923 s. 10016; M.S. 1927 s. 10016.

1. What constitutes
2. Indictment
3. Oath administered
4. Subornation

### 1. What constitutes

There must be a wilful intention to swear falsely. *Schmidt v Witherick*, 29 M 156, 12 NW 448.

At common law a charge of perjury could be made only upon an oath before a court of justice. *State v McCarthy*, 41 M 59, 42 NW 599.

The oath administered must be pursuant to and required or authorized by some law, a mere gratuitous oath, cannot be said to be lawfully administered within the meaning of the penal code. *State v McCarthy*, 41 M 59, 42 NW 599.

The crime of perjury was not defined by statute until the enactment of the penal code. *State v Stein*, 48 M 466, 51 NW 474.

A statement in an affidavit for an attachment that affiant is plaintiff's attorney is material, and if false, may be the basis of a charge of perjury. There must be an oath actually administered. Merely subscribing an affidavit is not sufficient. *State v Madigan*, 57 M 425, 59 NW 490.

One who executed a false affidavit in the particulars defined by the ordinance is guilty of perjury. *State v Scatena*, 84 M 281, 87 NW 764.

Defendant was properly charged with perjury when applying for a marriage license, he gave a false oath as to the age and residence of the woman he intended to marry. *State v Randall*, 166 M 381, 208 NW 14.

Where the court had jurisdiction to hear a case perjury can be committed by giving false testimony even when the ordinance was invalid. The ordinance

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prohibited drunken driving of a motor car. *State v Mandehr*, 168 M 139, 209 NW 750.

Defendant pleaded guilty to the illegal transportation of liquor. Before he was sentenced he was sworn and questioned by the presiding judge. Defendant's answers were untrue. As the oath was one not required or authorized by law, he was not guilty of perjury. *State v Larson*, 171 M 246, 213 NW 900.

Defendant swore falsely at the trial of his son who was on trial for grand larceny, and is therefore guilty of perjury. *State v Olson*, 186 M 47, 242 NW 348.

One making false returns in listing property for taxation may be guilty of a gross misdemeanor and of perjury. OAG June 15, 1938 (133b-53).

### 2. Indictment

An allegation that the testimony of the accused was wilfully and corruptly false is equivalent to an allegation that defendant wilfully and knowingly testified falsely. The court where the offense was committed was sufficiently described. *State v Stein*, 48 M 466, 51 NW 474.

It is not necessary to aver that matter assigned as perjury is material where its materiality appears from the facts alleged. Where it is assigned as perjury that the accused in an affidavit for attachment swore falsely that he was the attorney for the plaintiff in the attachment suit it was held not necessary to allege that the accused was an attorney at law. *State v Madigan*, 57 M 425, 59 NW 490.

The indictment set out the testimony and alleged it to be false, but contained no averment negating any of the facts alleged to have been falsely deposed or specifying wherein they were false. This indictment did not inform the accused, of "the nature and cause of the accusation" against him, within the meaning of Minnesota Constitution, Article 1, Section 6. Form 24 of an indictment set out in General Statutes 1894, Section 7239, and carried over from territorial days is in conflict with the constitution. (Overruling *State v Thomas*, 19 M 484 (418)). *State v Nelson*, 74 M 409, 77 NW 223.

The indictment drawn under Laws 1895, Chapter 175, Section 104, (annual report of an insurance company) does not charge two offenses. The alleged forgery purported to verify the truth of a statement referred to as "foregoing statement, hereunto annexed and by affiant subscribed" is sufficiently described being annexed but not subscribed, and is sufficient. The indictment sufficiently avers that defendant was sworn to the affidavit. *State v Scott*, 78 M 311, 81 NW 3.

### 3. Oath administered

The production of an affidavit regular in form, with proof that the accused signed it, and that the officer before whom it purports to be sworn to, signed the jurat and affixed his seal, is sufficient evidence on the trial on such an indictment that the accused actually swore to the affidavit. *State v Madigan*, 57 M 425, 59 NW 490.

A clerk of the district court, in administering an oath to an applicant for a marriage license, is not required to affix the seal of the court to the jurat; and the application, if duly signed by the applicant and attested by the clerk, constitutes prima facie evidence that the oath was duly administered. *State v Day*, 108 M 121, 121 NW 611.

### 4. Subornation

If in the prosecution of a party for subornation of perjury, it is sought to establish the fact that perjury was committed by the person suborned, his testimony must be corroborated as to such fact. But the alleged fact that he was induced to commit the crime by the accused may be established by his corroborated testimony if he satisfies the jury beyond a reasonable doubt. *State v Renswick*, 85 M 19, 88 NW 22.

Upon a conviction for the crime of subornation of perjury, a new trial should be granted in furtherance of justice because of the doubtful character of the

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testimony and the insufficiency of the evidence. State v Smith, 159 M 511, 199 NW 427.

## **613.40 IRREGULARITIES IN ADMINISTERING OATHS; INCOMPETENCY OF WITNESS NO DEFENSE.**

HISTORY. Penal Code ss. 88, 89; G.S. 1894 ss. 6372, 6373; R.L. 1905 s. 4832; G.S. 1913 s. 8560; G.S. 1923 s. 10017, M.S. 1927 s. 10017.

SEE: State v Day, 108 M 121, 121 NW 611.

## **613.41 KNOWLEDGE OF MATERIALITY NOT NECESSARY.**

HISTORY. Penal Code s. 90; G.S. 1894 s. 6374; R.L. 1905 s. 4833; G.S. 1913 s. 8561; G.S. 1923 s. 10018; M.S. 1927 s. 10018.

Conviction not sustained for the reason that the oath he took was not administered to or as required or authorized by law. State v Larson, 171 M 246, 213 NW 900.

## **613.42 DEPOSITION; WHEN COMPLETE.**

HISTORY. Penal Code s. 91; G.S. 1894 s. 6375; R.L. 1905 s. 4834; G.S. 1913 s. 8562; G.S. 1923 s. 10019; M.S. 1927 s. 10019.

## **613.43 STATEMENT OF WHAT ONE DOES NOT KNOW TO BE TRUE.**

HISTORY. Penal Code s. 92; G.S. 1894 s. 6376; R.L. 1905 s. 4835; G.S. 1913 s. 8563; G.S. 1923 s. 10020; M.S. 1927 s. 10020.

## **613.44 COMMITTAL OF WITNESS; DETENTION OF DOCUMENTS.**

HISTORY. Penal Code ss. 93, 94; G.S. 1894 ss. 6377, 6378; R.L. 1905 s. 4836; G.S. 1913 s. 8564; G.S. 1923 s. 10021; M.S. 1927 s. 10021.

So strongly impressed was the trial judge that the defendant committed perjury that, after hearing his testimony, he ordered his arrest. State v Storey, 148 M 400, 182 NW 613.

New trial should be granted, the evidence not being sufficient to warrant conviction. State v Smith, 159 M 511, 199 NW 427.

## **613.45 PERJURY AND SUBORNATION.**

HISTORY. Penal Code s. 96; G.S. 1894 s. 6380; R.L. 1905 s. 4837; G.S. 1913 s. 8565; G.S. 1923 s. 10022; M.S. 1927 s. 10022.

Defendant urges that the sentence is "unusually hard and severe." Defendant asked for a suspended sentence which was denied. It sentenced the defendant to imprisonment for one year. The trial court has discretion to suspend sentence. There is nothing to show abuse of that discretion. State v Soltau, 212 M 31, 2 NW(2d) 156.

## **613.46 OFFERING FALSE EVIDENCE.**

HISTORY. Penal Code s. 96½; G.S. 1894 s. 6381; R.L. 1905 s. 4838; G.S. 1913 s. 8566; G.S. 1923 s. 10023; M.S. 1927 s. 10023.

## **613.47 DESTROYING EVIDENCE.**

HISTORY. Penal Code s. 97; G.S. 1894 s. 6382; R.L. 1905 s. 4839; G.S. 1913 s. 8567; G.S. 1923 s. 10024; M.S. 1927 s. 10024.

## **613.48 PREVENTING WITNESS FROM ATTENDING.**

HISTORY. Penal Code s. 98; G.S. 1894 s. 6383; R.L. 1905 s. 4840; G.S. 1913 s. 8568; G.S. 1923 s. 10025; M.S. 1927 s. 10025.



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Defendant is guilty of a misdemeanor under section 613.48, and a justice has jurisdiction. He did not bribe the witness to give false testimony but merely to absent himself from the trial. *State ex rei v Sargent*, 71 M 28, 73 NW 626.

The indictment follows the language of General Statutes 1913, Section 8568 (section 613.48), and is in no way defective. *State v Danaher*, 141 M 490, 169 NW 420.

An indictment following the language of the statute (section 613.48) is sufficient where the statute states the ultimate facts constituting the offense. An indictment, charging an attempt to prevent and dissuade one who had been subpoenaed as a witness from appearing and testifying in a prosecution, was sufficient notwithstanding failure to allege time subpoena was served. *State v Kahner*, 217 M 574, 15 NW(2d) 105.

Rules governing attorneys in the practice of their profession. 16 MLR 300.

### 613.49 INDUCING ANOTHER TO COMMIT PERJURY.

HISTORY. Penal Code s. 99; G.S. 1894 s. 6384; R.L. 1905 s. 4841; G.S. 1913 s. 8569; G.S. 1923 s. 10026; M.S. 1927 s. 10026.

## OFFICIAL ACTS AND OMISSIONS

### 613.50 NEGLECT OR REFUSAL TO RECEIVE PERSON INTO CUSTODY.

HISTORY. Penal Code s. 104; G.S. 1894 s. 6389; R.L. 1905 s. 4842; G.S. 1913 s. 8570; G.S. 1923 s. 10027; M.S. 1927 s. 10027.

### 613.51 NEGLECT OF DUTY BY OFFICERS.

HISTORY. Penal Code ss. 105, 127; G.S. 1894 ss. 6390, 6412; R.L. 1905 s. 4843; G.S. 1913 s. 8571; G.S. 1923 s. 10028; M.S. 1927 s. 10028.

Defendant, a justice of the peace, was convicted of "wilfully neglecting to perform his duty as a justice of the peace, and for misbehavior in office." The indictment shows conduct on the part of the defendant, which might, under some circumstances, be improper, but shows no facts to make his conduct a criminal offense. *State v Coon*, 14 M 456 (340).

Failure of the sheriff to make an arrest, when not due to any fault of the officer, does not affect his right to collect mileage. *Davis v County of LeSueur*, 37 M 491, 35 NW 364.

Wilful neglect of duty penalized under sections 612.04, 613.51, was not intended to apply to the neglect to perform a duty where the officer must scrutinize the prior proceedings to determine their liability in order to conclude whether his duty has in fact arisen. *State v Bratrud*, 210 M 214, 297 NW 713.

Where orders are audited and allowed by the city council, the mayor is chargeable under this section who refuses to sign the orders for payment. OAG Jan. 2, 1936 (361f).

### 613.52 DELAYING TO TAKE PRISONER BEFORE MAGISTRATE.

HISTORY. Penal Code s. 106; G.S. 1894 s. 6391; R.L. 1905 s. 4844; G.S. 1913 s. 8572; G.S. 1923 s. 10029; M.S. 1927 s. 10029.

### 613.53 ARREST WITHOUT AUTHORITY.

HISTORY. Penal Code s. 107; G.S. 1894 s. 6392; R.L. 1905 s. 4845; G.S. 1913 s. 8573; G.S. 1923 s. 10030; M.S. 1927 s. 10030.

The jury could find from the evidence that defendant's special agent unlawfully arrested plaintiff without a warrant and caused him to be imprisoned, and that defendant was liable therefor. Verdict reduced from \$3500 to \$1800. *McDermott v Minneapolis & Sault Ste. Marie Railway Co.* 176 M 203, 223 NW 94.

Right of liquor inspector to search for and seize liquor. OAG Feb. 5, 1935 (218f).

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## **613.54 MALICIOUSLY PROCURING SEARCH WARRANT; MISCONDUCT IN USE.**

HISTORY. Penal Code ss. 108, 132; G.S. 1894 ss. 6393, 6417; R.L. 1905 s. 4846; G.S. 1913 s. 8574; G.S. 1923 s. 10031; M.S. 1927 s. 10031.

## **613.55 REFUSING TO MAKE ARREST OR TO AID OFFICER.**

HISTORY. Penal Code ss. 109, 110; G.S. 1894 ss. 6394, 6395; R.L. 1905 s. 4847; G.S. 1913 s. 8575; G.S. 1923 s. 10032; M.S. 1927 s. 10032.

## **613.56 RESISTING PUBLIC OFFICER.**

HISTORY. Penal Code s. 111; G.S. 1894 s. 6396; R.L. 1905 s. 4848; G.S. 1913 s. 8576; G.S. 1923 s. 10033; M.S. 1927 s. 10033.

Evidence sustains the verdict finding defendant guilty of resisting an officer in the performance of his duties. *State v Keehn*, 135 M 211, 160 NW 666.

While the sheriff cannot forcibly enter a home to levy an execution, but defendant is guilty of resisting an officer in refusing to surrender the property. 1936 OAG 133, Feb. 7, 1935 (390a-b).

One who padlocks a building so the state fire marshal cannot inspect is guilty under this section. OAG May 9, 1935 (197c).

## **613.57 BUYING DEMANDS OR PROMISING REWARD BY JUSTICE OR CONSTABLE.**

HISTORY. Penal Code ss. 120, 121; G.S. 1894 ss. 6405, 6406; R.L. 1905 s. 4853; G.S. 1913 s. 8581; G.S. 1923 s. 10041; M.S. 1927 s. 10041.

## **613.58 GRAND JUROR ACTING AFTER CHALLENGE ALLOWED.**

HISTORY. Penal Code s. 123; G.S. 1894 s. 6408; R.L. 1905 s. 4855; G.S. 1913 s. 8583; G.S. 1923 s. 10043; M.S. 1927 s. 10043.

## **613.59 MISCONDUCT BY ATTORNEYS.**

HISTORY. Penal Code s. 124; G.S. 1894 s. 6409; R.L. 1905 s. 4856; G.S. 1913 s. 8584; G.S. 1923 s. 10044; M.S. 1927 s. 10044.

One who succeeds in a law suit and is awarded and paid his taxable costs and disbursements has no further claim against his adversary for his attorney's fees incurred in excess of the taxable costs so recovered. *Smith v Chaffee*, 181 M 322, 232 NW 515.

Rules governing attorneys in the practice of their profession. 16 MLR 274.

## **613.60 DISCLOSURE OF TRANSACTIONS OF GRAND JURY.**

HISTORY. Penal Code ss. 129, 130; G.S. 1894 ss. 6414, 6415; R.L. 1905 s. 4862; G.S. 1913 s. 8590; G.S. 1923 s. 10050; M.S. 1927 s. 10050.

Informations or indictments. 8 MLR 391.

## **613.61 FALSELY CERTIFYING AS TO RECORD.**

HISTORY. Penal Code s. 134; G.S. 1894 s. 6419; R.L. 1905 s. 4863; G.S. 1913 s. 8591; G.S. 1923 s. 10051; M.S. 1927 s. 10051.

## **613.62 OTHER FALSE CERTIFICATES.**

HISTORY. Penal Code s. 135; G.S. 1894 s. 6420; R.L. 1905 s. 4864; G.S. 1913 s. 8592; G.S. 1923 s. 10052; M.S. 1927 s. 10052.

In a suit against the county auditor and the surety on his official bond, based on the fact that the county auditor by error certified that the taxes were paid

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when in fact they were two years delinquent, plaintiff did not recover because he had not in fact suffered damage. *Bassin v Downs*, 181 M 334, 232 NW 339.

### 613.63 FALSELY AUDITING AND PAYING CLAIMS.

**HISTORY.** Penal Code 136; G.S. 1894 s. 6421; R.L. 1905 s. 4865; G.S. 1913 s. 8593; G.S. 1923 s. 10053; M.S. 1927 s. 10053.

The city of Fergus Falls in violation of law loaned \$10,000 to the defendant, taking a mortgage as security. The city may invoke the powers of the courts to enforce collection of the debt notwithstanding the act was ultra vires. *City of Fergus Falls v Fergus Falls Hotel*, 80 M 165, 83 NW 54.

General Statutes 1894, Section 6421 (section 613.63), authorizes the prosecution of a deputy county auditor who audits claims for redemption of taxes, where the unlawful use of the official signature and seal gives currency and value to a fraudulent demand upon the public treasury. *State v Bourne*, 86 M 426, 90 NW 1105.

Indictment for taking part in auditing and approving for payment a fraudulent claim against the state, states the facts constituting the offense with sufficient particularity to inform the defendant of the nature and cause of the accusation. *State v Buhler*, 159 M 228, 198 NW 543.

Where a town supervisor is on trial for auditing and allowing a false claim against the town, material being used on his own building evidence of other like acts may be received in evidence to show guilty knowledge. *State v Sabatini*, 171 M 137, 213 NW 552.

The record shows conclusively that a crime was committed, but the only direct evidence was furnished by Bennet who was clearly an accomplice. The fact that the jury did not believe defendant's testimony cannot be held corroborative. *State v Elsberg*, 209 M 167, 295 NW 913.

The issuance of wolf bounties on fox pelts is in violation of sections 348.11 and 613.63. 1938 OAG 93, March 17, 1938 (47f).

### 613.64 WRONGFULLY RECEIVING OR DISPOSING OF MONEY OR PROPERTY.

**HISTORY.** Penal Code s. 137; G.S. 1894 s. 6422; R.L. 1905 s. 4866; G.S. 1913 s. 8594; G.S. 1923 s. 10054; M.S. 1927 s. 10054.

## LYNCHING, BARRATRY, SYNDICALISM, AND OTHER CRIMES

### 613.65 COMPOUNDING CRIMES.

**HISTORY.** Penal Code ss. 112, 113; G.S. 1894 ss. 6397, 6398; R.L. 1905 s. 4849; G.S. 1913 s. 8577; G.S. 1923 s. 10034; M.S. 1927 s. 10034.

In a prosecution for taking money, upon an agreement to withhold evidence of a crime under Penal Code, Section 112 (section 613.65), the person who makes the agreement with and pays the money is not an accomplice and his evidence need not be corroborated. *State v Quinlan*, 40 M 55, 41 NW 299.

A contract to make restitution of property embezzled, made under an agreement to protect the guilty person from prosecution, is void and the courts will give no aid to either party, unless it was executed under duress. *American Bank v Helling*, 161 M 504, 202 NW 20.

Defendant's agents obtained from plaintiffs money and a conveyance of their home to protect their son from prosecution. Where a person is forced into an unlawful contract by duress, he is not in pari delicto with the one exercising the duress, and the courts are open to him to recover what was wrongfully obtained. *Quinn v United States F & G Co.* 163 M 320, 204 NW 156.

Two boys stole chickens worth not to exceed \$15.00. The attorney for the owner of the chickens collected \$500.00 from the father of the boys, turning \$200.00 over to the owner of the chickens. The attorney was guilty of compounding a felony. *State v Ostensoe*, 181 M 106, 231 NW 804.

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Defendant, an attorney, was guilty of accepting money from three parties to compound the crime of maintaining a gambling house and was convicted. He was properly disbarred from practice as an attorney. In re Wallace, 209 M 465, 296 NW 534.

The law makes no provision for the removal of a town clerk who has compounded a crime. The town board should, however, if they wish to remove him adopt a resolution stating the facts and declare the office vacant, appoint a successor, and direct the guilty person to turn over the office to his successor. 1940 OAG 208, Dec. 2, 1940 (475g).

## 613.66 INTIMIDATING PUBLIC OFFICERS.

HISTORY. Penal Code s. 114; G.S. 1894 s. 6399; R.L. 1905 s. 4850; G.S. 1913 s. 8578; G.S. 1923 s. 10035; M.S. 1927 s. 10035.

## 613.67 LYNCHING.

HISTORY. 1921 c. 401, ss. 1 to 3; G.S. 1923 ss. 10036 to 10038; M.S. 1927 ss. 10036 to 10038.

Governmental responsibility for torts; mob and riot acts. 26 MLR 727.

## 613.68 CRIMINAL SYNDICALISM.

HISTORY. 1917 c. 215 ss. 1 to 4; G.S. 1923 ss. 10057 to 10060; M.S. 1927 ss. 10057 to 10060.

Laws 1917, Chapter 215, is not obnoxious to either the state or federal constitution. The fact whether defendant intended by the distribution of the posters to advocate a form of sabotage condemned by the statute is one of fact for the jury. State v Moilen, 140 M 112, 167 NW 345.

The corporation and the managing editor of the defendant newspaper were properly convicted of criminal syndicalism, but as to the business manager judgment of conviction is reversed. State v Workers Socialist Co. 150 M 406, 185 NW 931.

While the federal espionage act enacted in 1917 was operative in time of war, and the federal subversive activities act of 1940 is applicable in peace times, since the latter act was enacted when war threatened, in construing the subversive activities act, the holdings and decisions in the earlier act may be quoted as authorities for the guidance and implementation of the latter act. Dunne v United States, 138 F(2d) 137.

Under a statute making it a crime to organize any society of persons who teach the overthrow of the government by force, or to become a member of such society knowing the purposes thereof, the court and jury ascertain whether the organization has such forbidden purposes, and whether such requisite knowledge exists as to members, and these must appear beyond a reasonable doubt before conviction can be had. Dunne v United States, 138 F(2d) 137.

Industrial disputes. 6 MLR 548.

License for operation of private schools. 7 MLR 347.

Freedom of speech and right of assembly. 21 MLR 746.

## 613.69 CRIMINAL CONTEMPTS.

HISTORY. Penal Code s. 122; G.S. 1894 s. 6407; R.L. 1905 s. 4854; G.S. 1913 s. 8582; G.S. 1923 s. 10042; M.S. 1927 s. 10042.

A proceeding in criminal contempt is one instituted for the sole purpose of penalizing the defendant. Its purpose being public, an order punishing a person for criminal contempt does not fall on account of irregularity of the order disobeyed, unless the court was without jurisdiction to make it. From an order imposing punishment for criminal contempt there is no right of appeal. Red River Association v Bernardy, 128 M 153, 150 NW 383.

Where a defendant is accused of contempt of court for the publication of a false report of proceedings in municipal court in Minneapolis, a writ of prohibition

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will not be granted upon the contention that criminal complaint does not charge a public offense. *State v Laughlin*, 204 M 291, 283 NW 395.

Fines for contempt as indemnity. 16 MLR 806.

### 613.70 CONSPIRACY; HOW PUNISHED.

**HISTORY.** Penal Code s. 138; G.S. 1894 s. 6423; R.L. 1905 s. 4867; G.S. 1913 s. 8595; G.S. 1923 s. 10055; M.S. 1927 s. 10055.

Conspiracy, though not declared a crime, (prior to the adoption of the penal code), by our statute law, is punishable. Our statutes, (prior to the enactment of the penal code), were intended as a modification, and not as an abrogation of the common law. *State v Pulle*, 12 M 164 (99).

Where two or more persons conspire together to commit any offense or actionable wrong, everything said, done, or written by any one of them, in the execution or furtherance of their common purpose, is to be deemed as so said, done or written by everyone. *State v Thaden*, 43 M 253, 45 NW 447.

Certain words spoken of plaintiff imputing criminal misconduct of him, that he conspired with certain persons to defraud plaintiff's employer, is actionable. *Nord v Gray*, 80 M 143, 82 NW 1082.

A statement by defendant that plaintiff had, as appraiser, conspired to "sell him out" was slander and actionable per se. *Earle v Johnson*, 81 M 472, 84 NW 332.

Insufficient indictment in that it did not set forth the specific facts constituting the elements of the crime charged with reasonable certainty to inform the defendant of the nature of his offense. *State v Clements*, 82 M 448, 85 NW 229.

In an action to recover money paid to an agent to negotiate the purchase of land for the person making the advances, it was claimed to be a part of a conspiracy between the proposed purchaser, who was insolvent, and the owner of the land, to secure a loan of the agent and defraud him of the same. These facts may be shown to bar a recovery from the innocent agent of the sum paid in aid in defrauding him. *Bauer v Sawyer*, 90 M 536, 97 NW 428.

The words "he pledged himself to support them in the county seat matter if elected; do not vote for him" spoken of a candidate for county auditor, were not actionable. *Sweaas v Evenson*, 110 M 304, 125 NW 272.

An agreement among union employees in the building trades, who have a bona fide dispute with a contractor, to withhold their services from such contractor or his subcontractors until the dispute is settled, is not a violation of the statute which makes unlawful any conspiracy to do an act injurious to trade and commerce, nor of the statute which forbids combinations in restraint of trade. *Grant v St. Paul Building Council*, 136 M 176, 161 NW-1055.

An indictment which charges defendants with conspiring to teach and advocate that men should not enlist in the military or naval forces of the United States and that the citizens of this state should not aid or assist the United States in prosecuting a war in which it is engaged with a public enemy, does not, by reason of the fact that it contains an averment that one of the defendants consummated the offense which they conspired to commit, charge the offense of so teaching and advocating, but is an indictment for conspiracy. *State v Townley*, 142 M 326, 171 NW 930.

A conspiracy to defraud is ordinarily provable by circumstantial evidence. If in the end there is a completed structure of fraudulent result the frame of which has been furnished piecemeal by several defendants, the parts when brought together showing adaptability to each other and the end accomplished, it is reasonable to draw the inference of conspiracy and common intent to defraud. *Scheele v Union Loan Co.* 200 M 554, 274 NW 673.

Where the truth of representations is known to an employee but not to his employer, the latter cannot be held criminally liable for conspiracy to cheat and defraud by means of the representations. *State v Burns*, 215 M 182, 9 NW(2d) 518.

A conspiracy to commit a crime is a separate offense from the crime which is the object of the conspiracy. *State v Peterson*, 213 M 59, 4 NW(2d) 826.

In redeeming from the second mortgage foreclosure sale, none of the defendants were chargeable with conspiracy. *Krahmer v Koch*, 216 M 421, 13 NW(2d) 370.

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Labor injunctions in Minnesota. 24 MLR 762, 764.

## **613.71 CONSPIRACY, WHEN PUNISHABLE; OVERT ACT.**

HISTORY. Penal Code ss. 139, 140; G.S. 1894 ss. 6424, 6425; R.L. 1905 s. 4868; G.S. 1913 s. 8596; G.S. 1923 s. 10056; M.S. 1927 s. 10056.

An overt law was unnecessary at common law. *State v Pulle*, 12 M 164 (99).

Under the Penal Code (in effect since January 1, 1886) the combination of two or more minds in an unlawful purpose is the foundation of the offense, but an overt act in furtherance of the common purpose is necessary to complete it. *State v Townley*, 149 M 8, 182 NW 773.

The business of conducting a motion picture theater falls within the purview of General Statutes 1913, Section 8973 (section 623.01), and a combination to boycott such a theater is one in restraint of trade and forbidden by the terms of the statute. *Campbell v Motion Picture Operators*, 151 M 220, 186 NW 781.

One who has procured, counseled, or commanded another to commit a crime may withdraw before that act is done and avoid criminal responsibility by communicating the fact of his withdrawal to the party who is to commit the crime. *State v Peterson*, 213 M 56, 4 NW(2d) 826.

Interference with contract. 12 MLR 171.

Labor injunction in Minnesota. 24 MLR 765.

## **613.72 SUBSTITUTION OF CHILD.**

HISTORY. Penal Code s. 126; G.S. 1894 s. 6411; R.L. 1905 s. 4858; G.S. 1913 s. 8586; G.S. 1923 s. 10046; M.S. 1927 s. 10046.

## **613.73 PRODUCTION OF PRETENDED HEIR.**

HISTORY. Penal Code s. 125; G.S. 1894 s. 6410; R.L. 1905 s. 4857; G.S. 1913 s. 8585; G.S. 1923 s. 10045; M.S. 1927 s. 10045.

## **613.74 INSTITUTING SUIT IN NAME OF ANOTHER.**

HISTORY. Penal Code s. 131; G.S. 1894 s. 6416; R.L. 1905 s. 4860; G.S. 1913 s. 8588; G.S. 1923 s. 10048; M.S. 1927 s. 10048.

## **613.75 COMMON BARRATRY.**

HISTORY. Penal Code ss. 116 to 119; G.S. 1894 ss. 6401 to 6604; R.L. 1905 s. 4852; G.S. 1913 s. 8580; G.S. 1923 s. 10040; M.S. 1927 s. 10040.

Rules governing attorneys in the practice of their profession. 16 MLR 297.

## **613.76 SUPPRESSING EVIDENCE.**

HISTORY. Penal Code s. 115; G.S. 1894 s. 6400; R.L. 1905 s. 4851; G.S. 1913 s. 8579; G.S. 1923 s. 10039; M.S. 1927 s. 10039.

## **613.77 UNAUTHORIZED COMMUNICATION WITH PRISONERS.**

HISTORY. Penal Code s. 133; G.S. 1894 s. 6418; R.L. 1899 c. 112; R.L. 1905 s. 4861; G.S. 1913 s. 8589; G.S. 1923 s. 10049; M.S. 1927 s. 10049.

## **613.78 PUNISHMENT FOR PROHIBITED ACTS.**

HISTORY. Penal Code s. 128; G.S. 1894 s. 6413; R.L. 1905 s. 4859; G.S. 1913 s. 8587; G.S. 1923 s. 10047; M.S. 1927 s. 10047.

Certain unlawful acts, such as stopping motor trucks on the highway, or preventing the loading or unloading of trucks, unless the person stopped or prevented join a labor organization may be punishable under sections 610.19 or 613.78. 1940 OAG 104, Aug. 11, 1939 (270d-7).•

Minnesota labor relations act; effect of an "unlawful" act. 24 MLR 233.

## **613.79 PRINTING AND CIRCULATING CERTAIN DOCUMENTS PROHIBITED; EXCEPTIONS.**

HISTORY. 1939 c. 69 ss. 1, 2; M. Supp. ss. 10060-1, 10060-2.