

CHAPTER 629
EXTRADITION, DETAINERS, ARREST, BAIL

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EXTRADITION

629.01 DEFINITIONS. Where appearing in sections 629.01 to 629.29, the term "governor" includes any person performing the functions of governor by authority of the law of this state. The term "executive authority" includes the governor, and any person performing the functions of governor in a state other than this state. The term "state," referring to a state other than this state, includes any other state or territory, organized or unorganized, of the United States.

[1939 c 240 s 1] (10547-11)

629.02 DUTIES OF GOVERNOR IN EXTRADITION MATTERS. Subject to the provisions of sections 629.01 to 629.29, the provisions of the Constitution of the United States controlling, and any and all acts of congress enacted in pursuance thereof, it is the duty of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and if found in this state.

[1939 c 240 s 2] (10547-12)

629.03 DEMAND IN WRITING. No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing alleging, except in cases arising under section 629.06, that the accused was

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present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state, and accompanied by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation, or parole. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of the indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the executive authority making the demand.

[1939 c 240 s 3] (10547-13)

629.04 ATTORNEY GENERAL TO INVESTIGATE. When a demand shall be made upon the governor of this state by the executive authority of another state for the surrender of a person so charged with crime, the governor may call upon the attorney general or any prosecuting officer in this state to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered.

[1939 c 240 s 4] (10547-14)

629.05 EXTRADITION BY AGREEMENT. When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.

The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state who is charged in the manner provided in section 629.23 with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily.

[1939 c 240 s 5] (10547-15)

629.06 EXTRADITION OF PERSONS COMMITTING CRIME. The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in section 629.03 with committing an act in this state, or in a third state, intentionally resulting in a crime in the state, whose executive authority is making the demand, and the provisions of sections 629.01 to 629.29 not otherwise inconsistent, shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom.

[1939 c 240 s 6] (10547-16)

629.07 WARRANT OF ARREST. If the governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance.

[1939 c 240 s 7] (10547-17)

629.08 ACCUSED TURNED OVER TO DEMANDING STATE. Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the state and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of sections 629.01 to 629.29, to the duly authorized agent of the demanding state.

[1939 c 240 s 8] (10547-18)

629.09 POWERS OF OFFICER. Every such peace officer or other person empowered to make the arrest shall have the same authority, in arresting the accused, to

command assistance therein, as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance.

[1939 c 240 s 9] (10547-19)

629.10 ACCUSED TAKEN BEFORE COURT. No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court of record in this state, who shall inform him of the demand made for his surrender and of the crime with which he is charged, and that he has the right to demand and procure legal counsel; and, if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge of such court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the agent of the demanding state.

[1939 c 240 s 10] (10547-20)

629.11 VIOLATION A GROSS MISDEMEANOR. Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the governor's warrant in wilful disobedience to section 629.10 shall be guilty of a gross misdemeanor; and upon conviction shall be fined not more than \$1,000 or be imprisoned for not more than six months.

[1939 c 240 s 11] (10547-21)

629.12 ACCUSED MAY BE CONFINED IN JAIL. The officer or persons executing the governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered, may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person being chargeable with the expense of keeping.

The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this state with such a prisoner for the purpose of immediately returning such prisoner to the demanding state, may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent being chargeable with the expense of keeping; provided, that such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this state.

[1939 c 240 s 12] (10547-22)

629.13 WHO MAY BE APPREHENDED. When any person within this state shall be charged on the oath of any credible person before any judge or magistrate of this state with the commission of any crime in any other state and, except in cases arising under section 629.06, with having fled from justice, with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation, or parole, or when complaint shall have been made before any judge or magistrate in this state setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime and, except in cases arising under section 629.06, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation, or parole, and is believed to be in this state, the judge or magistrate shall issue a warrant directed to any peace officer commanding him to apprehend the person named therein, wherever he may be found in this state, and to bring him before the same or any other judge, magistrate, or court who or which may be available in or convenient of access to the place where the arrest may be made, to

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answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

[1939 c 240 s 13] (10547-23)

629.14 ARREST WITHOUT WARRANT. The arrest of a person may be lawfully made also by any peace officer or a private person, without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in section 629.13; and thereafter his answer shall be heard as if he had been arrested on a warrant.

[1939 c 240 s 14] (10547-24)

629.15 COURT MAY COMMIT TO JAIL. If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under section 629.06, that he has fled from justice, the judge or magistrate must, by a warrant reciting the accusation, commit him to the county jail for such a time, not exceeding 30 days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in section 629.16, or until he shall be legally discharged.

[1939 c 240 s 15] (10547-25)

629.16 ADMIT TO BAIL. Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or magistrate in this state may admit the person arrested to bail by bond, with sufficient sureties, and in such sum as he deems proper, conditioned for his appearance before him at a time in such bond, and for his surrender, to be arrested upon the warrant of the governor of this state.

[1939 c 240 s 16] (10547-26)

629.17 DISCHARGE. If the accused is not arrested under warrant of the governor by the expiration of the time specified in the warrant or bond, a judge or magistrate may discharge him or may recommit him for a further period not to exceed 60 days, or a judge or magistrate may again take bail for his appearance and surrender, as provided in section 629.16, but within a period not to exceed 60 days after the date of such new bond.

[1939 c 240 s 17] (10547-27)

629.18 BOND FORFEITED. If the prisoner is admitted to bail, and fails to appear and surrender himself according to the conditions of his bond, the judge, or magistrate by proper order, shall declare the bond forfeited and order his immediate arrest without warrant if he be within this state. Recovery may be had on such bond in the name of the state as in the case of other bonds given by the accused in criminal proceedings within this state.

[1939 c 240 s 18] (10547-28)

629.19 PRISONER HELD OR SURRENDERED. If a criminal prosecution has been instituted against such person under the laws of this state and is still pending, the governor, in his discretion, either may surrender him on demand of the executive authority of another state or hold him until he has been tried and discharged or convicted and punished in this state.

[1939 c 240 s 19] (10547-29)

629.20 GUILT OR INNOCENCE NOT INQUIRED INTO. The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the governor or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form, as provided, shall have been presented to the governor, except as it may be involved in identifying the person held as the person charged with the crime.

[1939 c 240 s 20] (10547-30)

629.21 RECALL OF WARRANT. The governor may recall his warrant of arrest or may issue another warrant when he deems proper.

[1939 c 240 s 21] (10547-31)

629.22 WARRANT FOR PAROLEES OR PROBATIONERS. When the governor of this state shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation, or parole in this state, from the executive authority of any other state, or from the chief justice or an associate justice of the supreme court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this state, to some agent, commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county in this state in which the offense was committed.

[1939 c 240 s 22] (10547-32)

629.23 PROSECUTING ATTORNEY, WRITTEN APPLICATION. Subdivision 1. **Contents.** When the return to this state of a person charged with crime in this state is required, the prosecuting attorney shall present to the governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place, and circumstances of its commission, the state in which he is believed to be, including the location of the accused therein at the time the application is made, and certifying that, in the opinion of the prosecuting attorney, the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not instituted to enforce a private claim.

Subd. 2. **Return of fugitive.** When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation, or parole, the prosecuting attorney of the county in which the offense was committed, the parole board, or the warden of the institution or sheriff of the county, from which the escape was made, shall present to the governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation, or parole, the state in which he is believed to be, including the location of the person therein at the time application is made.

Subd. 3. **Procedural requirements.** The application shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge or magistrate, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer, parole board, warden, or sheriff may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application, with the action of the governor indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information, and affidavits, or of the judgment of conviction or of the sentence shall be filed in the office of the secretary of state to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition.

[1939 c 240 s 23] (10547-33)

629.24 CIVIL PROCESS NOT TO BE SERVED. A person brought into this state by, or after waiver of, extradition based on a criminal charge, shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceedings to answer which he is being or has been returned, until he has been convicted in the criminal proceeding, or, if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited.

Any person arrested in this state charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his bail, probation, or parole, may waive the issuance and service of the warrant provided for in sections 629.07 and 629.08 and all other procedure incidental to extradition proceedings, by executing or subscribing, in the presence of a judge of any court of record within this state, a writing which states that he consents to return to the demanding state; provided, that before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of his rights to the is-

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suance and service of a warrant of extradition and to obtain a writ of habeas corpus, as provided for in section 629.10.

If and when such consent has been duly executed, it shall forthwith be forwarded to the office of the governor of this state and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of such consent; provided, that nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights, or duties of the officers of the demanding state or of this state.

Nothing in sections 629.01 to 629.29 shall be deemed to constitute a waiver by this state of its right, power, or privilege to try such demanded person for crime committed within this state, or of its right, power, or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence, or punishment for any crime committed within this state, nor shall any proceedings had under sections 629.01 to 629.29 which result in, or fail to result in, extradition be deemed a waiver by this state of any of its rights, privileges, or jurisdiction in any way.

[1939 c 240 s 24] (10547-34)

629.25 TRIAL FOR OTHER CRIMES. After a person has been brought back to this state by or after waiver of extradition proceedings, he may be tried in this state for other crimes which he may be charged with having committed here, as well as that specified in the requisition for his extradition.

[1939 c 240 s 25] (10547-35)

629.26 UNIFORMITY. The provisions of sections 629.01 to 629.29 shall be so interpreted and construed as to effectuate their general purposes to make uniform the laws of those states which enact them.

[1939 c 240 s 26] (10547-36)

629.27 GOVERNOR MAY APPOINT AGENT. In every case authorized by the constitution and laws of the United States, the governor may appoint an agent, who shall be the sheriff of the county from which the application for extradition shall come, when he can act, to demand of the executive authority of any state or territory any fugitive from justice or any person charged with a felony or other crime in this state; and when an application shall be made to the governor for that purpose, the attorney general, when so required by him, shall forthwith investigate or cause to be investigated by any county attorney the grounds of such application, and report to the governor all material circumstances which shall come to his knowledge, with an abstract of the evidence, and his opinion as to the expediency of the demand. The accounts of agents so appointed shall in each case be audited by the county board of the county wherein the crime upon which extradition proceedings are based shall be alleged to have been committed, and every such agent shall receive from the treasury of such county \$4 for each calendar day, and the necessary expenses incurred by him in the performance of such duties.

[1939 c 240 s 28] (10547-38)

629.28 POWERS OF OFFICERS. Any person who has been or shall be convicted of or charged with a crime in any other state, and who shall be lawfully in the custody of any officer of the state where such offense is claimed to have been committed, may be by such officer conveyed through or from this state, for which purpose such officer shall have all the powers in regard to his control or custody that an officer of this state has over a prisoner in his charge.

[1939 c 240 s 29] (10547-39)

629.29 CITATION, UNIFORM CRIMINAL EXTRADITION ACT. Sections 629.01 to 629.29 may be cited as the uniform criminal extradition act.

[1939 c 240 s 31] (10547-41)

629.291 TRANSFER OF INMATES OF PENAL INSTITUTIONS TO FEDERAL DISTRICT COURT FOR TRIAL FOR VIOLATIONS OF FEDERAL CRIMINAL LAWS. When the attorney general of the United States, or any of his assistants, or the United

States attorney for the district of Minnesota, or any of his assistants, shall present and file with the governor of Minnesota a written verified petition stating that at the date of the petition there was imprisoned in one of the penal institutions of Minnesota, naming the institution, a certain person, naming the person, then serving a sentence of imprisonment imposed by one of the courts of record of Minnesota, which person was at the time of the petition under indictment in the United States district court for the district of Minnesota for a violation of a federal criminal law, which petition shall have attached to it a certified copy of the indictment, and petitioning the state of Minnesota to consent to the transfer of such person from such Minnesota penal institution to the United States district court for the district of Minnesota having jurisdiction thereof, for trial under such indictment, and agreeing to pay all expenses incurred by the state by reason thereof, the governor shall forthwith hear and consider the petition and, when satisfied as to the identity of the person sought to be transferred, the governor may consent to the transfer of the prisoner by and on behalf of the state of Minnesota, and may issue his order directing the warden, superintendent, or keeper of the penal institution in which the person shall be imprisoned to transfer the person from the penal institution to the United States district court for the district of Minnesota, upon receipt and service of a proper process issued out of the United States district court naming the time and place where the prisoner shall be wanted for trial, and directing the warden, superintendent, or keeper of the penal institution to retain custody of the prisoner during the trial and, at the conclusion of the trial after judgment shall have been pronounced by the United States district court, to return the prisoner to the Minnesota penal institution from which he was taken, to be there kept until released pursuant to the laws of the state of Minnesota and, prior to the time for the release of any such prisoner who shall be under sentence in the United States district court, the warden, superintendent, or keeper of the penal institution in which the prisoner is in custody shall notify the United States marshal in and for the district of Minnesota and shall at the time of such release surrender such prisoner to him to be dealt with in accordance with the laws of the United States.

[1927 c 141] (9950-3)

DETAINERS

629.292 UNIFORM MANDATORY DISPOSITION OF DETAINERS ACT. Subdivision 1. **Request for disposition; notification of prisoner.** (a) Any person who is imprisoned in a penal or correctional institution or other facility in the department of corrections of this state may request final disposition of any untried indictment or information pending against him in this state. The request shall be in writing addressed to the court in which the indictment or information is pending and to the prosecuting attorney charged with the duty of prosecuting it, and shall set forth the place of imprisonment.

(b) The commissioner of corrections or other official designated by him having custody of prisoners shall promptly inform each prisoner in writing of the source and nature of any untried indictment or information against him of which the commissioner of corrections or such official had knowledge or notice and of his right to make a request for final disposition thereof.

(c) Failure of the commissioner of corrections or other such official to inform a prisoner, as required by this section, within one year after a detainer has been filed at the institution shall entitle him to a final dismissal of the indictment or information with prejudice.

Subd. 2. Procedure on receipt of request. The request shall be delivered to the commissioner of corrections or other official designated by him having custody of the prisoner, who shall forthwith

(a) certify the term of commitment under which the prisoner is being held, the time already served on the sentence, the time remaining to be served, the good time earned, the time of parole eligibility of the prisoner, and any decisions of the corrections board relating to the prisoner; and

(b) send by registered or certified mail, return receipt requested, one copy of the request and certificate to the court and one copy to the prosecuting attorney to whom it is addressed.

Subd. 3. Time of trial. Within six months after the receipt of the request and certificate by the court and prosecuting attorney, or within such additional time as the court for good cause shown in open court may grant, the prisoner or his counsel being present, the indictment or information shall be brought to trial; but the parties may

stipulate for a continuance or a continuance may be granted on notice to the attorney of record and opportunity for him to be heard. If, after such a request, the indictment or information is not brought to trial within that period, no court of this state shall any longer have jurisdiction thereof, nor shall the untried indictment or information be of any further force or effect, and the court shall dismiss it with prejudice.

Subd. 4. **Effect of escape.** Escape from custody by any prisoner subsequent to his execution of a request for final disposition of an untried indictment or information voids the request.

Subd. 5. **Notification of existence of procedure.** The commissioner of corrections or other official designated by him having custody of prisoners shall arrange for all prisoners to be informed in writing of the provisions of this section, and for a record thereof to be placed in the prisoner's file.

Subd. 6. **Uniformity.** This section shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Subd. 7. **Citation.** This section may be cited as the uniform mandatory disposition of detainers act.

[1967 c 294 s 1-7; 1973 c 654 s 15; 1975 c 271 s 6]

629.294 INTERSTATE AGREEMENT ON DETAINERS. Subdivision 1.

Agreement. The agreement on detainers is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

The contracting states solemnly agree that:

ARTICLE I

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations, or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

ARTICLE II

As used in this agreement:

(a) "State" shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to Article III hereof or at the time that a request for custody or availability is initiated pursuant to Article IV hereof.

(c) "Receiving state" shall mean the state in which trial is to be had on an indictment, information, or complaint pursuant to Article III or Article IV hereof.

ARTICLE III

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information, or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within 180 days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint; provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certifi-

cate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections, or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The warden, commissioner of corrections, or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information, or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations, or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections, or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information, or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

ARTICLE IV

(a) The appropriate officer of the jurisdiction in which an untried indictment, information, or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article V(a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated; provided that the court having jurisdiction of such indictment, information, or complaint shall have duly approved, recorded, and transmitted the request; and provided further that there shall be a period of 30 days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

(b) Upon receipt of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultane-

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ously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this article, trial shall be commenced within 120 days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the grounds that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information, or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V(e) hereof, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

ARTICLE V

(a) In response to a request made under Article III or Article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information, or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(1) Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given.

(2) A duly certified copy of the indictment, information, or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information, or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV hereof, the appropriate court of the jurisdiction where the indictment, information, or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations, or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary

custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations, or complaints are pending, or in which trial is being had, shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping, and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

ARTICLE VI

(a) In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(b) No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

ARTICLE VII

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

ARTICLE VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

ARTICLE IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

Subd. 2. **Appropriate court.** The phrase "appropriate court" as used in the agreement on detainers shall, with reference to the courts of this state, mean the district court.

Subd. 3. **Enforcement.** All courts, departments, agencies, officers, and employees of this state and its political subdivisions are hereby directed to enforce the agreement on detainers and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purpose.

Subd. 4. **Habitual offenders.** Nothing in this section or in the agreement on detainers shall be construed to require the application of the habitual offenders law to any person on account of any conviction had in a proceeding brought to final disposition by reason of the use of said agreement.

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Subd. 5. **Escapes.** Whoever departs without lawful authority from custody while in another state pursuant to the agreement on detainers shall be deemed to have escaped and may be punished as provided in section 609.485, subdivision 4.

Subd. 6. **Delivery of inmate.** It shall be lawful and mandatory upon the warden or other official in charge of a penal or correctional institution in this state to give over the person of any inmate thereof whenever so required by the operation of the agreement on detainers.

Subd. 7. **Administration.** The commissioner of corrections or his designee shall be the central administrator and information agent for the agreement on detainers.

Subd. 8. **Distribution of copies of act.** Copies of this act shall, upon its approval, be transmitted to the governor of each state, the attorney general and the administrator of general services of the United States, and the council of state governments.

[1967 c 94 s 1]

ARRESTS

629.30 ARRESTS; BY WHOM MADE; AIDING OFFICER. Arrest is the taking of a person into custody that he may be held to answer for a public offense, and may be made:

- (1) By a peace officer under a warrant;
- (2) By a peace officer without a warrant;
- (3) By a private person.

Every person shall aid an officer in the execution of a warrant when requested so to do by such officer, who is himself present and acting in its execution.

[RL s 5225] (10566)

629.31 TIME OF ARREST. If the offense charged be a felony, arrest may be made on any day and at any time of the day or night; if it be a misdemeanor, arrest shall not be made on Sunday or between the hours of 9:00 o'clock p.m. and 9:00 o'clock a.m. on any other day unless upon the direction of the magistrate endorsed upon the warrant.

[RL s 5226; Ex1971 c 27 s 46] (10567)

629.32 RESTRAINT, WARRANT TO BE SHOWN. An arrest is made by the actual restraint of the person of the defendant or by his submission to the custody of the officer; but he shall not be subjected to any more restraint than shall be necessary for his arrest and detention, and the officer shall inform the defendant that he is acting under the authority of a warrant, and shall show him the warrant if so required. An arrest by a peace officer acting under a warrant is lawful even though the officer does not have the warrant in his possession at the time of the arrest, but if the person so requests the warrant shall be shown to him as soon as possible and practicable. An arrest may lawfully be made by a peace officer when advised by any other peace officer in the state that a warrant has been issued for that person.

[RL s 5227; 1947 c 316 s 1] (10568)

629.33 MEANS USED. If, after notice of intention to arrest defendant, he shall flee or forcibly resist, the officer may use all necessary and lawful means to effect his arrest, provided the officer may not use deadly force unless authorized to do so under section 609.066. He may break open an inner or outer door or window of a dwelling house to execute a warrant if, after notice of his authority and purpose, he is refused admittance, or when necessary for his own liberation, or for the purpose of liberating another person who, having entered to make an arrest, is detained therein.

[RL s 5228; 1978 c 736 s 3] (10569)

629.34 ARREST WITHOUT WARRANT. A peace officer may, without warrant, arrest a person:

- (1) For a public offense committed or attempted in his presence;
- (2) When the person arrested has committed a felony, although not in his presence;
- (3) When a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it; or

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(4) Upon a charge made upon reasonable cause of the commission of a felony by the person arrested.

To make such arrest the officer may break open an outer or inner door or window of a dwelling house if, after notice of his office and purpose, he shall be refused admittance.

[*RL s 5229*] (10570)

629.341 PROBABLE CAUSE ARRESTS; DOMESTIC VIOLENCE. Notwithstanding the provisions of section 629.34 or any other law or rule to the contrary, a peace officer may arrest without a warrant a person at his place of residence if the peace officer has probable cause to believe the person within the preceding four hours has assaulted his spouse or other person with whom he resides, although the assault did not take place in the presence of the peace officer. A peace officer may not arrest a person pursuant to this section without first observing recent physical injury to, or impairment of physical condition of the alleged victim.

[*1978 c 724 s 2*]

629.35 ARREST AT NIGHT. Such peace officer may at night, without a warrant, arrest any person whom he has reasonable cause for believing to have committed a felony, and shall be justified in making such arrest, though it shall afterwards appear that no felony has been committed; but when so arresting a person without a warrant, the officer shall inform him of his authority and the cause of the arrest, except when he shall be in the actual commission of a public offense, or shall be pursued immediately after an escape.

[*RL s 5230*] (10571)

629.36 ARREST BY BYSTANDER. Such peace officer may take before a magistrate a person who, being engaged in a breach of the peace, shall be arrested by a bystander and delivered to him; and, when a public offense shall be committed in the presence of a magistrate, he may, by written or verbal order, command any person to arrest the offender, and thereupon proceed as if the offender had been brought before him on a warrant of arrest.

[*RL s 5231*] (10572)

629.361 RESTORATION OF STOLEN PROPERTY; DUTY OF OFFICERS. The officer arresting any person charged as principal or accessory in any robbery, aggravated robbery, or theft shall use reasonable diligence to secure the property alleged to have been stolen, and after seizure shall be answerable therefor while it remains in his hands, and shall annex a schedule thereof to his return of the warrant. When the county attorney shall require such property for use as evidence upon the examination or trial, such officer, upon his demand, shall deliver it to him and take his receipt therefor, after which such county attorney shall be responsible for the same. Upon conviction of the offender, whoever shall hold such property shall turn it over to the owner.

[*RL s 5095; 1965 c 35 s 11*] (10376)

629.362 ESCAPED PRISONER RECAPTURED. Every prisoner in custody under sentence of imprisonment for any crime who shall escape from custody may be recaptured and imprisoned for a term equal to the unexpired portion of the original term.

[*RL s 4821*] (10006)

NOTE: See section 609.485.

629.363 CONDUCTOR; AUTHORITY TO ARREST. Every conductor of a railway train, with or without warrant, may arrest any person committing any act upon such train specified in sections 609.605 and 609.72, and take him before a magistrate or to the next railway station, and deliver him to the proper officer, or to the station agent, who shall take such person before the proper magistrate or deliver him to such officer. Every such conductor and station agent shall in such case possess all the powers of a sheriff with a warrant.

[*RL s 5027; 1963 c 753 art 2 s 11*] (10297)

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629.364 ARRESTS. Every person may, and every conductor or other employee on any railway car or train, captain, clerk, or other employee on any boat, station agent at any depot, officer of any fair or fairground, proprietor or employee of any place of public resort, with or without warrant, shall, arrest any person found in the act of committing any of the offenses mentioned in section 609.52, subdivision 2, clause (4), or any person who, he has good reason to believe, has been guilty of any such offense, and take him before a magistrate or court having jurisdiction, and make written complaint under oath against him. Every person so making such arrest shall have the same power and authority in all respects as an officer with a warrant, including the power to summon assistance, and shall also arrest the person injured by reason of such offense, and take him before such magistrate or court, who shall require him to give security for his appearance as a witness on trial of the case; and he shall receive for such services the same compensation as is provided for sheriffs.

[*RL s 4970; 1965 c 51 s 84*] (10220)

629.365 DEFINITIONS. Subdivision 1. For the purposes of sections 629.365 and 629.366 the terms defined in this section have the meanings ascribed to them.

Subd. 2. "Merchant" means any person who owns or has in his possession or subject to his control personal property with authority to sell the same in the regular course of business at retail or wholesale.

Subd. 3. "Person" includes an individual, a partnership, corporation, or association.

[*1957 c 805 s 1*]

629.366 THEFT IN BUSINESS ESTABLISHMENTS; DETENTION OF SUSPECTS. Subdivision 1. A merchant or merchant's employee who has reasonable cause for believing that a person has taken, or is in the act of taking, any article of value without paying therefor, from the possession of the merchant in his place of business or from any vehicle or premises under his control, with the intent wrongfully to deprive the merchant of his property or the use and benefit thereof or to appropriate the same to the use of the taker or any other person, may detain such person for the sole purpose of delivering him to a peace officer without unnecessary delay and then and there making a charge against such person to the peace officer. The person detained shall be informed promptly of the purpose of the detention and shall not be subjected to unnecessary or unreasonable force, nor to interrogation against his will.

Subd. 2. Upon a charge being made, a peace officer may, without a warrant, arrest any person, whom he has reasonable cause for believing has committed or attempted to commit the offense described in subdivision 1.

Subd. 3. No merchant, merchant's employee, or peace officer shall be criminally or civilly liable for false arrest or false imprisonment or wrongful detention under subdivisions 1 or 2 if his action was based upon reasonable cause.

[*1957 c 805 s 2*]

629.37 ARREST BY PRIVATE PERSON. A private person may arrest another:

- (1) For a public offense committed or attempted in his presence;
- (2) When such person has committed a felony, although not in his presence; or
- (3) When a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it.

[*RL s 5232*] (10573)

629.38 DISCLOSURE OF CAUSE; MEANS USED. Before making an arrest such private person shall inform the person to be arrested of the cause thereof and require him to submit, except when he is in the actual commission of the offense or when he shall be arrested on pursuit immediately after its commission. If such person has committed a felony, such private person, after notice of his intention to make the arrest, if he shall be refused admittance, may break open an outer or inner door or window of a dwelling house for the purpose of making the same.

[*RL s 5233*] (10574)

629.39 PRIVATE PERSON MAKING ARREST, PROCEEDINGS. Every private person who shall have arrested another for the commission of a public offense shall, without unnecessary delay, take him before a magistrate or deliver him to a peace of-

ficer. If a person arrested shall escape or be rescued, the person from whose custody he has escaped may immediately pursue and retake him, at any time and in any place in the state, and for that purpose, after notice of his intention and refusal of admittance, may break open any outer or inner door or window of a dwelling house.

[*RL s 5234*] (10575)

629.40 ARRESTS, ANYWHERE IN STATE. Subdivision 1. In any case wherein any sheriff, deputy sheriff, police officer, marshal, constable, or peace officer may by law, either with or without a warrant, arrest any person for or upon a charge of any criminal offense committed within his jurisdiction, and the person to be arrested escapes from or is out of the county, city or town, the officer may pursue and apprehend the person to be arrested anywhere in this state.

Subd. 2. When any sheriff, deputy sheriff, police officer, marshal, constable, or peace officer shall, in obedience to the order of a court, or proper police authority, or in fresh pursuit as provided in subdivision 1, be outside of his jurisdiction he is serving in his regular line of duty as fully as though he was within his jurisdiction.

[*1927 c 256 s 1; 1955 c 252 s 1; 1973 c 123 art 5 s 7*] (10575-1)

629.401 DELAYING TO TAKE PRISONER BEFORE MAGISTRATE. Every public officer or other person having arrested any person upon a criminal charge, who shall wilfully and wrongfully delay to take him before a magistrate having jurisdiction to take his examination, shall be guilty of a gross misdemeanor.

[*RL s 4844*] (10029)

629.402 ARREST WITHOUT AUTHORITY. Every public officer, or person pretending to be a public officer, who shall knowingly, under the pretense or color of any process, arrest any person or detain him against his will, or shall seize or levy upon any property, or dispossess any one of any lands or tenements, without a regular process therefor, shall be guilty of a gross misdemeanor.

[*RL s 4845*] (10030)

629.403 REFUSING TO MAKE ARREST OR TO AID OFFICER. Every person who, after having been lawfully commanded by any magistrate to arrest another person, shall wilfully neglect or refuse so to do, and every person who, after having been lawfully commanded to aid an officer in arresting any person, or in retaking any person who has escaped from lawful custody, or in executing any legal process, shall wilfully neglect or refuse to aid such officer, shall be guilty of a misdemeanor.

[*RL s 4847*] (10032)

629.404 COUNTIES OR MUNICIPALITIES CAUSING ARREST. Subdivision 1. **Return transportation.** Every county or municipality which causes to be issued a warrant for arrest for a person pursuant to section 628.05 or 629.41, shall furnish return transportation, upon request to the person so arrested. Such transportation shall be furnished to the municipality or township of his residence in Minnesota after a trial or final hearing on the matter.

Subd. 2. **Exceptions.** This section shall not apply:

- (1) To arrests made outside the state pursuant to sections 629.01 to 629.291;
- (2) Where the person is convicted or pleads guilty to any offense;
- (3) Where the arrest is made pursuant to section 629.61.

[*1971 c 908 s 1,2*]

WARRANTS; BAIL BONDS

629.41 PROCESS, ISSUANCE. The judges of the several courts of record, in vacation as well as in term time, court commissioners, and all justices of the peace, are authorized to issue process to carry into effect the provisions of law for the apprehension of persons charged with offenses.

[*RL s 5235*] (10576)

629.42 PROCEEDINGS ON COMPLAINT; WARRANT. Upon complaint made to any such magistrate that a criminal offense has been committed, he shall examine, on oath, the complainant and any witnesses who shall appear before him, reduce the complaint to writing, and cause it to be subscribed by the complainant; and, if it shall appear that such offense has been committed, he shall issue a warrant, reciting the substance of the complaint, and requiring the officer to whom it is directed to forth-

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with bring the accused before the magistrate issuing the warrant, or some other court or magistrate of the county, to be dealt with according to law, and in such warrant require him to summon the witnesses therein named to appear and give evidence on the examination. Provided, however, the clerk and deputy clerks of court may also perform such duties when the offense alleged to have been committed is a violation of a petty misdemeanor law of this state or of a municipal ordinance which is punishable, upon conviction, by a sentence to the payment of a fine only.

[*RL s 5236; Ex1971 c 27 s 47*] (10577)

629.43 WARRANT, EXECUTION OF. If any person against whom a warrant is issued for an alleged offense committed in any county, either before or after the issuing of such warrant, shall escape from or be out of the county, the sheriff or other officer to whom such warrant is directed may pursue and apprehend the party charged, in any county in this state, and for that purpose may command aid, and exercise the same authority, as in his own county.

[*RL s 5237*] (10578)

629.44 RECOGNIZANCE BY OFFENDER, DUTY OF MAGISTRATE. In every case where the offense charged in the warrant shall not be punishable by imprisonment in the state prison, upon request of the person arrested, the officer making the arrest shall take him before a magistrate of the county in which the arrest shall be made, for the purpose of entering into a recognizance without trial or examination, and such magistrate may take from him a recognizance with sufficient sureties for his appearance before the court having cognizance of the offense and next holden in such county, and thereupon he shall be liberated. The magistrate taking bail shall certify that fact upon the warrant, and deliver the same, with the recognizance so taken, to the person making the arrest, who shall cause the same to be delivered, without unnecessary delay, to the clerk of the court before which the accused was recognized to appear; and, on application of the complainant, the magistrate who issued the warrant, or the county attorney, shall cause such witnesses to be summoned as he deems necessary.

[*RL s 5238; 1961 c 561 s 14*] (10579)

629.45 BAIL REFUSED; PROCEEDINGS. If the magistrate in the county where the arrest was made shall refuse to bail the person so arrested and brought before him, or if no sufficient bail shall be offered, the person having him in charge shall take him before the magistrate who issued the warrant, or, in his absence, before some other magistrate of the county in which the warrant was issued, to be proceeded with as directed.

[*RL s 5239*] (10580)

629.46 PROCEDURE IN CASE OF FELONY. When the offense charged in any warrant is punishable by imprisonment in the state prison, the officer making the arrest in some other county shall convey the prisoner to the county where the warrant issued, and take him before the magistrate who issued the same, or, in case of his inability to attend, before some other magistrate of the same county, and also deliver to such magistrate the warrant, with the proper return thereon signed by him.

[*RL s 5240; 1961 c 561 s 15*] (10581)

629.47 EXAMINATION ADJOURNED; RECOGNIZANCE. Every magistrate may adjourn an examination or trial pending before himself, from time to time, as occasion shall require, not exceeding ten days at one time, without consent of the accused, and at the same or a different place in the county as he shall think proper; and in such case, if the person is charged with an offense not bailable, he shall be committed in the meantime, otherwise he may be recognized in a sum and with sureties satisfactory to the magistrate for his appearance for further examination, and for want of such recognizance he shall be committed; but in a case where a person shall be brought before the judge of a municipal court charged with a misdemeanor, such court may receive cash bail for his appearance in an amount not more than double the highest cash fine which can be imposed for the offense, and within such limit he may, from time to time thereafter, increase or reduce such sum.

[*RL s 5241*] (10582)

629.48 PROCEEDINGS ON FAILURE TO APPEAR. If the person so recognized shall not appear before the magistrate at the time appointed for such further examination, according to the conditions of such recognizance, the magistrate shall record the default and certify the recognizance, with the record of such default, to the district court, and like proceedings shall be had thereon as upon the breach of the condition of a recognizance for appearance before that court.

[*RL s 5242*] (10583)

629.49 FAILURE TO RECOGNIZE, COMMITMENT. When such person shall fail to recognize, he shall be committed to prison by an order under the hand of the magistrate, stating concisely that he is committed for further examination on a future day, to be named in the order; and on the day appointed he may be brought before the magistrate, by his verbal order to the same officer by whom he was committed, or by an order, in writing, to a different person.

[*RL s 5243*] (10584)

629.50 EXAMINATION; RIGHTS OF ACCUSED. The magistrate before whom any person shall be brought upon a charge of having committed an offense shall, as soon as may be, examine the complainant and the witnesses in support of the prosecution, on oath, in the presence of the party charged, in relation to any pertinent matter connected with such charge, after which the witnesses for the prisoner, if he has any, shall be sworn and examined, and he may be assisted by counsel in such examination, and also in the cross-examination of the witnesses in support of the prosecution.

[*RL s 5244*] (10585)

629.51 WITNESSES KEPT SEPARATE; TAKING TESTIMONY. While examining any witness, the magistrate may in his discretion exclude all other witnesses from the place of examination, and upon request, or if he sees cause, he may direct the witnesses for and against the prisoner to be kept separate, so that they cannot converse with each other until they have been examined. He shall reduce the testimony to writing, or cause it to be done, and, when he shall so require, have it signed by the witnesses.

[*RL s 5245*] (10586)

629.52 DISCHARGE OF PRISONER; BAIL. If upon the whole examination it shall appear that no offense has been committed, or that there is not probable cause for charging the prisoner with it, he shall be discharged. Any person charged with an offense punishable by imprisonment in the state prison for more than seven years shall not be admitted to bail by a justice of the peace; in all other cases bail may be taken in such sums as in the opinion of the judge or magistrate having jurisdiction will secure the appearance of the accused at the court where he is to be tried.

[*RL s 5246; 1961 c 561 s 16*] (10587)

629.53 BAIL; COMMITMENT. When at the close of an examination it shall appear that an offense has been committed, and that there is probable cause to believe the prisoner to be guilty, if the offense be bailable by the magistrate, and the prisoner shall offer sufficient bail or money in lieu thereof, it shall be taken, and he shall be discharged; but if no sufficient bail be offered, or the offense shall not be bailable by the magistrate, he shall be committed for trial. When cash bail shall be deposited in lieu of other bail, such cash shall be the property of the accused, whether deposited by him personally or by any third person in his behalf. When cash bail shall be accepted by a judge of a court of record, he shall order the same to be deposited with the clerk, there to remain until the final disposition of the case and the further order of the court relative thereto. Upon release, in whole or in part, the amount so released shall be paid to the accused personally or upon his written order. In case of conviction the magistrate may order such deposit to be applied upon any fine imposed and, if such fine be less than the deposit, the balance shall be paid to the defendant. If the fine exceeds the deposit, the deposit shall be applied thereon and the defendant committed until the balance is paid, but such commitment shall not exceed one day's time for each dollar of such unpaid balance. Cash bail in the hands of the court or any officer thereof shall be exempt from garnishment or levy under attachment or execution.

[*RL s 5247*] (10588)

629.54 WITNESSES TO RECOGNIZE, WHEN; COMMITMENT. When a prisoner shall be admitted to bail, or committed by the magistrate, he shall also bind by recognizance such witnesses against the prisoner as he shall deem material, to appear and testify at the court to which the prisoner is held to answer. If the magistrate shall be satisfied that there is good reason to believe that any witness will not perform the conditions of his recognizance unless other security shall be given, he may order him to enter into a recognizance for his appearance, with such sureties as he shall deem necessary; but, except in case of murder in the first degree, arson where human life is destroyed, and cruel abuse of children, he shall not commit any witness who shall offer to recognize, without sureties, for his appearance.

[*RL s 5248*] (10589)

629.55 REFUSAL TO RECOGNIZE. Every witness required to recognize, with or without sureties, who shall refuse so to do, shall be committed by the magistrate until he shall comply with such order, or be otherwise discharged according to law. Every person held as a witness shall receive such compensation during confinement as the court before whom the case is pending shall direct, not exceeding regular witness fees. When a married woman or a minor shall be a material witness, any other person may recognize for the appearance of such witness, or the magistrate may take recognizance of such witness in a sum of not more than \$50, which shall be valid and binding in law notwithstanding such disability.

[*RL s 5249*] (10590)

629.56 MAGISTRATES, POWERS. Any magistrate to whom a complaint shall be made, or before whom any prisoner shall be brought, may associate with himself one or more magistrates of the same county, and they may together execute the powers and duties mentioned; but no fees shall be taxed for such associates.

[*RL s 5250*] (10591)

629.57 CERTIFYING TESTIMONY. All examinations and recognizances, taken by any magistrate in pursuance of the provisions of this chapter, shall be certified and returned by him to the clerk of the court, before which the party charged is bound to appear, within ten days after such examination has been had or the recognizance taken, and shall be filed in such court; and, if the magistrate neglects or refuses to return the same, he may be compelled forthwith by rule of court, and, in case of disobedience, may be proceeded against by attachment as for contempt.

[*RL s 5251; 1905 c 179 s 1*] (10592)

629.58 PROCEEDINGS ON DEFAULT. When any person, in any criminal prosecution, under recognizance either to appear and answer, to prosecute an appeal, or to testify in any court, shall fail to perform the conditions of such recognizance, his default shall be recorded, and process issued against the persons bound thereby, or such of them as the prosecuting officer shall direct; and any surety may, by leave of court, after default, and either before or after process shall be issued against him, pay to the county treasurer or clerk of court the amount for which he was bound as surety, with such costs as the court shall direct, and be thereupon forever discharged.

[*RL s 5252*] (10593)

629.59 RECOGNIZANCE; WHEN PENALTY REMITTED. When any action shall be brought in the name of the state against a principal or surety in any recognizance entered into by a party or witness in any criminal prosecution, and the penalty thereof shall be adjudged forfeited, the court may, upon application of any party defendant, remit the whole or any part of such penalty, and may render judgment thereon for the state, according to the circumstances of the case and the situation of the party, and upon such terms and conditions as it may deem just and reasonable.

[*RL s 5253*] (10594)

629.60 RECOGNIZANCE; WHEN ACTION NOT BARRED. No action brought on any recognizance shall be barred or defeated, nor judgment thereon arrested, by reason of any neglect or omission to note or record the default of any principal or surety at the term when it occurs, or by reason of any defect in the form of the recognizance, if it shall sufficiently appear from the tenor thereof at what court the party or witness was bound to appear, and that the court or magistrate before whom it was taken was authorized by law to require and take it; and when upon action brought

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upon any recognizance to prosecute an appeal the penalty thereof shall be adjudged to be forfeited, or when by leave of court such penalty has been paid to the county treasurer or clerk of court without suit or before judgment in a manner provided by law, if by law any forfeiture accrues to any person by reason of the offense of which appellant was convicted, the court may award him such sum as he may be entitled to out of such forfeiture.

[*RL s 5254*] (10595)

629.61 ARREST OF DEFAULTER. When a defendant in any indictment has been admitted to bail after verdict or trial, and shall neglect to appear before any court or officer at any time or place at which he is bound to appear and submit to the jurisdiction of the proper court or officer, such court or officer may cause him to be arrested in the same manner as upon the finding of an indictment, and may forfeit his recognizance and direct the same to be prosecuted.

[*RL s 5255*] (10597)

629.62 APPLICATION FOR BAIL, JUSTIFICATION. When a party in custody shall desire to give bail, the offense being bailable, and the district court shall not be in session in the county, he may apply to a judge thereof, or a judge of the supreme court, upon his affidavit showing the nature of the application and the names of the persons to be offered as bail, with a copy of the mittimus or papers upon which he is held in custody. Such judge may thereupon, by order, direct the sheriff to bring up such party, at a time and place named, for the purpose of giving bail. Notice of the application shall be given to the county attorney, if within the county, and no matters shall be inquired into except such as relate to the amount of bail and the sufficiency of the sureties. Sureties shall in all cases justify by affidavit, or upon oral examination before the court, judge, or magistrate, as the case may be.

[*RL s 5256*] (10598)

629.63 SURRENDER OF PRINCIPAL; NOTICE TO SHERIFF. When a surety for any person held to answer, upon any charge or otherwise, shall believe that his principal is about to abscond, or that he will not appear as required by his recognizance, or not otherwise perform the conditions thereof, he may arrest and take such principal, or cause him to be arrested and taken, before the officer who admitted him to bail, or the judge of the court before which such principal was by his recognizance required to appear, and surrender him up to such officer or judge; or any such surety may have such person arrested by the sheriff of the county by delivering to him a certified copy of the recognizance or instrument of bail under which he is held as surety, with a direction to such sheriff, endorsed thereon, requiring him to arrest such principal and bring him before such officer or judge to be so surrendered, and on the receipt thereof, and a tender or payment to him of his fees therefor, such sheriff shall arrest such principal and bring him before such officer or judge, to be so surrendered. Before any surety shall personally surrender such person, the sheriff shall be notified, and he or one of his deputies be present to take him into custody if he shall fail to give new bail as herein provided.

[*RL s 5257*] (10599)

629.64 COMMITMENT OF PRINCIPAL. When any such principal shall be so surrendered, the officer or judge to whom he is surrendered shall, by a new commitment, commit him to jail, unless he shall give sufficient bail, with new sureties, as he was required by law to do in the first instance.

[*RL s 5258*] (10600)

629.65 FEES OF SHERIFF. The sheriff shall be allowed the same fees and mileage for making an arrest or attending before such officer or judge as for arresting a person under a bench warrant, and in all cases his fees shall be paid by the surety or sureties surrendering any principal, as provided.

[*RL s 5259*] (10601)

629.66 EXAMINATION BEFORE JUSTICE; REMOVAL. When any person charged with a criminal offense shall be brought before a justice of the peace or court commissioner for examination under the provisions of this chapter, if, before the commencement of such examination, he shall make oath that, from prejudice or other cause, he believes that such magistrate will not decide impartially in the matter, then

such magistrate shall immediately transmit all the papers in the case to a justice of the peace of the same or an adjoining election district in the same county, who is qualified by law to conduct such examination, and he shall proceed with the same as though it had been first brought before him; but no case shall be so removed after a second adjournment, and only one removal shall be had in the same case.

[*RL s 5260*] (10602)

629.67 SURETIES ON BOND, RECOGNIZANCE, OR UNDERTAKING; AFFIDAVITS. Every personal surety upon any bond, recognizance, or undertaking given to secure the appearance of a defendant in any criminal case in any court of record shall make an affidavit, to be attached to such bond, recognizance, or undertaking, stating his full name, residence and post office address, whether or not he is surety upon any other bond, recognizance, or undertaking in any criminal case, and if so stating, the name of the principal, the amount of each obligation, and the court in which the same was given; also setting forth the legal description of all real property owned by such surety and specifying as to each parcel thereof its fair market value, what liens or encumbrances, if any, exist thereon, and whether or not the same is his homestead or is otherwise exempt from execution. He may also be required by the court to make a like statement of his personal property, or so much thereof as the court shall deem necessary.

The court may, in its discretion, by written order endorsed on the bond, recognizance, or undertaking, dispense with such affidavit, or any part thereof, as to any surety if satisfied that the surety is worth the amount in which he justifies and is not a professional or habitual bondsman in criminal cases.

[*1927 c 233 s 1*] (10602-1)

629.68 SURETIES; FALSE STATEMENTS IN AFFIDAVITS; PUNISHMENT. Every person who shall wilfully and knowingly make any false statement in any affidavit made by him, as provided in sections 629.67 to 629.69, shall be guilty of perjury, and shall be punished therefor as provided by law.

[*1927 c 233 s 2*] (10602-2)

629.69 SURETIES; RECORD KEPT. The clerk of every court of record shall keep a permanent book of record, in which he shall record the names, indexed or arranged alphabetically, of all the sureties, whether personal or corporate, upon bonds, recognizances, or undertakings, filed in such court, stating as to each surety his or its name and post office address, the name of the principal, and the amount of the obligation, and where the original obligation is filed.

[*1927 c 233 s 3*] (10602-3)

629.70 CORPORATE BONDS AUTHORIZED IN CRIMINAL CASES. Any defendant required to give a bond, recognizance, or undertaking to secure his appearance in any criminal case in any court of record, may, if he so elects, give a surety bond, recognizance, or undertaking executed by a corporation authorized by law to execute such bonds, recognizances, or undertakings; provided, that the amount of the bond, recognizance, or undertaking as fixed by the court must be the same regardless of the kind of bond, recognizance, or undertaking given.

[*1931 c 386 s 1*] (10602-4)

629.71 SCHEDULES SETTING BAIL. Subdivision 1. Any magistrate, having jurisdiction over any offenses constituting misdemeanors committed in violation of chapter 169 or chapters 97 to 102, or any municipal ordinance, may, by order, provide a schedule of bail setting forth the amount of bail required to be deposited by an accused in order to obtain release from custody.

Subd. 2. Any magistrate may designate any person or persons to receive the bail as provided in the bail schedule when the court over which the magistrate presides is not in session or when the magistrate is not available.

Subd. 3. A copy of the order and schedule of bail shall be filed by the magistrate with the clerk of the district court of the county in which the magistrate presides.

[*1959 c 353 s 1-3*]

629.72 BAIL IN CASES OF DOMESTIC ASSAULT. Subdivision 1. Detention in lieu of citation; release. Notwithstanding any other law or rule to the contrary, an ar-

resting officer may not issue a citation in lieu of arrest and detention to an individual charged with assaulting his spouse or other individual with whom he resides.

Notwithstanding any other law or rule to the contrary, an individual who is arrested on a charge of assaulting his spouse or other person with whom he resides shall be brought to the police station or county jail. The officer in charge of the police station or the county sheriff in charge of the jail shall issue a citation in lieu of continued detention unless it reasonably appears to the officer or sheriff that detention is necessary to prevent bodily harm to the arrested person or another, or there is a substantial likelihood the arrested person will fail to respond to a citation.

If the arrested person is not issued a citation by the officer in charge of the police station or the county sheriff, he shall be brought before the nearest available judge of the county court or county municipal court in the county in which the alleged assault took place without unnecessary delay, but no more than 24 hours after his arrest, exclusive of Sundays and legal holidays.

Subd. 2. Judicial review; release; bail. The judge before whom the arrested person is brought shall review the facts surrounding the arrest and detention. The arrested person shall be ordered released pending trial or hearing on his personal recognizance or on an order to appear or upon the execution of an unsecured bond in a specified amount unless the judge determines that release will be inimical to public safety, will create a threat of bodily harm to the arrested person or another, or will not reasonably assure the appearance of the arrested person at subsequent proceedings. If the judge so determines, he may impose any conditions of release which will reasonably assure the appearance of the person for subsequent proceedings, or may fix the amount of money bail without other conditions upon which the arrested person may obtain his release.

Subd. 3. Release after 24 hours. If the arrested person is not issued a citation by the officer in charge of the police station or the county sheriff pursuant to subdivision 1, and is not brought before a judge within the time limits prescribed in subdivision 1, he shall be released by the arresting authorities, and a citation shall be issued in lieu of continued detention.

[1978 c 724 s 3]