

CHAPTER 630

PRE-TRIAL PROCEDURE

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ARRAIGNMENT

**630.01 ARRAIGNMENT; PRESENCE OF DEFENDANT.** When the indictment is filed, the defendant shall be arraigned thereon before the court in which it is found, if triable therein, and, if not, before the court to which it shall be sent or removed. If it is for felony, the defendant shall be personally present; if for a misdemeanor, he may upon arraignment appear by counsel. When his personal presence shall be necessary, if he is in custody the court may direct the officer having him in custody to bring him before it to be arraigned.

[ *RL s 5322* ] (10669)

**630.02 BENCH WARRANT; ISSUANCE.** If the defendant has been discharged on bail, or has deposited money in lieu thereof, and shall not appear to be arraigned when his personal attendance shall be necessary, in addition to the forfeiture of bail or of the money deposited, the court may direct the clerk to issue a bench warrant for his arrest. On application of the county attorney, the clerk, at any time after the order, whether the court is in session or not, may issue a bench warrant, which may be served in any county in the same manner as a warrant of arrest.

[ *RL s 5323* ] (10670)

**630.03 FORM OF BENCH WARRANT IN FELONY.** The bench warrant, if the offense is a felony, shall be substantially in the following form: "The District Court for the County of ..... and State of Minnesota. The State of Minnesota, to any Sheriff (or other proper officer):

An indictment having been found on the ..... day of ....., 19....., in the district court for the county of ....., charging C.D. with the crime of (designating it generally), you are therefore commanded forthwith to arrest the above-named C.D., and bring him before this court (or, if the venue has been changed, take him before that court, as the case may be) to answer the indictment, or, if the court has adjourned for the term, that you deliver him into the custody of the jailer of the county of ....., the ..... day of ....., 19..... .

Witness the Honorable .....

By order of the Court. E.F., Clerk."

[ *RL s 5324* ] (10671)

**630.04 FORM OF BENCH WARRANT IN MISDEMEANORS.** If the offense shall be a misdemeanor, the bench warrant shall be in a similar form, adding to the body thereof a direction to the following effect: "Or, if he shall require it, that you

take him before any magistrate in that county, or in the county in which you arrest him, that he may give bail to answer the indictment.”

[ *RL s 5325* ] (10672)

**630.05 COURT TO FIX BAIL.** If the offense charged shall be bailable, the court, upon directing the bench warrant to issue, may fix the amount of bail; and in such case an endorsement shall be made upon the bench warrant, and signed by the clerk, to the following effect: “The defendant is to be admitted to bail in the sum of \$.....”

[ *RL s 5326* ] (10673)

**630.06 PROCEEDINGS BEFORE MAGISTRATE.** If the defendant shall be brought before a magistrate of another county for the purpose of giving bail, the magistrate shall proceed in respect thereto in the same manner as if the defendant had been brought before him on a warrant of arrest.

[ *RL s 5327* ] (10674)

**630.07 PROCEEDINGS WHERE BAIL IS TAKEN.** On taking bail, the magistrate shall certify that fact on the warrant, and deliver the warrant and recognizance to the officer having charge of the defendant. The officer shall then discharge the defendant from arrest, and without delay deliver the warrant and recognizance to the clerk of the court before which the defendant is required to appear.

[ *RL s 5328* ] (10675)

**630.08 DEFENDANT COMMITTED, WHEN.** When the indictment shall be for felony, and the defendant, before the finding thereof, shall have given bail for his appearance to answer the charge, the court to which the indictment is presented, or sent or removed for trial, may order the defendant to be committed to actual custody, unless he shall give bail in the increased amount to be specified in the order.

[ *RL s 5329* ] (10676)

**630.09 BENCH WARRANT TO ENFORCE ORDER.** If the defendant shall be present when the order is made, he shall be forthwith committed; if he is not present, a bench warrant shall be issued and proceeded upon in the manner provided in this chapter.

[ *RL s 5330* ] (10677)

**630.10 DEFENDANT INFORMED OF HIS RIGHT TO COUNSEL.** If the defendant shall appear for arraignment without counsel, he shall be informed by the court that it is his right to have counsel before being arraigned, and shall be asked if he desires the aid of counsel.

[ *RL s 5331* ] (10678)

**630.11 ARRAIGNMENT; HOW MADE.** The arraignment shall be made by the court, or by the clerk or county attorney under its direction, and shall consist in reading the indictment to the defendant, and delivering to him a copy thereof and of the endorsement thereon, including the list of witnesses endorsed on it or appended thereto, and asking him whether he pleads guilty or not guilty to the indictment; provided, if the defendant waives the reading of the indictment, it need not be read to him.

[ *RL s 5332; 1925 c 137* ] (10679)

**630.12 DEFENDANT TO BE ASKED HIS TRUE NAME.** When the defendant shall be arraigned, he shall be informed that, if the name by which he has been indicted is not his true name, he shall then declare his true name, or be proceeded against by the name in the indictment. If he shall give no other name, the court may proceed accordingly; if he shall allege that another name is his true name, the court shall direct an entry thereof in the minutes of the arraignment, and the subsequent proceedings may be had against him by that name, referring also to the name by which he was indicted.

[ *RL s 5333* ] (10680)

**630.13 TIME TO PLEAD; DEMURRER; PLEA; MOTION TO SET ASIDE.** Upon being arraigned, the defendant shall be allowed until the next day, if he requires it, to

answer the indictment and, upon his request, such further time as the court shall determine. If he does not require time, or upon the next day, or such further day as shall be allowed by the court, if he does, he shall answer to the arraignment, and either move the court to set aside the indictment, or demur or plead thereto.

[ *RL s 5334* ] (10681)

**630.14 DEFENSE OF ALIBI; APPLICATION BY COUNTY ATTORNEY.** Upon application of the county attorney, the district court in which any criminal proceeding is pending may require the defendant to file with the court notice of intention to claim an alibi, which notice shall specify the county or municipality in which the defendant claims to have been at the time of the commission of the alleged offense, and upon failure to file such notice the trial court may, in its discretion, exclude evidence of an alibi in the trial of the case.

[ *1935 c 194 s 3* ] (10681-1)

**630.15 CRIMES OF CORPORATIONS; INDICTMENT; SERVICE OF SUMMONS.** When an indictment shall be filed in any district court against a corporation, charging it with the commission of a crime, a summons shall be issued by the clerk of the court in which such indictment shall be found, signed by one of the judges thereof, commanding the sheriff to forthwith notify the accused thereof, and commanding it to appear before such court within 24 hours after service thereof upon it. Such summons and a copy of the indictment shall be at once delivered by such clerk to the sheriff, and by him forthwith served and returned in the manner provided for the service of summons upon such corporation in a civil action. When a complaint against a corporation, charging it with the commission of a crime, shall be made before any justice of the peace or municipal court, a like summons, signed by such justice or municipal judge, shall be issued, which, together with a copy of the complaint, shall be delivered to the sheriff at once, and by him forthwith served as herein provided.

[ *RL s 5335* ] (10682)

**630.16 CORPORATIONS; APPEARANCE; TRIAL.** Upon such service being made, such corporation shall appear within the time limited, by one of its officers or by counsel; and upon such appearance, and thereafter, the same course shall be pursued, as nearly as may be, as upon the appearance of an individual to an indictment, or complaint and warrant, charging him with the same offense. Upon failure of the corporation to make such appearance, the clerk, justice of the peace, or municipal judge shall enter or cause to be entered a plea of not guilty, and, upon appearance made or plea entered, the corporation shall be deemed thenceforth continuously present in court until the case shall be finally disposed of.

[ *RL s 5336* ] (10683)

**630.17 FINE, HOW COLLECTED.** If the corporation shall be found guilty and a fine imposed, it shall be entered and docketed by the clerk, justice of the peace, or municipal judge, as the case may be, as a judgment against the corporation, and it shall be of the same force and effect, and be enforced against the corporation in the same manner, as if the judgment had been recovered against it in a civil action.

[ *RL s 5337* ] (10684)

#### SETTING ASIDE INDICTMENT

**630.18 GROUNDS FOR SETTING ASIDE; WAIVER.** The indictment shall be set aside by the court in which the defendant is arraigned, upon his motion, in any of the following cases:

(1) When it shall not be found, endorsed, and presented as prescribed in sections 628.41 to 628.66 relating to grand juries;

(2) When the names of the witnesses examined before the grand jury are not inserted at the foot of the indictment or endorsed thereon;

(3) When a person shall have been permitted to be present at the session of the grand jury while the charge embraced in the indictment was under consideration, except as provided by section 628.63.

If the motion to set aside the indictment shall not be made, the defendant shall be precluded from afterwards taking advantage of the foregoing objections.

[ *RL s 5338; 1971 c 24 s 57* ] (10685)

**630.19 MOTION, WHEN HEARD; DECISION.** The motion to set aside shall be heard at the time of the arraignment, unless, for a good cause, the court shall postpone such hearing. If the motion is denied, the defendant shall immediately answer the indictment, either by demurring or pleading thereto; if it be granted, the court shall order that the defendant, if in custody, be discharged therefrom, or if admitted to bail, that his bail be exonerated, or, if he has deposited money in lieu of bail, that it be refunded to him, unless it shall direct that the case be resubmitted to the same or another grand jury.

[ *RL s 5339* ] (10686)

**630.20 EFFECT OF RESUBMISSION.** If the court shall direct that the case be resubmitted, the defendant, if already in custody, shall so remain, unless he be admitted to bail; if already admitted to bail, or money deposited in lieu thereof, the bail or money shall be answerable for his appearance to answer a new indictment.

[ *RL s 5340* ] (10687)

**630.21 PROCEEDINGS IF NEW INDICTMENT IS NOT FOUND; SETTING ASIDE NO BAR.** Unless a new indictment shall be found before the next grand jury of the county shall be discharged, the court, on the discharge of such grand jury, shall make the order prescribed in section 630.19. An order to set aside an indictment as provided in this chapter shall be no bar to a future prosecution for the same offense.

[ *RL s 5341* ] (10688)

#### DEMURRER

**630.22 PLEADINGS BY DEFENDANT; DEMURRER; PLEA.** The only pleading on the part of the defendant is a demurrer or plea. Both shall be made in open court, either at the time of the arraignment, or at such other time as may be allowed to the defendant for that purpose.

[ *RL s 5342* ] (10689)

**630.23 GROUNDS OF DEMURRER.** The defendant may demur to the indictment when it shall appear from the face thereof:

(1) That the grand jury by which it was found had no legal authority to inquire into the offense charged, by reason of its not being within the local jurisdiction of the county;

(2) That it does not substantially conform to the requirements of sections 628.10 to 628.13, as qualified by section 628.18, or was not found within the time prescribed therein;

(3) That more than one offense is charged in the indictment, except in cases where it is allowed by statute;

(4) That the facts stated do not constitute a public offense;

(5) That the indictment contains any matter which, if true, would constitute a legal justification or excuse of the offense charged, or other legal bar to the prosecution.

[ *RL s 5343* ] (10690)

**630.24 REQUISITES; WHEN HEARD; JUDGMENT.** The demurrer shall be in writing, signed by the defendant or his counsel. It shall distinctly specify the ground of objection to the indictment, or it may be disregarded. Upon its being filed, the objection presented thereby shall be heard, either immediately, or at such time as the court may appoint. Upon considering the demurrer, the court shall give judgment, either allowing or disallowing it, and an order to that effect shall be entered upon the minutes.

[ *RL s 5344* ] (10691)

**630.25 PROCEEDINGS ON ALLOWANCE; DEFENDANT, WHEN DISCHARGED.** If the demurrer shall be allowed, the judgment shall be final upon the indictment demurred to, and a bar to another prosecution for the same offense, unless the court shall allow an amendment, where the defendant will not be unjustly prejudiced thereby, or, being of opinion that the objection on which the demurrer is allowed may be avoided in a new indictment, shall direct the case to be resubmitted to the same or another grand jury. If the court does not allow an amendment, or shall direct the case to be resubmitted, the defendant, if in custody, shall be discharged, or, if

admitted to bail, his bail shall be exonerated, or, if he shall have deposited money in lieu of bail, that shall be refunded to him.

[ *RL s 5345* ] (10692)

**630.26 PROCEEDINGS WHEN DISALLOWED OR CASE IS SUBMITTED ANEW.** If the court shall direct the case to be submitted anew, the same proceedings shall be had thereon as are prescribed in sections 630.18 to 630.21 on setting aside the indictment. If the demurrer shall be disallowed or the indictment amended, the court shall permit the defendant, at his election, to plead forthwith or at such time as the court may allow. If he does not plead, judgment shall be pronounced against him.

[ *RL s 5346* ] (10693)

**630.27 OBJECTIONS TAKEN BY DEMURRER.** When the objections specified in section 630.23 shall appear upon the face of the indictment, they can only be taken by demurrer, except that the objection to the jurisdiction of the court over the subject of the indictment, or that the facts stated do not constitute a public offense, may be taken at the trial, under the plea of not guilty, and in arrest of judgment.

[ *RL s 5347* ] (10694)

## PLEAS

**630.28 PLEAS TO INDICTMENT; ORAL; HOW ENTERED.** There are three pleas to an indictment: guilty; not guilty; a former judgment of conviction or acquittal of the offense charged, which may be pleaded either with or without the plea of not guilty. Every plea shall be oral, and entered upon the minutes of the court, in substantially the following form:

(1) If the defendant pleads guilty, "The defendant pleads that he is guilty of the offense charged in this indictment;"

(2) If he pleads not guilty, "The defendant pleads that he is not guilty of the offense charged in this indictment;"

(3) If he pleads a former conviction or acquittal, "The defendant pleads that he has already been convicted (or acquitted, as the case may be) of the offense charged in this indictment, by the judgment of the court of ..... (naming it), rendered at ..... (naming the place), on the ..... day of ....."

[ *RL s 5348* ] (10695)

**630.29 PLEA OF GUILTY.** A plea of guilty can in no case be put in except by the defendant himself in open court, unless upon an indictment against a corporation, in which case it may be put in by counsel. At any time before judgment the court may permit it to be withdrawn and a plea of not guilty substituted.

[ *RL s 5349* ] (10696)

**630.30 PLEA OF GUILTY TO LESSER DEGREE OF OFFENSE; RECORD.**

When any person charged with crime shall be permitted by any court or magistrate to plead guilty to a lesser degree of the offense than that which he is charged, or to a lesser offense included within the offense with which he is charged, the reasons for the acceptance of such plea shall be set forth in an order of the court directing such acceptance and entered upon the minutes, and any recommendations of the county attorney or other prosecuting officer in reference thereto, with his reasons therefor, shall be stated in writing and filed as a public record with the official files of the case.

[ *1927 c 255* ] (10696-1)

**630.31 PLEA OF NOT GUILTY; EVIDENCE UNDER.** The plea of not guilty is a denial of every material allegation in the indictment, and all matters of fact tending to establish a defense, other than a former conviction or acquittal, may be given in evidence under such plea.

[ *RL s 5350* ] (10697)

**630.32 ACQUITTAL; WHEN A BAR.** If the defendant was formerly acquitted on the ground of a variance between the indictment and the proof, or the indictment was dismissed, upon an objection to its form or substance, without a judgment of acquittal, it is not an acquittal of the same offense. If he was acquitted on the merits, he

shall be deemed acquitted of the same offense, notwithstanding a defect in the form or substance of the indictment on which he was acquitted.

[ *RL s 5351* ] (10698)

**630.33 INDICTMENT FOR OFFENSE OF DIFFERENT DEGREES.** If the defendant shall have been convicted or acquitted upon an indictment for an offense consisting of different degrees, such conviction or acquittal shall be a bar to another indictment for the offense charged in the former, or for any inferior degree of that offense, or for an attempt to commit the same, or for an offense necessarily included therein of which he might have been convicted under that indictment.

[ *RL s 5352* ] (10699)

**630.34 REFUSAL TO PLEAD.** If the defendant shall refuse to answer an indictment by demurrer or plea, a plea of not guilty shall be entered.

[ *RL s 5353* ] (10700)

#### CALENDAR

**630.35 CALENDAR; CONTENTS.** The clerk shall prepare a calendar of the indictments pending to be tried at the term, enumerating them according to the date of filing the indictment, and specifying, opposite to the title of each action, whether it is a felony or a misdemeanor, and whether the defendant is in custody or on bail; and shall in like manner enter therein all indictments found during the term, and on which issues of fact or law are joined.

[ *RL s 5379* ] (10726)

**630.36 ISSUES, HOW DISPOSED OF.** The issues on the calendar shall be disposed of in the following order, unless, upon the application of either party, for good cause, the court directs an indictment to be tried out of its order:

- (1) Indictments for felony, where the defendant is in custody;
- (2) Indictments for misdemeanor, where the defendant is in custody;
- (3) Indictments for felony, where the defendant is on bail; and
- (4) Indictments for misdemeanor, where the defendant is on bail.

After his plea, the defendant shall be entitled to at least four days to prepare for his trial, if he requires it.

[ *RL s 5380* ] (10727)

**630.37 REGISTER.** The clerk shall keep a register of all criminal actions, in which he shall enter:

- (1) All cases returned to the court by a magistrate, whether the defendant is discharged or held to answer;
- (2) All indictments found in the court, or sent or removed thereto for trial, with the time of finding the indictment, or when it was sent or removed; and
- (3) The time of arraignment, of the demurrer or plea, and of the trial, conviction, or acquittal of the defendant, together with a brief note of all the other proceedings in the action.

[ *RL s 5381* ] (10728)