THE CODE OF CRIMINAL PROCEDURE (EXCERPT)
Act 175 of 1927

CHAPTER VII
GRAND JURIES, INDICTMENTS, INFORMATIONS AND PROCEEDINGS BEFORE TRIAL

767.1 Courts of record; jurisdiction over prosecutions upon information.

Sec. 1. The several circuit courts of this state, the recorders' courts and any court of record having jurisdiction of criminal causes, shall possess and may exercise the same power and jurisdiction to hear, try and determine prosecutions upon informations for crimes, misdemeanors and offenses, to issue writs and process and do all other acts therein as they possess and may exercise in cases of like prosecutions upon indictments.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17215;—CL 1948, 767.1.

Former law: See sections 1 and 9 of Act 138 of 1859, being CL 1871, §§ 7937 and 7945; How., §§ 9548 and 9556; CL 1897, §§ 11933 and 11941; and CL 1915, §§ 15760 and 15768.

767.2 Applicability of indictment laws to informations.

Sec. 2. All provisions of the law applying to prosecutions upon indictments, to writs and process therein and the issuing and service thereof, to commitments, bail, motions, pleadings, trials, appeals and punishments, or the execution of any sentence, and to all other proceedings in cases of indictments whether in the court of original or appellate jurisdiction, shall, in the same manner and to the same extent as near as may be, be applied to informations and all prosecutions and proceedings thereon.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17216;—CL 1948, 767.2.

Former law: See section 4 of Act 138 of 1859, being CL 1871, § 7940; How., § 9551; CL 1897, § 11936; and CL 1915, § 15763.

767.3 Proceedings before trial; inquiry; summoning witnesses; notification to judge; taking testimony; legal counsel; disqualification of judge.

Sec. 3. Whenever by reason of the filing of any complaint, which may be upon information and belief, or upon the application of the prosecuting attorney or attorney general, any judge of a court of law and of record shall have probable cause to suspect that any crime, offense or misdemeanor has been committed within his jurisdiction, and that any persons may be able to give any material evidence respecting such suspected crime, offense or misdemeanor, such judge in his discretion may make an order directing that an inquiry be made into the matters relating to such complaint, which order, or any amendment thereof, shall be specific to common intent of the scope of the inquiry to be conducted, and thereupon conduct such inquiry. In any court having more than 1 judge such order and the designation of the judge to conduct the inquiry shall be made in accordance with the rules of such court. Thereupon such judge shall require such persons to attend before him as witnesses and answer such questions as the judge may require concerning any violation of law about which they may be questioned within the scope of the order. The proceedings to summon such witness and to compel him to testify shall, as far as possible, be the same as proceedings to summon witnesses and compel their attendance and testimony. The witnesses shall not receive any compensation or remuneration other than witness fees as paid witnesses in other criminal proceedings. The witness shall not be employed in any capacity by the judge or by any person connected with such inquiry, within the scope of the inquiry being conducted. Whenever a subpoena is issued by the judge conducting the inquiry, commanding the appearance of a witness before the judge forthwith upon the service of such subpoena, and, following the service thereof, the witness arrives at the time and place stated in the subpoena, the judge issuing the same shall be forthwith notified of the appearance by the officer serving the subpoena, and the judge forthwith shall appear and take the testimony of the witness. Any person called before the grand jury shall at all times be entitled to legal counsel not involving delay and he may discuss fully with his counsel all matters relative to his part in the inquiry without being subject to a citation for contempt. The witness shall have the right to have counsel present in the room where the inquiry is held. All matters revealed to the attorney shall be subject to the requirements of secrecy in section 4, and any revelation thereof by the attorney shall make him subject to punishment as provided in section 4. No testimony shall be taken or given by any witness except in the presence of the judge.

Any judge, prosecuting attorney or special prosecuting attorney, or the attorney general participating in any inquiry under this section which continues more than 30 calendar days shall thereafter be disqualified from appointment or election to any office other than one held at the time of the inquiry. The disqualification shall not extend more than 1 year from date of termination of the inquiry, as determined by final order of the judge entered prior to such date.

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History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17217;—CL 1948, 767.3;—Am. 1949, Act 311, Eff. Sept. 23, 1949;—Am. 1951, Act 276, Eff. Sept. 28, 1951;—Am. 1965, Act 251, Imd. Eff. July 21, 1965.

Former law: See section 1 of Act 196 of 1917.

767.4 Proceedings before trial; apprehension of suspect; disqualification as examining magistrate; finding as to misconduct in office; disclosures, penalty, exceptions; report of no finding of criminal guilt; period of inquiry; successor judge, appointment.

Sec. 4. If upon such inquiry the judge shall be satisfied that any offense has been committed and that there is probable cause to suspect any person to be guilty thereof, he may cause the apprehension of such person by proper process and, upon the return of such process served or executed, the judge having jurisdiction shall proceed with the case, matter or proceeding in like manner as upon formal complaint. The judge conducting the inquiry under section 3 shall be disqualified from acting as the examining magistrate in connection with the hearing on the complaint or indictment, or from presiding at any trial arising therefrom, or from hearing any motion to dismiss or quash any complaint or indictment, or from hearing any charge of contempt under section 5, except alleged contempt for neglect or refusal to appear in response to a summons or subpoena. If upon such inquiry the judge shall find from the evidence that there is probable cause to believe that any public officer, elective or appointive and subject to removal by law, has been guilty of misfeasance or malfeasance in office or wilful neglect of duty or of any other offense prescribed as a ground of removal, the judge shall make a written finding setting up the offense so found and shall serve said finding upon the public officer, public board or body having jurisdiction under the law to conduct removal proceedings against the officer. The finding shall be a sufficient complaint as a basis for removal of said officer and the public officer, public board or public body having jurisdiction of removal proceedings against the officer shall proceed in the method prescribed by law for a hearing and determination of said charges. Except in cases of prosecutions for contempt or perjury against witnesses who may have been summoned before the judge conducting such inquiry, or for the purpose of determining whether the testimony of a witness examined before the judge is consistent with or different from the testimony given by such witness before a court in any subsequent proceeding, or in cases of disciplinary action against attorneys and counselors in this state, any judge conducting the inquiry, any prosecuting attorney and other persons who may at the discretion of the judge be admitted to such inquiry, who shall while conducting such inquiry or while in the services of the judge or after his services with the judge shall have been discontinued, utter or publish any statement pertaining to any information or evidence involved in the inquiry, or who shall disclose the fact that any indictment for a felony has been found against any person not in custody or under recognizance, or who shall disclose that any person has been questioned or summoned in connection with the inquiry, who shall disclose or publish or cause to be published any of the proceedings of the inquiry otherwise than by issuing or executing processes prior to the indictment, or shall disclose, publish or cause to be published any comment, opinion or conclusions related to the proceedings of the inquiry, shall be guilty of a misdemeanor punishable by imprisonment in the county jail not more than 1 year or by a fine of not less than $100.00 nor more than $1,000.00, or both fine and imprisonment in the discretion of the court, and the offense when committed by a public official shall also constitute malfeasance in office. The limitations, restrictions and penalties relating to the uttering, publishing or disclosing of any statement pertaining to any information or evidence, imposed by this section, do not apply to disclosures of information or evidence made by a judge conducting such an investigation to another judge concurrently conducting an investigation as provided in section 3. Upon the termination of the inquiry if the judge shall make no presentment of crime or wrongdoing as to any person whose apprehension or removal from office he has not so caused, he may, in his discretion, with the consent of the person who may be named, file with the clerk of the county in which such inquiry has been conducted, a report of no finding of criminal guilt as to any person or persons involved in such inquiry, either as witness or otherwise, whose involvement in such inquiry has become public.

No inquiry or proceeding under this chapter shall continue longer than 6 months unless extended by specific order of the judge or his successor for an additional period not to exceed 6 months.

In the event any judge conducting such inquiry shall be unable to continue because of physical disability, disqualification, termination of office or death, the presiding circuit judge of Michigan shall appoint a successor.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17218;—Am. 1947, Act 33, Imd. Eff. Apr. 4, 1947;—CL 1948, 767.4;—Am. 1949, Act 311, Eff. Sept. 23, 1949;—Am. 1951, Act 276, Eff. Sept. 28, 1951;—Am. 1967, Act 70, Eff. Nov. 2, 1967.

Former law: See section 2 of Act 196 of 1917 and Act 395 of 1921.

767.4a Proceedings before trial; unlawful use or possession of testimony, exhibits or proceedings; exceptions, penalty.

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Sec. 4a. It shall be unlawful for any person, firm or corporation to possess, use, publish, or make known to any other person any testimony, exhibits or secret proceedings obtained or used in connection with any grand jury inquiry conducted prior to the effective date of this act, except in the manner specifically provided herein, and also excepting any information heretofore disclosed before any investigating committee of the Congress of the United States or any agency of the federal government. Any person violating the provisions of this section shall be guilty of a felony.

History: Add. 1951, Act 276, Eff. Sept. 28, 1951.

767.5 Proceedings before trial; failure of witnesses to appear or answer questions; hearing, penalty; commutation or suspension of sentence.

Sec. 5. Any witness neglecting or refusing to appear in response to such summons or to answer any questions which such judge may require as material to such inquiry, shall be deemed guilty of a contempt and after a public hearing in open court and conviction of such contempt, shall be punished by a fine not exceeding $1,000.00 or imprisonment in the county jail not exceeding 1 year or both at the discretion of the court: Provided, That if such witness after being so sentenced shall offer to appear before such judge to purge himself of such contempt, the judge shall cause such witness to be brought before him and, after examination of such witness, the judge may in his discretion commute or suspend the further execution of such sentence.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17219;—CL 1948, 767.5;—Am. 1949, Act 311, Eff. Sept. 23, 1949;—Am. 1951, Act 276, Eff. Sept. 28, 1951.

Constitutionality: This section, in regard to a contemnor appearing before a judge to purge himself and the discretion of the judge to commute or suspend further execution of a sentence, insofar as criminal contempt is concerned, constitutes an unconstitutional delegation by the legislature to the judicial branch of government of a power which exists only in the executive. People v Joseph, 384 Mich 24; 179 NW2d 383 (1970).

Former law: See section 3 of Act 196 of 1917.

767.5a Disclosing identity of informant; privileged and confidential communications.

Sec. 5a. (1) a reporter or other person who is involved in the gathering or preparation of news for broadcast or publication shall not be required to disclose the identity of an informant, any unpublished information obtained from an informant, or any unpublished matter or documentation, in whatever manner recorded, relating to a communication with an informant, in any inquiry authorized by this act, except an inquiry for a crime punishable by imprisonment for life when it has been established that the information which is sought is essential to the purpose of the proceeding and that other available sources of the information have been exhausted.

(2) Any communications between attorneys and their clients, between members of the clergy and the members of their respective churches, and between physicians and their patients are hereby declared to be privileged and confidential when those communications were necessary to enable the attorneys, members of the clergy, or physicians to serve as such attorney, member of the clergy, or physician.

History: Add. 1949, Act 311, Eff. Sept. 23, 1949;—Am. 1951, Act 276, Eff. Sept. 28, 1951;—Am. 1986, Act 293, Imd. Eff. Dec. 22, 1986.

Compiler's note: At the beginning of subsection (1) of this section, “a” evidently should read “A”.

767.6 Incriminating answers of witnesses; order granting immunity; use of truthful testimony or other information against witness in criminal case; transcript; applicability of secrecy provisions; scope of order.

Sec. 6. (1) Upon inquiry, a witness shall not be required to answer any questions or be convicted for contempt upon refusal to do so If the answers might tend to incriminate him or her.

(2) Upon written motion by the prosecuting attorney or a duly authorized representative of the state in a proceeding described in section 3 of this chapter, the judge may enter a written order granting immunity to the witness. The order shall set forth verbatim the questions the witness refused to answer. A true copy of the motion and order shall be delivered to the witness before he or she answers the questions in the inquiry. The order granting immunity shall extend to all related questions which may be asked of the witness after entry of the order until the judge advises the witness that the immunity no longer applies.

(3) Truthful testimony compelled under the order granting immunity and any information derived directly or indirectly from that truthful testimony shall not be used against the witness in a criminal case, except for impeachment purposes or in a prosecution for perjury or otherwise failing to comply with the order.

(4) All questions and the witness's answers shall be transcribed under the judge's direction. A true copy of the transcript, duly certified by the judge, shall be delivered to the witness as soon as practicable.

(5) The provisions for secrecy provided for in section 3 of this chapter apply to all copies of the motion,

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order, and transcript delivered to the witness. However, the witness may disclose that information to his or her attorney if his or her testimony or any information derived directly or indirectly from that testimony is used against the witness in violation of subsection (3).

(6) An order granting immunity does not extend beyond the scope of an inquiry described in this section or beyond the particular questions set forth in the motion, order, or transcript.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17220;—CL 1948, 767.6;—Am. 1949, Act 311, Eff. Sept. 23, 1949;—Am. 1951, Act 276, Eff. Sept. 28, 1951;—Am. 1999, Act 250, Imd. Eff. Dec. 28, 1999.

Former law: See section 4 of Act 196 of 1917.

767.6a Docket, journal, transcript and record; seal and file; violation of secrecy; available in connection with appeal, order, receipt; destruction of transcripts, notes and records.

Sec. 6a. On termination of any such inquiry lasting not more than 30 calendar days the docket, journal, reporters' notes, transcript and other record of such judge in such inquiry shall be sealed and filed with the clerk of the court having jurisdiction; and if lasting more than 30 calendar days shall be sealed and filed with the clerk of the supreme court of the state of Michigan, where it shall be held secretly in a separate container securely locked. Any person who shall violate the secrecy herein ordered as to such docket, journal, transcript and record shall be punished as provided in section 4 hereof. And the entire transcript and record as to any witness, and so far as material, including any grant of immunity, shall be available to such witness in connection with any appeal or other judicial proceeding where it may be relevant upon such witness filing a petition with the circuit court of the county in which he resides setting forth the proceeding for which such documents are sought and describing the portions of such transcript and record as to such witness only, which such witness requested for such appeal or proceeding; the judge of such circuit court shall issue an order upon the filing of such petition directed to the clerk of the supreme court of the state of Michigan or the clerk of the court, as the case may be, ordering such clerk to make available to such witness all such portions of the transcript and record as shall pertain to such witness and as set forth in the petition. The clerk shall immediately reseal the remaining transcript and records after compliance with such order. The petitioner shall execute to the clerk of the supreme court a receipt for such documents and such documents shall be returned to the clerk immediately upon the termination of such appeal or proceeding for which the same shall have been obtained: Provided, however, upon the petition of the prosecuting attorney of the county in which such inquiry was conducted, or any other interested person, any circuit judge, acting as such in said county, upon determining that there is no further need for preserving and retaining the same, shall enter an order providing for the referring to the supreme court, for the entry of such order or orders as a majority of the court may at any time determine, for the destruction of said transcripts, notes and records, or any part thereof: Provided further, That no such order shall be entered by such circuit judge until at least 6 years after the termination of such inquiry.

History: Add. 1951, Act 276, Eff. Sept. 28, 1951.

767.6b Public accounting by judge; time, filing.

Sec. 6b. Within 90 days after the termination of such inquiry, such judge shall file with the clerk of the court having jurisdiction a public accounting of all monies disbursed by him or disbursed at his direction.

History: Add. 1951, Act 276, Eff. Sept. 28, 1951.

767.7 Grand jury; summoning, procedure.

Sec. 7. Grand juries shall not hereafter be drawn, summoned or required to attend at the sittings of any court within this state, as provided by law, unless the judge thereof shall so direct by writing under his hand, and filed with the clerk of said court.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17221;—CL 1948, 767.7.

Former law: See section 7 of Act 138 of 1859, being CL 1871, § 7943; How., § 9554; CL 1897, § 11939; and CL 1915, § 15766.

767.7a Grand jurors; term of service; recalling.

Sec. 7a. Notwithstanding the provisions of section 1343 of Act No. 236 of the Public Acts of 1961, as added, being section 600.1343 of the Compiled Laws of 1948, the term of service of grand jurors shall be 6 months unless extended by specific order of the judge who summoned such jurors or his successor for an additional period not to exceed 6 months, except that the grand jurors may be recalled at any time by the judge who summoned such jurors or by his successor to conclude business commenced during their term of service.

History: Add. 1970, Act 9, Imd. Eff. Mar. 26, 1970.

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767.7b Grand jury; petition by attorney general or county prosecuting attorneys to convene; jurisdiction; contents of petition.

Sec. 7b. (1) The attorney general may petition the court of appeals of this state to convene a grand jury with jurisdiction over 2 or more counties in this state.

(2) Two or more attorneys who are county prosecuting attorneys in this state may, with the approval of the attorney general, petition the court of appeals of this state to convene a grand jury with jurisdiction over all of the counties in which they are prosecuting attorneys.

(3) A petition to the court of appeals under this section shall contain all of the following:

(a) The name and official title of each petitioner.

(b) The name of each county over which the grand jury is to have jurisdiction.

(c) A statement setting forth probable cause to believe that a crime, or a portion of that crime, has been committed in 2 or more of the counties named in the petition.

(d) A statement setting forth the reasons to convene a grand jury with jurisdiction over all of the counties named in the petition.

(e) The signature of each petitioner.

(f) The date of the petition.

History: Add. 1989, Act 204, Imd. Eff. Nov. 1, 1989.

767.7c Grand jury convened by court of appeals; procedure; jurisdiction.

Sec. 7c. The court of appeals of this state, acting in a 3-judge panel consistent with the Michigan court rules, may convene a grand jury with jurisdiction over 2 or more counties in this state as follows:

(a) If a petition is filed under section 7b(1) by the attorney general, the court of appeals may convene a grand jury with jurisdiction over 2 or more of the counties named in the petition.

(b) If a petition is filed under section 7b(2) by 2 or more attorneys who are county prosecuting attorneys in this state, the court of appeals may convene a grand jury with jurisdiction over 2 or more of the counties named in the petition in which the attorneys are prosecuting attorneys.

History: Add. 1989, Act 204, Imd. Eff. Nov. 1, 1989.

767.7d Grand jury convened by court of appeals; circumstances.

Sec. 7d. The court of appeals may convene a grand jury under section 7c with jurisdiction over 2 or more counties in this state if a petition is properly filed under section 7b, and all of the following circumstances exist:

(a) The petition establishes probable cause to believe that a crime, or a portion of that crime, has been committed in 2 or more of the counties named in the petition.

(b) The petition establishes reason to believe that a grand jury with jurisdiction over 2 or more of the counties named in the petition could more effectively address the criminal activity referred to in the petition than could a grand jury with jurisdiction over 1 of those counties.

History: Add. 1989, Act 204, Imd. Eff. Nov. 1, 1989.

767.7e Grand jury convened by court of appeals; duties of court of appeals.

Sec. 7e. If the court of appeals convenes a grand jury with jurisdiction over 2 or more counties, the court of appeals shall do all of the following:

(a) Designate a judge of the circuit court or of the recorder's court to preside over the grand jury proceedings.

(b) If the petition to convene the grand jury was filed under section 7b(2), designate the prosecuting attorney of 1 of the counties over which the grand jury is to have jurisdiction to assist the grand jury.

(c) Designate the counties from which the jurors shall be drawn from among the counties over which the grand jury is to have jurisdiction.

(d) Designate the number of jurors to be drawn for the grand jury and the number of jurors to be drawn from each county.

(e) Designate the locations for the grand jury proceedings.

History: Add. 1989, Act 204, Imd. Eff. Nov. 1, 1989.

767.7f Grand jury convened by court of appeals; term; extension; dismissal; recall.

Sec. 7f. (1) Except as provided in subsection (2), the term of a grand jury convened under section 7c shall not exceed 6 months.

(2) The court of appeals of this state may order the term of the grand jury extended for an additional period not to exceed 6 months, for good cause shown. The judge presiding over the grand jury proceedings shall

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dismiss the grand jury upon completion of the functions of the grand jury whether or not the maximum term of the grand jury has been met. The grand jurors may be recalled at any time by the presiding judge or his or her successor to conclude business commenced during their term of service.

History: Add. 1989, Act 204, Imd. Eff. Nov. 1, 1989.

767.7g Grand jury convened by court of appeals; expansion of jurisdiction; petition.

Sec. 7g. (1) If a grand jury has been convened under section 7c(a), and the attorney general seeks to expand the jurisdiction of the grand jury to include 1 or more additional counties, the attorney general may petition the court of appeals under section 7b(1) to convene a grand jury which includes the additional county or counties. If the petition is granted, the court of appeals shall convene a new grand jury pursuant to section 7e and shall dismiss the existing grand jury.

(2) If a grand jury has been convened under section 7c(b) and the prosecuting attorneys of all of the counties over which the grand jury has jurisdiction seek to expand the jurisdiction of the grand jury to include 1 or more additional counties, the prosecuting attorneys of the counties over which the grand jury had jurisdiction and the prosecuting attorneys of the additional counties may, with the approval of the attorney general, petition the court of appeals under section 7b(2) to convene a grand jury with jurisdiction over all of those counties. If the petition is granted, the court of appeals shall convene a new grand jury pursuant to section 7e and shall dismiss the existing grand jury.

History: Add. 1989, Act 204, Imd. Eff. Nov. 1, 1989.

767.8 Grand jury; juror; grounds for discharge; summoning new juror.

Sec. 8. Any court in which a grand jury may be sitting, may discharge any of the grand jurors for intoxication or other gross misconduct; and in case of such discharge, or in case of the sickness, death or non-attendance of any grand juror, after he shall have been sworn, the court may cause another juror to be summoned from among the bystanders, or inhabitants of the city, township or village having the qualifications required by law, and to be sworn and to serve in his stead.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17222;—CL 1948, 767.8.

Former law: See section 1 of Ch. 164 of R.S. 1846, being CL 1857, § 6010; CL 1871, § 7879; How., § 9490; CL 1897, § 11875; and CL 1915, § 15702.

767.9 Grand jurors; alphabetical list; administration and form of oath.

Sec. 9. The clerk of the court shall prepare an alphabetical list of all the persons returned as grand jurors. When the jury is to be impaneled, the following oath shall be administered to the jurors: "You as grand jurors of this inquest do solemnly swear that you will diligently inquire and true presentment make of all such matters and things as shall be given you in charge; your own counsel and the counsel of the people, and of your fellows, you shall keep secret; you shall present no person for envy, hatred or malice, neither shall you leave any person unpresented for love, fear, favor, affection or hope of reward; but you shall present things truly, as they come to your knowledge, according to the best of your understanding; so help you God".

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17223;—CL 1948, 767.9;—Am. 1989, Act 204, Imd. Eff. Nov. 1, 1989.

Former law: See sections 2 and 3 of Ch. 164 of R.S. 1846, being CL 1857, §§ 6011 and 6012; CL 1871, §§ 7880 and 7881; How., §§ 9491 and 9492; CL 1897, §§ 11876 and 11877; and CL 1915, §§ 15703 and 15704.

767.10 Grand jury; affirmation in lieu of oath.

Sec. 10. Any person returned as a grand juror shall be allowed to make affirmation, substituting the word "affirm" instead of the word "swear"; and also the words, "this you do under the pains and penalties of perjury", instead of the words "so help you God".

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17224;—CL 1948, 767.10.

Former law: See section 4 of Ch. 164 of R.S. 1846, being CL 1857, § 6013; CL 1871, § 7882; How., § 9493; CL 1897, § 11878; and CL 1915, § 15705.

767.11 Grand jury; size; foreman, appointment.

Sec. 11. There shall be no more than 17 persons nor less than 13 persons sworn on any grand jury; and after such jurors have been impaneled and have received their charge from the court, they shall retire with the officer appointed to attend them and before they proceed to discharge the duties of their office, the court shall appoint 1 of their number to be foreman and the clerk shall record the same.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17225;—CL 1948, 767.11;—Am. 1970, Act 9, Imd. Eff. Mar. 26, 1970.

Former law: See section 5 of Ch. 164 of R.S. 1846, being CL 1857, § 6014; CL 1871, § 7883; How., § 9494; CL 1897, § 11879; and CL 1915, § 15706.

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767.12 Grand jury; foreman; term, vacancy.

Sec. 12. The foreman appointed by the court in the manner provided in the preceding section, shall be foreman during the whole time they are required to serve; but in case of his death or absence or if he shall be discharged, or excused before the grand jury shall be dismissed, another of such jurors shall be appointed foreman for the residue of such time of service.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17226;—CL 1948, 767.12.

Former law: See section 6 of Ch. 164 of R.S. 1846, being CL 1857, § 6015; CL 1871, § 7884; How., § 9495; CL 1897, § 11880; and CL 1915, § 15707.

767.13 Grand jury; juror; grounds of objection to competency.

Sec. 13. A person held to answer to any criminal charge may object to the competency of any 1 summoned to serve as a grand juror, on the ground that he is the prosecutor or complainant upon any charge against such person; and if such objection be established, the person so summoned shall be set aside.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17227;—CL 1948, 767.13.

Former law: See section 7 of Ch. 164 of R.S. 1846, being CL 1857, § 6016; CL 1871, § 7885; How., § 9496; CL 1897, § 11881; and CL 1915, § 15708.

767.14 Grand jury; no challenge of array or individual juror in other cases.

Sec. 14. No challenge to the array of grand jurors, or to any person summoned as a grand juror, shall be allowed in any other case than that specified in the preceding section.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17228;—CL 1948, 767.14.

Former law: See section 8 of Ch. 164 of R.S. 1846, being CL 1857, § 6017; CL 1871, § 7886; How., § 9497; CL 1897, § 11882; and CL 1915, § 15709.

767.15 Grand jury; witnesses; administration of oath, list.

Sec. 15. The foreman of every grand jury, the attorney general and the prosecuting attorney, or other prosecuting officer who shall be before them, shall have authority to administer all oaths and affirmations, in the manner prescribed by law, to witnesses who shall appear before such jury for the purpose of testifying in any matter of which they may have cognizance, and the foreman shall return to the court, or deliver to the prosecuting officer, a list of all the witnesses sworn before the grand jury in each case in which an indictment shall be found.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17229;—CL 1948, 767.15.

Former law: See section 9 of Ch. 164 of R.S. 1846, being CL 1857, § 6018; CL 1871, § 7887; How., § 9498; CL 1897, § 11883; and CL 1915, § 15710.

767.16 Grand jury; clerk, stenographer; appointment, duties.

Sec. 16. The grand jury may appoint 1 of their number to be their clerk, to preserve minutes of their proceedings and of evidence given before them; which minutes shall be delivered to the prosecuting officer, when so directed by the grand jury. Whenever it appears to the judge that it is necessary he may appoint a stenographer to take the testimony given before the grand jury.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17230;—CL 1948, 767.16.

Former law: See section 10 of Ch. 164 of R.S. 1846, being CL 1857, § 6019; CL 1871, § 7888; How., § 9499; CL 1897, § 11884; and CL 1915, § 15711.

767.17 Grand jury; summoning after dismissal.

Sec. 17. When the grand jury attending any court shall have been dismissed before the court is adjourned without day, they may be summoned to attend again, in the same term at such time as the court shall direct, for the dispatch of any business that may come before them.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17231;—CL 1948, 767.17.

Former law: See section 11 of Ch. 164 of R.S. 1846, being CL 1857, § 6020; CL 1871, § 7889; How., § 9500; CL 1897, § 11885; and CL 1915, § 15712.

767.18 Grand jury; disclosure of indictment for felony.

Sec. 18. No grand juror, stenographer or officer of the court shall disclose the fact that any indictment for a felony has been found against any person not in custody or under recognizance, otherwise than by issuing or executing process on such indictment, until such person has been arrested.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17232;—CL 1948, 767.18.

Former law: See section 12 of Ch. 164 of R.S. 1846, being CL 1857, § 6021; CL 1871, § 7890; How., § 9501; CL 1897, § 11886;

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and CL 1915, § 15713.

767.19 Grand jury; testimony to certain facts required.

Sec. 19. Members of the grand jury may be required by any court to testify, whether the testimony of a witness examined before such jury is consistent with, or different from the evidence given by such witness before such court; and they may also be required to disclose the testimony given before them by any person, upon complaint against such person for perjury, or upon his trial for such offense; but in no case can a member of a grand jury be obliged or allowed to testify or declare in what manner he or any other member of the jury voted on any question before them, or what opinions were expressed by any juror in relation to any such question.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17233;—CL 1948, 767.19.

Former law: See section 13 of Ch. 164 of R.S. 1846, being CL 1857, § 6022; CL 1871, § 7891; How., § 9502; CL 1897, § 11887; and CL 1915, § 15714.

767.19a Grand jury; order granting immunity to persons giving testimony; application; verified petition; entry of order.

Sec. 19a. The prosecuting attorney may apply to the judge who summoned the jury or his or her successor, or to the presiding judge, for an order granting immunity to any person designated by name and address in the application who might give testimony concerning any matter before the grand jury. The application shall be accompanied by a verified petition of the prosecuting attorney that sets forth the facts upon which the application is based. If the judge to whom the application is presented is satisfied that it is in the interest of justice that immunity be granted to that person, the judge shall enter an order granting immunity to the person, if the person appears before the grand jury and testifies under oath about any matter before the grand jury and set forth in the petition of the prosecuting attorney.

History: Add. 1970, Act 9, Imd. Eff. Mar. 26, 1970;—Am. 1989, Act 204, Imd. Eff. Nov. 1, 1989.

767.19b Delivery of immunity order to witness; use of truthful testimony or other information against witness in criminal case; transcript; duration of order granting immunity.

Sec. 19b. (1) A true copy of the order granting immunity shall be delivered to the witness before he or she answers any questions before the grand jury.

(2) Truthful testimony or other information compelled under the order granting immunity and any information derived directly or indirectly from that truthful testimony or other information shall not be used against the witness in a criminal case, except for impeachment purposes or in a prosecution for perjury or otherwise failing to comply with the order.

(3) All questions asked of the witness and his or her answers shall be transcribed. If a witness who has been granted immunity subsequently alleges that he or she is being prosecuted for an offense in violation of the grant of immunity, a true copy of the transcript, duly certified by an officer authorized to administer oaths, shall be delivered to the witness as soon as practicable.

(4) The order granting immunity shall continue in effect until the judge who summoned the jury or his or her successor, in his or her discretion and upon the prosecuting attorney's application, enters an order terminating the order granting immunity and informs the witness of the order of termination.

History: Add. 1970, Act 9, Imd. Eff. Mar. 26, 1970;—Am. 1999, Act 250, Imd. Eff. Dec. 28, 1999.

767.19c Grand jury; witness, failing to appear, contempt; penalty; purging.

Sec. 19c. Any witness who neglects or refuses to appear or testify or both in response to a summons of the grand jury or to answer any questions before the grand jury concerning any matter or thing of which the witness has knowledge concerning matters before the grand jury after service of a true copy of an order granting the witness immunity as to such matters shall be guilty of a contempt and after a public hearing in open court and conviction of such contempt shall be fined not exceeding $10,000.00 or imprisoned not exceeding 1 year, or both. If the witness thereafter appears before the court to purge himself of such contempt, the court shall order the recalling of the grand jury to afford such opportunity, and after appearance of the witness before the grand jury upon a transcript of the testimony there and then given, the witness shall be brought before the court and after examination, the court shall determine whether the witness has purged himself of the contempt and shall commute the sentence upon a finding that the witness has purged himself.

History: Add. 1970, Act 9, Imd. Eff. Mar. 26, 1970.

Constitutionality: In People v David Johnson, 407 Mich 134; 283 NW2d 632 (1979), the Michigan supreme court held that an indigent witness has a right under the due process clause of the Michigan constitution to the assistance and appointment of counsel at contempt proceedings in respect to a citizens' grand jury which may result in incarceration.

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767.19d Grand jury; perjury.

Sec. 19d. A person who wilfully swears falsely under oath in regard to any matter or thing upon which he is being examined is subject to the penalties of perjury as prescribed by law.

History: Add. 1970, Act 9, Imd. Eff. Mar. 26, 1970.

767.19e Grand jury; right of witness to legal counsel; communications between witness and legal counsel.

Sec. 19e. A witness called before the grand jury is at all times entitled to legal counsel not involving delay. The witness may discuss fully with his or her legal counsel any matter relating to the witness's part in the inquiry without being subject to citation for contempt. The witness has the right to have legal counsel present in the room in which the inquiry is held. All communications between the witness and his or her legal counsel are subject to the requirements of section 19f, and any disclosure of those communications by the witness or his or her legal counsel in violation of section 19f is punishable as provided in section 19f.

History: Add. 1970, Act 9, Imd. Eff. Mar. 26, 1970;—Am. 1989, Act 204, Imd. Eff. Nov. 1, 1989.

767.19f Grand jury; publication of testimony prohibited; penalty, exceptions.

Sec. 19f. (1) Except as otherwise provided by law, a person shall not publish or make known to any other person any testimony or exhibits obtained or used, or any proceeding conducted, in connection with any grand jury inquiry. A person who violates this subsection is guilty of a misdemeanor punishable by imprisonment in the county jail for not more than 1 year or by a fine of not more than $1,000.00, or both.

(2) Subsection (1) does not apply to any of the following:

(a) Communications between prosecuting officers for the purpose of presenting evidence before the grand jury, for the purpose of reviewing evidence presented to the grand jury for prospective prosecution, or for any other purpose involving the execution of a public duty.

(b) Communications between law enforcement officers in cases involving violations of chapter LXXXIII-A of the Michigan penal code, 1931 PA 328, MCL 750.543a to 750.543z.

(3) Subsection (1) applies to, but its application is not limited to, applications and petitions for and orders of immunity and to any transcript of testimony that may be delivered to a witness pursuant to his or her grant of immunity, except that the witness may be privileged to disclose such application, petition, order, and transcript to his or her attorney.

History: Add. 1970, Act 9, Imd. Eff. Mar. 26, 1970;—Am. 2002, Act 114, Eff. May 1, 2002.

767.19g Furnishing testimony of witness to person indicted by grand jury.

Sec. 19g. (1) The testimony of any witness before the grand jury shall not be made available to any person indicted by such grand jury prior to the time of trial of the indictment except as otherwise provided by this section.

(2) After the filing of an indictment returned by a citizen's grand jury but prior to trial, upon motion of the defendant made not later than 20 days after the arraignment of the defendant on the indictment, the trial judge shall direct the prosecuting attorney to furnish to the defendant the testimony which the defendant gave before the grand jury relative to the offense with which he is charged and may direct the prosecuting attorney to furnish to the defendant the testimony which any witness who will testify at the trial gave before the grand jury relative to the offense with which the defendant is charged except those portions adjudged irrelevant, immaterial or excluded for other good cause shown. If the trial judge directs the prosecuting attorney to furnish to the defendant a copy of a witness's testimony, which has been requested in accordance with this subsection, the prosecuting attorney shall furnish such testimony not later than 10 days prior to the time of trial or shall not call that witness to testify at the defendant's trial.

(3) If the trial judge has not directed the prosecuting attorney to furnish a copy of a witness's testimony to the defendant prior to trial, then at such time during the course of the trial when the direct examination of such a witness has been completed, a copy of the witness's testimony before the grand jury relative to the offense with which the defendant is charged, upon the request of the defendant, shall be furnished by the prosecuting attorney to the defendant.

History: Add. 1970, Act 9, Imd. Eff. Mar. 26, 1970;—Am. 1972, Act 53, Imd. Eff. Feb. 21, 1972.

767.20 Grand jury; examination of witnesses; advice on legal matters.

Sec. 20. If requested by the grand jury, the prosecuting attorney or attorney general shall examine witnesses in the presence of the grand jury, and advise the grand jury on legal matters.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17234;—CL 1948, 767.20;—Am. 1989, Act 204, Imd. Eff. Nov. 1, 1989.

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Former law: See section 14 of Ch. 164 of R.S. 1846, being CL 1857, § 6023; CL 1871, § 7892; How., § 9503; CL 1897, § 11888; and CL 1915, § 15715.

767.21 Grand jury; prosecutor to subpoena witness.

Sec. 21. The prosecuting attorney and other prosecuting officers, may, in all cases, issue subpoenas for witnesses to appear and testify on behalf of the people of this state; and the subpoena, under the hand of such officer, shall have the same force and be obeyed in the same manner and under the same penalties, as if issued by the clerk or any magistrate.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17235;—CL 1948, 767.21.

Former law: See section 15 of Ch. 164 of R.S. 1846, being CL 1857, § 6024; CL 1871, § 7893; How., § 9504; CL 1897, § 11889; and CL 1915, § 15716.

767.22 Grand jury; appearances to give information; deliberations or vote of grand jury.

Sec. 22. The prosecuting attorney, attorney general, or other prosecuting officer, shall be allowed at all times to appear before the grand jury on his or her request to give information to the grand jury regarding any matter cognizable by the grand jury. No person other than a grand juror shall be present during the deliberations of the grand jury or during the vote of the grand jury upon any matter before the grand jury.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17236;—CL 1948, 767.22;—Am. 1989, Act 204, Imd. Eff. Nov. 1, 1989.

Former law: See section 16 of Ch. 164 of R.S. 1846, being CL 1857, § 6025; CL 1871, § 7894; How., § 9505; CL 1897, § 11890; and CL 1915, § 15717.

767.23 Grand jury; indictment, vote required; true bill.

Sec. 23. No indictment can be found without the concurrence of at least 9 grand jurors; and when so found, and not otherwise, the foreman of the grand jury shall certify thereon, under his hand, that the same is a true bill.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17237;—CL 1948, 767.23;—Am. 1970, Act 9, Imd. Eff. Mar. 26, 1970.

Former law: See section 17 of Ch. 164 of R.S. 1846, being CL 1857, § 6026; CL 1871, § 7895; How., § 9506; CL 1897, § 11891; and CL 1915, § 15718.

767.23a Grand jury; indictment; specifying county where offense took place.

Sec. 23a. A grand jury convened under section 7c may indict a person for an offense committed in any county over which the grand jury has jurisdiction. If the grand jury indicts a person under this subsection, the grand jury shall specify in the indictment the county or counties in which the offense took place.

History: Add. 1989, Act 204, Imd. Eff. Nov. 1, 1989.

767.24 Indictment; crimes; "Theresa Flores's Law"; definitions; Brandon D'Annunzio's law; findings and filing; exceptions for victims under 18; extension or tolling.

Sec. 24. (1) An indictment for any of the following crimes may be found and filed at any time:

(a) Murder, conspiracy to commit murder, or solicitation to commit murder, or criminal sexual conduct in the first degree.

(b) A violation of chapter XXXIII of the Michigan penal code, 1931 PA 328, MCL 750.200 to 750.212a, that is punishable by imprisonment for life.

(c) A violation of chapter LXVIIA of the Michigan penal code, 1931 PA 328, MCL 750.462a to 750.462h, that is punishable by imprisonment for life.

(d) A violation of the Michigan anti-terrorism act, chapter LXXXIII-A of the Michigan penal code, 1931 PA 328, MCL 750.543a to 750.543z, that is punishable by imprisonment for life.

(2) An indictment for a violation or attempted violation of section 13, 462b, 462c, 462d, or 462e of the Michigan penal code, 1931 PA 328, MCL 750.13, 750.462b, 750.462c, 750.462d, and 750.462e, may be found and filed within 25 years after the offense is committed. This subsection shall be known as "Theresa Flores's Law".

(3) Except as provided in subsection (4) for a violation of section 520c or 520d of the Michigan penal code, 1931 PA 328, MCL 750.520c and 750.520d, in which the victim is under 18 years of age, an indictment for a violation or attempted violation of section 136, 136a, 145c, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.136, 750.136a, 750.145c, 750.520c, 750.520d, 750.520e, and 750.520g, may be found and filed as follows:

(a) Except as otherwise provided in subdivision (b), an indictment may be found and filed within 10 years after the offense is committed or by the alleged victim's twenty-first birthday, whichever is later.

(b) If evidence of the offense is obtained and that evidence contains DNA that is determined to be from an unidentified individual, an indictment against that individual for the offense may be found and filed at any

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time after the offense is committed. However, after the individual is identified, the indictment may be found and filed within 10 years after the individual is identified or by the alleged victim's twenty-first birthday, whichever is later.

(4) An indictment for a violation of section 520c or 520d of the Michigan penal code, 1931 PA 328, MCL 750.520c and 750.520d, in which the victim is under 18 years of age may be found and filed as follows:

(a) Except as otherwise provided in subdivision (b), an indictment may be found and filed within 15 years after the offense is committed or by the alleged victim's twenty-eighth birthday, whichever is later.

(b) If evidence of the offense is obtained and that evidence contains DNA that is determined to be from an unidentified individual, an indictment against that individual for the offense may be found and filed at any time after the offense is committed. However, after the individual is identified, the indictment may be found and filed within 15 years after the individual is identified or by the alleged victim's twenty-eighth birthday, whichever is later.

(5) As used in subsections (3) and (4):

(a) "DNA" means human deoxyribonucleic acid.

(b) "Identified" means the individual's legal name is known and he or she has been determined to be the source of the DNA.

(6) An indictment for kidnapping, extortion, assault with intent to commit murder, attempted murder, manslaughter, armed robbery, or first-degree home invasion may be found and filed as follows:

(a) Except as otherwise provided in subdivision (b), an indictment may be found and filed within 10 years after the offense is committed.

(b) If the offense is reported to a police agency within 1 year after the offense is committed and the individual who committed the offense is unknown, an indictment for that offense may be found and filed within 10 years after the individual is identified. This subsection shall be known as Brandon D'Annunzio's law. As used in this subsection, "identified" means the individual's legal name is known.

(7) An indictment for identity theft or attempted identity theft may be found and filed as follows:

(a) Except as otherwise provided in subdivision (b), an indictment may be found and filed within 6 years after the offense is committed.

(b) If evidence of the offense is obtained and the individual who committed the offense has not been identified, an indictment may be found and filed at any time after the offense is committed, but not more than 6 years after the individual is identified.

(8) As used in subsection (7):

(a) "Identified" means the individual's legal name is known.

(b) "Identity theft" means 1 or more of the following:

(*i*) Conduct prohibited in section 5 or 7 of the identity theft protection act, 2004 PA 452, MCL 445.65 and 445.67.

(*ii*) Conduct prohibited under former section 285 of the Michigan penal code, 1931 PA 328.

(9) An indictment for false pretenses involving real property, forgery or uttering and publishing of an instrument affecting an interest in real property, or mortgage fraud may be found and filed within 10 years after the offense was committed or within 10 years after the instrument affecting real property was recorded, whichever occurs later.

(10) All other indictments may be found and filed within 6 years after the offense is committed.

(11) Any period during which the party charged did not usually and publicly reside within this state is not part of the time within which the respective indictments may be found and filed.

(12) The extension or tolling, as applicable, of the limitations period provided in this section applies to any of those violations for which the limitations period has not expired at the time the extension or tolling takes effect.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17238;—Am. 1935, Act 144, Eff. Sept. 21, 1935;—CL 1948, 767.24;—Am. 1954, Act 100, Imd. Eff. Apr. 14, 1954;—Am. 1987, Act 255, Eff. Mar. 30, 1988;—Am. 2001, Act 6, Imd. Eff. May 2, 2001;—Am. 2002, Act 119, Eff. Apr. 22, 2002;—Am. 2004, Act 458, Eff. Mar. 1, 2005;—Am. 2005, Act 35, Imd. Eff. June 7, 2005;—Am. 2011, Act 203, Imd. Eff. Oct. 20, 2011;—Am. 2012, Act 363, Eff. Mar. 28, 2013;—Am. 2014, Act 324, Eff. Jan. 14, 2015;—Am. 2017, Act 79, Eff. Oct. 9, 2017;—Am. 2018, Act 148, Eff. Aug. 14, 2018;—Am. 2018, Act 182, Eff. Sept. 10, 2018.

Compiler's note: Enacting section 1 of Act 6 of 2001 provides:

"Enacting section 1. The legislature intends that the extension or tolling, as applicable, of the limitations period provided in this amendatory act shall apply to any of those violations for which the limitations period has not expired at the time this amendatory act takes effect."

Former law: See section 18 of Ch. 164 of R.S. 1846, being CL 1857, § 6027; CL 1871, § 7896; How., § 9507; CL 1897, § 11892; and CL 1915, § 15719.

767.25 Indictment by grand jury; indorsement; presentment; return; filing; inspection.

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Sec. 25. (1) If a person is indicted by a grand jury, the grand jury shall indorse all of the names of the complainants and all of the names of the witnesses on the back of the indictment. The foreperson of the grand jury shall present the indictment to the court in the presence of the grand jury.

(2) If a person is indicted by a grand jury convened under section 7c, the indictment shall remain with the court having jurisdiction over the offense, after the indictment is certified and filed with that court.

(3) If the grand jury indicts a person under subsection (1), the judge presiding over the grand jury proceedings shall return the indictment to any court having proper jurisdiction over the offense.

(4) Except as otherwise provided in this section, the indictment shall be filed with the court and remain with the court as a public record.

(5) If a person is indicted for a felony and the person is not in custody, the indictment shall not be open to inspection by any person other than the attorney general or the prosecuting attorney until the defendant is in custody.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17239;—CL 1948, 767.25;—Am. 1989, Act 204, Imd. Eff. Nov. 1, 1989.

Former law: See section 19 of Ch. 164 of R.S. 1846, being CL 1857, § 6028; CL 1871, § 7897; How., § 9508; CL 1897, § 11893; and CL 1915, § 15720.

767.26 Discharge of accused in absence of indictment.

Sec. 26. Any person held in prison on any charge of having committed a crime, shall be discharged if he be not indicted before the end of the second term of the court at which he is held to answer unless it shall appear to the satisfaction of the court that the witnesses on the part of the people have been enticed or kept away, or are detained and prevented from attending the court by sickness or some inevitable accident, and except in the case provided for in the next section.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17240;—CL 1948, 767.26.

Former law: See section 20 of Ch. 164 of R.S. 1846, being CL 1857, § 6029; CL 1871, § 7898; How., § 9509; CL 1897, § 11894; and CL 1915, § 15721.

767.27 Repealed. 1966, Act 266, Eff. Mar. 10, 1967.

Compiler's note: The repealed section pertained to procedure followed when person accused of felony was found to be insane or when he was acquitted of felony upon grounds of insanity.

767.27a-767.27c Repealed. 1974, Act 258, Eff. Aug. 6, 1975.

Compiler's note: The repealed sections pertained to persons incompetent to stand trial.

767.28 Indictment; right of indictee to copy.

Sec. 28. Every person indicted for any offense, who shall have been arrested upon process issued upon such indictment or who shall have duly entered into recognizance to appear and answer to such indictment shall, on demand, be entitled to a copy of the indictment and of all endorsements thereon.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17242;—CL 1948, 767.28.

Former law: See section 22 of Ch. 164 of R.S. 1846, being CL 1857, § 6031; CL 1871, § 7900; How., § 9511; CL 1897, § 11896; and CL 1915, § 15723.

767.29 Discontinuance or abandonment of indictment.

Sec. 29. A prosecuting attorney shall not enter a nolle prosequi upon an indictment, or discontinue or abandon the indictment, without stating on the record the reasons for the discontinuance or abandonment and without the leave of the court having jurisdiction to try the offense charged, entered in its minutes. If a defendant is charged with a major controlled substance offense, in addition to the requirements of this section, the requirements of section 7415 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.7415 of the Michigan Compiled Laws, shall apply upon the prosecuting attorney's motion to dismiss the charge.

History: 1927, Act 175, Eff. Sept. 5, 1927;—Am. 1929, Act 24, Imd. Eff. Apr. 2, 1929;—CL 1929, 17243;—CL 1948, 767.29;—Am. 1978, Act 77, Eff. Sept. 1, 1978;—Am. 1988, Act 90, Imd. Eff. Mar. 30, 1988.

Former law: See section 23 of Ch. 164 of R.S. 1846, being CL 1857, § 6032; CL 1871, § 7901; How., § 9512; CL 1897, § 11897; and CL 1915, § 15724.

767.30 Warrant for arrest of indictee; issuance, persons.

Sec. 30. A warrant for the arrest of any person indicted may be issued by the court to which the indictment shall be presented, or by any justice of the supreme court, or judge of the court for the county in which such indictment shall be found, or judge of any recorder's court or any court of record having jurisdiction of criminal causes, either in vacation or during the sitting of any such court; but such warrant shall not be issued

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by any other officer.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17244;—CL 1948, 767.30.

Former law: See section 24 of Ch. 164 of R.S. 1846, being CL 1857, § 6033; CL 1871, § 7902; How., § 9513; CL 1897, § 11898; and CL 1915, § 15725.

767.31 Warrant for arrest of indictee; persons to whom directed; place of execution.

Sec. 31. Every warrant shall be directed to the sheriff, constable, police officer or peace officer of the county in which the indictment shall be found, and may be executed in any part of this state.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17245;—CL 1948, 767.31.

Former law: See section 25 of Ch. 164 of R.S. 1846, being CL 1857, § 6034; CL 1871, § 7903; How., § 9514; CL 1897, § 11899; and CL 1915, § 15726.

767.32 Subpoena; witness for defendant; issuance by county clerk, fee.

Sec. 32. The clerk of any county in which an indictment shall be found, upon the application of the defendant, and without requiring any fees, shall issue subpoenas as well during the sitting of any court as in vacation, for such witnesses as the defendant may require, whether residing in or out of the county.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17246;—CL 1948, 767.32.

Former law: See section 26 of Ch. 164 of R.S. 1846, being CL 1857, § 6035; CL 1871, § 7904; How., § 9515; CL 1897, § 11900; and CL 1915, § 15727.

767.33 Subpoena; witness for defendant; disobedience; penalty, civil liability.

Sec. 33. Disobedience to any subpoena issued pursuant to the foregoing provisions, shall be punished in the same manner and upon the like proceedings, as provided by law in other cases; and the person guilty of such disobedience shall be liable to the party at whose instance such subpoena issued in the same manner and to the like extent as in cases of subpoenas issued in any civil suit.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17247;—CL 1948, 767.33.

Former law: See section 27 of Ch. 164 of R.S. 1846, being CL 1857, § 6036; CL 1871, § 7905; How., § 9516; CL 1897, § 11901; and CL 1915, § 15728.

767.34 Witness; issuance of capias.

Sec. 34. Any circuit court or any court of record shall have power to issue capiases, in the first instance, for any witness or witnesses in criminal cases, when it shall satisfactorily appear that such witness or witnesses are material and that there will be danger of the loss of their testimony unless such writ be issued.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17248;—CL 1948, 767.34.

Former law: See section 1 of Act 209 of 1871, being CL 1871, § 7961; How., § 9574; CL 1897, § 11958; and CL 1915, § 15831.

767.35 Material witness in criminal case; danger of loss of testimony; requiring witness to enter into recognizance with surety; commitment to jail.

Sec. 35. When it appears to a court of record that a person is a material witness in a criminal case pending in a court in the county and that there is a danger of the loss of testimony of the witness unless the witness furnishes bail or is committed if he or she fails to furnish bail, the court shall require the witness to be brought before the court. After giving the witness an opportunity to be heard, if it appears that the witness is a material witness and that there is a danger of the loss of his or her testimony unless the witness furnishes bail or is committed, the court may require the witness to enter into a recognizance with a surety in an amount determined by the court for the appearance of the witness at an examination or trial. If the witness fails to recognize, he or she shall be committed to jail by the court, until he or she does recognize or is discharged by order of the court.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17249;—CL 1948, 767.35;—Am. 1980, Act 506, Imd. Eff. Jan. 22, 1981.

Former law: See sections 19, 20, and 22 of Ch. 163 of R.S. 1846, being CL 1857, §§ 5995, 5996, and 5998; CL 1871, §§ 7861, 7862, and 7864; How., §§ 9472, 9473, and 9475; CL 1897, §§ 11856, 11857, and 11859; CL 1915, §§ 15683, 15684, and 15686; and Act 77 of 1871.

767.36 Witness; subpoena by prosecution; necessity of fee.

Sec. 36. It shall not be necessary to pay or tender any fees whatever to any witness subpoenaed on the part of the people of this state in support of any prosecution, but such witness shall be bound to attend as if the fees allowed by law to witnesses in civil actions had been duly paid to him.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17250;—CL 1948, 767.36.

Former law: See section 28 of Ch. 163 of R.S. 1846, being CL 1857, § 6037; CL 1871, § 7906; How., § 9517; CL 1897, § 11902; and CL 1915, § 15729.

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767.37 Indictee; plea on arraignment.

Sec. 37. When any person shall be arraigned upon an indictment, it shall not be necessary in any case to ask him how he will be tried but if, on being so arraigned, he shall refuse to plead or answer or shall not confess the indictment to be true, the court shall order a plea of not guilty to be entered and thereupon the proceedings shall be the same as if he had pleaded not guilty to the indictment. At the arraignment of any person upon an indictment or upon the charge in a warrant, complaint or information the court may accept a plea of nolo contendere and if such a plea is accepted, the court shall proceed as if he had pleaded guilty.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17251;—CL 1948, 767.37;—Am. 1969, Act 334, Imd. Eff. Nov. 10, 1969.

Former law: See section 29 of Ch. 163 of R.S. 1846, being CL 1857, § 6038; CL 1871, § 7907; How., § 9518; CL 1897, § 11903; and CL 1915, § 15730.

767.37a Arraignments; use of 2-way interactive video technology; access to courtroom; court record.

Sec. 37a. (1) A judge or district court magistrate may conduct initial criminal arraignments and set bail by 2-way interactive video technology communication between a court facility and a prison, jail, or other place where a person is imprisoned or detained. A judge or district court magistrate may conduct initial criminal arraignments and set bail on weekends, holidays, or at any time as determined by the court.

(2) A 2-way interactive video technology system used under this section shall enable the accused and the judge or district court magistrate to see, hear, and communicate with each other simultaneously, and shall enable defense counsel and the prosecuting attorney, if present, to be heard by and to communicate simultaneously with the accused, the judge or district court magistrate, and opposing counsel.

(3) Except as otherwise provided by law, the public shall have access to the courtroom or other location, that allows them to view and hear the proceedings.

(4) If proceedings conducted under this section are not recorded by an individual certified by the state court administrative office, the court shall record and maintain an original audiovisual recording of the entire proceedings. A recording made under this subsection shall become part of the court record.

(5) This act does not prohibit the use of 2-way interactive video technology for arraignments on the information, criminal pretrial hearings, criminal pleas, sentencing hearings for misdemeanor violations cognizable in the district court, show cause hearings, or other criminal proceedings, to the extent the Michigan supreme court has authorized that use.

History: Add. 1994, Act 229, Imd. Eff. June 30, 1994;—Am. 2006, Act 655, Imd. Eff. Jan. 9, 2007.

767.38 Indictee; right to trial or admission to bail.

Sec. 38. Every person held in prison upon an indictment shall, if he require it, be tried at the next term of court after the expiration of 6 months from the time when he was imprisoned, or shall be bailed upon his own recognizance, unless it shall appear to the satisfaction of the court that the witnesses on behalf of the people have been enticed or kept away, or are detained and prevented from attending court by sickness, or some inevitable accident.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17252;—CL 1948, 767.38.

Former law: See section 30 of Ch. 163 of R.S. 1846, being CL 1857, § 6039; CL 1871, § 7908; How., § 9519; CL 1897, § 11904; and CL 1915, § 15731.

767.39 Abolition of distinction between accessory and principal.

Sec. 39. Every person concerned in the commission of an offense, whether he directly commits the act constituting the offense or procures, counsels, aids, or abets in its commission may hereafter be prosecuted, indicted, tried and on conviction shall be punished as if he had directly committed such offense.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17253;—CL 1948, 767.39.

Former law: See sections 3 and 5 of Ch. 161 of R.S. 1846, being CL 1857, §§ 5939 and 5941; CL 1871, §§ 7805 and 7807; How., §§ 9415 and 9417; CL 1897, §§ 11776 and 11778; CL 1915, §§ 15603 and 15605; and section 19 of Act 77 of 1855, being CL 1857, § 6065; CL 1871, § 7934; How., § 9545; CL 1897, § 11930; CL 1915, § 15757.

767.40 Information; filing; subscription.

Sec. 40. All informations shall be filed in the court having jurisdiction of the offense specified in the information after the proper return is filed by the examining magistrate and by the prosecuting attorney of the county as informant. The information shall be subscribed by the prosecuting attorney or in his or her name by an assistant prosecuting attorney.

History: 1927, Act 175, Eff. Sept. 5, 1927;—Am. 1929, Act 24, Imd. Eff. Apr. 2, 1929;—CL 1929, 17254;—CL 1948, 767.40;—Am. 1955, Act 184, Eff. Oct. 14, 1955;—Am. 1961, Act 11, Eff. Sept. 8, 1961;—Am. 1986, Act 46, Eff. July 1, 1986.

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Former law: See sections 2 and 3 of Act 138 of 1859, being CL 1871, §§ 7938 and 7939; How., §§ 9549 and 9550; CL 1897, §§ 11934 and 11935; and CL 1915, §§ 15761 and 15762.

767.40a Attaching list of witnesses to filed information; disclosing names of res gestae witnesses; sending list to defendant or defendant's attorney; additions or deletions from list; request for assistance in locating and serving process on witness; objection to request; hearing; impeachment or cross-examination of witness.

Sec. 40a. (1) The prosecuting attorney shall attach to the filed information a list of all witnesses known to the prosecuting attorney who might be called at trial and all res gestae witnesses known to the prosecuting attorney or investigating law enforcement officers.

(2) The prosecuting attorney shall be under a continuing duty to disclose the names of any further res gestae witnesses as they become known.

(3) Not less than 30 days before the trial, the prosecuting attorney shall send to the defendant or his or her attorney a list of the witnesses the prosecuting attorney intends to produce at trial.

(4) The prosecuting attorney may add or delete from the list of witnesses he or she intends to call at trial at any time upon leave of the court and for good cause shown or by stipulation of the parties.

(5) The prosecuting attorney or investigative law enforcement agency shall provide to the defendant, or defense counsel, upon request, reasonable assistance, including investigative assistance, as may be necessary to locate and serve process upon a witness. The request for assistance shall be made in writing by defendant or defense counsel not less than 10 days before the trial of the case or at such other time as the court directs. If the prosecuting attorney objects to a request by the defendant on the grounds that it is unreasonable, the prosecuting attorney shall file a pretrial motion before the court to hold a hearing to determine the reasonableness of the request.

(6) Any party may within the discretion of the court impeach or cross-examine any witnesses as though the witness had been called by another party.

History: Add. 1941, Act 336, Eff. Jan. 10, 1942;—CL 1948, 767.40a;—Am. 1986, Act 46, Eff. July 1, 1986.

767.41 Inquiry by prosecuting attorney into preliminary examination; statement of reasons for not filing information; direction by court to file proper information.

Sec. 41. The prosecuting attorney of the proper county shall inquire into and make full examination of all the facts and circumstances connected with a case of preliminary examination as provided by law, concerning the commission of an offense where the offender is committed to jail or becomes recognized or held to bail. If the prosecuting attorney determines in a case other than a major controlled substance offense that an information ought not be filed, he shall make and subscribe a statement, in writing, containing his reasons in fact and in law, for not filing an information in the case and shall file that statement with the clerk of the court at and during the term of the court at which the offender is held for appearance. The court may examine the statement, together with the evidence filed in the case and if, upon examination, the court is not satisfied with the statement, the prosecuting attorney shall be directed by the court to file the proper information and bring the case to trial.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17255;—CL 1948, 767.41;—Am. 1978, Act 77, Eff. Sept. 1, 1978.

Former law: See section 6 of Act 138 of 1859, being CL 1871, § 7942; How., § 9553; CL 1897, § 11938; CL 1915, § 15765; and Act 147 of 1863.

767.42 Preliminary examination as prerequisite to filing of information; remand where right waived without benefit of counsel; fugitives from justice.

Sec. 42. (1) An information shall not be filed against any person for a felony until such person has had a preliminary examination therefor, as provided by law, before an examining magistrate, unless that person waives his statutory right to an examination. If any person waives his statutory right to a preliminary examination without having had the benefit of counsel at the time and place of the waiver, upon proper and timely application by the person or his counsel, before trial or plea of guilty, the court having jurisdiction of the cause, in its discretion, may remand the case to a magistrate for a preliminary examination.

(2) An information may be filed without a preliminary examination against a fugitive from justice, and any fugitive from justice against whom an information shall be filed may be demanded by the governor of this state of the executive authority of any other state or territory, or of any foreign government, in the same manner and the same proceedings may be had thereon as provided by law in like cases of demand upon indictment filed.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17256;—CL 1948, 767.42;—Am. 1957, Act 38, Eff. Sept. 27, 1957;—Am. 1974, Act 63, Eff. May 1, 1974.

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Compiler's note: Section 2 of Act 63 of 1974 provides: "To give judges, prosecutors, and defense counsel a reasonable opportunity to become aware of and familiar with the time periods and sequence prescribed in this amendatory act and the effects of noncompliance, sections 20 and 21 of chapter 8 of Act No. 175 of the Public Acts of 1927, being sections 768.20 and 768.21 of the Michigan Compiled Laws, as amended by this amendatory act shall take effect May 1, 1974, and apply to cases in which the arraignment on an information occurs on or after that date. The other provisions of this amendatory act shall take effect May 1, 1974 and apply to offenses committed on or after that date."

Former law: See section 8 of Act 138 of 1859, being CL 1871, § 7944; How., § 9555; CL 1897, § 11940; and CL 1915, § 15767.

767.43 Indictment; form generally.

Sec. 43. The indictment may be substantially in the following form:

In the ..... (here give the name of the court) ..... term, 19..... the People of the state of Michigan vs. (here give the name or the description of the accused.)

The grand jury of the county or counties of ..... presents that (here give the name or the description of the accused), (here set forth the offense and transaction, according to the rules herein enunciated).

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17257;—CL 1948, 767.43;—Am. 1989, Act 204, Imd. Eff. Nov. 1, 1989.

767.44 Indictment; forms for particular offenses; bill of particulars.

Sec. 44. The following forms may be used in the cases in which they are applicable but any other forms authorized by this or any other law of this state may also be used:

Adultery—A.B., a married man, committed adultery with C.D.; or A.B. committed adultery with C.D., a married woman.

Affray—A.B. and C.D. made an affray.

Assault—A.B. assaulted C.D.

Assault and Battery—A.B. committed an assault and battery on C.D.

Assault with intent—A.B. assaulted C.D. with intent to murder, or kill, or rob, or maim, or rape (as the case may be).

Arson—A.B. committed arson by burning the dwelling house of C.D.

Attempt—A.B. attempted to steal from C.D.; A.B. attempted to commit larceny of the goods of C.D.; A.B. attempted to commit burglary of a building belonging to C.D. (as the case may be).

Burglary—A.B. committed burglary of the house of C.D. A.B. broke and entered the dwelling house of C.D. in the night time with intent to commit larceny, or murder, or robbery therein (as the case may be).

Conspiracy—A.B. and C.D. conspired together to murder E.F. or to steal the property of E.F. or to rob E.F. (as the case may be).

Forgery—A.B. forged a certain instrument purporting to be a promissory note (or describe instrument or give its tenor or substance).

Larceny—Embezzlement and false pretenses. A.B. stole from C.D. 1 horse of the value of more than 100 dollars.

Murder—A.B. murdered C.D.

Manslaughter—A.B. killed C.D.

Perjury—A.B. appeared as a witness in a case between C.D. and E.F. being heard before the (set forth the tribunal) and committed perjury by testifying as follows: (set forth the testimony).

Rape—A.B. raped or ravished C.D.

Rape (statutory)—A.B. raped or ravished C.D., she C.D. being then under the age of (statutory age) years.

Robbery Armed—A.B. robbed C.D., A.B. being armed.

Robbery—A.B. robbed C.D., A.B. not being armed.

Provided, That the prosecuting attorney, if seasonably requested by the respondent, shall furnish a bill of particulars setting up specifically the nature of the offense charged.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17258;—CL 1948, 767.44.

Former law: See section 2 of Act 77 of 1855, being CL 1857, § 6048; CL 1871, § 7917; How., § 9528; CL 1897, § 11913; and CL 1915, § 15740.

767.45 Contents of indictment or information; felony in which motor vehicle used.

Sec. 45. (1) The indictment or information shall contain all of the following:

(a) The nature of the offense stated in language which will fairly apprise the accused and the court of the offense charged.

(b) The time of the offense as near as may be. No variance as to time shall be fatal unless time is of the essence of the offense.

(c) That the offense was committed in the county or within the jurisdiction of the court. No verdict shall be

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set aside or a new trial granted by reason of failure to prove that the offense was committed in the county or within the jurisdiction of the court unless the accused raises the issue before the case is submitted to the jury.

(2) If a person is accused of committing or attempting to commit a felony in which a motor vehicle was used, other than a felony specified in section 732(4) or 319(1)(a) to (f) of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.732 and 257.319 of the Michigan Compiled Laws, the prosecuting attorney shall include on the complaint and information the statement, "You are charged with the commission of a felony in which a motor vehicle was used. If you are convicted and the judge finds that the conviction is for a felony in which a motor vehicle was used, as defined in section 319 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.319 of the Michigan Compiled Laws, your driver's license shall be suspended by the secretary of state for a period of 90 days to 2 years." As used in this subsection, "felony in which a motor vehicle was used" means a felony during the commission of which the person accused operated a motor vehicle and while operating the vehicle presented real or potential harm to persons or property and 1 or more of the following circumstances existed:

(*i*) The vehicle was used as an instrument of the felony.

(*ii*) The vehicle was used to transport a victim of the felony.

(*iii*) The vehicle was used to flee the scene of the felony.

(*iv*) The vehicle was necessary for the commission of the felony.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17259;—CL 1948, 767.45;—Am. 1988, Act 123, Eff. July 1, 1988.

Former law: See sections 7 and 13 of Act 77 of 1855, being CL 1857, §§ 6053 and 6059; CL 1871, §§ 7922 and 7928; How., §§ 9533 and 9539; CL 1897, §§ 11918 and 11924; and CL 1915, §§ 15745 and 15751.

767.46 Indictment; amendment of certain parts.

Sec. 46. Any defect, error or omission in the caption, commencement or conclusion of an indictment may be amended.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17260;—CL 1948, 767.46.

767.47 Indictment; effect of repugnant and unnecessary allegations.

Sec. 47. No indictment is invalid by reason of any repugnant allegations contained therein, provided that an offense is charged. All unnecessary allegations shall be rejected as surplusage.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17261;—CL 1948, 767.47.

Former law: See section 8 of Act 77 of 1855, being CL 1857, § 6054; CL 1871, § 7923; How., § 9534; CL 1897, § 11919; and CL 1915, § 15746.

767.48 Indictment; necessity of negativing statutory exception.

Sec. 48. No indictment for any offense created or defined by statute shall be deemed objectionable for the reason that it fails to negative any exception, excuse or proviso contained in the statute creating or defining the offense. The fact that the charge is made shall be considered as an allegation that no legal excuse for the doing of the act exists in the particular case.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17262;—CL 1948, 767.48.

767.49 Indictment; statement of name of individual, association or corporation.

Sec. 49. In any indictment it is sufficient for the purpose of identifying the accused to state his true name, to state the name, appellation or nickname by which he has been or is known, to state a fictitious name, or to describe him as a person whose name is unknown or to describe him in any other manner. In stating the true name or the name by which the accused has been or is known or a fictitious name, it is sufficient to state a surname, a surname and 1 or more christian name or names, or a surname and 1 or more abbreviations or initials of a christian name or names. It is sufficient for the purpose of identifying any group or association of persons, not incorporated, to state the proper name of such group or association (if such there be), to state any name or designation by which the group or association has been or is known, to state the names of all the persons in such group or association or of 1 or more of them, or to state the name or names of 1 or more persons in such group or association referring to the other or others as "another" or "others". It is sufficient for the purpose of identifying a corporation to state the corporate name of such corporation, or any name or designation by which such corporation has been or is known. It is not necessary for the purpose of identifying any group or association of persons or any corporation to state or prove the legal form of such group or association of persons or of such corporation. In no case is it necessary to aver or prove that the true name of any person, group or association of persons or corporation is unknown to the grand jury, complainant or prosecuting officer. If in the course of the trial the true name of any person, group or association of persons or corporation identified otherwise than by the true name, is disclosed by the evidence, the court shall on motion

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of the accused or of the prosecuting attorney, and may without such motion, insert the true name in the indictment wherever the name appears otherwise.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17263;—CL 1948, 767.49.

Former law: See sections 8 and 14 of Act 77 of 1855, being CL 1857, §§ 6054 and 6060; CL 1871, §§ 7923 and 7929; How., §§ 9534 and 9540; CL 1897, §§ 11919 and 11925; and CL 1915, §§ 15746 and 15752.

767.50 Indictment; description of instrument.

Sec. 50. Whenever in an indictment an allegation relative to any instrument which consists wholly or in part of writing or figures, pictures or designs, is necessary, it is sufficient to describe such instrument by any name or description by which it is usually known or by its purport without setting forth a copy or facsimile of the whole or any part thereof.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17264;—CL 1948, 767.50.

Former law: See section 10 of Act 77 of 1855, being CL 1857, § 6056; CL 1871, § 7925; How., § 9536; CL 1897, § 11921; and CL 1915, § 15748.

767.51 Indictment; allegation of time.

Sec. 51. Except insofar as time is an element of the offense charged, any allegation of the time of the commission of the offense, whether stated absolutely or under a videlicet, shall be sufficient to sustain proof of the charge at any time before or after the date or dates alleged, prior to the finding of the indictment or the filing of the complaint and within the period of limitations provided by law: Provided, That the court may on motion require the prosecution to state the time or identify the occasion as nearly as the circumstances will permit, to enable the accused to meet the charge.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17265;—CL 1948, 767.51.

Former law: See section 8 of Act 77 of 1855, being CL 1857, § 6054; CL 1871, § 7923; How., § 9534; CL 1897, § 11919; and CL 1915, § 15746.

767.52 Indictment; allegation of means of offense.

Sec. 52. The indictment need contain no allegation of the means by which the offense was committed except insofar as the means is an element of the offense.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17266;—CL 1948, 767.52.

767.53 Indictment; allegation of value or price.

Sec. 53. The indictment need not allege the value or price of any property unless the value or price is an element of the offense and in such case it is sufficient to aver that the value or price of the property is less than, equals or exceeds the certain value or price which determines the offense or grade thereof.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17267;—CL 1948, 767.53.

Former law: See sections 8 and 16 of Act 77 of 1855, being CL 1857, §§ 6054 and 6062; CL 1871, §§ 7923 and 7931; How., §§ 9534 and 9542; CL 1897, §§ 11919 and 11927; and CL 1915, §§ 15746 and 15754.

767.54 Indictment; ownership; allegation; proof.

Sec. 54. The indictment need not allege the ownership of any property unless such ownership is necessary to indicate the offense. Proof of possession or right of possession or lien or special property in the person alleged to be the owner shall be sufficient to sustain an allegation of ownership in such person.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17268;—CL 1948, 767.54.

Former law: See section 10 of Ch. 161 of R.S. 1846, being CL 1857, § 5946; CL 1871, § 7812; How., § 9422; CL 1897, § 11783; and CL 1915, § 15610.

767.55 Indictment; allegation of certain matters in the alternative.

Sec. 55. In an indictment for an offense which is constituted of 1 or more of several acts, or which may be committed by 1 or more of several means, or with 1 or more of several intents, or which may produce 1 or more of several results, 2 or more of such acts, means, intents or results may be charged in the alternative.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17269;—CL 1948, 767.55.

767.56 Indictment; allegation of prior conviction.

Sec. 56. Whenever it is necessary to allege a prior conviction of the accused in an indictment, it is sufficient to allege that the accused was at a certain stated time, in a certain stated court, convicted of a certain stated offense, giving the name of the offense, if it have one, or stating the substantial elements thereof.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17270;—CL 1948, 767.56.

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767.57 Pleading; statute or statutory right.

Sec. 57. In pleading a statute or a right derived therefrom it is sufficient to refer to the statute by its title, or in any other manner which identifies the statute and the court must thereupon take judicial notice thereof.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17271;—CL 1948, 767.57.

Former law: See section 13 of Act 77 of 1855, being CL 1857, § 6059; CL 1871, § 7928; How., § 9539; CL 1897, § 11924; and CL 1915, § 15751.

767.58 Pleading; judgment or proceeding.

Sec. 58. In pleading a judgment or other determination of, or a proceeding before any court or officer, civil or military, it is unnecessary to allege the facts conferring jurisdiction on such court or officer, but it is sufficient to allege generally that such judgment or determination was duly given or made or such proceedings had.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17272;—CL 1948, 767.58.

Former law: See section 17 of Act 77 of 1855, being CL 1857, § 6063; CL 1871, § 7932; How., § 9543; CL 1897, § 11928; and CL 1915, § 15755.

767.59 Indictment; unnecessary formal words and phrases.

Sec. 59. The indictment need not allege that the offense was committed or the act done "feloniously" or "traitorously" or "unlawfully" or "with force of arms" or "with a strong hand," nor need it use any phrase of like kind otherwise than to characterize the offense, nor need it allege that the offense was committed or the act done "burglariously", "wilfully", "knowingly", "maliciously", "negligently" nor need it otherwise characterize the manner of the commission of the offense unless such description is necessary to indicate the offense. The indictment need not contain the words "contrary to the statute", "as appears by the record", or any other words of similar import.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17273;—CL 1948, 767.59.

Former law: See section 34 of Ch. 164 of R.S. 1846, being CL 1857, § 6043; CL 1871, § 7912; How., § 9523; CL 1897, § 11908; CL 1915, § 15735; and section 8 of Act 77 of 1855, being CL 1857, § 6054; CL 1871, § 7923; How., § 9534; CL 1897, § 11908; CL 1915, § 15735.

767.60 Indictment; allegations in embezzlement, larceny and false pretense cases.

Sec. 60. In any prosecution for the offenses of embezzlement, larceny, larceny by conversion, or obtaining money or property by false pretenses under the statutes of this state, it shall be sufficient to allege generally in the information or indictment the embezzlement, larceny, larceny by conversion or obtaining by false pretenses of personal property to a certain amount without specifying the particulars of such embezzlement, larceny, larceny by conversion or obtaining by false pretenses, and on the trial evidence may be given of any such embezzlement, larceny, larceny by conversion or obtaining money or property by false pretenses within 6 months next after the time stated in the information or indictment, and it shall be sufficient to maintain the charge in the information or indictment and shall not be deemed at variance if it shall be proved that any personal property was fraudulently embezzled, stolen or obtained by false pretenses within the said period of 6 months.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17274;—CL 1948, 767.60.

Former law: See section 9 of Ch. 161 of R.S. 1846, being CL 1857, § 5945; CL 1871, § 7811; How., § 9421; CL 1897, § 11782; CL 1915, § 15609; and Act 39 of 1927.

767.61 Indictment; description of money, bonds, mortgage and similar instrument in offense relating thereto.

Sec. 61. In an indictment for larceny, larceny by conversion, embezzlement, robbery, obtaining money by false pretenses, receiving stolen property or for any other criminal conversion or misappropriation where the offense relates to money or currency, it shall be sufficient to describe the same under the terms "money", "currency", or "dollars" without specifying the particular character, number, denomination, kind, species, nature or value thereof. Where such indictment relates to promissory notes, certificates of stock, bonds, bills of lading, mortgages or any other negotiable or non-negotiable instruments, or securities or evidence of debt or property, it is sufficient to designate the same by general description without specifying the particular number or denomination thereof.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17275;—CL 1948, 767.61.

Former law: See section 15 of Act 77 of 1855, being CL 1857, § 6061; CL 1871, § 7930; How., § 9541; CL 1897, § 11926; and CL 1915, § 15753.

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767.61a Indictment; offense committed by sexually delinquent person; prosecution; expert testimony provided; examination of witnesses; testimony in open court; record; punishment.

Sec. 61a. In any prosecution for an offense committed by a sexually delinquent person for which may be imposed an alternate sentence to imprisonment for an indeterminate term, the minimum of which is 1 day and the maximum of which is life, the indictment shall charge the offense and may also charge that the defendant was, at the time said offense was committed, a sexually delinquent person. In every such prosecution the people may produce expert testimony and the court shall provide expert testimony for any indigent accused at his request. In the event the accused shall plead guilty to both charges in such indictment, the court in addition to the investigation provided for in section 35 of chapter 8 of this act, and before sentencing the accused, shall conduct an examination of witnesses relative to the sexual delinquency of such person and may call on psychiatric and expert testimony. All testimony taken at such examination shall be taken in open court and a typewritten transcript or copy thereof, certified by the court reporter taking the same, shall be placed in the file of the case in the office of the county clerk. Upon a verdict of guilty to the first charge or to both charges or upon a plea of guilty to the first charge or to both charges the court may impose any punishment provided by law for such offense.

History: Add. 1952, Act 234, Eff. Sept. 18, 1952.

767.62 Place of indictment, trial and conviction; receiver of stolen property.

Sec. 62. In the cases where any person shall be liable to prosecution as the receiver of any personal property that shall have been feloniously stolen, taken or embezzled, he may be indicted, tried and convicted in any county where he received or had such property, notwithstanding such theft was committed in another county.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17276;—CL 1948, 767.62.

Former law: See section 31 of Ch. 164 of R.S. 1846, being CL 1857, § 6040; CL 1871, § 7909; How., § 9520; CL 1897, § 11905; and CL 1915, § 15732.

767.63 Place of indictment; removal of stolen property from another county.

Sec. 63. When any property shall be stolen in 1 county and brought into another, the offender may be indicted, tried and convicted in the county into which such stolen property was brought, in the same manner as if such property had been originally stolen in that county; and when such property shall have been taken by burglary or robbery the offender may be indicted, tried and convicted of said burglary or robbery, in the county into which such property was brought in the same manner as if such burglary or robbery had been committed in that county.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17277;—CL 1948, 767.63.

Former law: See section 32 of Ch. 164 of R.S. 1846, being CL 1857, § 6041; CL 1871, § 7910; How., § 9521; CL 1897, § 11906; and CL 1915, § 15733.

767.64 Place and manner of indictment, conviction and punishment; removing stolen property from another state or country; prior conviction or acquittal.

Sec. 64. Every person who shall feloniously steal the property of another, in any other state or country, and shall bring the same into this state, may be indicted, convicted and punished in the same manner as if such larceny had been committed in this state; and in every such case such larceny may be charged to have been committed in any town or city into or through which such stolen property shall have been brought: Provided, That every such person may plead a former conviction or acquittal for the same offense in another state or country; and if such plea be admitted or established, it shall be a bar to any further or other proceedings against such person for the same offense.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17278;—CL 1948, 767.64.

Former law: See section 1 of Act 119 of 1850, being CL 1857, § 5797; CL 1871, § 7606; How., § 9177; CL 1897, § 11592; and CL 1915, § 15347.

767.65 Place and manner of indictment; receiver of property stolen in another state or country.

Sec. 65. Every receiver of personal property that shall have been feloniously stolen, knowing the same to have been stolen, may be indicted, convicted and punished in any county where he received or had such property in the same manner that receivers of personal property stolen in this state are indicted, convicted and punished, notwithstanding such theft was committed in any other state or country.

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History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17279;—CL 1948, 767.65.

Former law: See section 2 of Act 119 of 1850, being CL 1857, § 5798; CL 1871, § 7607; How., § 9178; CL 1897, § 11593; and CL 1915, § 15348.

767.66 Place and manner of indictment; person aiding and abetting thief who removes stolen property from another state or country.

Sec. 66. Every person who shall aid and abet any thief, such thief having brought the stolen property into this state, may be indicted, convicted and punished in the same manner, notwithstanding such theft was committed in any other state or country, that aiders and abettors are punished, where the theft was originally committed within this state.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17280;—CL 1948, 767.66.

Former law: See section 3 of Act 119 of 1850, being CL 1857, § 5799; CL 1871, § 7608; How., § 9179; CL 1897, § 11594; and CL 1915, § 15349.

767.67 Indictment; charging accessory without principal; substantial felony.

Sec. 67. Any number of accessories after the fact, or receivers, buyers, or persons aiding in the concealment of any stolen money, goods, or property may be charged with substantive felonies in the same indictment, notwithstanding the principal felon shall not be included in the same indictment, or shall not be in custody or amenable to justice.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17281;—CL 1948, 767.67.

Former law: See section 5 of Act 77 of 1855, being CL 1857, § 6051; CL 1871, § 7920; How., § 9531; CL 1897, § 11916; and CL 1915, § 15743.

767.68 Indictment; charge of jointly receiving or concealing stolen property; conviction of less than all indictees.

Sec. 68. If 2 or more persons are indicted for jointly receiving, buying or aiding in the concealment of any stolen property, and the evidence shall be that 1 or more persons separately, knowingly received, bought or aided in the concealment of any part of such property, the jury may convict upon such indictment those who are proved to have received, bought or aided in the concealment of any part of such property.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17282;—CL 1948, 767.68.

Former law: See section 6 of Act 77 of 1855, being CL 1857, § 6052; CL 1871, § 7921; How., § 9532; CL 1897, § 11917; and CL 1915, § 15744.

767.69 Indictment for larceny; additional counts; conviction; election between counts unnecessary.

Sec. 69. An indictment for larceny may contain also a count for embezzlement, larceny by conversion, obtaining property by false pretenses or for receiving or having in possession, or aiding in concealing the same property, knowing it to have been stolen, and the jury may convict of any such offense; and the jury may find all or any of the persons indicted, guilty of any of the offenses charged in the indictment. The prosecuting attorney shall not be required to elect between the offenses so charged.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17283;—Am. 1931, Act 309, Eff. Sept. 18, 1931;—CL 1948, 767.69.

Former law: See section 20 of Act 77 of 1855, being CL 1857, § 6066; CL 1871, § 7936; How., § 9547; CL 1897, § 11932; and CL 1915, § 15759.

767.70 Indictment for libel; statement of application to party libelled.

Sec. 70. An indictment for libel need not set forth any extrinsic facts for the purpose of showing the application to the party libelled of the defamatory matter on which the indictment is founded, but it is sufficient to state generally that the same was published concerning him.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17284;—CL 1948, 767.70.

Former law: See section 18 of Act 77 of 1855, being CL 1857, § 6064; CL 1871, § 7934; How., § 9545; CL 1897, § 11930; and CL 1915, § 15757.

767.71 Indictment for murder and manslaughter; charging act.

Sec. 71. In all indictments for murder and manslaughter it shall not be necessary to set forth the manner in which nor the means by which the death of the deceased was caused; but it shall be sufficient in any indictment for murder to charge that the defendant did murder the deceased; and it shall be sufficient in manslaughter to charge that the defendant did kill the deceased.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17285;—CL 1948, 767.71.

Former law: See section 1 of Act 77 of 1855, being CL 1857, § 6047; CL 1871, § 7916; How., § 9527; CL 1897, § 11912; and CL

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1915, § 15739.

767.72 Indictment for manslaughter; added count for abortion; admissibility of dying declaration under either count.

Sec. 72. An indictment or information for manslaughter may contain also a count for procuring or attempting to procure an abortion and the jury may convict of either offense. Dying declarations shall be admissible in evidence in proof of either count.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17286;—CL 1948, 767.72.

767.73 Indictment; perjury; sufficiency of statement.

Sec. 73. An indictment for perjury or for subornation of, solicitation, or conspiracy to commit perjury, is sufficient which indicates the offense for which the accused is prosecuted, the nature of the controversy in respect of which the offense was committed and before what court or officer the oath was taken or was to have been taken, without setting forth any part of the records or proceedings with which the oath was connected, and without stating the commission or authority of the court or other authority before whom the perjury was committed or was to have been committed or the form of the oath or affirmation or the manner of administering the same.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17287;—CL 1948, 767.73.

Former law: See section 3 of Act 77 of 1855, being CL 1857, § 6049; CL 1871, § 7918; How., § 9529; CL 1897, § 11914; and CL 1915, § 15741.

767.74 Indictment; motion to quash; dilatory plea; proof.

Sec. 74. No motion to quash, plea in abatement or other dilatory plea to the indictment, shall be received by any court unless the party offering such plea shall prove the truth thereof by affidavit, or by some other sworn evidence.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17288;—CL 1948, 767.74.

Former law: See section 33 of Ch. 164 of R.S. 1846, being CL 1857, § 6042; CL 1871, § 7911; How., § 9522; CL 1897, § 11907; and CL 1915, § 15734.

767.75 Indictment; certain defects; quashing not allowed; remedy.

Sec. 75. No indictment shall be quashed, set aside or dismissed for any 1 or more of the following defects: (First) That there is a misjoinder of the parties accused; (Second) That there is a misjoinder of the offenses charged in the indictment, or duplicity therein; (Third) That any uncertainty exists therein. If the court be of the opinion that the first and second defects or either of them exist in any indictment, it may sever such indictment into separate indictments or informations or into separate counts as shall be proper. If the court be of the opinion that the third defect exists in any indictment, it may order that the indictment be amended to cure such defect.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17289;—CL 1948, 767.75.

Former law: See section 3 of Act 138 of 1859, being CL 1871, § 7939; How., § 9550; CL 1897, § 11935; and CL 1915, § 15762.

767.76 Indictment; time of objection to defect; amendment; discharge of jury; continuance of cause; double jeopardy; review of action by court.

Sec. 76. No indictment shall be quashed, set aside or dismissed or motion to quash be sustained or any motion for delay of sentence for the purpose of review be granted, nor shall any conviction be set aside or reversed on account of any defect in form or substance of the indictment, unless the objection to such indictment, specifically stating the defect claimed, be made prior to the commencement of the trial or at such time thereafter as the court shall in its discretion permit. The court may at any time before, during or after the trial amend the indictment in respect to any defect, imperfection or omission in form or substance or of any variance with the evidence. If any amendment be made to the substance of the indictment or to cure a variance between the indictment and the proof, the accused shall on his motion be entitled to a discharge of the jury, if a jury has been impaneled and to a reasonable continuance of the cause unless it shall clearly appear from the whole proceedings that he has not been misled or prejudiced by the defect or variance in respect to which the amendment is made or that his rights will be fully protected by proceeding with the trial or by a postponement thereof to a later day with the same or another jury. In case a jury shall be discharged from further consideration of a case under this section, the accused shall not be deemed to have been in jeopardy. No action of the court in refusing a continuance or postponement under this section shall be reviewable except after motion to and refusal by the trial court to grant a new trial therefor and no writ of error or other appeal based upon such action of the court shall be sustained, nor reversal had, unless from

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consideration of the whole proceedings, the reviewing court shall find that the accused was prejudiced in his defense or that a failure of justice resulted.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17290;—CL 1948, 767.76.

Former law: See section 34 of Ch. 164 of R.S. 1846, being CL 1857, § 6043; CL 1871, § 7912; How., § 9523; CL 1897, § 11908; CL 1915, § 15735; and sections 9, 11, 12, and 14 of Act 77 of 1855, being CL 1857, §§ 6055, 6057, 6058, and 6060; CL 1871, §§ 7924, 7926, 7927, and 7929; How., §§ 9535, 9537, 9538, and 9540; CL 1897, §§ 11920, 11922, 11923, and 11925; CL 1915, §§ 15747, 15749, 15750, and 15752.

767.77 Commission to examine out-of-state witness; granting on application of defendant.

Sec. 77. When an issue of fact shall be joined upon any indictment, the court in which the same is pending may, on application of the defendant, grant a commission to examine any material witnesses residing out of this state, in the same manner as in civil cases.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17291;—CL 1948, 767.77.

Former law: See section 35 of Ch. 164 of R.S. 1846, being CL 1857, § 6044; CL 1871, § 7913; How., § 9524; CL 1897, § 11909; and CL 1915, § 15736.

767.78 Commission to examine out-of-state witness; interrogatories; reading of deposition.

Sec. 78. Interrogatories to be annexed to such commission shall be settled and such commission shall be issued, executed and returned in the manner prescribed by law in respect to commissions in civil cases, and the deposition taken thereon and returned shall be read in the same cases, and with like effect in all respects, as in civil suits.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17292;—CL 1948, 767.78.

Former law: See section 36 of Ch. 164 of R.S. 1846, being CL 1857, § 6045; CL 1871, § 7914; How., § 9525; CL 1897, § 11910; and CL 1915, § 15737.

767.79 Conditional examination of witness for defendant; order; notice to prosecutor.

Sec. 79. After an indictment shall be found against any defendant, he may have witnesses examined in his behalf conditionally on the order of a judge of the court in which the indictment is pending, in the same cases upon the like notice to the prosecuting attorney, and with like effect in all respects as in civil suits.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17293;—CL 1948, 767.79.

Former law: See section 37 of Ch. 164 of R.S. 1846, being CL 1857, § 6046; CL 1871, § 7915; How., § 9526; CL 1897, § 11911; and CL 1915, § 15738.

767.80, 767.81 Repealed. 1970, Act 232, Imd. Eff. Dec. 3, 1970.

Compiler's note: The repealed sections pertained to residents of this state being required to attend as a witness in a criminal action in another state and bringing out-of-state witnesses into Michigan.

767.82 Repealed. 1974, Act 266, Eff. Apr. 1, 1975.

Compiler's note: The repealed section pertained to charge of taking indecent liberties in indictment for rape or attempted rape.

767.83 Indictment involving intent to defraud; sufficiency of allegations and proof.

Sec. 83. In any prosecution where an intent to defraud is required to constitute the offense, it shall be sufficient to allege in the indictment an intent to defraud without naming therein the particular person or body corporate intended to be defrauded; and on the trial of such indictment, it shall be deemed sufficient, and shall not be deemed a variance, if there appear to be an intent to defraud the United States, or any state, county, city or township, or any body corporate, or any public officer in his official capacity, or any copartnership or member thereof, or any particular person.

History: Add. 1931, Act 309, Eff. Sept. 18, 1931;—CL 1948, 767.83.

767.91 Out of state witnesses; attendance; definitions.

Sec. 91. As used in sections 91 to 95 of this chapter:

(a) "Witness" includes a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution or proceeding.

(b) "State" includes any territory of the United States and the District of Columbia.

(c) "Summons" includes a subpoena, order or other notice requiring the appearance of a witness.

History: Add. 1970, Act 232, Imd. Eff. Dec. 3, 1970.

767.92 Attendance in another state; hearing; summons; custody; fee.

Sec. 92. (1) A judge of a court of record in a state which by law has provided for commanding persons within that state to attend and testify in this state may certify under seal of his court that for purposes of a

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criminal prosecution in his court or a grand jury investigation in his state, a person in this state is required as a material witness for a specified number of days.

(2) Upon presentation of a certificate issued pursuant to subsection (1) to a judge of a court of record in a county where such witness is found, the judge shall fix a time and place for a hearing and make an order directing the witness to appear at the hearing. At such hearing the certificate shall be prima facie evidence of all the facts stated therein.

(3) The judge shall issue a summons with a copy of the certificate attached directing the witness to attend and testify in the court where the criminal prosecution is pending or a grand jury is investigating if he determines at the hearing that:

(a) The witness is material and necessary to the prosecution or investigation.

(b) The attendance and testifying in the prosecution or investigation will not cause undue hardship to the witness.

(c) The laws of the state where the prosecution or investigation is being held and the laws of any other state through which the witness may be required to pass by ordinary course of travel protect the witness from arrest and service of civil or criminal process.

(4) If a certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure his attendance in the requesting state, the judge may direct that the witness be forthwith brought before him for a hearing without notice. If the judge at the hearing is satisfied of the desirability of custody and delivery, for which determination the certificate shall be prima facie proof of desirability, he may order that the witness be forthwith taken into custody and delivered to an officer of the requesting state without issuing a summons.

(5) If a witness, who is summoned pursuant to this section and is paid by an authorized person the sum of 10 cents for each mile of the ordinary traveled route to and from the court where such prosecution or investigation is being held and $5.00 for each day that he is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

History: Add. 1970, Act 232, Imd. Eff. Dec. 3, 1970.

767.93 Attendance from without the state; certificate; fee.

Sec. 93. (1) If a person in a state, which by law provides for commanding persons within its borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to commence, in this state, is a material witness in a prosecution pending in a court of record in this state, or in a grand jury investigation which has commenced or is about to commence, a judge of the court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. The certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this state to assure his attendance in this state. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

(2) If the witness is summoned to attend and testify in this state he shall be tendered the sum of 10 cents for each mile of the ordinary traveled route to and from the court where the prosecution or investigation is being held and $5.00 for each day that he is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this state longer than the period stated in the certificate, unless otherwise ordered by the court. If the witness, after coming into this state, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

History: Add. 1970, Act 232, Imd. Eff. Dec. 3, 1970.

767.94 Immunity of witness.

Sec. 94. (1) If a person comes into this state in obedience to a summons which is issued pursuant to section 93 he shall not while in this state pursuant to such summons be subject to arrest or the service of civil or criminal process in connection with matters which arose before his entrance into this state under the summons.

(2) If a person passes through this state while going to another state in obedience to a summons to attend and testify in that state or while returning therefrom, he shall not while so passing through this state be subject to arrest or the service of civil or criminal process in connection with matters which arose before his entrance into this state under the summons.

History: Add. 1970, Act 232, Imd. Eff. Dec. 3, 1970.

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767.94a Disclosure of certain material or information by defendant to prosecuting attorney; compliance; motion for good cause.

Sec. 94a. (1) A defendant or his or her attorney shall disclose to the prosecuting attorney upon request the following material or information within the possession or control of the defendant or his or her attorney:

(a) The name and last known address of each witness other than the defendant whom the defendant intends to call at trial provided the witness is not listed by the prosecuting attorney.

(b) The nature of any defense the defendant intends to establish at trial by expert testimony.

(c) Any report or statement by an expert concerning a mental or physical examination, or any other test, experiment, or comparison that the defendant intends to offer in evidence, or that was prepared by a person, other than the defendant, whom the defendant intends to call as a witness, if the report or statement relates to the testimony to be offered by the witness.

(d) Any book, paper, document, photograph, or tangible object that the defendant intends to offer in evidence or that relates to the testimony of a witness, other than the defendant, whom the defendant intends to call.

(2) The defendant or his or her attorney shall comply with the disclosure provisions of subsection (1) not later than 10 days before trial or at any other time as the court directs.

(3) A defendant shall not offer at trial any evidence required to be disclosed pursuant to subsection (1) that was not disclosed unless permitted by the court upon motion for good cause shown. A motion under this subsection may be made before or during trial.

History: Add. 1994, Act 113, Eff. Oct. 1, 1994.

Compiler's note: On November 16, 1994, the Michigan Supreme Court entered Administrative Order No. 1994-10, which provides as follows:

"On May 4, 1994, the Governor signed House Bill 4227, concerning discovery by the prosecution of certain information known to the defendant in a criminal case. 1994 PA 113, MCL 767.94a; MSA 28.1023(194a). On November 16, 1994, this Court promulgated MCR 6.201, which is a comprehensive treatment of the subject of discovery in criminal cases.

"On order of the Court, effective January 1, 1995, discovery in criminal cases heard in the courts of this state is governed by MCR 6.201 and not by MCL 767.94a; MSA 28.1023(194a). Const 1963, art 6, § 5; MCR 1.104."

767.95 Short title; uniformity.

Sec. 95. Sections 91 to 95 constitute the uniform act to secure the attendance of witnesses from without a state in criminal proceedings and shall be so interpreted and construed as to effectuate their general purposes to make uniform the law of the states which enact them.

History: Add. 1970, Act 232, Imd. Eff. Dec. 3, 1970.

767.96 Costs of grand jury.

Sec. 96. (1) Except as otherwise provided by law, the costs of a grand jury convened under section 7c(a) shall be borne by this state, and shall be paid from the general fund of this state.

(2) Except as otherwise provided by law, the costs of a grand jury convened under section 7c(b) shall be borne equally by each county over which the grand jury has jurisdiction, and shall be paid by those counties.

History: Add. 1989, Act 204, Imd. Eff. Nov. 1, 1989.

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