TITLE XLVI.

Criminal Procedure.

CHAPTER 954.

ARREST AND EXAMINATION.

954.01 Process, who issues. (1) For the arrest of persons accused of crime, the judges of courts of record, court commissioners, justices of the peace, district attorneys and other officers expressly empowered thereto are authorized to issue process. The officials mentioned in this subsection (except district attorneys) are referred to generally in chs. 955 to 963 as magistrates.

(2) District attorneys are not magistrates, and their authority to issue process is limited to that prescribed in s. 954.02.

History: 1955 c. 660.

Proceedings for the arrest and examination of offenders and commitment for trial, under 954.01 et seq., are not proceedings in any court but are proceedings before certain officers known to the law as magistrates. State v. Friedl, 259 W 110, 47 NW (2d) 306.

954.02 Complaint and warrant or summons; service; return. (1) A complaint is a written statement of the essential facts constituting the offense charged and may be upon information and belief. It shall be made upon oath before a magistrate or other person empowered to issue warrants of arrest.

(2) If it appears from the complaint that there is probable cause to believe that a crime has been committed and that the accused committed it, the magistrate shall issue a warrant or summons.

(3) A complaint may be subscribed and sworn to before the district attorney and thereupon he may issue a warrant for the arrest of the accused returnable before some magistrate of his county. The district attorney shall forthwith deliver the complaint to the magistrate before whom the warrant is returnable. The magistrate shall docket the case as though the proceedings had originated before him and shall then proceed accordingly.

(4) The magistrate or district attorney may issue a summons instead of a warrant. If the defendant fails to appear in response to the summons, the magistrate shall issue a warrant.

(5) (a) The warrant shall be signed by the magistrate or district attorney and shall contain the name of the defendant or, if his name is unknown, any name or description by which he can be identified with reasonable certainty. The warrant shall contain the charge stated in the complaint. It shall command that the defendant be arrested and brought before the magistrate.

(b) The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before the magistrate at a stated time and place.

(6) (a) The warrant or summons may be served anywhere in the state. The warrant is served by arresting the defendant. The officer need not have the warrant in his possession, but upon request it shall be shown to the defendant as soon as possible. An arrest may be made by a peace officer when advised by any other peace officer that a warrant has been issued. In such case the officer shall inform the defendant of the crime with which he is charged.

(b) The summons may be served by any person except the complainant. It shall be served by delivering a copy to the defendant personally or by leaving a copy at his usual place of abode with a person of discretion residing therein or by mailing a copy to the defendant's last known address.

(c) The officer serving the warrant shall make return thereof to the magistrate before whom the defendant is brought. An unserved warrant shall, at the request of the district attorney, be returned to the magistrate and canceled. On or before the return hour the person who served the summons shall make return to the magistrate who issued it.

(d) At the request of the district attorney a warrant or summons which is returned unserved may be again delivered for service.

(7) The complaint and warrant and summons may be in the forms prescribed by s. 960.36.

History: 1955 c. 660.

954.021 Officer making arrest to secure and care for stolen property. The officer who arrests a person who has stolen property shall, if possible, secure the property alleged to have been stolen; if a warrant has been issued he shall annex a schedule thereof to the return of the warrant. Upon conviction of such person for burglary, robbery or theft, the court shall allow the officer who secured and kept the stolen property his actual and necessary expense in so doing, such expenses to be paid by the county.

History: 1955 c. 660; 1955 c. 696 s. 313.

954.025 John Doe proceeding. If a person complains to a magistrate that he has reason to believe that a crime has been committed within his jurisdiction, the magistrate shall examine the complainant on oath and any witnesses produced by him and may, and at the request of the district attorney shall, subpoena and examine other witnesses to ascertain whether a crime has been committed and by whom committed. The extent to which the magistrate may proceed in such examination is within his discretion. The examination may be adjourned and may be secret. If it appears probable from the testimony given that a crime has been committed and who committed it, the complaint shall be reduced to writing and signed and verified; and thereupon a warrant shall issue for the arrest of the accused. The record of such proceeding and the testimony taken shall not be open to inspection by anyone except the district attorney unless it is used by the prosecution at the preliminary hearing or the trial of the accused and then only to the extent that is is so used.

History: 1953 c. 601; 1955 c. 660.

954.03 Arrest without warrant. (1) WHEN LAWFUL. An arrest by a peace officer without a warrant for a misdemeanor or for the violation of an ordinance is lawful whenever the officer has reasonable grounds to believe that the person to be arrested has committed a misdemeanor or has violated an ordinance and will not be apprehended unless immediately arrested or that personal or property damage may likely be done unless immediately arrested. This subsection is supplemental to s. 62.09 (13) and shall not in any way limit any powers to arrest granted by that section.

(2) ARREST UNDER WARRANT NOT IN OFFICER'S POSSESSION. An arrest by a peace officer acting under a warrant is lawful even though the officer does not have the warrant in his possession at the time of the arrest, but, if the person arrested so requests, the warrant shall be shown to him as soon as practicable. An arrest may lawfully be made by a peace officer when advised by any other peace officer in the state that a warrant has been issued for the individual.

History: 1955 c. 660.

A search for and seizure of stolen goods is to be considered as on a different basis and as totally different from a search for and seizure of a man's private books and papers for the purpose of obtaining information therein contained or for using them as evidence against him. State v. Cox, 258 W 162, 45 NW (2d) 100.

Information which police officers possessed as to 2 men of a certain description having taken clothing from a store in October, 1948, and as to these same 2 men having been in such store on January 13, 1950, acting in the same manner as previously, would have justified the arrest of the 2 men without a warrant for the 1948 shoplifting; where the officers on January 13 saw the defendant driving a foreign-licensed automobile with the 2 men in it, and followed the car, and saw through the window thereof a pair of unfinished trousers and considerable other clothing in the back thereof, the officers had probable cause to believe that the car contained stolen clothing and that the defendant was acting in concert with and for the benefit of the 2 men whom the officers were seeking, so that the arrest of the defendant then without a warrant, and the search of the car incidental thereto, were lawful, and the evidence thus obtained was admissible in the prosecution of the defendant for receiving stolen property and

aiding in concealing stolen property. State v. Cox, 258 W 162, 45 NW (2d) 100.

Where 2 police detectives knew personally that a burglary attempt had been made, that shortly prior thereto the defendant and 2 companions had been driving around the scene of the burglary in the defendant's automobile in an unusual and suspicious manner, and that a pair of shoes carried by one of the companions when both of them were arrested, had been worn by someone concerned in the burglary, the officers had sufficient grounds to make a valid arrest of the defendant at his home without a warrant, about an hour after the burglary. After an officer had validly arrested the defendant at his home, it was the officer's duty not to permit the defendant to escape or to obtain weapons or to destroy or dispose of incriminating evidence, and where the officer followed the defendant to a closet in the performance of this duty, and observed the defendant's effort to conceal garments which the officer had seen him wearing a few hours previously, and the officer thereupon took possession thereof, the search or seizure, if it was such under the circumstances, was not unreasonable, and the evidence so obtained was admissible on the trial. A search may be made as an incident to a valid arrest, and when the arrest is valid and the search is an incident thereto, the search may extend beyond the person of the arrested individual to property within his immediate presence, control and surroundings. State v. Phillips, 262 W 303, 55 NW (2d) 384.

The fact that officers, when they arrested the defendant without a warrant, said to the defendant that he was under arrest for "suspicion of burglary," instead of saying that he was under arrest for burglary, did not render the arrest invalid. State v. Phillips, 262 W 303, 55 NW (2d) 384.

954.034 Bail upon arrest. (1) BAIL IN ANOTHER COUNTY. (a) If the crime charged is not punishable by imprisonment in the state prison and the arrest is made in a county other than the county from which the warrant issued and the defendant requests to be brought before a magistrate of the county in which arrested, for the purpose of giving bail, the officer having him in custody shall take him before such a magistrate for that purpose and the magistrate may admit him to bail on his bond with sureties, to appear before the magistrate named in the warrant at a time and place stated in the bond.

(b) If the defendant is bailed, the magistrate shall certify the facts upon the warrant; and the warrant and bail bond shall be forthwith delivered by the officer to the magistrate before whom the defendant is bound to appear.

(2) BAIL BY OFFICER. (a) The person issuing the warrant may fix the amount of the bail and indorse it on the warrant. If the defendant offers to give bail, the arresting officer may take his bond, with sufficient sureties, for his appearance before the magistrate at a time and place stated in the bond. In lieu of sureties, the defendant may deposit with the officer the amount of the bail required.

(b) If the defendant is so admitted to bail, the officer shall certify the facts upon the warrant and shall forthwith deliver the warrant and the bond and any deposit to the magistrate named in the warrant.

(3) PROCEEDING IF BAIL NOT GIVEN. If the prisoner is not bailed, the officer shall take him before the magistrate named in the warrant or, in his absence, another magistrate of the county in which the warrant was issued.

History: 1955 c. 660.

954.037 Arrest on charge of felony. When the crime charged in a warrant is a felony, the officer making the arrest in some other county shall convey the prisoner to the county where the warrant issued, and he shall be proceeded with in the manner directed in the following sections.

History: 1955 c. 660.

954.04 Prisoner taken before magistrate. Except as provided otherwise in s. 954.034, every person arrested upon a warrant shall be taken before the magistrate before whom it is returnable or if he is unable to attend before another magistrate of the same county. In cases not triable before the magistrate, the defendant shall not be required to plead.

History: 1955 c. 660.

Cross Reference: For the handling of juveniles, see 48.29.

954.05 Adjournments of hearing. (1) The magistrate may adjourn the examination from time to time, but not exceeding 10 days at one time without the consent of the defendant, and to any place in his county, and the defendant shall be committed in the meantime unless he is bailed.

(2) If he is not bailed, the magistrate shall order him committed to await examination on a day named in the commitment. On the appointed day he shall be brought before the magistrate.

History: 1955 c. 660.

954.06 Forfeiture of bail. If the defendant does not appear before the magistrate as required by the bail bond, the magistrate shall record the default and shall certify the bond with the record of default to the circuit court; and like proceedings shall be had therein as upon a breach of a bond for appearance before that court. The magistrate may reissue the warrant or issue another warrant for the arrest of the defendant.

History: 1955 c. 660.

954.08 Preliminary examination; separation of witnesses; transfer of examination. (1) WITNESSES EXAMINED AND CROSS-EXAMINED. As soon as may be, the magistrate shall swear and examine or permit the district attorney to examine the witnesses for the state, in the presence of the defendant, in relation to the crime charged in the complaint; and they may be cross-examined. Then the witnesses for the defendant shall be sworn and examined and may be cross-examined. The defendant may be assisted by counsel.

(2) SEPARATION OF WITNESSES. During the examination, the magistrate may exclude from the place of examination all witnesses until they are called to testify; and he may also direct that persons who are expected to be called as witnesses be kept separate until called; and he may prevent them from communicating with one another until they have been examined.

(3) TRANSFER OF EXAMINATION. If it is inconvenient or impractical for the magistrate before whom the defendant is first brought to proceed with the examination within 10 days, the magistrate may transmit the case to another qualified magistrate of the county and he shall proceed with the examination.

History: 1955 c. 660.

954.09 Change of venue. If a defendant makes oath before the examination begins that he believes that the magistrate will not decide impartially in the matter, the magistrate shall transmit the case to the nearest magistrate qualified to conduct the examination; and he shall proceed with the examination. No case shall be removed after a second adjournment, and only one removal shall be allowed. If 2 or more defendants are charged with the crime, no removal shall be allowed unless they all join in the oath of prejudice. This section shall not apply to cities where police justices have exclusive criminal jurisdiction to conduct preliminary examinations.

History: 1955 c. 660.

954.10 Exclusion of public. If the defendant is accused of a crime against chastity or morality or decency, the magistrate may exclude from the hearing all persons not officers of the court or otherwise required to attend.

History: 1955 c. 660.

954.11 Testimony to be written. The testimony shall be written by the magistrate or under his direction.

History: 1955 c. 660.

954.12 Discharge; when complainant to pay costs. If it appears to the magistrate upon the examination that no crime has been committed or that there was no probable cause for charging the defendant with a crime, he shall be discharged. If the magistrate certifies in his docket that the complaint was malicious and without probable cause, he shall enter judgment against the complainant and in favor of the county for the taxable costs of the proceeding, and thereafter proceedings shall be as provided in s. 960.22.

History: 1955 c. 660.

See note to 943.02, citing State v. Janasky, 258 W 182, 45 NW (2d) 78.

See note to 958.12, citing State v. Friedl, 259 W 110, 47 NW (2d) 306.

954.13 Commitment, trial, bail. (1) If it appears probable that a crime has been committed which is not within the trial jurisdiction of a justice of the peace and that the defendant is probably guilty, he shall be committed to await trial. If the crime is bailable by the magistrate and a sufficient bail is offered he shall be released.

(2) When it appears from the evidence that the crime with which the defendant is accused is within the trial jurisdiction of a justice of the peace, if the magistrate is a justice, he shall amend the complaint and warrant to conform to the evidence; and shall thereupon proceed to try the defendant as though the proceeding had originated before him, under ch. 960. But if the magistrate is not a justice of the peace or if he is a justice but cannot proceed with the trial, he shall amend the warrant and complaint and transmit all the papers and a copy of his docket to the nearest justice of the peace of the county. The defendant shall be taken before the justice designated and he shall proceed to try the defendant pursuant to ch. 960, the same as though the proceeding had originated before him under that chapter.

History: 1955 c. 660.

If it appears from the evidence on a preliminary examination that any offense has been committed, even though not the one charged in the complaint, and that the defendant is probably guilty, the examining magistrate must hold the defendant for trial; and a finding as to any specific offense is not required. State ex rel. Kowaleski v. Kubiak, 256 W 518, 41 NW (2d) 605.

On a preliminary examination of the president and principal stockholder of an incorporated store, who devoted his full time to its affairs and was assisted by relatives and who was charged with making a false and fraudulent tax return of corporate income, testimony of a former cashier as to falsifying figures so as to show less than the true amount of sales and withdrawing a balancing amount of cash and placing it in a drawer in a desk which she used, and evidence as to the disappearance of certain records from which a tax auditor had computed that $41,800 was withdrawn and not accounted for in the tax return, and the fail-

ure to prosecute the former cashier for embezzlement on the discovery of $9,600 in the desk once occupied by her, and the full release of all claims against her while employed in the store, were sufficient to warrant the magistrate's finding of probable cause to believe that the defendant knew the tax return to be false and was guilty of the offense charged. State ex rel. Marachowsky v. Kerl, 258 W 309, 45 N W(2d) 668.

954.14 Bail in case of life imprisonment. Only a justice of the supreme court or the presiding circuit judge may admit to bail a person charged with a crime punishable by imprisonment for life.

History: 1955 c. 660.

954.15 Bail, sureties, lien. (1) Except as provided in this section, no bail bond shall bind property. The bail bond shall be sufficient to secure the appearance of the defendant for trial.

(2) In case of murder the bond shall be signed by the defendant and at least 2 sureties who severally swear that each owns real property in this state not exempt from execution, worth a named sum, which sums shall aggregate double the penalty in the bond. No surety shall be accepted who does not justify in at least one-third of the penalty, and when required by the district attorney or by the court, he shall describe such real property.

(3) In case of murder, the bond shall be filed in the office of the clerk of the circuit court and entered in the judgment docket the same as judgments are docketed. A transcript of the docket may be filed in every county where any of such real property is located. From the time the bond is docketed it shall be a charge upon the real property, except the homesteads, of the parties wherever the same is located, until fully paid and satisfied or otherwise discharged.

History: 1955 c. 660.

Despite the terms of 954.40 for misdemeanors and felonies other than murder, a surety bond with personal sureties may be signed by persons who own real estate or personal property, or both, worth a sum which in the opinion of the court or magistrate is sufficient to secure the appearance of the defendant at the trial. 41 Atty. Gen. 8.

954.16 Bail of prisoners. Except as otherwise provided in s. 954.14, any judge of a court of record may admit to bail a prisoner who is committed for a bailable offense. He may admit to bail any person committed because he failed to find sufficient surety to insure his appearance as a witness. The judge may increase or decrease the amount of bail that has been required.

History: 1955 c. 660.

954.17 Examinations returned to court. All examinations and the evidence and bonds taken by a magistrate shall be certified and returned by him within 10 days to the clerk of the court before which the defendant is bound to appear.

History: 1955 c. 660.

954.20 Bail for witness. If it appears by affidavit that the testimony of a person is material in any criminal proceeding and that it may become impracticable to secure his presence by subpoena, the court or examining magistrate may, if he is in court, require him to give bail for his appearance as a witness. If the witness is not in court a warrant for his arrest may be issued and upon return thereof the court may require him to give bond for his appearance as a witness. If he fails to give bail, he may be committed to the custody of the sheriff pending final disposition of the proceeding. His release may be ordered if he has been detained for an unreasonable length of time; and the court may at any time modify the bail requirement. The general rule as to the form and conditions of the bail bonds of persons accused of crime and forfeiture and enforcement thereof shall apply to bail under this section.

History: 1955 c. 660.

954.30 Forfeiture of bail. When any person under bail to appear and answer or to prosecute an appeal or to testify fails to perform the condition of his bail, his default shall be recorded and an action may be commenced to enforce the penalty in the bond.

History: 1955 c. 660.

954.31 Surety may satisfy default. Any surety may, after default and by leave of the court, pay to the clerk of the court the amount for which he was bound, with such costs as the court directs, and thereupon be discharged.

History: 1955 c. 660.

954.32 Remission of penalty. In an action on a bail bond and if the penalty is adjudged forfeited, the court may remit part or the whole of the penalty; and may render judgment for the state according to the circumstances and the situation of the party and upon such terms and conditions as to the court seem just.

History: 1955 c. 660.

954.33 Actions not barred. No such action shall be defeated by reason of failure to record the default; nor by reason of any defect in the form of the bail bond if it suffi-

ciently appears therefrom at what court the defendant or witness was bound to appear and that the court or magistrate taking the bond had authority to take it.

History: 1955 c. 660.

954.34 Examination waived. A defendant may waive a preliminary examination; and, except in murder cases, may give bond with sufficient sureties to be approved by the magistrate for his appearance at the trial court.

History: 1955 c. 660.

954.36 Bail to appear for trial; form. (1) A defendant's bail for his appearance in the trial court shall be conditioned for his appearance at the current term and from term to term thereafter until discharged.

(2) The bail bond may be in substantially the following form:

STATE OF WISCONSIN,
.... County,
Town (city, village) of ....

The State of Wisconsin,

v.

Name of defendant.

We, A. B., C. D. and E. F. hereby give bail in the sum of .... (the amount fixed as bail) dollars for the appearance of A.B. at the current term of the .... (insert the name of the trial court) to answer a criminal prosecution for (state the crime) and from term to term thereafter until discharged.

Dated ...., 19...

(Signed) A. B.
C. D.
E. F.

Approved ....

Judge, etc.

History: 1955 c. 660.

954.38 Entry of bail. Bail given in open court shall have the same force and effect as a formal bail bond and may be entered on the minutes thus:

A. B., C. D. and E. F. came into court and gave bail in the sum of .... dollars for the appearance of said A.B., at the current term and from term to term thereafter until discharged, to answer a criminal prosecution for (state the crime).

History: 1955 c. 660.

954.39 Bonds valid; their effect. Bail bonds given or entered in substantially the form prescribed by s. 954.36 or 954.38 shall bind the principal and sureties jointly and severally for the appearance of the defendant from day to day during the current term and on the first day of each subsequent regular term and from day to day thereafter during each term, unless the defendant is excused from such daily attendance, and for like appearance at any court to which the case may be removed for trial until he is discharged; and that the defendant shall do and receive what the court enjoins upon him, and not depart the court without leave.

History: 1955 c. 660.

954.40 Oath of sureties. The oath required of the sureties on a bail bond may be subjoined to the bond in substantially the following form:

STATE OF WISCONSIN,
.... County.

C. D. and E. F., the sureties above named, being severally duly sworn, each for himself says that he owns unencumbered real estate within this state, not exempt from sale on execution, worth at least .... dollars (total amount to be double the sum at which the bail is fixed).

(Signed) C. D.
E. F.

Subscribed and sworn to before me, this .... day of ...., 19...

....
Judge, etc.

History: 1955 c. 660.

See note to 954.15, citing 41 Atty. Gen. 8.

954.42 Surety company bond or deposit of money. Where bail is required of any person for his appearance to answer a criminal charge (except murder) or as a witness, he may furnish a bail bond executed by himself and a surety company authorized to do business in this state, using the usual form for that purpose, which bond shall be accompanied by a certified copy of the certificate of the commissioner of insurance; or such

person may give his personal bond without sureties upon depositing with the court the amount thereof in money, which deposit, on forfeiture of such bond, shall be paid into the county treasury in discharge of the bond. In case of a witness it shall be refunded to the depositor upon his appearance according to the terms of his bond; and in the case of a defendant, it shall be applied by the magistrate or court before whom the accused is tried, in satisfaction of so much of the judgment as requires the payment of money, rendering the surplus money to the depositor. If money is deposited with a magistrate, it shall be paid over with his return to the clerk of the court in which he is bound to appear.

History: 1955 c. 660.

Court may not order costs collected from cash bail unless accused is sentenced to pay a fine and costs (959.055). Fine and costs properly taxed against defendant may be collected out of cash bail notwithstanding that such bail was posted by a person other than the defendant. 39 Atty. Gen. 209.

Bail forfeited in a criminal case under 954.42 belongs to the county. 288.13 and 288.17 do not apply to such forfeitures. The failure of the accused to appear does not authorize imposing a fine in absentia and collecting it out of the bail money. The foregoing does not apply to deposits by persons accused of speeding in violation of 85.40. 41 Atty. Gen. 166.

954.43 Surrender of principal by sureties. (1) When the sureties desire to be discharged from the obligations of their bond, they may arrest the principal and deliver him to the keeper of the jail to which he was committed, or if he has not been so committed he may be surrendered to the officer who had him in custody at the time he was admitted to bail.

(2) The sureties shall at the time of surrendering the principal deliver to the officer into whose custody he is surrendered a certified copy of the original commitment, if any, and of the order admitting him to bail and of the bond thereon; and such delivery of copies shall be sufficient authority for the officer to receive and detain the principal until he is otherwise bailed or discharged.

(3) Upon such surrender to an officer not the keeper of the jail in which the principal is to be detained, the officer shall forthwith convey him to the jail of the county in which the crime is triable, and he shall be received and detained therein as though he had been originally committed there.

(4) Upon such delivery of the principal, the sureties may apply to the court for an order discharging them from liability as sureties; and, upon satisfactory proof being made that this section has been complied with, the court shall make an order discharging them from liability.

History: 1955 c. 660.

954.46 Arrest of witnesses for perjury. If it appears to the trial judge that a witness so testified before him as to induce a reasonable belief that he committed perjury, the judge may order his arrest, stating in the order the reason for the arrest; and such order shall stand as a criminal complaint upon which the clerk of the court shall issue a warrant. Notice of the proceedings shall be given to the district attorney. The accused shall be brought before the judge issuing the order for a preliminary examination. Thereafter the procedure shall be as in other cases. If any paper, book or document was produced which is needed in the prosecution for perjury, the judge may order a certified copy made, which copy shall have the same effect as the original.

History: 1955 c. 660.

954.47 Car conductor, police power. The conductor or other person in charge of a public passenger conveyance may arrest any person on such conveyance violating s. 945.02 (1) and (3), 945.03 (2) to (5), 947.01 (1) or 947.04 and deliver him to any policeman, constable, or other peace officer at the earliest reasonable opportunity, and such officer shall bring the offender before a magistrate of the county where the crime was committed and make complaint against him. For such arrest the person in charge of the conveyance shall have the powers of a sheriff.

History: 1955 c. 660; 1955 c. 696 s. 313.

A conductor is not required under 351.55 (Stats. 1947) to put an offending passenger off the train at its first usual stopping place, but may exercise some discretion in his choice of the place of ejection. Hotzel v. Simmons, 258 W 234, 45 NW (2d) 683.

954.48 Summary arrest at fish hatchery. The person in charge of any fish hatchery is empowered to arrest any person who in his presence violates s. 29.515, and shall deliver him to some peace officer for prosecution.

History: 1955 c. 660; 1955 c. 696 s. 313B.