CHAPTER 361.

ARREST AND EXAMINATION OF OFFENDERS, COMMITMENT AND BAIL.

361.01 Issue of process. For the apprehension of persons charged with offenses the judges of the several courts of record in vacation as well as term time, court commissioners, district attorneys and all justices of the peace are authorized to issue process to carry into effect the provisions of this chapter. But district attorneys are not magistrates and their authority to issue such process is limited to that prescribed in section 361.02 (2). [*1945 c. 558*]

Note: Ch. 91, laws of 1917, deprives county judge of Richland county of jurisdiction to hold preliminary hearings in criminal and bastardy cases, which jurisdiction he would otherwise have under ch. 361. He cannot hold such examinations as a court commissioner by reason of 252.16 because ch. 91, laws of 1917, "otherwise expressly provides" and because 252.16 does not vest him with the separate office of court commissioner. 35 Atty Gen. 289.

361.02 Complaint and warrant; John Doe proceeding. (1) Upon complaint made to any such magistrate that a criminal offense has been committed, he shall examine, on oath, the complainant and any witness produced by him, and shall reduce the complaint to writing and shall cause the same to be subscribed by the complainant; and if it shall appear that any such offense has been committed the magistrate shall issue a warrant reciting the substance of the accusation, and requiring the officer to whom it shall be directed forthwith to take the person accused and bring him before the said magistrate, or before some other magistrate of the county, to be dealt with according to law; and in the same warrant may require the officer to summon such witnesses as shall be therein named to appear and give evidence on the examination.

(2) Upon like complaint made to any district attorney, he may in his discretion reduce the complaint to writing and cause it to be subscribed and sworn to by the complainant; and may issue a like warrant returnable before some magistrate of the county. For this purpose the district attorney is authorized to administer an oath to the complainant. [*1945 c. 558*]

Note: In prosecution for criminal libel for stating that chief of police was one of organizers of attack by underworld elements who kidnapped defendant, defendant's motion for order for inspection of district attorney's transcript of testimony in John Doe proceeding with respect to defendant's assailants is properly denied. State v. Herman, 219 W 267, 262 NW 718.

Forthwith, like reasonable time, is a term which is dependent upon the circumstances of each case for the interpretation which is to be placed upon it. In some cases it means instanter, in others it means a reasonable time. Peloquin v. Hibner, 231 W 77, 285 NW 380.

In John Doe proceedings it is improper for magistrate to issue warrant for apprehension of John Doe and then take evidence, but such evidence should be taken without issuing any warrant. For this purpose magistrate may subpoena witnesses and may continue hearing from time to time until identity of offender has been discovered. 29 Atty. Gen. 400.

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

361.04 Recognizance. In all cases where the offense charged in the warrant is not punishable by imprisonment in the state prison, if the prisoner request that he may be brought before a magistrate of the county in which the arrest was made for the purpose of entering into a recognizance without a trial or examination the officer making the arrest shall carry him before a magistrate of that county, who may take from the person arrested a recognizance, with sufficient sureties, for his appearance at the court having cognizance of the offense and next to be holden in the county where it shall be alleged to have been committed, and the party shall thereupon be liberated.

361.05 Taking bail. The magistrate who shall so let the person to bail shall certify that fact upon the warrant and shall deliver the same with the recognizance by him taken to the person who made the arrest, who shall cause the same to be delivered, without unnecessary delay, to the clerk of the court before which the accused was recognized to appear; and on application of the complainant the magistrate who issued the warrant or the district attorney shall cause such witnesses to be summoned to the same court as he shall think necessary.

361.06 Proceedings if bail not given. If the magistrate in the county where the arrest was made shall refuse to bail the person so arrested and brought before him or if no sufficient bail shall be offered the person having him in charge shall take him before the magistrate who issued the warrant, or in his absence before some other magistrate of the county in which the warrant was isued, to be proceeded with as hereinafter directed.

361.07 Arrest on charge of felony. When the offense charged in a warrant is punisable by imprisonment in the state prison the officer making the arrest in some other county shall convey the prisoner to the county where the warrant issued, and he shall be proceeded with in the manner directed in the following sections.

361.08 Appearance; return. Every person arrested by warrant for any offense, where no other provision is made for his examination thereon, shall be brought before the magistrate who issued the warrant, or if he be absent or unable to attend before some other magistrate of the same county; and the warrant, with the proper return thereon, signed by the person who made the arrest, shall be delivered to the magistrate.

361.09 Adjournment. Any magistrate may adjourn an examination or trial pending before himself from time to time as occasion may require, not exceeding ten days at one time, without consent of the defendant or person charged, and to the same or different place in the county as he shall think proper; and in such case, if the party is charged with a capital offense, he shall be committed in the meantime; otherwise he may be recognized in a sum and with sureties to the satisfaction of the magistrate for his appearance for such further examination; and for want of such recognizance he shall be committed to prison.

361.10 Forfeiture of recognizance. If the person so recognized shall not appear before the magistrate at the time appointed for such further examination, according to the condition of such recognizance, the magistrate shall record the default and shall certify the recognizance, with the record of such default, to the circuit court, and like proceedings shall be had thereon as upon the breach of the condition of a recognizance for appearance before that court, and such magistrate may reissue the same warrant or issue another warrant for the arrest of the person accused to be brought before him for further examination.

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

361.12 Examination. The magistrate before whom any person is brought upon a charge of having committed an offense shall, as soon as may be, examine the complainant and the witnesses to support the prosecution, on oath, in the presence of the party charged in relation to any matters connected with such charge which may be deemed pertinent.

361.13 Same. After the testimony to support the prosecution, the witnesses for the prisoner, if he have any, shall be sworn and examined, and he may be assisted by counsel in such examination and also in the cross-examination of the witnesses in support of the prosecution.

361.14 Separation of witnesses. The magistrate while examining any witness may, at his discretion, exclude from the place of examination all the other witnesses; he may also, if requested or if he see cause, direct the witnesses for or against the prisoner to be

kept separate so that they cannot converse with each other until they shall have been examined.

361.15 Exclusion from examination. On the preliminary examination of every person charged with the offense of rape, assault with intent to commit rape, seduction, adultery, bastardy or other offense against chastity, morality or decency it shall be in the discretion of the magistrate to exclude from the place of trial all bystanders and other persons not officers of the court or otherwise required to be in attendance.

361.16 Testimony to be written. The testimony of the witnesses examined shall be reduced to writing by the magistrate or under his direction and shall be signed by the witnesses; but the omission of any of the witnesses to sign such testimony shall not invalidate any proceedings had upon the examination nor any information filed based thereon.

361.17 When complainant to pay costs. (1) If it shall appear to the magistrate, upon the whole examination, that no offense has been committed or that there is not probable cause for charging the prisoner with the offense, he shall be discharged, and in case the magistrate before whom the proceeding was had shall, upon the discharge of the prisoner, certify in his docket that the complaint was wilful and malicious and without probable cause he shall forthwith enter judgment against the complainant for all the costs of the proceeding, including witness' fees.

(2) The complainant may stay such judgment for thirty days by giving a bond to the state, with one or more sureties to be approved by the magistrate, conditioned for the payment of such judgment at the expiration of the thirty days; but if the complainant shall neglect to pay said judgment or to give such security then the magistrate shall forthwith issue execution on such judgment against the person of the complainant, which execution shall have the same force and effect as is now provided by law in cases where execution may issue against a defendant in actions founded in tort; but the defendant in such judgment shall have the right of appeal therefrom as in civil cases tried before a justice of the peace.

Note: In action for malicious prosecution, change of jury's answer from "no" to "yes" to question whether defendant had made a full and fair statement of all the material facts within his knowledge to his attorney before applying for warrant of arrest held error since question was for the jury. Jury's failure to assess damages to plaintiff, where evidence disclosed that plaintiff had been held in jail for ten days over election day, had been unable to vote, that notice of his arrest had been published in newspapers, and that he had incurred expense for the services of his attorneys held error. Buckley v. Brooks, 217 W 287, 258 NW 614.

In an action for malicious prosecution against a bank and its cashier, who had instituted a prosecution against the plaintiff for alleged larceny of certain certificates of deposit on another bank, which the plaintiff-owner had delivered to a third person as security for a debt and which the third person had left with the defendant bank for safekeeping and which the plaintiff had taken to the other bank to be cashed after the defendant cashier had handed them to him, the evidence warranted the jury in believing that the plaintiff at the time of being handed the certificates had paid the debt secured and believed himself entitled to the certificates and that the defendant cashier as well as the president of the defendant bank knew of the plaintiff's belief, and supported the jury's finding of want of probable cause. Lechner v. Ebenreiter, 235 W 244, 292 NW 913.

361.18 Recognizance; commitment. If it shall appear that an offense has been committed and that there is probable cause to believe the prisoner guilty, and if the offense be bailable by the magistrate and the prisoner offer sufficient bail, it shall be taken and the prisoner discharged; but if no sufficient bail be offered or if the offense be not bailable by the magistrate the prisoner shall be committed for trial.

Note: The circuit court was not without jurisdiction to try the defendant upon counts of the complaint which had been "dismissed" or involved the substance of those which had been "dismissed" by the examining magistrate. If it appears that any offense has been committed and that the defendant is probably guilty thereof the examining magistrate must hold the defendant for trial; but the magistrate is not authorized to restrict the action of the district attorney in filing an information or to limit the action of the circuit court in determining for what offense or upon what specific charges the defendant shall be tried. Hobbins v. State, 214 W 496, 253 NW 570.

The testimony of a prosecutrix who was unable to understand questions or to communicate intelligent answers, or to give a consistent series of affirmative and negative answers to leading questions, and who did not appear to have an appreciation of an obligation to testify truthfully, was insufficient on which to bind defendant over on a charge of rape. Hancock v. Hallmann, 229 W 127, 281 NW 703.

Evidence on the preliminary examination warranted the magistrate's conclusion that the defendant was one of the men who participated in the burglary. Chambers v. State, 235 W 7, 291 NW 772.

If it appears on preliminary examination that a crime has been committed and there is probable cause to believe the defendant guilty, he is to be committed for trial, and it is not necessary to establish the guilt of the defendant beyond a reasonable doubt, but the test is whether the evidence brings the charge against the defendant within the reasonable probabilities. State ex rel. Wojtycski v. Hanley, 248 W 108, 20 NW (2d) 719.

361.19 Bail when murder charged. No officer other than a justice of the supreme court or presiding judge of the circuit court shall be authorized to admit to bail a person charged with any offense punishable by imprisonment for life.

361.20 Bail; sureties; lien of bond. (1) The amount of penalty of the recognizance or bail bond shall be in such sum as, in the opinion of the officer taking the same, will se-

cure the appearance of the accused for trial. In cases of murder the recognizance shall be signed by the accused and at least two sureties, who shall severally swear that they each own and possess unincumbered real estate, within this state, not exempt from sale on execution, worth a certain sum mentioned, which sums so sworn to by such sureties shall in the aggregate be double the amount specified in said recognizance; but no surety shall be accepted who shall not justify in at least one-third of the amount fixed in said recognizance; and when required by the district attorney or court shall give a full description of such land and in what county such land is situated.

(2) Such recognizance shall, immediately after its execution, be filed in the office of the clerk of the circuit court and docketed upon the docket of judgments therein, in the same manner as judgments are required to be docketed in such office; and a transcript thereof shall be immediately filed in every county where such lands are situated. The said recognizance, from the time the same is executed before such judge, shall bind and be a charge upon the lands and tenements, real estate and chattels real of the parties executing such recognizance, whether owned by them jointly or either of them severally and wherever the same may be situated in this state, until such recognizance shall be fully paid and satisfied or otherwise discharged by due course of law.

Note: Under this section only recognizances given in cases of murder must be docketed in the office of the clerk of the circuit court. 28 Atty. Gen. 450.

361.21 Effect of recognizance. No recognizance taken by any court or magistrate, except as provided in section 361.20, shall bind any lands, tenements or real estate or other property; but such recognizance shall be deemed to be mere evidence of debt.

361.22 Witnesses to recognize. When the prisoner is admitted to bail or committed by the magistrate he shall also bind, by recognizance, such witnesses against the prisoner as he shall deem material to appear and testify at the next court having cognizance of the offense and in which the prisoner shall be held to answer.

361.23 When to give security. If the magistrate shall be satisfied that there is good cause to believe that any such witness will not perform the conditions of his recognizance unless other security be given, such magistrate may order the witness to enter into a recognizance with such sureties and in such sum as the magistrate shall determine to be fair and reasonable in view of the nature of the offense committed by the prisoner and the probability that the witness may escape or flee or otherwise be prevented from appearing and testifying at the next court having cognizance of the offense in which the prisoner shall be held to answer. [*1945 c. 331*]

361.24 [*Repealed by 1945 c. 331*]

361.25 Witnesses, when committed. All witnesses required to recognize, either with or without sureties, shall, if they refuse, be committed to prison by the magistrate, there to remain until they comply with such order or be otherwise discharged according to law.

361.26 Bail for prisoners. Any judge of a court of record, on application of any prisoner committed for a bailable offense, may inquire into the case and admit such prisoner to bail; and any person committed for not finding sufficient sureties to recognize for him may be admitted to bail by either of said judges.

361.27 Examination to be returned. All examinations, evidence and recognizances taken by any magistrate in pursuance of the provisions of this chapter shall be certified and returned by him to the clerk of the court before which the party charged is bound to appear, within ten days after the close of such examination; and if such magistrate shall neglect or refuse to return the same he may be compelled to do so forthwith by rule of the court, and in case of disobedience may be proceeded against by attachment as for contempt; and for such neglect he shall be liable to a penalty of twenty dollars, to be collected in an action against him as other penalties are collected.

Note: This section does not require the evidence in a proceeding under 361.02, to determine whether a warrant shall issue, to be returned, since such evidence is not required to be reduced to writing. State ex rel. Schroeder v. Page, 206 W 611, 240 NW 173.

361.28 Discharge of recognizance. When any person shall be committed to prison or shall be under recognizance to answer any charge of a misdemeanor for which the party injured may have a remedy by civil action, except when the offense was committed by or upon any sheriff or other officer of justice, or riotously, or with intent to commit a felony, if the party injured shall appear before the magistrate who made the commitment or took the recognizance and acknowledge in writing that he has received satisfaction for the injury the magistrate may, at his discretion, upon payment of all costs which have accrued, discharge the recognizance or supersede the commitment by an order under his hand and may also discharge all recognizances and supersede the commitment of all witnesses in the case.

361.29 Filing order; civil action. Every such order of the magistrate discharging the recognizance of the party or witnesses shall be filed in the office of the clerk before the sitting of the court before which they are bound to appear; and every order superseding the commitment of the party charged or any witnesses shall be delivered to the keeper of the jail in which he is confined, who shall forthwith discharge him; and every such order, if so filed and delivered, and not otherwise, shall forever bar all remedy by civil action for such injury.

361.30 Forfeiture of recognizance. When any person under recognizance in any criminal prosecution, either to appear and answer or to prosecute an appeal or to testify in any court, shall fail to perform the condition of such recognizance his default shall be recorded and an action shall be commenced against the person bound by the recognizance or such of them as the prosecuting officer shall direct.

Note: Failure of principal to perform conditions of recognizance requires that his default should be recorded by court to which recognizance was given, but record so made is not an adjudication of liability and does not have effect of summary judgment against defaulting principal and his sureties. State v. Rosenberg, 219 W 487, 263 NW 368.

361.31 How surety discharged. Any surety in such recognizance may, by leave of the court, after default and either before or after action commenced against him, pay to the county treasurer or to the clerk of the court the amount for which he was bound as surety with such costs as the court shall direct, and be thereupon forever discharged.

361.32 Remission of penalty. When any action is brought in the name of the state of Wisconsin against a principal or surety in any recognizance entered into either by a party or a witness in any criminal prosecution and the penalty of such recognizance shall be adjudged forfeited the court may, on application of any party defendant, remit any part or the whole of such penalty, and may render judgment thereon for the state according to the circumstances of the case and the situation of the party and upon such terms and conditions as to such court shall seem just and reasonable.

Note: County may sue to collect forfeited recognizance, but suit must be in name of state. State v. Wettstein, 64 W 234, 25 NW 34, 20 Atty. Gen. 38.

361.33 Action not barred. No such action brought on a recognizance as mentioned in section 361.32 shall be barred or defeated nor shall judgment thereon be arrested by reason of any neglect or omission to note or record the default of any principal or surety at the term when such default shall happen, nor by reason of any defect in the form of the recognizance, if it sufficiently appear from the tenor thereof at what court the party or witness was bound to appear and that the court or magistrate before whom it was taken was authorized by law to require and take such recognizance.

361.34 Waiver of examination. Any person who is arrested by virtue of a warrant charging him with bailable offense, which the court or officer before whom such warrant is returnable has no jurisdiction to try, may waive an examination thereon and, except in cases of murder, enter into recognizance, with sufficient sureties to be approved by such officer, for his appearance at the next term of the circuit court of the county, and such defendant shall thereupon be discharged.

361.35 Change of venue. Whenever any person charged with having committed any offense shall be brought before any justice of the peace or other magistrate for examination in accordance with the provisions of this chapter and shall, before the commencement of the examination, make oath that, from prejudice or other cause he believes that such justice or other magistrate will not decide impartially in the matter, then said justice or other magistrate shall transmit all the papers in the case to the nearest justice or other magistrate qualified by law to conduct the examination, who shall proceed with the examination in the same manner as though said defendant had first been brought before him; but no case shall be so removed after a second adjournment had therein, and only one removal shall be allowed in the same case; and if two or more defendants are charged with the same offense no removal shall be allowed or had unless they all join in such oath. The provisions of this section shall not apply to cities where police justices have exclusive criminal jurisdiction.

361.36 Bail. Whenever any person charged with a criminal offense shall be admitted to bail for his appearance at the circuit court to answer the same he may, at his option, give bail either for his appearance at the then pending term thereof, or for his appearance at such term and from term to term thereafter until discharged by law.

361.37 Forms. The following forms of recognizance and bail bonds may be used:

FOR APPEARANCE AT PENDING TERM.

STATE OF WISCONSIN, }
....County. }

We, A. B., C. D. and E. F., hereby give bail in the sum of .... dollars (stating amount fixed as bail), for the appearance of said A. B. at the now pending term of the .... court for .... county, to answer a criminal prosecution for (state the offense).

Dated, ... Signed,

A. B.
C. D.
E. F.

Approved, ... Judge, etc.

FOR APPEARANCE FROM TERM TO TERM.

STATE OF WISCONSIN, }
....County. }

We, A. B., C. D. and E. F., hereby give bail in the sum of .... dollars (stating amount fixed as bail), for the appearance of said A. B. at the now pending term of the .... court for .... county, to answer a criminal prosecution for (state the offense), and from term to term thereafter until discharged by law.

Dated, ... Signed,

A. B.
C. D.
E. F.

Approved, ... Judge, etc.

361.38 Entry of bail. Bail given in open court may be entered on the minutes substantially thus:

FOR APPEARANCE AT PRESENT OR NEXT TERM.

The State }
vs. }
A. B. }

Came into court A. B., C. D. and E. F., and gave bail in the sum of .... dollars for the appearance of said A. B., at the present (or next regular term, and from term to term thereafter until discharged by law, as the case may be), to answer a criminal prosecution for (state the offense).

361.39 Bonds valid; their effect. Bail bonds and recognizances given or entered in the above forms or forms of substantially the same import shall be as valid, binding and effectual and as much a charge as those given in the forms heretofore in use and shall bind the principal and sureties jointly and severally as follows:

(1) If for the pending term only, for the appearance of the accused at the court from day to day during such term, unless excused from such daily appearance by the court;

(2) If for the next regular term only, for the appearance at court at such term, on the first day thereof and from day to day thereafter during the term, unless excused by the court from such daily appearance;

(3) If for all terms until discharged by law, for the appearance of the accused at the court from day to day during the then pending term and on the first day of each subsequent regular term and from day to day thereafter during each term, unless excused by the court from such daily attendance, until discharged by law, and for like appearance at any court to which the case may be removed for trial;

(4) That, at whatever term to which the bail applies, the accused shall do and receive what may by the court be then and there enjoined upon him, and not depart the court without leave.

361.40 Oath of sureties. The oath required by the sureties on a bail bond or recognizance may be subjoined to the same and substantially in the following form:

.... County, ss.

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

C. D.
E. F.

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

...., Judge, etc.

361.41 Use of forms. The forms of recognizance and bail bonds prescribed in sections 361.37 to 361.40 may be used, as far as applicable, in all criminal actions and proceedings in all justices' courts, police and other courts not of record as well as in all courts of record in this state.

361.42 Surety company bond or deposit of money. In all cases where a recognizance or bail bond with sureties is required by the court or other magistrate, of any person for his appearance to answer any criminal charge except murder or as a witness, the person so required to enter into the same with sureties, may, in lieu of such

sureties, furnish a recognizance or bail bond executed by any surety company authorized to do business in this state, using the usual form for that purpose, which undertaking, when filed, shall be accompanied with the certificate of the commissioner of insurance or a copy thereof duly certified by him, as provided in sections 204.02 to 204.04, or such person may enter into his own personal recognizance or bond without sureties, upon depositing with the court the amount thereof in money, which on the forfeiture of such recognizance or bond, shall be paid into the county treasury in discharge thereof, but which in the case of a witness, shall be refunded to the person depositing the same, upon his appearance according to the terms of such recognizance or bond; and which in the case of a person accused of crime, shall be applied by the magistrate or court before whom the accused is tried, in satisfaction of so much of the judgment as is required by the payment of money, rendering the surplus money, if any there be, to the person depositing the same; and if such money is deposited with a justice of the peace or other magistrate, it shall be paid over with the return of such recognizance, to the clerk of the court to which he is bound to appear.

Note: For all the purposes of the deposit and until those purposes are fully satisfied the money deposited must be treated as that of the defendant. When these purposes have been fully satisfied, the section has no further application and furnishes no barrier to any proper proceeding to determine the true title to the fund deposited. If it, in fact, belongs to a third party the attorneys for the defendant cannot apply the funds to the defendant's debt to them. Gentilli v. Brennan, 202 W 465, 233 NW 98.

Justice of peace may not set bail on Sunday or legal holiday set out in 256.15. Police officer may not take from one who has been arrested cash bond to be forfeited for nonappearance at appointed time. 26 Atty. Gen. 185.

361.43 Surrender of principal by sureties. (1) Whenever the sureties upon any bond or undertaking given by or on behalf of any person charged with an offense punishable by any law of this state, deem themselves insecure and desire to surrender their principal and be discharged from the obligations of such bond or undertaking, they may arrest and take into custody such principal wherever he may be found within this state and convey and deliver him into the custody of the officer having charge of the jail, prison or other place of confinement to which he shall have been committed, or in case he shall not have been so committed he may be surrendered into the custody of the officer who shall have had the custody of his person at the time he was admitted to bail.

(2) Such sureties shall also at the time of surrendering the principal deliver to the officer into whose custody he may be surrendered a certified copy of the original commitment, if any shall have been made, of the order admitting the principal to bail and of the bond or undertaking thereon, and the delivery of such copies to such officer shall be sufficient authority for him to receive and detain in custody the person of such principal until he shall be otherwise bailed or discharged therefrom by due course of law.

(3) Whenever such surrender shall be made to an officer not having the custody of the jail, prison or other place of confinement in which such principal is to be detained in custody it shall be the duty of such officer to forthwith convey such principal to the place of confinement used by the county in which the offense charged against him is triable, and he shall be received and detained therein as though he had been originally committed there.

(4) Upon such surrender and delivery of the principal into the proper place of confinement the sureties may apply to the judge or justice having jurisdiction to try the offense charged against the principal, in vacation or otherwise, for an order discharging them from further liability as sureties; and, upon satisfactory proof being made that the provisions of this section have been complied with, such judge or justice may make an order so discharging them from all liability upon their bond or undertaking.

361.44 Arrest without warrant. (1) WHEN LAWFUL. An arrest by a peace officer without a warrant for a misdemeanor is lawful whenever the officer has reasonable grounds to believe that the person to be arrested has committed a misdemeanor and will not be apprehended unless immediately arrested or that further personal and property damage may likely be done unless immediately arrested.

(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. [*1943 c. 488*]