

CHAPTER 362.

PROCEEDINGS TO PREVENT CRIME.

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362.01 Security for good conduct. The judges of the several courts of record, in vacation as well as in open court, court commissioners and all justices of the peace shall have power to cause all laws made for the preservation of the public peace to be kept, and in the execution of that power may require persons to give security to keep the peace or for their good behavior, or both, in the manner provided in this chapter.

362.02 Complaint of threats. Whenever complaint shall be made to any such magistrate that any person has threatened to commit an offense against the person or property of another the magistrate shall examine the complainant and any witnesses who may be produced, on oath, and reduce such complaint to writing and cause the same to be subscribed by the complainant.

362.03 Warrant and arrest. If upon examination it shall appear that there is just cause to fear that any such offense may be committed the magistrate shall issue a warrant under his hand reciting the substance of the complaint, and require the officer to whom it may be directed forthwith to apprehend the person complained of and bring him before such magistrate or some other magistrate or court having jurisdiction of the cause.

Note: Utterance of a threat to commit an offense against the property or person of another does not justify issuance of a warrant, unless it appears that there is just cause to fear that any such offense may be committed. Plaintiff's apology to obtain the withdrawal of the warrant and save herself and baby from distress was not voluntary, but was induced by duress, and constituted no bar to the action for malicious prosecution. *Schwartz v. Schwartz*, 206 W 420, 240 NW 177.

362.04 Examination. The magistrate before whom any person is brought upon a charge of having made threats as aforesaid 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.

Note: Suspect arrested for questioning must be brought before magistrate within reasonable time and likewise one arrested on warrant must be brought before magistrate forthwith, which in some cases means within reasonable time and in other cases means instantly. 24 Atty. Gen. 559. This section does not contemplate trial by jury. 29 Atty. Gen. 342.

362.05 Witnesses and counsel. 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.

362.06 Recognizance. If upon examination it shall appear that there is just cause to fear that any such offense will be committed by the party complained of he shall be required to enter into a recognizance, and with sufficient sureties, in such sum as the magistrate shall direct, to keep the peace toward all the people of this state and especially toward the person requiring such security, for such time as the magistrate shall order, not exceeding six months; but he shall not be ordered to recognize for his appearance at the circuit court unless he is also charged with some offense for which he ought to be held to answer at said court.

362.07 Discharge. Upon complying with the order of the magistrate the party complained of shall be discharged.

362.08 When to be committed. If the person so ordered to recognize shall refuse or neglect to comply with such order the magistrate shall commit him to the county jail during the period for which he was required to give security or until he shall so recognize, stating in the warrant the cause of commitment, with the sum and time for which security was required.

362.09 Discharge; costs. If upon examination it shall not appear that there is just cause to fear that any such offense will be committed by the party complained of he shall be forthwith discharged, and if the magistrate shall deem the complaint unfounded, frivolous or malicious he shall order the complainant to pay the costs of prosecution, who shall thereupon be answerable to the magistrate and the officer for their fees as for his own debt.

362.10 Costs in other cases. When no order respecting the costs is made by the magistrate they shall be allowed and paid in the same manner as costs before justices in criminal prosecutions; but in all cases where a person is required to give security for the peace or for his good behavior the magistrate may further order the costs of prosecution or any part thereof to be paid by such person, who shall stand committed until such costs are paid or he is otherwise legally discharged.

362.11 Appeal. Any person aggrieved by the order of any magistrate, requiring him to recognize as aforesaid, may, on giving the security required, appeal to the circuit court next to be holden in the same county.

362.12 Witnesses to recognize. The magistrate from whose order an appeal is so taken shall require such witnesses as he may think necessary to support the complaint to recognize for their appearance at the court to which appeal is made.

362.13 Proceedings on appeal. The court before whom such appeal is prosecuted shall, without a jury, examine witnesses and hear and determine such charge in the same manner as prescribed for the examining magistrate, and may affirm the order of the magistrate or discharge the appellant, or may require the appellant to enter into a new recognizance with sufficient sureties, in such sum and for such time as the court shall think proper, and may also make such order in relation to the costs of prosecution as he may deem just and reasonable.

362.14 Effect of recognizance. If any party appealing shall fail to prosecute his appeal his recognizance shall remain in full force and effect as to any breach of the condition, without an affirmation of the judgment or order of the magistrate, and shall also stand as a security for any costs which shall be ordered by the court appealed to, to be paid by the appellant.

362.15 Discharge. Any person committed for not finding sureties or refusing to recognize as required by the court or magistrate may be discharged by any judge or justice of the peace on giving such security as was required.

362.16 Recognizance, transmittal of. Every recognizance taken in pursuance of the foregoing provisions shall be transmitted by the magistrate to the circuit court for the county, on or before the first day of the next term, and shall be there filed of record by the clerk.

362.17 Arrest without process. Any person who shall, in the presence of any magistrate mentioned in this chapter or before any court of record, make an affray, or threaten to kill or beat another or to commit any violence or outrage against his person or property, and every person who, in the presence of such court or magistrate, shall contend with hot and angry words, to the disturbance of the peace, may be ordered, without process or any other proof, to recognize for keeping the peace and being of good behavior for a term of not exceeding six months, and in case of a refusal may be committed as before directed.

362.18 Armed person to give security. If any person shall go armed with a dirk, dagger, sword, pistol or pistols or other offensive and dangerous weapon, without reasonable cause to fear an assault or other injury or violence to his person or to his family or property, he may, on complaint of any other person having reasonable cause to fear an injury or breach of the peace, be required to find sureties for keeping the peace for a term not exceeding six months, with the right of appealing as before provided.

362.19 Remission of penalty. Whenever, upon an action brought on any such recognizance, the penalty thereof shall be adjudged forfeited the court may remit such portion of the penalty, on the petition of any defendant, as the circumstances of the case shall render just and reasonable.

362.20 Surrender of principal. Any surety in recognizance to keep the peace or for good behavior, or both, shall have the same authority and right to take and surrender his principal as if he had been bail for him in a civil cause, and upon such surrender shall be discharged and exempt from all liability for any act of the principal subsequent to such surrender which would be a breach of the condition of the recognizance, and the person so surrendered may recognize anew, with sufficient sureties, before any justice of the peace for the residue of the term, and shall thereupon be discharged.

362.21 Arrest without complaint. If any magistrate or officer mentioned in this chapter shall have any knowledge that any assault and battery is about to be committed or that any affray is about to occur he shall forthwith issue a warrant and proceed as is di-

rected when complaint has been made; and if any such offense is committed, threatened or attempted in his presence he shall immediately arrest the offender or cause it to be done and for this purpose no warrant or process shall be necessary, but the officer may summon to his assistance any sheriff, coroner or constable and all other persons there present, whose duty it shall be to aid the officer in preserving the peace, arresting and securing the offenders and all such as obstruct or prevent the officer or any of his assistants in the performance of their duty, and any person who shall, when summoned to aid in arresting and securing an offender, refuse to give such assistance shall forfeit the sum of five dollars.

362.22 Change of venue. The defendant to any complaint under this chapter, before any magistrate, shall have the same right of change of venue and removal thereof and for the same cause as in other cases of examination or trial for offenses before such magistrate.