# 1938 Supplement

# To

# Mason's Minnesota Statutes

## 1927

## (1927 to 1938)

(Superseding Mason's 1931, 1934, and 1936 Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, and 1937 General Sessions, and the 1933-34, 1935-36, 1936, and 1937 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.


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# CHAPTER 98

# Crimes Against Morality, Decency, Etc.

## RAPE—ABDUCTION—CARNAL ABUSE, ETC.

### 10124. Rape.

**4. Evidence.**

Guilt held for jury. 171M187, 213NW740.

Evidence held to warrant a conviction for attempt to rape 14 year old girl. 171M173, 213NW923.

Evidence held to sustain conviction. 172M226, 215NW 189.

Defendant in rape prosecution who undertakes to prove unchastity of a young girl should be required to offer rather definite proof thereof. State v. Brown, 185 M446, 241NW591. See Dun. Dig. 8243a.

In prosecution for rape, court did not err in refusing to admit evidence that complainant on some occasions drank liquor, smoked cigarettes and attended dances, and was somewhat indiscreet in her behavior. State v. Brown, 185M446, 241NW591. See Dun. Dig. 8231.

Evidence held to sustain conviction of attempt to rape. State v. Brown, 185M446, 241NW591. See Dun. Dig. 8235.

A paper charging defendant with conduct unbecoming a member of the church, signed by an officer of the church, held inadmissible. State v. Wulff, 194M271, 260 NW515. See Dun. Dig. 8231.

Evidence of specific acts, as distinguished from reputation evidence, showing or tending to show want of chastity on part of prosecutrix may be introduced to bear on question of consent. Id. See Dun. Dig. 8231.

Evidence held to create such a grave doubt of defendant's guilt as to require a new trial, despite conviction by jury. Id. See Dun. Dig. 8244.

### 10125. Carnal knowledge of children.

Op. Atty. Gen., May 25, 1932; note under §10132.

**2. What constitutes.**

Verdict of guilty sustained by evidence. 175M174, 220 NW547.

**6. Evidence.**

Evidence held to warrant a conviction for attempt to rape. 171M173, 213NW923.

Evidence held to sustain a verdict of guilty. 172M372, 215NW514.

Verdict of not guilty in a proceeding to charge defendant with paternity is not admissible. 175M174, 220 NW547.

Evidence of illicit relations with others is not admissible in defense or in mitigation of punishment, but is only admissible in case of pregnancy to rebut the pregnancy as corroborative evidence. 175M174, 220NW 547.

Verdict held sufficiently supported. 176M604, 224NW 144.

Evidence in a carnal knowledge case held so consistent with the hypothesis of guilt as to sustain conviction. State v. Nelson, 185M351, 241NW48. See Dun. Dig. 8233.

Evidence held to support conviction for carnal knowledge of female less than fifteen years old. State v. Kosek, 186M119, 242NW473. See Dun. Dig. 8244.

Evidence held to support conviction for carnal knowledge of girl. State v. Marudas, 187M138, 244NW549. See Dun. Dig. 8244.

Evidence held sufficient to establish corpus delicti in prosecution for carnal knowledge of girl. State v. Bauer, 189M280, 249NW40. See Dun. Dig. 8244(13).

**7. Trial.**

Demonstration in court room by father of prosecutrix in prosecution for rape on girl under 18, held not ground for new trial in view of the admonition of the court to the jury. 172M372, 215NW514.

### 10128. Abduction—Evidence.

**1. What constitutes.**

Instructions were not erroneous which, in substance, stated that if defendant took girl to hotel with intent that she should have sexual intercourse with another and for that purpose persuaded and advised her to enter bedroom defendant procured, and said girl was then under age of 18 years, he, defendant, was guilty of abduction. State v. Ellis, 199M306, 271NW594. See Dun. Dig. 18.

Evidence sustains verdict that defendant abducted a female under 18 years of age for purpose of prostitution or sexual intercourse with another person. Id. See Dun. Dig. 22.

**3. Corroboration.**

Appearance of girl may be considered by jury in corroboration of her testimony as to her age. State v. Ellis, 199M306, 271NW594. See Dun. Dig. 20.

**10132. Indecent assault.**—Every person who shall take any indecent liberties with or on the person of any female, not a public prostitute, without her consent expressly given, and which acts do not in law amount to rape, an attempt to commit a rape, or an assault with intent to commit a rape, and every person who shall take such indecent liberties with or on the person of any female under the age of sixteen years, and every person who shall take any indecent liberties with or on the person of any male under the age of sixteen years, without regard to whether he or she shall consent to the same or not, or who shall persuade or induce any male or female under the age of sixteen years to perform any indecent act upon his or her own body or the body of another, shall be guilty of a felony. (R. L. '05, §4392; G. S. '13, §8663; '27, c. 394; Feb. 20, 1929, c. 27.)

Title of laws 1927, c. 394, does not express the subject of the act in so far as it refers to change of age of consent, and act is ineffective to that extent. 173M 221, 217NW108.

Fact that girl assaulted made complaint of outrage is admissible, but neither the particulars of the offense nor the name of the person may be disclosed as a part of the complaint, except where the complaint is made as a part of the res gestae. 173M305, 217NW120.

This section applies only to conduct toward male and female persons under 14 years of age, as the amending statute of 1927 was invalid in that respect because having insufficient title. State v. Phillips, 176M234, 223NW 98.

Evidence held to sustain conviction for taking indecent liberties with sixteen year old girl. State v. Weis, 186M342, 243NW135. See Dun. Dig. 552a.

Offense of indecent assault or taking indecent liberties is lesser offense included within charge of carnal knowledge. Op. Atty. Gen., May 25, 1932.

Construed and distinguished from §10153. Op. Atty. Gen. (494b-4), May 25, 1934.

## CRIMES AGAINST CHILDREN, ETC.

**10135. Desertion of child and pregnant wife.**—Every parent, including the duly adjudged father of an illegitimate child and a father who in an action for divorce or separate maintenance has been judicially deprived of the actual custody of his child, or other person having legal responsibility for the care or support of a child who is under the age of sixteen years and unable to support himself by lawful employment, who fails to care for and support such child with intent wholly to abandon and avoid such legal responsibility for the care and support of such child; and every husband who, without lawful excuse, deserts and fails to support his wife, while pregnant, with intent wholly to abandon her is guilty of a felony and upon conviction shall be punished therefor by imprisonment in the state prison for not more than five years. Desertion of and failure to support a child or pregnant wife for a period of three months shall be presumptive evidence of intention wholly to abandon and/or to avoid legal responsibility for the care and support of the child. (R. L. '05, §4933; '11, c. 144, §1; G. S. '13, §8666; '15, c. 336, §1; '17, c. 213, §1; Mar. 27, 1931, c. 94.)

Op. Atty. Gen., Oct. 11, 1933; note under §10136.

This section cannot be used merely to coerce the payment of money. 178M568, 227NW896.

The offenses under §§10135 and 10136 are continuing and former conviction does not preclude prosecution for subsequent violations. 179M32, 228NW337.

Illegitimate child failed to show that illegitimacy proceedings in Wisconsin were such as to meet requirements of statute. Reilly v. S., 196M376, 265NW284. See Dun. Dig. 826, 827.

Abandonment is a continuing offense and Laws 1931, c. 94, removed the declared limitation as to subsequently occurring abandonment. Op. Atty. Gen., Sept. 30, 1931.

Laws 1931, c. 94, permits conviction for abandonment of child though its custody has been placed in another by decree of court. Op. Atty. Gen., Sept. 30, 1931.

Abandonment is a continuing offense. Op. Atty. Gen., Jan. 22, 1932.

The crime of abandonment as defined in this act may be committed by a person who was not within the state at the time the law became effective and has never since returned to the state. Op. Atty. Gen., Jan. 22, 1932.

Offense of abandonment occurred in county wherein mother and child were living at time payment stopped and father formed intent to abandon and avoid legal responsibility. Op. Atty. Gen. (840a-1), Apr. 13, 1934.

Statute, as amended in 1931, is applicable to persons then absent from the state and who have never returned. Op. Atty. Gen. (840a-1), June 25, 1934.

Where following birth of illegitimate, father signed affidavit of admission of paternity and thereafter married mother and two years later a divorce was obtained, child was legitimate and father could be prosecuted for desertion. Op. Atty. Gen. (494b-27), Sept. 17, 1935.

One spending about one-half of his days from home and giving practically no money to his family for their support would not be guilty of desertion under §10135 but might be guilty of nonsupport under §10136. Op. Atty. Gen. (605b-16), Sept. 17, 1935.

Abandonment is an extraditable offense. Op. Atty. Gen. (193b-1), Mar. 26, 1936.

Father of illegitimate cannot be guilty of abandonment unless he has been duly adjudged to be father. Op. Atty. Gen. (840a-1), May 6, 1937.

**10136. Failure to support wife or child.**

178M568, 227NW896.

Justice has no jurisdiction of offense committed in Minneapolis. 174M608, 219NW452.

Evidence held not to show common-law marriage. 175 M547, 221NW911.

This section refers only to legitimate children. 175M 547, 221NW911.

The offenses under §§10135 and 10136 are continuing and former conviction does not preclude prosecution for subsequent violations. 179M32, 228NW337.

Where, after conviction, defendant was deprived of custody of child, a charge for abandonment thereafter occurring must be based on this section. 179M32, 228NW 337.

Duty of providing for child is cast upon father, although child is in custody of mother who refuses to live with husband. State v. Washnesky, 187M643, 246NW366. See Dun. Dig. 7302.

Neither wife nor minor child may recover damages for personal injuries to husband and father, remedy being solely in husband and father. Eschenbach v. B., 195M 378, 263NW154. See Dun. Dig. 4288b, 7305b.

The offense herein defined is a continuing one. Op. Atty. Gen., Sept. 30, 1931.

Wife has right to establish residence within state after desertion by husband in another state and continued nonsupport would constitute crime under this section. Op. Atty. Gen., Oct. 11, 1933.

"Dependents" defined. Op. Atty. Gen., Dec. 16, 1933.

Whether husband and father abandoning wife and children in Chicago would be criminally liable because wife and children moved to Minnesota would depend upon whether wife and children were justified in coming to Minnesota after having been deserted and whether husband refused to furnish a home elsewhere. Op. Atty. Gen. (339n), July 13, 1934.

A resident of another state who sends wife and children into certain county in state with intent to follow but then neglects to support them commits crime of abandonment in such county in state, but cannot be extradited where he has never come into the state, as he is not a fugitive from justice. Op. Atty. Gen. (494b-15), Nov. 1, 1934.

One spending about one-half of his days from home and giving practically no money to his family for their support would not be guilty of desertion under §10135 but might be guilty of nonsupport under §10136. Op. Atty. Gen. (605b-16), Sept. 17, 1935.

Parents are not liable for support of child in state school and cannot be prosecuted for nonsupport. Op. Atty. Gen. (840a-9), Apr. 29, 1936.

Where court orders defendant to pay specified sum each month for support of wife, he cannot be prosecuted for failure to furnish more. Op. Atty. Gen. (494b-25), Nov. 25, 1936.

A husband deserting wife and children in county where he has an established home must be prosecuted in that county, and not in county into which wife subsequently moved, in absence of some subsequent conduct amounting to desertion in the new county. Op. Atty. Gen. (840a-1), Dec. 28, 1936.

**10140. Keepers of public places to exclude minors.**

In prosecution of tavern owner, acts and omissions of defendant's servants contributed to minor's delinquency, and court did not err in refusing to submit that question as a fact issue. State v. Sobelman, 199M232, 271NW 484. See Dun. Dig. 4465a.

Proof of criminal intent is unnecessary where statute makes commission of prohibited act a punishable offense. Id. See Dun. Dig. 4924.

**10150. Sale of liquor within one mile of certain institutions.**—Any person who shall sell any intoxicating liquor, or maintain a drinking place, within one mile of the university farm of the school of agriculture of the University of Minnesota, located in Ramsey County, Minnesota, on section 21, township 29, and range 23 west, or shall aid or abet another in either of such acts, shall be guilty of a gross misdemeanor and shall be punished for the first offense with a fine of not more than $100.00 or imprisonment for not less than sixty days nor more than ninety days; for each subsequent offense, by a fine of not less than $500.00 nor more than $1,000.00, or by imprisonment in the county jail for not less than six months nor more than one year, or by both. ('07, c. 378, §1; G. S. '13, §8680; Feb. 14, 1933, c. 27, §1.)

In view of amendment by Laws 1933, c. 27, cigarettes may be sold on state fair grounds, though within mile of University farm. Op. Atty. Gen., Aug. 25, 1933.

**10151-1. Peddling and canvassing prohibited on school grounds.**—No person shall offer for sale, sell or peddle any goods, wares, books, newspapers, magazines or merchandise, insurance, course of instruction or any other thing whatsoever, or canvass or take orders therefor, or solicit the endorsement of any goods, wares, books, newspapers, magazines, merchandise, insurance or course of instruction or other thing in any public school building or upon any public school grounds not located within the limits of any city, village or borough whether or not such person has a license to offer for sale, sell, solicit or canvass for such goods, wares, books, newspapers, magazines, merchandise, insurance, course of instruction or any other thing whatsoever; provided this act shall not be construed as prohibiting the soliciting of or taking of such orders from, or making such sale to the school board or any member thereof, the board of education or any member thereof, or the superintendent of schools. (Act Apr. 13, 1929, c. 181, §1.)

Does not prohibit sale of Christmas seals. Op. Atty. Gen., Aug. 29, 1929.

**10151-2.**—Any person violating the provisions of this act shall be guilty of a misdemeanor. (Act. Apr. 13, 1929, c. 181, §2.)

**10153. Cruelty to children.**

Distinguished from §10132. Op. Atty. Gen. (494b-4), May 25, 1934.

## HABITUAL OFFENDERS

**10157. Habitual offenders defined—Penalties.**

Conviction of vagrancy to cause one to become a habitual offender must be for violations of state laws and not municipal ordinances. Op. Atty. Gen. (605b-44), Dec. 19, 1936.

## DANCE HALLS

**10161. Definitions.**

Op. Atty. Gen., June 5, 1933; note under §10171.

One charging only for checkroom and lunches, held guilty of maintaining dance hall without permit. 176M 86, 222NW575.

Defendant, held to have violated this section by permitting dancing with the aid of a piano and phonograph operated by placing a nickel in a slot. State v. Bennett, 179M289, 229NW88.

A club charging admission to a dance but using all proceeds for payment of debt on hall, without pecuniary gain to anyone, comes within definition and is controlled by §10162. Op. Atty. Gen., Feb. 26, 1933.

Whether operator of cafe permitting patrons to dance is operating public dance is a question of fact. Op. Atty. Gen., July 10, 1933.

A road house where proprietor permits dancing by persons placing coin in musical instrument is a public dance hall. Op. Atty. Gen., July 31, 1933.

One operating beer parlor and providing space for dancing is operating a public dancing place requiring license if patrons understand that they must make purchase to obtain dancing privileges. Op. Atty. Gen., Aug. 19, 1933.

A night club permitting dancing is a dance hall, though dancing is incidental to serving of beer and meals. Op. Atty. Gen., Dec. 22, 1933.

Whether proprietor of a non-intoxicating malt liquor business, who provides music to which his patrons may dance, is conducting a public dance for which a license would be required, is a question of fact. Op. Atty. Gen. (802a-7), Aug. 1, 1934.

Whether cover charge in dining room constituted a charge for dancing was a question of fact. Op. Atty. Gen. (802a-10), Sept. 7, 1935.

Whether church club dances were public dances requiring license, held question of fact. Op. Atty. Gen. (802a-2), Jan. 29, 1936.

What constitutes public or private dance is a question of fact. Op. Atty. Gen. (802a-10), July 13, 1937.

**10162. Proprietors must obtain permits.**

Op. Atty. Gen., Feb. 28, 1933; note under §10161.

**10163. Issuance of permit.**—In all cities, villages and boroughs of this state said permit must be procured from the governing body of the municipality provided, however, that in any county within which there now exists a city having a population of 225,000 inhabitants or more, such permits may be issued only by the town board of the town within which such public dance is to be held except when said public dancing place is owned by the municipality and the dance to be given or held therein is to be given by and under the supervision of the public authorities of said municipality. In all other cases such permit must be procured from the county board of the county in which said public dance is to be held. Such permits may be issued for one or more public dances or for a period of time not exceeding one year, provided that in any case where a permit for one single dance is desired, the town board of the town where the dance is to be held shall have a right to grant the same, but any person owning or operating a dance pavilion or dance hall in any such town where dances are regularly held during the year or a part thereof, must make application for such dance permit to the county commissioners and provided, that this shall not apply as hereinbefore stated to counties having a population of 225,000 or more. Said permit shall be issued at a fee and under such conditions as such governing body or county board may prescribe, not inconsistent with the provisions of this act. Provided no such permit shall be granted in any organized town outside of the limits of any city or village, in which town the town board shall pass a by-law or resolution prohibiting public dances therein. ('23, c. 139, §3; Apr. 20, 1929, c. 264, §1.)

Laws 1929, c. 264, amending §§10163 to 10165, had the effect of revoking all permits in effect at its passage. Op. Atty. Gen., May 8, 1929.

Town board can grant a permit for a single dance where county board has refused a permit. Op. Atty. Gen., May 21, 1929.

"Governing body of the municipality" has reference to dances in city, village or borough. Op. Atty. Gen., May 21, 1929.

Town board may prohibit dances though county board has given permit to give dances for a year. The licensee cannot recover fee paid. Op. Atty. Gen., July 19, 1929.

Village council need not pass ordinance regulating dancing in order to place village under operation of law. Op. Atty. Gen., June 4, 1930.

Under this section as amended by Laws 1929, c. 264, owner of dance pavilion licensed by county commissioners may lease premises to a third party who may conduct a single dance therein under permit from a town board. Op. Atty. Gen., Aug. 14, 1930.

Under this section as amended by Laws 1929, c. 264, town board may grant a permit for a single dance and the county commissioners cannot restrain or interfere with this permit. Op. Atty. Gen., Aug. 14, 1930.

Town board may grant a permit to a third person not connected with dancing pavilion in question to conduct a single dance at the pavilion on a date other than that licensed by the board of county commissioners to the pavilion owners. Op. Atty. Gen., July 7, 1931.

Statute does not prohibit issuance of permit to person or organization other than pavilion to hold more than one dance in a year. Op. Atty. Gen., Feb. 28, 1933.

Provision did not affect §10173. Op. Atty. Gen., Apr. 11, 1933.

Town clerk is not entitled to receive any fees for issuance of dance hall permits. Op. Atty. Gen., Apr. 11, 1933.

Permits for operating dance halls may be granted or rejected by village council under state law without enactment of an ordinance. Op. Atty. Gen. (63b-13), May 18, 1934.

Permits for dances to be held in a city, village or borough, must be obtained from the governing body of such municipality, and municipality may charge fee therefor. Op. Atty. Gen. (802a-22), May 23, 1934.

Permit for public dances must be obtained from county board of commissioners in all cases except: counties within which there exists a city having a population of 225,000 inhabitants or more; where dance is given under supervision of public authorities of a municipality; where dance is to be given in a city, village or borough; where a permit for one single dance only is desired, and a town board cannot permit holding dances regularly under successive for single dance. Op. Atty. Gen. (802a-17), June 18, 1935.

**10164. Permit to be posted.**—An person or person desiring a permit to hold, give, or conduct a public dance shall make application therefor by filing with the city clerk, village recorder, or county auditor, as the facts may require, a verified application, setting forth the name and address of the person, persons, committee or organization who are to give, hold, and conduct the same, the time and place where said public dance is to be held, and the area of the dance floor where dance is to be given. Said application shall thereupon be presented to said governing body or to said county board at its next meeting for action. Said governing body or said county board may refer said application to the chief peace officer of the municipality or to the sheriff of the county for investigation and report before granting the same. Said governing body or said county board shall thereupon act upon said application and either grant or reject the same. In case the same is granted, the governing body or the county board shall fix the fee to be paid by the applicant for such permit and shall direct the proper officers to issue the same upon the payment of said fee and upon payment of the expense of the investigation herein provided for in case such investigation is made. Said permit shall specify the names and addresses of the persons to whom issued, the amount paid therefor, and the time and place where said public dance is to be held. Said permit shall be posted in a public place in the dance hall described therein during the time the public dance mentioned therein is being given, and the persons named in said permit shall be responsible under the law for the manner in which said public dance is being held and conducted. Provided that such permit may be acted upon at any special meeting of said governing body or county board, whether included in the call for such special meeting or otherwise. ('23, c. 139, §4; Apr. 20, 1929, c. 264, §2.)

Village need not pass ordinance fixing schedule of fees in order to place village under operation of law. Op. Atty. Gen., June 4, 1930.

**10165. Applications.**—All applications for such permit shall be made upon blanks furnished by the city, village, or county as the case may be and shall be accompanied by the affidavit of two freeholders and shall affirmatively show by the application and affidavits that the applicant is a person of good moral character and reputation in the community in which he lives and that the applicant has not, within five years prior to the making of such application, been convicted of a felony, gross misdemeanor, or of any of the provisions of this act, and no such application shall be granted to any person of bad character or who has been so convicted as aforesaid, nor to any person who is keeper of any disorderly house of any kind nor for any place which has any direct or indirect communication with any room in which intoxicating liquor is sold, given away or otherwise used, nor for any place having any so-called "private apartments" or "private rooms" furnished or used for any other than legitimate business purposes which adjoin such dancing place or which may be reached by stairs, elevator or passageway leading from such dancing place. No permit shall be issued under the terms of this act unless the governing body or county board are satisfied that the place where said public dance is to be given or held is properly ventilated and equipped with necessary toilets, wash rooms, lighting facilities and that such place is not likely to become a public nuisance or detrimental to public morals. ('23, c. 139, §5; Apr. 20, 1929, c. 264, §3.)

Op. Atty. Gen. (63b-13), May 18, 1934; note under §10163.

**10166. [Repealed].**

Repealed Jan. 6, 1934, Ex. Ses., c. 46, §7, ante §3200-27.

Town board may require applicant for permit to patrol at his own expense within a radius of 1,000 feet to prevent sale of liquor. Op. Atty. Gen., June 4, 1930.

**10170. Officer must attend all public dances.**

Where dance is given by an organization, such as American Legion, one of its members may be appointed peace officer if he is not personally interested in the profits. Op. Atty. Gen., Dec. 13, 1929.

Marshal is not chief peace officer, and the council has power to appoint peace officers for dances. Council may appoint several for a dance, if necessary. Op. Atty. Gen., Apr. 3, 1929.

Applicant for permit may be required to patrol within radius of 1,000 feet to prevent sale of liquor. Op. Atty. Gen., June 4, 1930.

Peace officer is to be designated by sheriff of county and may be any citizen, town constable or deputy sheriff. Op. Atty. Gen., Apr. 11, 1933.

Promoter of dance or his employee cannot act as officer thereat. Op. Atty. Gen. (802a-16), Apr. 25, 1936.

One officer cannot be appointed for two dances held at same time at two different places. Op. Atty. Gen. (802a-16), Apr. 27, 1936.

**10171. Hours.**

Defendant held to have violated this section by permitting dancing with the aid of a piano and phonograph operated by placing a nickel in a slot. State v. Bennett, 179M289, 229NW88.

"Night club" operated by hotel in which cover charge was made held a public dance hall in which dancing could not continue after 12 o'clock on Saturday. Op. Atty. Gen., June 5, 1933.

**10173. Revocation of permit.**

Provision as to issuance and revocation of permits was not changed by Laws 1929, c. 264. Op. Atty. Gen., Apr. 11, 1933.

## BIGAMY—ADULTERY, ETC.

**10180. Bigamy defined—How punished—Exceptions.**

One who married during the existence of a voidable marriage was guilty of bigamy. 175M498, 221NW867.

Honest and reasonable belief in divorce of former spouse as defense for bigamy. 15MinnLawRev470.

**10182. Incest.**

Cohabitation between first cousins is not incest. Op. Atty. Gen. (133b-36), Sept 7, 1935.

**10183. Crime against nature.**

Evidence abundantly sustains finding that defendant was guilty of sodomy. State v. Nelson, 199M86, 271NW 114.

Where entire course of trial not only indicates but compels conclusion that the only offense charged and involved at trial was that of sodomy, court did not err in refusing to submit to jury lesser offenses of indecent assault in third degree. Id. See Dun. Dig. 2486.

**10184. Adultery.**

Complainant cannot dismiss a prosecution once commenced. 175M218, 220NW563.

An admission or confession by one paramour is not admissible against the other. 175M218, 220NW563.

**10185. Fornication.**

173M158, 217NW146.

Where it appears that the woman was not the wife of the defendant, it is not necessary for the state, in the first instance, to prove the single state of the woman. 171M222, 213NW920.

Acts showing fornication prove a violation of an ordinance of the city of Minneapolis prohibiting lewdness and indecency. 171M505, 214NW479.

Statements of woman to police officers, made in the presence and hearing of defendant when he was apprehended in the act of violating the ordinance, were properly received. 171M505, 214NW479.

Evidence held to sustain finding that defendant lived with a prostitute and to sustain conviction for lewd and indecent conduct in violation of city ordinance. State v. Turner, 196M176, 264NW681. See Dun. Dig. 7860c.

**10185A. Absconding by father to evade bastardy proceedings.**

This section has no bearing upon question as to whether defendant in bastardy may be called by prosecution for cross-examination. State v. Jeffrey, 188 M476, 247NW692.

## OBSCENITY

**10186. Indecent exposure—penalties.**—Every person who shall wilfully and lewdly expose his person, or the private parts thereof, in any public place, or in any place where others are present, or shall procure another to so expose himself, and every person who shall be guilty of any open or gross lewdness or lascivious behavior, or any public indecency other than hereinbefore specified, shall be guilty of a misdemeanor, and punished by a fine of not less than five dollars or by imprisonment in a county jail for not less than ten days.

Every person committing the offense herein set forth, after having once been convicted of such an offense in this state, shall be guilty of a gross misdemeanor. (R. L. '05, §4953; G. S. '13, §8704; Apr. 24, 1931, c. 321.)

Acts showing fornication prove a violation of Minneapolis ordinance prohibiting lewdness and indecency. 171M505, 214NW479.

**10187. Obscene literature.**

Magazine consisting of short stories and pictures of naked women in various poses and containing crudely written paragraphs concerning so-called "love and passion," held obscene literature. Op. Atty. Gen. (494b-37), May 29, 1934.

## HOUSES OF PROSTITUTION, ETC.

**10194. Keeper of disorderly resort.**

Admissibility and sufficiency of evidence. 174M143, 218NW557.

Complaint charging keeping of disorderly house under city ordinance held sufficient, in view of fact that there was but one ordinance to which it could apply. State v. McDow, 183M115, 235NW637. See Dun. Dig. 2754(94).

Evidence held sufficient to sustain a conviction for keeping a disorderly house. State v. McDow, 183M115, 235NW637. See Dun. Dig. 2756(99).

Evidence held to sustain conviction of keeping disorderly house. State v. Johnston, 189M546, 250NW366. See Dun. Dig. 2756.

Evidence sustains conviction of keeping and visiting a disorderly house. City of St. Paul v. M., 198M229, 269 NW408. See Dun. Dig. 2756.

**10199. Houses of prostitution, etc., nuisances.**

174M457, 219NW770.

**10201. Trial—Action by citizen, etc.**

Evidence held sufficient to connect defendant with nuisance. State v. Minneapolis Brewing Co., 189M147, 248NW715. See Dun. Dig. 2753a(92).

## LOTTERIES

**10209. Defined—A nuisance—Drawing, etc.**

174NW457, 219NW770.

Automobile contest where votes given in accordance with purchases from merchants, did not constitute a lottery. 176M598, 224NW158.

A punch board under which prizes may be won held a gambling device, notwithstanding small bars of chocolate were given with every punch. Op. Atty. Gen., Nov. 28, 1933.

Punch boards are unlawful gambling devices. Op. Atty. Gen., Apr. 2, 1934.

Intoxicating liquor cannot be raffled at a bazaar or given as a prize in a drawing. Op. Atty. Gen. (218), May 5, 1934.

A nickel slot machine which always gives a package of gum considered worth $.05 violates this law where it does not always give out exactly the same merchandise. Op. Atty. Gen. (733i), Oct. 15, 1934.

Fraternal organization may not maintain slot machines in its club rooms. Op. Atty. Gen. (733d), Mar. 21, 1935.

Whether "bank night" constitutes a lottery is a question of fact. Op. Atty. Gen. (510a-1), Mar. 25, 1935.

A "suit club" of 100 members each paying in $1 per week, one member receiving a suit each week at a drawing, and remaining members receiving a suit at the end of 25 weeks, constitutes a lottery. Op. Atty. Gen. (510c-10), Apr. 30, 1936.

Attorney general cannot pass upon questions of fact in determining what constitutes lottery. Op. Atty. Gen. (510c-6), Sept. 25, 1936.

## GAMING

**10214. Gambling.**

**1. What is a gambling device.**

There was no error in condemning and destroying slot machines, though there was no search warrant. 176M 346, 223NW455.

A nickel slot machine which always gives a package of gum considered worth $.05 violates this law where it does not always give out exactly the same merchandise. Op. Atty. Gen. (733i), Oct. 15, 1934.

Whether a "pin ball" game constitutes a gambling device is a question of fact. Op. Atty. Gen. (733d), Apr. 2, 1935.

Whether pin ball game is gambling device is question of fact. Op. Atty. Gen. (733d), Feb. 13, 1936.

Fact that a machine does not automatically take cash does not of itself determine whether or not it is a gambling device, and whether or not a particular device is one of skill or one of chance is a question of fact. Op. Atty. Gen. (733), Mar. 3, 1937.

**10215. Gambling devices on premises.**

176M346, 223NW455; note under §10214.

A gum vending machine, which also sets in motion discs which would entitle player to free glass of beer if letters

spelled word "beer," was a gambling device, though there was no proof that any one ever succeeded in getting such combination. State v. La Due, 198M255, 269 NW527. See Dun. Dig. 3943.

Conviction of violating ordinance providing that: "No person shall keep or set up any gambling device whatever," held sustained by evidence. Id. See Dun. Dig. 3944.

A vending machine which delivers small package of mints valued at 5c and at irregular intervals chips which can only be used to insert in machine again and merely produce amusement is a gambling machine. Op. Atty. Gen., May 23, 1933.

A slot machine that pays nickels or chips for a jackpot is a gambling device though it pays a package of gum each time it is played. Op. Atty. Gen., June 6, 1933.

Games consisting of a board and slot for the deposit of a coin upon which balls are released for the purpose of attempting to place them in certain slots, the idea being to get a large score, are not gambling devices unless the proprietor offers prizes in the form of cash or merchandise for certain scores obtained. Op. Atty. Gen. (733), July 3, 1934.

**10223–1. Contracts for future delivery of wheat, grain or other farm produce, etc.**

Transactions wherein options on wheat were purchased and sold held to constitute gambling. Deterling v. G., 192M60, 255NW484. See Dun. Dig. 1126.

Evidence held to show that transaction out of which arose alleged guaranty in grain transaction sued upon was a gambling transaction and not a contract by which parties contemplated actual delivery of grain. Becher-Barrett-Lockerby Co. v. H., 197M541, 267NW727. See Dun. Dig. 3941.

## RIGHTS OF SEPULTURE

**10227. Dissection—When permitted.**

Insurer, held entitled to disinterment of body of insured for autopsy, where demand was seasonably made; and refusal to grant consent to such autopsy, held to defeat right to recover on policy. Clay v. Aetna Life Ins. Co., (DC-Minn), 53F(2d)689. See Dun. Dig. 2599, 2599a.

Coroner possesses considerable discretion in performance of his duties and is the only person that can hold an inquest, though mandamus might lie to compel him to hold an inquest in a proper case. Op. Atty. Gen. (103f), Jan. 29, 1935.

## SABBATH BREAKING, ETC.

**10234. Definitions.**

There is no statutory provision prohibiting distribution of campaign cards on Sunday. Op. Atty. Gen. (627f-2), May 11, 1934.

**10235. Things prohibited—Exceptions.**—All horse racing, gaming and shows; all noises disturbing the peace of the day; all trades, manufacturers, and mechanical employments, except works of necessity performed in an orderly manner so as not to interfere with the repose and religious liberty of the community; all public selling or offering for sale of property, and all other labor except works of necessity and charity are prohibited on the Sabbath day:

Provided, that meals to be served upon the premises or elsewhere by caterers, prepared tobacco in places other than where intoxicating liquors are kept for sale, fruits, confectionery, newspapers, drugs, medicines, and surgical appliances may be sold in a quiet and orderly manner. In works of necessity or charity is included whatever is needful during the day for good order, health or comfort of the community, including the usual shoe shining service; but keeping open a barber shop or shaving and hair cutting shall not be deemed works of necessity or charity, and nothing in this section shall be construed to permit the selling of uncooked meats, groceries, clothing, boots, or shoes. Provided, however, that the game of baseball when conducted in a quiet and orderly manner so as not to interfere with the peace, repose and comfort of the community, may be played between the hours of one p. m. and six p. m. on the Sabbath day. (R. L. '05, §4981; '09, c. 267, §1; G. S. '13, §8753; Apr. 23, 1929, c. 308, §1; Apr. 5, 1935, c. 129.)

Farmers may sell products on their properties near highways on Sundays. Op. Atty. Gen., Aug. 8, 1933.

# CHAPTER 99

# Crimes Against Public Health and Safety

**10241. Public nuisance defined.**

Act making possession of foul, offensive or injurious substance, compound or gas with wrongful intent a gross misdemeanor. Laws 1931, c. 86.

Logging railroad over highway under Mason's Minn. Stat. 1927, §25558-1, etc., is not a public nuisance under this section. 174M305, 219NW172.

A newspaper business conducted in violation of §§10123-1 to 10123-3 is a public nuisance. 174M457, 219 NW770.

Finding that school district was negligent in exposing school teacher to tuberculosis, sustained by evidence, but there was not sufficient evidence to show that it maintained a nuisance by its failure to make the school building sanitary, and it was not liable for damages under §3098. 177M454, 225NW449.

Landowner removing rock on land supporting embankment for state highway is guilty of maintaining a public nuisance and is guilty of a misdemeanor. State v. Nelson, 189M87, 248NW751. See Dun. Dig. 7240n, 58.

Patch of ice on walk formed by melting of snow on cornice was not a public nuisance, for which building owner would be liable. Mesberg v. C., 191M393, 254NW 597. See Dun. Dig. 6845.

Section 5015-4 giving railroad and warehouse commission authority to require auto transportation company to maintain suitable depots, does not oust a city or village of jurisdiction to enjoin maintenance of a depot if it constitutes a nuisance. Village of Wadena v. F., 194M146, 260NW221. See Dun. Dig. 6752.

A truck warehouse and depot, located in Wadena, Minn., a block and a half from main business street and within a block of a public garage, a smillar truck depot, a large warehouse, a furniture store and undertaking parlor, and on street running directly from railroad depot to main business street, is not a nuisance, either public or private. Id. See Dun. Dig. 7244.

Owner of private lake cannot construct and maintain a channel to a public lake if it injuriously affects the public lake. Op. Atty. Gen., Sept. 26, 1929.

A misdemeanor. Op. Atty. Gen., June 20, 1930.

Village may refer buildings which are life and limb hazards to persons on sidewalks to state fire marshal or deal with owners thereof under nuisance statute. Op. Atty. Gen. (477b-20), Mar. 23, 1937.

Nuisance maintained by tenants by throwing of refuse on property forfeited to state for delinquent taxes may not be abated in proceedings against the state or tax commission, but may be corrected by criminal or civil proceedings against tenants. Op. Atty. Gen. (133b-2), May 22, 1937.

(3).

Op. Atty. Gen., Jan. 24, 1934; note under §2615(1).

**10242. Itinerant carnivals prohibited.**

174M457, 219NW770.

**10245. Maintaining or permitting building as a nuisance.**

Owner of private lake cannot construct and maintain a channel to a public lake if it injuriously affects the public lake. Op. Atty. Gen., Sept. 26, 1929.

**10250. *Adulteration or imitation of foods, etc.***

Whether milk was free from adulteration held question for jury. 174M320, 219NW159.

**10255. Deadly weapons.**

There was no fatal variance where information charged carrying of a revolver and proof showed weapon to be an automatic pistol. 176M238, 222NW925.

There was no error in refusing to hold that weapon was not loaded nor admitting it in evidence against objection that, because the prosecuting witness had by force taken it from defendant, it would virtually be compelling defendant to furnish evidence against himself. 176M238, 222NW925.

The question of criminal intent of defendant in carrying automatic pistol, held so far doubtful as to require new trial. 176M238, 222NW925.

Does not prohibit the use or possession of a pistol in the absence of an intent to use it against another. Clarine v. A., 182M310, 234NW295. See Dun. Dig. 10200a (2).

A father who furnished him with the pistol cannot be held liable for a accidental shooting by his son, in the absence of evidence that, because of youth, mental deficiency, recklessness, or other cause, it was unsafe to intrust the son with the weapon, and that the father was chargeable with knowledge of that fact. Clarine v. A., 182M310, 234NW295. See Dun. Dig. 10200.