

PART V

CRIMES AND CRIMINALS

NOTE: Prior to the enactment of the Penal Code, effective January 1, 1886, the common law as to crime was in force in this state except where abrogated or modified by statute. The Penal Code abolished all common law offenses and now no act or omission is criminal except as prescribed by statute. It would serve no useful purpose to trace the origin and legislative history of each section prior to the adoption of the code.

CHAPTER 610

GENERAL PROVISIONS RELATING TO CRIMES

610.01 CRIMES DEFINED AND CLASSIFIED.

1. Definitions
2. Acts punishable under general law and ordinance
3. Acts punishable by federal and state authority
4. Acts constituting different offenses
5. Merger
6. No common law offenses

1. Definitions

An apparent inconsistency arises from the fact that the last two sentences of section 610.01 read as follows: "Every crime punishable by fine not exceeding \$100.00, or by imprisonment in a jail for not more than 90 days," is a misdemeanor. "Every other crime is a gross misdemeanor." At common law, the term "misdemeanor" was applied generally to all crimes and offenses below the grade of felony. Two classes of misdemeanors were, however, recognized: (1) Those which were of a heinous nature and which might be punished corporally, and, (2) those which were not heinous. The terms "gross misdemeanor," "high misdemeanor," and the like are of statutory origin, invented to permit a similar distinction between petty offenses and those of a more serious nature. *State v Kelly*, 218 M 265, 15 NW(2d) 554.

As used in section 169.11 defining the crime of "criminal negligence in the operation of a vehicle resulting in death" as causing the death of a human being under circumstances not constituting murder in the first, second, or third degree, or manslaughter in the first or second degree, by operating or driving a vehicle "in a reckless or grossly negligent manner," the word "reckless" means, as defined in section 169.13, either a wilful or a wanton disregard for the safety of persons or property, which intentional conduct, but not intentional harm as a result thereof; and the words "grossly negligent" means very great negligence or the want of even scant care, but not such reckless disregard of probable consequences as is equivalent to a wilful and intentional wrong. *State v Bolsinger*, 221 M 154, 21 NW(2d) 483.

Conviction of a person under the "Smith Law," a felony under the federal statute, under the provisions of section 202.19 disqualifies said person from being a candidate for public office. 1944 OAG 136, July 17, 1944 (184-i).

Minnesota crime commission. 7 MLR 1.

Show window of the bar. 20 MLR 577.

Some legal aspects of interstate crime. 21 MLR 229.

Sources of the penal code, table in detail. Kelly's Index, p. 413.

3. Acts punishable by federal and state authority

Grand larceny in the second degree may be punishable by imprisonment in the state prison and is a felony. Willoughby v Utecht, 223 M 572, 27 NW(2d) 779.

4. Acts constituting different offenses

The only offense charged is a violation of state law. Provisions of local ordinances relate only to defendant's personal duties under the contract to fumigate a building. Since defendant was in full and exclusive charge of the entire job, since his duties were prescribed, and his acts or omissions brought about a child's death, he must meet the consequences as defined in and required by state law. State v Cantrell, 220 M 13, 18 NW(2d) 682.

5. Merger

A woman, upon whom an abortion is performed or attempted is not an accomplice in the commission of the offense, and where, as here, the evidence justified a finding of guilty or not guilty of abortion it was not error to refuse to submit to the jury, under section 610.11, the question whether defendant was guilty of an attempt. State v Tennyson, 212 M 158, 2 NW(2d) 833.

6. No common law offenses

On adoption of the penal code, effective January 1, 1886, common law offenses were abolished, and now no act or omission is criminal except as defined and prescribed by statute. State v Cantrell, 220 M 13, 18 NW(2d) 681.

Minnesota crime commission. 7 MLR 1.

Solicitation, a substantive crime. 17 MLR 499.

Show window of the bar. 20 MLR 577.

Legal aspects of interstate crime. 21 MLR 229.

Multiple consequences of a single criminal act. 21 MLR 805.

Participation in crime for the purpose of detection. 24 MLR 112.

Youth correction act. 28 MLR 300, 320.

Sources of the Penal Code, table in detail. Kelly's Index-Digest, p. 415.

610.02 MEANING OF WORDS AND TERMS.

(1) To justify conviction of the offense charged, the facts upon which the state relies must be fully stated; mere conclusions of law are not enough. State v Cantrell, 220 M 13, 18 NW(2d) 681.

Plaintiff was guilty of contributory negligence as a matter of law, since he was thoroughly familiar with the physical location where the accident to him occurred, and, although having a safe route to walk, he chose the more dangerous one. Veasen v Pillsbury, 223 M 396, 27 NW(2d) 414.

(3) The intentional invasion of the rights of another has been termed wilful negligence. However wilful such act may be, it is in no sense negligent. The very fact that an act is characterized as negligent indicates that harm to another as the result of it was neither foreseen nor intended, although a reasonable man would have foreseen danger to others because of it and would have adopted another course of conduct. Wilful negligence embraces conduct where the infringement of another's right is not only intended but also it is foreseen that the conduct pursued will result in such invasion. Hanson v Hall, 202 M 381, 279 NW 227.

Multiple consequences of a single criminal act. 21 MLR 805.

What law determines negligences. 25 MLR 235.

610.03 RULES OF CONSTRUCTION.

The provisions of L. 1939, c. 369, coded as sections 526.09 to 526.11, are not so indefinite and uncertain as to render the statute void; while due process of law requires notice and opportunity to be heard, the constitutional right to a jury trial does not apply to proceedings for the care and commitment of sexually irresponsible persons dangerous to others. Statutes must be so construed as to give effect to every section and part, and when any doubts arise as to the constitutionality of a law, doubt must be resolved in favor of the law. *State ex rel v Probate Court*, 205 M 555, 287 NW 297.

Rule of *Ejusdem Generis*, as applied to penal statutes. 23 MLR 545.

610.04 PERSONS PUNISHABLE.

One who has procured, counseled, or commanded another to commit a crime may withdraw before the act is done and avoid criminal responsibility by communicating the fact of his withdrawal to the party who is to commit the crime. *State v Peterson*, 213 M 56, 4 NW(2d) 826.

Solicitation, a substantive crime. 17 MLR 499.

610.05 DEFENSE OF SELF OR ANOTHER, WHEN JUSTIFIABLE.

Right to defend a person not a relative. 11 MLR 170.

610.07 DURESS; HOW CONSTITUTED.

Effect of impossibility of success upon the existence of a criminal attempt. 25 MLR 796.

610.08 PRESUMPTION OF RESPONSIBILITY.

In a murder prosecution against a 28 year old defendant, instruction that if the jury found defendant to be of the mental age of eight years and ten months, then she was presumed to be incapable of committing a crime, was properly refused. *State v Schabert*, 222 M 261, 24 NW(2d) 846.

The crime of selling mortgaged property, not having the consent of the mortgagee, is a crime that a minor over 18 years of age is capable of committing. OAG April 30, 1945 (605-B-35).

Insanity as a defense in homicide cases; burden of proof; degree of proof required. 13 MLR 731.

Massachusetts procedure relative to the sanity of defendants in criminal cases. 19 MLR 308.

610.10 CRIMINAL RESPONSIBILITY OF INSANE PERSONS.

Section 610.10, directing the district court not to try a person for crime while he is in a state of insanity, imposes a duty on, but does not go to the jurisdiction of, the court. Hence failure to comply with the statute is no ground for collateral attack, as by habeas corpus, on the judgment of conviction. *State ex rel v Utecht*, 203 M 448, 281 NW 775.

Irresistible impulse as a defense to homicide. 13 MLR 65.

Insanity as a defense to homicide; burden of proof; degree of proof required. 13 MLR 731.

Tests for determining criminal responsibility. 17 MLR 635.

Massachusetts procedure relative to the sanity of defendants in criminal cases. 19 MLR 308.

MINNESOTA STATUTES 1947 ANNOTATIONS

610.11 CRIMES AND CRIMINALS

1446

Validity of statute relating to persons having "psychopathic personality." 24 MLR 687.

610.11 CONVICTION OF LESSER CRIME, WHEN.

Where a statute provides that an offense may be committed in either of two ways and the information alleges that the offense charged was committed in both ways, it is proper to charge the jury to find accused guilty if it appears that the offense was committed in either one of the two ways mentioned in the statute. *State v Bolsinger*, 221 M 154, 21 NW(2d) 483.

A defendant is convicted on the date sentence is imposed and not when the verdict of guilty is returned or plea of guilty received. OAG Dec. 20, 1946 (341-K-10).

610.12 PRINCIPAL, DEFINED.

One who has procured, counseled, or commanded another to commit a crime may withdraw before the act is done and avoid criminal responsibility by communicating the fact of his withdrawal to the party who is to commit the crime. *State v Peterson*, 213 M 56, 4 NW(2d) 826.

Where a corporation is used by an individual as an instrument of fraud or for other wrongful purposes, courts will go as far as necessary in disregarding the corporation and its doing in order to accomplish justice. Although a director or other officer of a corporation ordinarily is not liable for acts performed by other officers or agents of the corporation, he is criminally liable for his own acts, although done in his official capacity, if he participated in the unlawful act, either directly or as an aider, abettor, or accessory. All who participate directly or as accessories in violation of municipal ordinances prohibiting keeping for sale of intoxicating liquor are principals. *State v McBride*, 215 M 123, 9 NW(2d) 416.

Subornation of perjury; conviction upon evidence of the suborned. 10 MLR 167.

Accessory before the fact; conviction of the accessory of a higher degree of crime than the principal. 11 MLR 170.

610.13 ACCESSORY, DEFINED.

An accomplice must participate or be concerned in the commission of the specific crime with which the defendant is charged. A woman upon whom an abortion is performed or attempted is not an accomplice in the commission of the offense. *State v Tennyson*, 212 M 158, 2 NW(2d) 833.

610.14 TRIAL AND PUNISHMENT OF ACCESSORIES.

Conviction of accessory before the fact of a higher crime than the principal. 11 MLR 170.

610.16 PUNISHMENT OF FELONY WHEN NOT FIXED BY STATUTE.

Where accused was convicted of crime of burglary and sentenced therefor and subsequently, under section 610.31, was found guilty of two prior felony convictions and thereupon, after vacation of the first sentence, was sentenced to an increased punishment, the constitutional guarantee against double jeopardy or punishment for the same offense (United States Constitution, Amendment V, and Minnesota Constitution, Article 1, Section 7) was not violated, since second sentence imposed was for an aggravated offense, which carried a more severe penalty than the crime for which the first sentence was imposed. *State ex rel v Utecht*, 221 M 138, 21 NW(2d) 239.

610.17 MINIMUM TERM OF IMPRISONMENT FOR FELONY.

A sentence for less than one year in a state reformatory is not void. OAG Feb. 8, 1946 (341-K-2).

MINNESOTA STATUTES 1947 ANNOTATIONS

1447

CRIMES AND CRIMINALS 610.28

610.18 FELONIES COMMITTED WHILE ARMED WITH FIREARMS; ADDITIONAL PUNISHMENT.

Responsibility of unarmed principal under a statute providing for increased punishment for a felony committed while armed. 12 MLR 78.

610.19 PUNISHMENT OF MISDEMEANORS WHEN NOT FIXED BY STATUTE.

Effect of an "unlawful act" as set out in the Minnesota labor relations act. 24 MLR 233.

610.21 CRIMES PUNISHABLE UNDER DIFFERENT PROVISIONS.

Where the facts constitute but one offense, though it may be susceptible of division into parts, as in larceny for stealing several articles of property at the same time, a prosecution to final judgment for stealing some of the articles will bar a subsequent prosecution for stealing any of the articles taken at the same time. And the same rule applies where the acquittal or conviction of a greater offense necessarily includes a lesser one. *State v Fredlund*, 200 M 44, 273 NW 353.

A plea of guilty to violation of the city ordinance against drunkenness in a public place is not a bar to a prosecution under another city ordinance declaring it an offense to drive a vehicle on the city streets when under the influence of intoxicating liquor—the two offenses having been committed on the same day. *State v Ivens*, 210 M 334, 298 NW 50.

There is no merit to petitioner's contention that the court's sentence was violated and that he is illegally confined because the sheriff did not take him to the state prison, but turned him over at the county jail to a representative thereof, who in turn took him to the state prison. *State v Utecht*, 221 M 138, 21 NW(2d) 242.

Double jeopardy; various crimes. 3 MLR 181; 7 MLR 348; 14 MLR 179; 18 MLR 221, 24 MLR 522.

Multiple consequences of a single criminal act. 21 MLR 805.

610.23 FOREIGN CONVICTION OR ACQUITTAL.

Prosecutions by more than one jurisdiction. 24 MLR 521, 540.

610.27 ATTEMPTS; HOW PUNISHED.

Solicitation, a substantive crime. 17 MLR 499, 512.

Impossibility of success on existence of a criminal attempt. 25 MLR 796.

610.28 SECOND OFFENSES; PUNISHMENT.

Where accused was convicted of crime of burglary and sentenced therefor and subsequently, under section 610.31, was found guilty of two prior felony convictions and thereupon, after vacation of the first sentence, was sentenced to an increased punishment, the constitutional guarantee against double jeopardy or punishment for the same offense (United States Constitution, Amendment V, and Minnesota Constitution, Article 1, Section 7) was not violated, since second sentence imposed was for an aggravated offense, which carried a more severe penalty than the crime for which the first sentence was imposed. *State ex rel v Utecht*, 221 M 138, 21 NW(2d) 239.

Increased punishment for a crime in this state because of the fact that defendant had been previously convicted of a crime in another state is valid as against the objection that the prior conviction was for a crime committed in another state. *Willoughby v Utecht*, 223 M 572, 27 NW(2d) 779.

Pardoned conviction as basis for increased penalty for a later conviction under the habitual criminal statutes. 14 MLR 293.

Increased punishment for offense under habitual criminal act where first offense pardoned for innocence. 26 MLR 274.

MINNESOTA STATUTES 1947 ANNOTATIONS

610.29 CRIMES AND CRIMINALS

1448

Necessity that second offense be committed after first conviction. 26 MLR 403.

NOTE: L. 1927, c. 236, provides a procedure modifying the law as it existed when decisions, *State v Findling*, 123 M 413, 144 NW 142, and *State ex rel v Reed*, 132 M 295, 156 NW 127, were handed down. While the title to L. 1927, c. 236, purports to repeal G.S. 1923, s. 9931, the act itself amends said section.

610.29 CONVICTION OF THREE OR MORE FELONIES; PUNISHMENT.

Prior convictions in order to be available for increased punishment under L. 1927, c. 236, must precede the commission of the offense for which sentence is being imposed. *State v McKenzie*, 182 M 513, 235 NW 274.

NOTE: L. 1927, c. 236, is patterned after the Baumes habitual criminal act of New York, being the Penal Code, s. 1943, as amended by L. 1926, c. 457.

Concurrent sentences. 11 MLR 73.

Methods of imposing rightful sentence for habitual offenses. 11 MLR 561.

Pardoned conviction as basis for increased penalty for a later conviction under habitual criminal statutes. 14 MLR 293.

Double jeopardy. 24 MLR 522.

610.31 INFORMATION AS TO PREVIOUS OFFENSE BY PROSECUTING OFFICER AND PROCEDURE THEREON.

The procedure prescribed by L. 1927, c. 236, does not place the defendant twice in jeopardy. The law is constitutional. *State v Zywicki*, 175 M 508, 221 NW 900.

Identity of defendant's name and that in certified copies of judgments of conviction of felonies from other courts in Minnesota was sufficient to sustain jury's finding that defendant was the person named in the records. *State v West*, 175 M 516, 221 NW 903.

Section 610.31 was not violated where the court in one proceeding simultaneously vacated the old sentence and then imposed an increased penalty based upon present offense and two prior felony convictions. *State v Utecht*, 221 M 138, 21 NW(2d) 240.

Under sections 610.28 and 610.31, a person convicted in this state of grand larceny in the second degree, and of a prior conviction for armed robbery in the state of Ohio, is subject to double the punishment prescribed for grand larceny in the second degree. *Willoughby v Utecht*, 223 M 138, 27 NW(2d) 780.

610.32 REPORT BY PRISON OFFICIALS AS TO PREVIOUS CONVICTIONS.

The duties imposed upon the county attorney by section 610.32 are mandatory. OAG May 4, 1928 (121-B-7).

610.33 IMPRISONMENT ON TWO OR MORE CONVICTIONS.

If a felon under sentence commits a crime, unless the sentence for the second crime is definitely stated to be concurrent, the sentences run consecutively. OAG Sept. 28, 1944 (341-K-1).

Where a person is sentenced under several charges to fine or imprisonment and fails to pay his fines, the sentences, unless definitely stated to be concurrent, run consecutively. OAG Feb. 16, 1945 (341-K).

Concurrent sentences. 11 MLR 73.

610.35 SENTENCES OF CONVICTS.

Power to impose cumulative sentence in cases not covered by mandatory statutes. 13 MLR 63.

MINNESOTA STATUTES 1947 ANNOTATIONS

1449

CRIMES AND CRIMINALS 610.47

610.37 SUSPENSION OF SENTENCE.

Amended by L. 1947 c. 243 s. 1.

Power of the court to suspend sentence. 2 MLR 381; 8 MLR 340.

Power to suspend sentence for an indefinite period or during good behaviour or other condition. 6 MLR 363; 12 MLR 413.

Youth correction act. 28 MLR 301.

610.38 SUSPENSION OF SENTENCES AND PROBATION.

Social aspects of Minneapolis courts. 6 MLR 261.

610.39 REVOCATION.

The district court may without notice and at any time revoke a stay or suspension of sentence. *State v Chandler*, 158 M 447, 197 NW 847; *State ex rel v Municipal Court*, 197 M 141, 266 NW 433.

Relieving the defendant of the supervision of the probation officer does not of itself indefinitely suspend the sentence. OAG Feb. 5, 1945 (121-F).

Prisoner sentenced for two and one-half years was paroled to the Red Wing training school. Later, the suspension of sentence was revoked, and he was sent to St. Cloud. He is entitled to credit allowance for time spent in Red Wing and for good behaviour. OAG June 10, 1946 (341-K-9).

Necessity of due process to revoke. 12 MLR 414.

Power of court to suspend sentence. 15 MLR 828.

610.41 RESTORATION TO CIVIL RIGHTS.

A person convicted of felony in Minnesota is not entitled to hold public office unless civil rights have been restored. OAG Sept. 9, 1946 (68-H).

Denaturalization based on disloyalty and disbelief in constitutional principles. 29 MLR 406.

610.42 CERTIFICATION BY PROPER OFFICERS.

Governor may restore civil rights to prisoners upon their receiving an unconditional pardon. This applies to residents of the state or persons domiciled therein. OAG May 18, 1943 (68-H).

610.47 INCRIMINATING TESTIMONY NOT TO BE USED.

In a prosecution for violation of the city plumbing ordinance, defendant was asked the identity of the plumber who did the work and upon refusing to answer, and upon claiming the privilege against self-incrimination, the trial court properly held him in contempt. *State v Beery*, 198 M 550, 270 NW 600.

A statutory presumption or prima facie case cannot be sustained if there be no rational connection, rooted in common experience, between the fact proved and the ultimate fact presumed. *State v Kelly*, 218 M 247, 15 NW(2d) 554.

Self-incrimination; provision in insurance policy for examination of insured. 5 MLR 575.

Validity of ordinance requiring motorist to report accident. 13 MLR 150.

Privilege against self-incrimination accorded witnesses before grand jury. 15 MLR 344.

Privilege against self-incrimination; rules governing the allowance of. 19 MLR 426.

MINNESOTA STATUTES 1947 ANNOTATIONS

610.48 CRIMES AND CRIMINALS

1450

610.48 COMMITMENT OF CHILD TO STATE TRAINING SCHOOL UPON CONVICTION OF CRIME.

A boy while on parole committed a second degree assault. If under 16 years, he must be sent back to the Red Wing state training school; if 16 or over, he may be sentenced to St. Cloud reformatory. OAG Feb. 8, 1946 (341-K-8).

610.49 CONVICT AS WITNESS.

It cannot be held upon the record that the county attorney was given too wide a range in cross-examining defendant in respect to other offenses brought into the case by his direct examination; and the same holds true in regard to proof that he had kept the condition of his probation, he having offered testimony that he had been convicted of crime but had not served time because of his having kept his probation. *State v Palmer*, 206 M 185, 288 NW 160.

The extent of cross-examination is largely discretionary with the trial court. OAG Nov. 18, 1946 (494-B-4).

The problem of proof; disqualification of witnesses. 18 MLR 518.

610.50 INTENT TO DEFRAUD.

Applying the rule that proof may be made of a system of cheats or swindles of the same general nature as that of which defendant was charged, the evidence in the instant case sufficiently connected the defendant with the perpetration of a swindle of the same general nature as the one for which he was being tried and that the state was properly allowed to make proof thereof. *State v Friedman*, 146 M 373, 178 NW 895.

On the issue of liability for fraud in procuring plaintiff's corporate stocks in defendant bakery, the evidence sustains the verdict. Since the corporation becomes the property of defendant by virtue of fraud, defendant may not use it as a corporate veil to serve as a shield to avoid his or its liability. *Fewell v Tappan*, 223 M 483, 27 NW(2d) 649.

610.51 CRIMES ON PUBLIC CONVEYANCES.

Constitutionality of statutes relating to offenses committed on trains or boats; trial in county where offense committed. 5 MLR 148.