

# MASON'S MINNESOTA STATUTES

1927

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BY THE SUBSEQUENT LEGISLATION OF 1925  
AND 1927

AND ALSO EMBRACING LAWS OMITTED FROM THE GENERAL STATUTES  
1923, AND THE LAWS OF THE 1925 AND 1927 SESSIONS OF THE  
LEGISLATURE UNDER APPROPRIATE CLASSIFICATION.

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PART IV.

CRIMES, CRIMINAL PROCEDURE, IMPRISONMENT, AND PRISONS

CHAPTER 93

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9906. Crimes defined and classified—A crime is an act or omission forbidden by law, and punishable upon conviction by death, imprisonment, fine, or other penal discipline. Every crime which may be punished by death, or by imprisonment in the state prison or state

reformatory, is a felony. Every crime punishable by fine not exceeding one hundred dollars, or by imprisonment in a jail for not more than ninety days, is a misdemeanor. Every other crime is a gross misdemeanor. (4747) [8466]

1. Definition of "crime," "offense," "misdemeanor"—The terms "crime," "offense" and "criminal offense" are all synonymous, and include any breach of law established for the protection of the public, as distinguished from an infringement of mere private rights, for which a penalty is imposed or punishment inflicted in any judicial proceeding (42-147, 43+345). The term "offense" in criminal law, is not identical in meaning with the word "act." It imports, in its legal sense, an infraction or transgression of a law—the wilful doing of an act which is forbidden by a law or omitting to do what it commands (26-507, 517, 5+959). It includes any punishable violation of law—the doing that which a penal law forbids or omitting to do what it commands—and hence includes all violations of municipal ordinances punishable by fine or imprisonment (34-1, 24+458). It includes misdemeanors (42-258, 44+115). It does not include violations of the military code (74-518, 77+424). When an offense is not a felony it is necessarily a misdemeanor (39-153, 39+305).

2. Acts punishable under general law and ordinance—An act may be punishable under both the general law and a municipal ordinance and the punishment need not be the same (16-474, 426; 21-202; 26-507, 5+959; 36-62, 30+305; 42-147, 43+345; 50-128, 52+387; 77-540, 80+701; 84-367, 87+916). In such a case a conviction under the ordinance is not a bar to a prosecution under the general law (29-445, 13+913; 50-128, 52+387).

3. Acts punishable by federal and state authority—An act may be at the same time an offence against the United States and against the state (26-507, 5+959; 29-445, 13+913).

4. Acts constituting different offences—The same acts may constitute or be parts of different offences (10-407, 325); they may be offences under different statutes (69-423, 72+700).

5. Merger—There is no such thing as a merger of different offences (10-407, 325).

6. No common law offences—Prior to the Penal Code the common law as to crime was in force in this state except where abrogated or modified by statute (12-164, 99; 17-72, 50). The Code abolished all common law offences and now no act or omission is criminal except as prescribed by statute (38-368, 37+587; 39-153, 39+305; 71-28, 73+626). The common law may be referred to in aid of the construction of common law terms used in statutes (5-19, 6); but statutory definitions must control. The legislature has endeavored to do away with the refinements and technicalities of the common law and it is the duty of the courts to further the reform (2-124, 99; 5-19, 6; 38-368, 37+587). See 146-57, 177+937.

7. Felony. Unlawful transportation of liquor is not a felony. 157-145, 195+789.

9907. Meaning of words and terms—In the construction of Part IV, save when otherwise plainly declared or clearly apparent from the context, the following rules shall be observed:

1. Each of the words "neglect," "negligence," "negligent," and "negligently" shall import a want of such attention to the nature or probable consequences of the act or omission as an ordinarily prudent man usually exercises in his own business.

2. Each of the words "corrupt" and "corruptly"

shall import a wrongful desire to acquire or cause some pecuniary or other advantage to himself or another, by the person to whom applicable.

3. "Malice" and "maliciously" shall import an evil intent, wish, or design to vex, annoy, or injure another person, or to maltreat or injure an animal.

4. The word "knowingly" imports a knowledge that the facts exist which constitute the act or omission a crime, and does not require knowledge of its unlawfulness.

5. Whenever an intent to defraud constitutes a part of a crime, it is not necessary to aver or prove an intent to defraud any particular person.

6. The word "vessel" includes ships, steamers, and every boat or structure adapted to navigation, either upon lakes, rivers, or artificial waterways.

7. The word "signature" includes any memorandum, mark, or sign written with intent to authenticate any instrument or writing, or the subscription of any person thereto.

8. The word "writing" shall include printing.

9. The word "property" includes both real and personal property, things in action, money, bank bills, and every other thing of value.

10. The word "oath" includes an affirmation; the word "bond," an undertaking; words in the present include the future tense; and in the masculine include the feminine and neuter genders; and in the singular include the plural; and in the plural, the singular.

11. The word "person" includes a corporation or joint-stock association. Whenever it is used to designate a party whose property may be the subject of any offense, it also includes the state, or any other state, government, or country which may lawfully own property within the state.

12. The term "real property" includes every estate, interest, and right in lands, tenements, or hereditaments.

13. The term "personal property" includes every description of money, goods, chattels, effects, evidences of rights in action, and all written instruments by which any pecuniary obligation, right, or title to property, real or personal, is created, acknowledged, transferred, increased, defeated, discharged, or diminished, and every right and interest therein. (4748) [8467]

Subd. 3 (127-510, 150+1209). Subd. 5 (27-309, 7+264; 43-196, 45+152; 67-176, 69+816). Subd. 10 (66-296, 68+1094). Subd. 11 (78-524, 81+532; 150-406, 185+931). Subd. 12 (91-482, 98+463). Subd. 13 (89-244, 94+686).

9908. Rules of construction—The rule that a penal statute is to be strictly construed shall not apply to any provision of Part IV of the Revised Laws, but every such provision shall be construed according to the fair import of its terms, to promote justice and effect the purpose of the law. (4749) [8468]

A criminal offence should not be created by an uncertain or doubtful construction (1-292, 226). A statute is ineffectual to make criminal an act otherwise innocent, unless it clearly appears that such act is within the prohibition of the statute, the statute being reasonably construed for the purpose of arriving at the expressed intention of the legislature. It is not enough that the case is within the apparent reason and policy of the statute (29-216, 12+703; 37-433, 34+904). A criminal statute is to have a reasonable construction and such as is best suited to accomplish the purposes to be arrived at, consistently with the meaning of the language used (33-102, 22+442. See 29-216, 12+703; 80-216, 83+141; 82-342, 85+12; 149-395, 184+12). The construction cannot be contrary to the language used (24-247), except in case of manifest mistake (29-216, 12+703; 82-71, 84+650). At common law penal statutes are construed strictly (1-292, 226; 26-191, 2+492; 29-216, 12+703. See 95-106, 103+728).

9909. Persons punishable—The following persons are liable to punishment:

1. A person who commits in the state any crime, in whole or in part.

2. A person who commits out of the state any offense which, if committed within it, would be larceny under the law, and is afterward found in the state with any of the stolen property.

3. A person who, being out of the state, causes, procures, aids, or abets another to commit a crime in the state.

4. A person who, being out of the state, abducts or kidnaps, by force or fraud, any person, contrary to the laws of the place where the act is committed, and brings, sends, or conveys such person into this state.

5. A person who, being out of the state, and with intent to cause within it a result contrary to its laws, does an act which, in its natural and usual course, results in an act or effect contrary to such laws. (4750) [8469]

9910. Defense of self or another, when justifiable—An act otherwise criminal is justifiable when done to protect the doer, or another whom he is bound to protect, from imminent personal injury, whenever such act appears to be only what is reasonably necessary to prevent the injury. (4751) [8470]

83-141, 144, 85+946; 96-318, 104+971.

9911. Defense of duress by married woman—It is no defense for a married woman charged with crime that the alleged act was committed by her in the presence of her husband. (4752) [8471]

9912. Duress—How constituted—Whenever any crime, except murder, is committed or participated in by two or more persons, any one of whom participates only under compulsion by another engaged therein, who by threats creates a reasonable apprehension in the mind of such participator that in case of refusal he is liable to instant death, such threats and apprehension constitute duress which will excuse such participator from criminal liability. (4753) [8472]

9913. Presumption of responsibility—Save as hereinafter specified, every person is presumed to be responsible for his acts, and the burden of rebutting such presumption is upon him. Children under the age of seven years, idiots, imbeciles, lunatics, or insane persons are incapable of committing crime. Children of seven and under twelve years of age are presumed incapable of committing crime, but this presumption may be removed by proof that they have sufficient capacity to understand the act or neglect, and to know that it was wrong. Whenever in legal proceedings it becomes necessary to determine the age of a child, he may be produced for inspection, to enable the court or jury to determine the age thereby; and the court may also direct his examination by one or more physicians, whose opinion shall be competent evidence upon the question of his age. (4754) [8473]

1. **Insanity**—Insanity is a matter of defence which the accused must prove by a fair preponderance of evidence; it is not enough for him to raise a reasonable doubt of his sanity (2-123, 99; 12-538, 448; 13-341, 315; 34-430, 28+397).

2. **Intoxication**—Irresponsible intoxication is a matter of defence which the accused must prove by a fair preponderance of evidence (29-221, 13+140; 93-38, 100+628).

3. **Children**—The testimony of a child over twelve years of age that he did not know that it was wrong to do the act constituting the crime will not, in the absence of any evidence as to his general mental capacity, tend to overcome the presumption of capacity to commit crime (53-541, 55+741). A child over twelve years of age is criminally liable (36-224, 90+360, 1133).

Child over twelve years of age is presumed to be responsible for his criminal acts. 156-181, 194+942.

9914. Intoxication or criminal propensity no defense

--No act committed by a person while in a state of voluntary intoxication shall be deemed less criminal by reason of his condition, but whenever the actual existence of any particular purpose, motive, or intent is a necessary element to constitute a particular species or degree of crime, the fact of his intoxication may be taken into consideration in determining such purpose, motive, or intent. A morbid propensity to commit prohibited acts existing in the mind of a person who is not shown to have been incapable of knowing that such acts were wrong shall constitute no defense. (4755) [8474]

1. **Intoxication**—No act committed by a person while in a state of voluntary intoxication is less criminal by reason of his having been in such condition (11-154, 95; 21-22; 29-221, 13+140; 93-38, 100+633). Thus it has been held that intoxication is no defence to a charge of double voting (21-22). But whenever the actual existence of any particular purpose, motive, or intent is a necessary element to constitute a particular species or degree of crime, the jury may take into consideration the fact that the accused was intoxicated at the time, in determining the purpose, motive, or intent with which he committed the act. Thus intoxication has been held admissible on a charge of assault with intent to do great bodily harm (11-154, 95; 21-22; 25-161; 28-426, 104+72; 29-221, 13+140); on a charge of larceny (21-22. See 74-460, 462, 77+302); on a charge of murder (13-341, 315; 21-22; 29-221, 13+140); and on a charge of passing counterfeit money (21-22). Intoxication cannot be considered by the jury unless it was of such a degree that the accused did not know what he was doing or could not distinguish right from wrong (11-154, 95; 13-341, 315; 25-161; 74-460, 462, 77+302). Where it appeared that a killing was intentional, or as a matter of revenge, it was held immaterial that the accused was intoxicated (13-341, 315). In no case can a defendant, by proof of intoxication, rebut the legal presumption that he knows and intends his voluntary acts (21-22).

2. **Criminal propensity**—13-341, 315; 41-365, 43+62.

9915. **Criminal responsibility of insane persons**—No person shall be tried, sentenced, or punished for any crime while in a state of idiocy, imbecility, lunacy, or insanity, so as to be incapable of understanding the proceedings or making a defense; but he shall not be excused from criminal liability except upon proof that at the time of committing the alleged criminal act he was laboring under such a defect of reason, from one of said causes, as not to know the nature of his act, or that it was wrong. (4756) [8475]

2-123, 99; 8-44, 26; 10-223, 178; 13-341, 315; 41-365, 43+62; 53-541, 55+741; 96-351, 105+265. Insanity is defense to action for divorce for cruel treatment, if acts were committed when defendant was laboring under such defect of reason as not to know nature of his acts or that they were wrong (119-139, 137+337).

9916. **Conviction of lesser crime, when**—Upon the trial of an indictment, the defendant may be convicted of the crime charged therein, or of a lesser degree of the same crime or of an attempt to commit the crime so charged, or of an attempt to commit a lesser degree of the same crime. In an indictment for an assault with intent to commit a felony, the jury, in case they do not find the intent charged, may convict of assault, and the court may sentence the defendant to imprisonment in the county jail for not more than one year, or to pay a fine not exceeding five hundred dollars. (4757) [8476]

Cited (119-107, 137+295). See 149-41, 182+721; 149-195, 183+143; 149-297, 183+669.

An assault, whether it be indecent or simple, is an essential and necessary element of the offense of attempting to commit the crime of carnal knowledge. 198+645.

Indictment charging carnal knowledge necessarily includes as lesser offenses: (1) Attempt to carnally know; (2) indecent assault or indecent liberties; and (3) simple assault. 157-408, 196+645.

9917. **Principal defined**—Every person concerned in the commission of a crime, whether he directly commits the act constituting the offense, or aids and abets in its commission, and whether present or absent, and

every person who directly or indirectly counsels, encourages, hires, commands, induces, or otherwise procures another to commit a crime, is a principal, and shall be indicted and punished as such. (4758) [8477]

This section abolishes the common law distinction between principals and accessories before the fact and under it all persons concerned in the commission of crime may be indicted and punished as principals (37-493, 35+373; 61-467, 63+1096; 84-357, 87+935; 85-19, 88+22; 122-493, 142+823; 148-368, 182+445). An accessory before the fact at common law defined (17-76, 54; 17-241, 218; 40-55, 41+299). One who gives a bribe is not an accomplice of the bribe-taker so that he can be convicted as a principal for bribery (71-23, 73+626). One who at common law would be accessory before the fact may be charged directly as principal, and evidence may be received to show that he procured the crime to be committed. Admission of such evidence is neither variance nor violation of Const. art. 1 § 6 (103-92, 114+363). Purchaser of intoxicating liquor sold contrary to law, for the purpose of prosecuting the seller for an unlawful sale, does not thereby become an accomplice (137-43, 162+683).

Killing incident to bank robbery. 158-516, 197+962.

Arson. 161-96, 200+933.

9918. **Accessory defined**—Every person not standing in the relation of husband or wife, parent or child, to the offender, who, after the commission of a felony, shall harbor, conceal, or aid such offender, with intent that he may avoid or escape from arrest, trial, conviction, or punishment, having knowledge or reasonable ground to believe that such offender has committed a felony or is liable to arrest, is an accessory to the felony. (4759) [8478]

In treason and misdemeanor there is no distinction between principals and accessories; all concerned in the commission of the offence are deemed principals, and indicted and punished accordingly (G. S. 1894, § 6312; 17-241, 218; 34-221, 25+395; 95-442, 104+556). Cited (144-348; 175+639).

9919. **Trial and punishment of accessories**—Every accessory to a felony may be indicted, tried, and convicted either in the county where he became an accessory, or where the principal felony was committed, and whether the principal offender has or has not been convicted, or is or is not amenable to justice, or has been pardoned or otherwise discharged after conviction; and, except where a different punishment is specially prescribed by law, such accessory shall be punished by imprisonment in the state prison or county jail for not more than five years, or by a fine of not more than five hundred dollars, or by both. (4760) [8479]

149-109, 182+962.

9920. **Certain duties of courts and juries**—Whenever a crime is distinguished into different degrees, the jury, on conviction, shall find the degree of which the accused is guilty. Whenever a crime is declared to be punishable in a specified way, the court shall pass sentence imposing the prescribed punishment; and, whenever the punishment is left undetermined between certain limits, the court shall determine the same within the prescribed limits. (4761) [8480]

On an indictment for a crime of which there are several degrees a general verdict of "guilty" is sufficient. It is necessary for the verdict to specify the degree only when the jury find a verdict for a lesser degree than the one charged (3-427, 313; 8-220, 190).

9921. **Punishment of felony when not fixed by statute**—Whoever is convicted of a felony for which no punishment is specially prescribed by any statutory provision in force at the time of conviction and sentence shall be punished by imprisonment in the state prison or a county jail for not more than seven years, or by a fine of not more than one thousand dollars, or by both. (4762) [8481]

69-508, 521, 72+799, 975; 90-526, 97+131, 213+56.

**9921-1. Minimum term of imprisonment for felony**—That the minimum penalty of imprisonment for any felony committed within this state shall be one year if the court in its discretion shall impose a state's prison or reformatory sentence therefor; provided, however, that the provisions of this act shall not apply to any offense where a greater minimum penalty of imprisonment is now or shall hereafter be prescribed by law for said offense. ('27, c. 306)

**9921-2. Felonies committed while armed with firearm—Additional punishment**—That if any person shall commit a felony, or attempt to commit a felony, while armed with a pistol, revolver, gun, or other firearm, with intent to use the same in the commission thereof, the penalty therefor, including any additional penalty which may be now or hereafter imposed by any law of this State for the commission of a crime of violence while armed with or having available any firearm, shall in the discretion of the trial judge be imprisonment for not less than five years; provided, that this Act shall not apply to reduce either the minimum or the maximum sentence now or hereafter provided by law for any offense for which the person has been convicted. ('27, c. 294)

**9922. Punishment of misdemeanors when not fixed by statute**—Whoever is convicted of a misdemeanor for which no punishment is prescribed by any statute in force at the time of conviction and sentence shall be punished by imprisonment in the county jail for not more than three months, or by a fine of not more than one hundred dollars. (4763) [8482]

39-153, 39+305; 71-28, 73+626; 89-343, 94+1077; 106-371, 119+56; 114-136, 130+79.

**9923. Punishment of gross misdemeanor when not fixed by statute**—Whoever shall be convicted of a gross misdemeanor for which no punishment is prescribed by any statute in force at the time of conviction and sentence shall be punished by imprisonment in the county jail for not more than one year, or by a fine of not more than one thousand dollars. (4764) [8483]

146-57, 177+939.

Defendant pleaded guilty to a charge of selling liquor to a minor and was sentenced to prison under section 3225, G. S. 1923. The commitment was in accord with the judgment and sentence. Held: proper. 213+56.

**9924. Crimes punishable under different provisions**—Any act or omission declared criminal and punishable in different ways by different provisions of law shall be punished under only one of such provisions, and a conviction or acquittal under any one shall bar a prosecution for the same act or omission under any other provision. (4765) [8484]

**9925. Acts punishable under foreign law**—An act or omission declared punishable by criminal law is not less so because it is also punishable under the laws of another state, government, or country, unless the contrary is expressly declared in such law. (4766) [8485]

**9926. Foreign conviction or acquittal**—Whenever, upon the trial of any person indicted for a crime, it appears that the offense was committed in another state or country, under such circumstances that the courts of this state had jurisdiction thereof, and that the defendant has already been acquitted or convicted on the merits, upon a criminal prosecution under the laws of such state or country, founded upon the act or omission in respect of which he is upon trial, such former acquittal or conviction is a sufficient defense. (4767) [8486]

**9927. Punishment for contempt**—A criminal act which at the same time constitutes contempt of court,

and has been punished as such, may also be punished as a crime, but in such case the punishment for contempt may be considered in mitigation. (4768) [8487]

**9928. Sending letter, when complete**—Whenever the statute makes the sending of a letter criminal, the offense shall be deemed complete from the time it is deposited in any postoffice or other place, or delivered to any person, with intent that it shall be forwarded; and the sender may be indicted and tried in the county wherein it was so deposited or delivered, or in which it was received by the person to whom it was addressed. (4769) [8488]

**9929. Omission—When punishable**—No person shall be punished for omission to perform an act where it has been performed by another acting in his behalf, and competent by law to perform it. (4770) [8489]

**9930. Attempts—How punished**—An act done with intent to commit a crime, and tending, but failing, to accomplish it, is an attempt to commit that crime; and every person who attempts to commit a crime, unless otherwise prescribed by statute, shall be punished as follows:

1. If the crime attempted is punishable by death or life imprisonment, the person convicted of the attempt shall be punished by imprisonment in the state prison for not more than ten years.

2. In every other case he shall be punished by imprisonment in the state prison for not more than half of the longest term, or by fine of not more than half the largest sum, prescribed upon conviction for the commission of the offense attempted, or by both such fine and imprisonment; but this shall not protect a person who, in an unsuccessful attempt to commit one crime, does commit another and different one, from the prescribed punishment for the crime actually committed. (4771) [8490]

An attempt to commit a crime is an overt act or acts done with intent to commit the particular crime, and tending, but failing, to accomplish it. (103-24, 114+88; 118-77, 136+311). Cited: (119-107, 137+295; 151-502, 187+607; 196+645). See 149-135, 182+961; 149-299, 183+669; 149-433, 183+960. The mere act of soliciting another to commit a crime, or preparation therefor, is not, in the absence of some overt act looking to its actual commission, sufficient to justify a conviction (131-65, 154+737).

An act done with intent to commit a crime, and tending but failing to accomplish it, is an attempt to commit that crime. 157-408, 196+645.

**9931. Second offenses—Punishment**—Every person who, after having been convicted in this state of a felony or an attempt to commit a felony, or, under the laws of any other state or country, of a crime which, if committed in this state, would be a felony, commits any felony or attempts to commit any felony in this state, upon conviction thereof, shall be punished as follows:

1. If the subsequent crime is such that the offender, upon a first conviction, might be punished by a definite sentence of imprisonment for life, he shall be sentenced to imprisonment in the state prison for life.

2. If the subsequent crime is such that upon a first conviction the offender might be punished by an indeterminate sentence of imprisonment, then he shall be sentenced to imprisonment under an indeterminate sentence for not less than twice the shortest term nor more than twice the longest term prescribed upon a first conviction; provided, that nothing herein shall reduce any minimum sentence now or hereafter fixed by any other law of this state. (4472) [8491] (Amended '27, c. 236, § 1)

**Explanatory note**—By the title of this act Gen. St. '23, § 9921 is repealed.

This section is not invalid as subjecting to double jeopardy (123-413, 144+142). The former conviction must be charged in the indictment (132-295, 156+127).

**9931-1. Conviction of three or more felonies—Punishment**—A person who, after having been three times convicted in this state of felonies, or attempts to commit felonies, or, under the laws of any other state or country, of crimes which, if committed in this state, would be felonies, commits any felony or attempts to commit any felony in this state, upon conviction of such fourth or subsequent offense, shall be punished as follows:

If the fourth or subsequent offense is such that the offender upon a first conviction might be punished by a definite sentence of imprisonment for life, he shall be sentenced to imprisonment for life.

If the fourth or subsequent offense is such that the offender upon a first conviction might be punished by an indeterminate sentence of imprisonment, then he shall be sentenced to imprisonment under an indeterminate sentence of which the minimum shall be not less than twice the shortest term prescribed upon a first conviction, and the maximum shall be for life; provided, that nothing herein shall reduce any minimum sentence now or hereafter fixed by any other law of this state. ('27, c. 236, § 2)

**9931-2. Punishment not dependent upon indictment and conviction as previous offender**—A person to be punishable under the preceding sections of this act or under any law of this state now or hereafter imposing any additional or other penalty need not have been indicted and convicted as a previous offender in order to receive the increased punishment therein provided, but may be proceeded against as provided in the following section. ('27, c. 236, § 3)

**9931-3. Same—Information as to previous offense by prosecuting officer and procedure thereon**—If at any time before sentence, or at any time after sentence but before such sentence is fully executed, it shall appear that a person convicted of a felony, or an attempt to commit a felony, has been previously convicted of any crime so as to render him liable to increased punishment by reason thereof under any law of this state, it shall be the duty of the county attorney of the county in which such conviction was had to file an information with the court wherein such conviction was had accusing such person of such previous convictions, whereupon the court shall cause the said person, whether confined in prison or otherwise, to be brought before it, either in term or in vacation, and shall inform him of the accusations contained in said information, by reading the same to him, and of his right to be tried as to the truth thereof according to law, and shall require such person to say whether he has been convicted as charged in said information or not. If he shall say that he has not been convicted as therein charged or refuses to answer, or remains silent, his plea, or the fact of his silence shall be entered of record, and the court shall make an order directing that the truth of the accusations made in said information be submitted to a jury at the then present term of court, if in term time and a jury be in attendance, or at the next ensuing term of court when a jury shall be in attendance. If the jury shall find and determine that the accused is guilty of previous convictions as charged in said information, or if the accused acknowledges or confesses in open court, after being duly cautioned as to his rights, that he has been so convicted, the court shall sentence him to the increased punishment or penalty of imprisonment to which he is liable as provided by law, and shall vacate any previous sentence if one has theretofore been imposed, provided, that any time served under the previous sentence shall

be deemed to have been served under the new sentence and shall be credited thereon. ('27, c. 236, § 4)

**9931-4. Report by prison officials, etc., as to previous convictions**—Whenever it shall become known to any warden or person in charge of the place of imprisonment wherein such person is confined, or to the Board of Punishments or to any probation or parole officer, police officer, or other peace officer that any person charged with or convicted of a felony, or attempt to commit a felony, has been previously convicted of any crime so as to render him liable to increased punishment by reason thereof under any law of this state, it shall be the duty of such person forthwith to report the facts to the county attorney of the county wherein the charge is pending or the conviction was had. ('27, c. 236, § 5)

**9932. Imprisonment on two or more convictions**—Whenever a person shall be convicted of two or more offenses before sentence has been pronounced for either, the imprisonment to which he is sentenced upon the second or other subsequent conviction shall commence at the termination of the first or other prior term or terms of imprisonment to which he is sentenced; and whenever a person while under sentence for felony commits another felony, and is sentenced to another term of imprisonment, such latter term shall not begin until the expiration of all prior terms. (4773) [8492]

26-498, 5+374.

**9933. Life sentence, when—Effect**—Whenever the statute declares a crime punishable by imprisonment for not less than a specified number of years, and fixes no maximum limit, the court may sentence the offender to imprisonment during his natural life, or for not less than the minimum number of years prescribed. A person sentenced to imprisonment for life is thereafter civilly dead. (4774) [8493]

144-82, 174+519.

**9934. Sentence — How limited — Jail — Workhouse**—Whenever a convict is sentenced to the state prison for more than one year, unless the exact period be fixed by law, the court shall so limit the term that it will expire between the months of March and November. Whenever a sentence may be imprisonment in a county jail, the offender may be sentenced to and imprisoned in a workhouse, if there be one in the county where he is tried or where the offense was committed. The place of imprisonment shall be specified in the sentence. But convicts may be removed from one place of confinement to another when so provided by statute. (4775) [8494]

Provision as to expiration of term directory (26-494, 5+369).

**9935. Limit of fine when not specified**—Whenever a statute makes a crime other than a misdemeanor punishable by fine, and does not specify its amount, a fine of not more than five hundred dollars may be imposed; and, where the defendant shall be sentenced to pay a fine, the court may, as part of the judgment, order the defendant to be committed to the county jail until such fine is paid, not exceeding a reasonable time, to be graduated according to the amount of the fine. (4776) [8495]

In all cases where the defendant is sentenced and adjudged to pay a fine the court may, in its discretion, as part of the judgment, order that he be committed to the common jail of the county until the fine is paid, not exceeding a reasonable time, to be graduated according to the amount of the fine (26-494, 5+369; 38-143, 36+443; 43-490, 45+1098; 84-367, 87+916). Without express statutory authority the court cannot impose a fine and commit the convict to prison until the fine is paid so as to exceed the limit of imprisonment prescribed by statute

for the offence (26-494, 5+369). A convict cannot be committed to state prison merely to enforce the payment of a fine and not by way of punishment for a crime; for such purpose imprisonment in the county jail is alone warranted (43-490, 45+1098). Enforcement of fines for contempt by confinement in jail (117-173, 134+509).

**9936. Suspension of sentence**—That the several courts of record of this state having jurisdiction to try criminal causes shall have power, upon the imposition of sentence against any person who has been convicted of the violation of a municipal ordinance or by-law, or of any crime for which the maximum penalty provided by law does not exceed imprisonment in the state prison for ten years, to stay the execution of such sentence whenever the court shall be of the opinion that by reason of the character of such person, or the facts and circumstance of his case, the welfare of society does not require that he shall suffer the penalty imposed by law for such offense so long as he shall thereafter be of good behavior, and at any time after the imposition of sentence in all cases where the sentence imposed is to a county jail, work farm or work house, any such court of this State shall have like power upon application of a prisoner and after notice to the county attorney. ('09 c. 391 § 1, amended '21 c. 298 § 1) [8496]

125-529, 147+273; 197+848.  
158-447, 197+847, note under § 9938.

**9937. Period of suspension—Probation**—Such stay shall originally be for a definite time; and during such time the person so sentenced may be placed upon probation under the supervision of a probation officer in counties where such officer is provided by law, and in other counties under the supervision of some discreet person who will accept such supervision and serve without pay, making report to the court as required. Provided, however, that nothing herein contained shall prevent the court from placing such persons under the supervision of a constable, sheriff or police officer specially detailed for that purpose. The court may make such terms and conditions of probation as are deemed suitable and may require a recognizance or other surety conditioned upon the performance of such terms and conditions and may enforce the same. On the expiration of the original period of probation the court may from time to time renew or extend the same for additional definite periods upon such conditions as are deemed proper, provided, the total period of such suspension of sentence shall not exceed one year except in case of conviction of a crime the maximum penalty for which is imprisonment for a term exceeding one year, and in such case such total period of suspension of sentence shall not exceed the term of such maximum penalty. The court may in its discretion suspend sentence indefinitely. The court may make such order in or out of term, and at any place within the judicial district in which the case was tried. ('09 c. 391 § 2) [8497]

**9938. Revocation**—Before sentence has been indefinitely suspended the court shall have power, in the exercise of its discretion, to revoke the order staying sentence and releasing such person on probation, without notice and at any time or place mentioned in section two [9937] of this act, stating in such order of revocation the reasons therefor; in which case the sentence theretofore imposed shall be executed in all respects as though no proceedings under this act has been taken. ('09 c. 391 § 3) [8498]

Revocation of order suspending sentence without notice. 158-447, 197+847.

**9939. Convicts protected—Forfeitures abolished**—Every convict sentenced to imprisonment shall be un-

der the protection of the law, and any unauthorized injury to his person is punishable in the same manner as if he were not convicted or sentenced. A conviction for any crime does not work a forfeiture of any property, real or personal, or of any right or interest therein. All forfeitures in the nature of deodands, or in a case of suicide, or where a person flees from justice, are abolished. (4777) [8499]

**9940. Restoration to civil rights**—All persons residing or having their domicile in the State of Minnesota who have been or may hereafter be convicted of a felony and sentenced by a court of this state to the state reformatory or state prison for such offense, may be restored by the governor, in his discretion, to civil rights, upon certification to him by the judge, officer or board having jurisdiction, custody or supervision of such person at the time such jurisdiction, custody or supervision is terminated of the matters specified in section 2 of this act. ('19 c. 290 § 1)

**9941. Certification by proper officers**—Every such judge, officer or board shall upon the termination of such jurisdiction, custody or supervision certify to the governor as follows: The court wherein the conviction was had; the offense of which such person was convicted; the indefinite suspension of the sentence, or the release, discharge, or other final disposition of said person at the termination of the sentence, and the nature and character of his conduct while under such jurisdiction, custody or supervision.

It shall also be the duty of any such judge, officer or board to certify such matters with reference to any such person whose sentence has heretofore been terminated and who has not heretofore been restored to civil rights, when such person shall make application therefor in writing, and the governor may, in like manner, in his discretion, restore such person to civil rights. ('19 c. 290 § 2)

**9942. Certificate by governor**—The governor, in case he determines to restore to civil rights, shall issue a certificate of restoration to civil rights in duplicate, one copy to be transmitted to the said person and one copy mailed to the clerk of court wherein conviction was had for filing and proper entry in the register. ('19 c. 290 § 3)

**9943. Application**—The provisions of this act shall not apply to any case where deprivation of any of the rights or privileges of citizenship is specifically made a part of the penalty for offense of which such person shall have been convicted. ('19 c. 290 § 4)

**9944. Restoration to civil rights—Persons heretofore convicted**—All persons residing or having their domicile in the state of Minnesota, who have heretofore been convicted of a felony and sentenced by a court of this state to pay a fine or to be confined in a county jail, for such offense, and who have paid and satisfied such fine or served such sentence shall be restored to all their civil rights and to full citizenship, with full right to vote and hold office, the same as if such conviction and sentence had not taken place, in the manner hereinafter provided. Before such restoration to civil rights shall take effect, such person or persons shall apply to the district court where such person or persons may reside, and produce before the court two witnesses to testify to his or her general good character; and if said court shall be satisfied of such good character, an order shall be issued restoring such party to all civil rights, which order shall be filed with the clerk of said court; thereupon said restoration to civil rights shall take effect and be in full force. ('07 c. 34 § 1, amended '13 c. 187 § 1) [8500]

**9945. Persons hereafter convicted**—All persons who shall hereafter be convicted of a felony in any court of this state and sentenced to jail or to pay a fine therefor and who shall serve such sentence or pay such fine, upon complying with the provisions of section 1 [9944] of this act, shall have all their civil rights restored as therein provided. ('07 c. 34 § 2, amended '13 c. 187 § 2) [8501]

**9946. Incriminating testimony not to be used**—In every case in the Revised Laws where it is provided that a witness shall not be excused from giving testimony tending to criminate himself, no person shall be excused from testifying or producing any papers or documents on the ground that his testimony may tend to criminate him or subject him to a penalty or forfeiture; but he shall not be prosecuted or subjected to a penalty or forfeiture for or on account of any action, matter, or thing concerning which he shall so testify, except for perjury committed in such testimony. (4778) [8502]

An objection of incompetent, irrelevant, and immaterial to introduction of sworn statement of defendant to state fire marshal under provisions of G. S. 1923, §§ 5957, 5958, does not prevent question whether or not statement was an involuntary one which defendant was required to give against himself. 210+403.

**9947. Commitment of child to state training school upon conviction of crime**—Whenever a juvenile court acquires jurisdiction of a child twelve years of age or over, who is charged with delinquency, and transfers such child to a justice, municipal, or district court to be tried for a crime, the trial court, upon conviction, may commit such child to the state training school for boys or the Minnesota home school for girls. ('17 c. 266 § 1 [8503])

Under the present statutes a boy over twelve and under sixteen years of age, convicted of the crime of murder in the third degree, may be sentenced to the state prison. 156-181, 194+942.

**9948. Convict as witness**—Every person convicted of crime shall be a competent witness in any civil or criminal proceeding, but his conviction may be proved for the purpose of affecting the weight of his testimony, either by the record or by his cross-examination, upon which he shall answer any proper question relevant to that inquiry; and the party cross-examining shall not be concluded by his answer thereto. (4780) [8504]

A witness may be asked if he has not been convicted of a crime, either a felony or a misdemeanor, and if he denies it he may be contradicted (39-357, 40+263; 42-258, 44+115; 43-196, 45+152; 77-417, 80+358; 85-19, 88+22). 128-474, 151+180. He cannot be asked if he has been indicted (91-419, 98+334), or arrested (85-19, 88+22; 97-8, 105+974), or as to the punishment (77-417, 80+358). Cited and applied (105-217, 117+483; 130-314, 153+611; 135-159, 160+677).

A defendant taking the witness stand may be asked on cross-examination, if he has been previously convicted of crime. 159-455, 199+99.

A violation of a city ordinance is not a crime, and hence cannot be proved on trial to impeach a witness. 212+418.

**9949. Intent to defraud**—Whenever, by any of the provisions of Part IV, an intent to defraud is required in order to constitute an offense, it is sufficient if an intent appears to defraud any person, association, or body politic or corporate whatsoever. (4781) [8505]  
27-309, 7+264; 43-196, 45+152; 67-176, 69+815.

**9950. Crimes on railway trains, boats, etc.**—The route traversed by any railway car, coach, train, or other public conveyance, and the water traversed by any boat, shall be criminal districts; and jurisdiction of all public offenses which shall be committed on any

such railway car, coach, train, boat, or other public conveyance, or at any station or depot upon such route, shall be in any county through which said car, coach, train, boat, or other public conveyance may pass during the trip or voyage, or in which the trip or voyage may begin or terminate. (4782) [8506]  
Crime on boat (4-325, 241).

**9950-1. Alien convicts or insane persons**—Notice to United States immigration officers—Whenever any person, convicted of a felony or adjudged insane, shall be committed to the State Prison, the State Reformatory, the county jail, or any other state or county institution which is supported wholly or in part by public funds, it shall be the duty of the warden, superintendent, sheriff, or other officer in charge of such state or county institution to at once inquire into the nationality of such person, and if it shall appear that such person is an alien, to immediately notify the United States immigration officer in charge of the district in which such prison, reformatory, jail, or other institution is located, of the date of and the reasons for such alien commitment, the length of time for which committed, the country of which he is a citizen, and the date on which and the port at which he last entered the United States. ('27, c. 301, § 1)

**9950-2. Same**—Certified copies of indictment, etc., for immigration officers—Upon the official request of the United States immigration officer in charge of the territory or district in which is located any court committing an alien, for the conviction of a felony, to any state or county institution which is supported wholly or in part by public funds, it shall be the duty of the clerk of such court to furnish without charge a certified copy of the complaint, information or indictment and the judgment and sentence and any other record pertaining to the case of the convicted alien. ('27, c. 301, § 2)

**9950-3. Transfer of inmates of penal institutions to Federal district court for trial for violations of Federal criminal laws**—That, whenever the Attorney General of the United States or any of his assistants, or the United States Attorney for the District of Minnesota, or any of his assistants, shall present and file with the Governor of Minnesota, a written verified petition stating that at the date of said petition there was imprisoned in one of the penal institutions of Minnesota, naming the institution, a certain person, naming the person, then serving a sentence of imprisonment imposed by one of the Courts of record of Minnesota, which said person was at the time of said petition under indictment in the United States District Court for the District of Minnesota for a violation of a Federal Criminal Law, which said petition shall have attached to it a certified copy of said indictment, and petitioning the State of Minnesota to consent to the transfer of such person from such Minnesota penal institution to the United States District Court for the District of Minnesota having jurisdiction thereof, for trial under said indictment, and agreeing to pay all expenses incurred by the state by reason thereof, said Governor shall forthwith hear and consider said petition and when satisfied as to the identity of the person sought to be transferred, said Governor may consent to said transfer of said prisoner by and on behalf of the State of Minnesota, and may issue his order (a) directing the Warden, Superintendent, or Keeper of the penal institution in which said person shall be imprisoned to transfer said person from said penal institution to said United States District Court for the District of Minnesota, upon receipt and service of a proper process

issued out of said United States Court naming the time and place where said prisoner shall be wanted for trial, and (b) directing said Warden, Superintendent, or Keeper of such penal institution, to retain custody of said prisoner during such trial and at the conclusion of said trial after judgment shall have been pronounced by said United States District Court, to return said prisoner to the Minnesota penal institution from which he was taken, to be there kept until released pursuant to the laws of the State of Minnesota, and prior to the time for the release of any such prisoner who shall be under sentence in the United States District Court, the Warden, Superintendent, or Keeper of the penal institution in which such prisoner is in custody shall notify the United States Marshal in and for the District of Minnesota and shall at the time of such release surrender such prisoner to him to be dealt with in ac-

cordance with the laws of the United States. ('27, c. 141)

**9950-4. Transfer of female prisoners—Female to accompany—**Every sheriff and every other person having the legal custody of any female person charged with crime or the detention of any female person are hereby required when such female person is being conducted to or from one place to another over 25 miles apart to have a suitable female person accompany such female person and every sheriff in every county of this state is hereby authorized to employ when the occasion exists a suitable female person to carry out the provisions of this act. The expenses of such employment shall be paid out of any county funds not otherwise appropriated. ('27, c. 213, § 1)

**Explanatory note—**Section 2 of Laws 1927, c. 213 repeals all inconsistent acts or parts of acts.

CHAPTER 93-A

PREVENTION AND CONTROL OF CRIME—BUREAU OF CRIMINAL APPREHENSION.

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**9950-5. Bureau created—**A bureau of the state government under the attorney general is hereby created and is designated as the Bureau of Criminal Apprehension. ('27, c. 224, § 1)

**9950-6. Superintendent—Appointment, term of office, removal, vacancy in office and salary—Rules and regulations made by—Bureau to assist sheriffs—**Said bureau shall be under the supervision and control of a superintendent, who shall be appointed by the governor by and with the consent of the Senate. The term of office of the superintendent first appointed shall continue until February 1, 1929, and thereafter the term shall be two years. The incumbent shall serve until a successor is appointed and qualified. The governor may remove the superintendent at any time at his pleasure. Any vacancy shall be filled for the unexpired portion of the term. The superintendent shall receive a salary of five thousand dollars per year, payable semi-monthly, and shall devote his entire time to the duties of his office. The superintendent from time to time shall make such rules and regulations and adopt such measures as he deems necessary, within the provisions and limitations of this act, to secure the efficient operation of the bureau. The bureau shall,

when requested by the sheriff of any county, furnish him assistance in the co-ordination of his work with other peace officers throughout the state and in promoting greater efficiency in detecting and apprehending criminals and enforcing the criminal laws of the state. ('27, c. 224, § 2)

**9950-7. Employees of bureau—Identification expert—Expenses of superintendent and employees—**The superintendent is hereby authorized to appoint and remove at his pleasure and to prescribe the duties of such skilled and unskilled employes, including an identification expert who shall be the assistant superintendent, as may be necessary to carry out the work of said bureau, but not exceeding twelve in number. The superintendent and all officers and employes of said bureau shall, in addition to their compensation, receive their actual and necessary expenses incurred in the discharge of their duties, provided that the total expense of said bureau during any year shall not exceed the appropriation therefor. ('27, c. 224, § 3)

**9950-8. Bonds of superintendent and employees—**The superintendent and each employe in the bureau whom he shall designate shall, before entering upon the performance of his duties under this act, give bond to the state, in such amount as the governor shall direct and approve, conditioned for the faithful performance of his duties. If a surety bond is given, the premium thereon shall be paid as an expense of the bureau, upon the approval of the amount of the premium by the commission of administration and finance. The state, the several governmental subdivisions thereof, or any person damaged by any wrongful act or omission of either the superintendent or any of such employes in the performance of his duties under this act may maintain an action on such bond for the recovery of damages so sustained. ('27, c. 224, § 4)

**9950-9. System for identification of criminals—Records and indexes—**The bureau shall install systems of identification of criminals, including the fingerprint system, the modus operandi system, the Bertillon method, and such others as the superintendent deems proper. Said bureau shall keep a complete record and index of all information received in convenient form for

consultation and comparison. Said bureau shall obtain from wherever procurable and file for record finger and thumb prints, measurements, photographs, plates, outline pictures, descriptions, modus operandi statements, or such other information as the superintendent considers necessary, of persons who have been or shall hereafter be convicted of a felony or an attempt to commit a felony within the state, or who are known to be habitual criminals. To the extent that the superintendent may determine it to be necessary, said bureau shall obtain like information concerning persons convicted of a crime under the laws of another state or government. ('27, c. 224, § 5)

**9950-10. Taking of finger prints, Bertillon measurements, photographs, etc.—Powers of sheriffs and police officers—**All sheriffs and deputies in their respective counties with the consent of the judge of the District court or a court commissioner of or for the county in which the arrest is made and all police officers in cities of the first class under the direction of the chief of police in such cities, shall have the power to take or cause to be taken finger and thumb prints, bertillon measurements, photographs and other identification data; (a) of all persons arrested for felony, (b) of all arrested persons believed by the arresting officer to be fugitives from justice (c) of all persons in whose possession, when arrested, are found concealed firearms or other dangerous weapons, burglar tools or outfits, high power explosives, or articles, machines or appliances usable for an unlawful purpose and believed by the arresting officer to be intended for such purposes. ('27, c. 224, § 6)

**9950-11. Same—Prints, etc., furnished to bureau by sheriffs and chiefs of police—**The sheriff of each county and the chief of police of each city of the first class, shall furnish the bureau, upon such form as the superintendent shall prescribe, with such finger and thumb prints, bertillon measurements, photographs and other identification data, which may be taken under the provisions of Section 6 of this act, of persons who shall be convicted of a felony or who shall be found to have been convicted of a felony within ten years next preceding their arrest. Upon the determination of all pending criminal actions or proceedings in favor of the arrested person, he shall, upon demand, have all such finger and thumb prints, bertillon measurements, photographs, and other identification data, and all copies and duplicates thereof, returned to him, provided it is not established that he has been convicted of any felony either within or without the state within the period of ten years immediately preceding such determination. ('27, c. 224, § 7)

**9950-12. Records of felonies committed to be kept by peace officers—Reports to bureau—**Every peace officer shall keep or cause to be kept a permanent written record in such form as the superintendent may prescribe of all felonies reported to or discovered by him within his jurisdiction and of all warrants of arrest for felonies and search warrants issued to him in relation to the commission of felonies and shall make or cause to be made to the bureau, reports of all such crimes upon such forms as the superintendent may prescribe, including a statement of the facts and a description of the offender, so far as known, the offender's method of operation, the action taken by the officer, and such other information as the superintendent may require. ('27, c. 224, § 8)

**9950-13. Information as to criminals to be furnished by bureau to peace officers, etc.—**Upon receipt of information data as to any arrested person, the bureau

shall immediately ascertain whether the person arrested has a criminal record or is a fugitive from justice and shall at once inform the arresting officer of the facts ascertained. Upon application by any sheriff, chief of police, or other peace officer in the state, or by an officer of the United States or by an officer of another state, territory, or government duly authorized to receive the same and effecting reciprocal interchange of similar information with said division, it shall be the duty of the bureau to furnish all information in its possession pertaining to the identification of any person. ('27 c. 224, § 9)

**9950-14. Officers of penal institutions to furnish bureau with data relating to released prisoners—**It shall be the duty of the officials having charge of the penal institutions of the state or the release of prisoners therefrom to furnish to the bureau, as the superintendent may require, finger and thumb prints, Bertillon measurements, photographs, identification data, modus operandi reports, and criminal records of prisoners heretofore, now or hereafter confined in such penal institutions together with the period of their service and the time, terms and conditions of their discharge. ('27, c. 224, § 10)

**9950-15. Bureau to co-operate with other criminal identification organizations—**The bureau shall co-operate and exchange information with other organizations for criminal identification either within or without the state for the purpose of developing, improving, and carrying on an efficient system for the identification and apprehension of criminals. ('27, c. 224, § 11)

**9950-16. Bureau to broadcast information to peace officers—**The bureau shall broadcast by mail, wire and wireless to peace officers such information as to wrongdoers wanted, property stolen or recovered, and other intelligence as may help in controlling crime. ('27, c. 224, § 12)

**9950-17. Police schools for training of peace officers—**The superintendent may from time to time provide police schools at convenient centers in the state for training peace officers in their powers and duties and in the use of approved equipment and methods for detection, identification, and apprehension of criminals. For this purpose said superintendent may use the services of all employes of the bureau. ('27, c. 224, § 13)

**9950-18. Reports to bureau by clerks of courts—**The superintendent shall have power to require the clerk of court of any county to file with the department, at such time as the superintendent may designate, an annual report, upon such form as the superintendent may prescribe, furnishing such information as he may require with regard to the prosecution and disposition of criminal cases. A copy of the report shall be kept on file in the office of the clerk of court. ('27, c. 224, § 14)

**9950-19. Reports by superintendent to governor—**The superintendent shall submit annually to the governor a detailed report of his official actions and the work of his bureau, of information about crime and the handling of crimes and criminals by state and local officials collected by him or his bureau, and his interpretation of the information, with his comments and recommendations. In such reports he shall from time to time include his recommendations to the legislature for dealing with crime and criminals and information as to conditions and methods in other states in reference thereto. ('27, c. 224, § 15)

**9950-20. Employees of bureau included in workmen's compensation laws—**Every employe of the bureau except the superintendent shall be deemed an employe

of the state within the meaning of the workmen's compensation laws of this state and entitled to the benefit of all the provisions of said laws applicable to state employes. ('27, c. 224, § 16)

9950-21. Construction of law—It is hereby declared

that this act is necessary for the public safety, peace and welfare, is remedial in nature, shall be construed liberally, and that in case any part thereof shall be declared unconstitutional it shall not in any way affect any other part hereof. ('27, c. 224, § 17)

CHAPTER 94

RIGHTS OF ACCUSED

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9951. To know ground of arrest—Every person arrested by virtue of process, or taken into custody by an officer, has a right to know from such officer the true ground of his arrest; and every such officer who shall refuse to answer relative thereto, or shall answer untruly, or neglect on request to exhibit to him, or to any person acting in his behalf, the precept by virtue of which such arrest is made, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding one year. (4783) [8507]

9952. Presumption of innocence—Conviction of lowest degree, when—Every defendant in a criminal action is presumed innocent until the contrary is proved, and in case of a reasonable doubt is entitled to acquittal; and when an offense has been proved against him, and there exists a reasonable doubt as to which of two or more degrees he is guilty, he shall be convicted only of the lowest. (4784) [8508]

1. Burden of proof on state—The state has the burden of proving beyond a reasonable doubt every essential element of the offence charged (10-407, 325; 22-514; 90-7, 95+578). The doubt entitling to acquittal must result from a consideration of all the evidence; each evidentiary fact need not be proved beyond a reasonable doubt (29-193, 12+524; 37-493, 35+493; 90-183, 96+330). See 121-405, 141+483.

2. Definition of reasonable doubt—It is not desirable for the court to attempt an explanation of the term "reasonable doubt" unless requested by the jury. It is impossible to make the meaning of the expression more clear by any circumlocution (14-105, 75; 38-438, 38+355). The following definition, if any, should be given: "Proof beyond a reasonable doubt is such as would impress the judgment of ordinarily prudent men with a conviction upon which they would act without hesitation in their own most important affairs and concerns of life" (56-226, 239, 55+652, 57+1065). The court is not required to explain to the jury the reason for the rule (37-493, 35+373). Instructions defining reasonable doubt considered (10-407, 325; 12-293, 191; 14-105, 75; 18-208, 191; 37-493, 35+373; 38-438, 38+355; 72-296, 75+235; 90-183, 96+330; 93-393, 101+499).

A definition of "reasonable doubt," which states it to be "a doubt for which a reasonable, sensible person could give a good reason, which reason must be based

upon the evidence or want of evidence; such doubt as a sensible person would act upon or decline to act upon in his own affairs," is held prejudicial. 210+12.

3. Doubt as to degree of crime—If the jury have a reasonable doubt whether the accused is guilty of a higher or lower degree of crime they must find him guilty of the latter (4-368, 277).

4. To what applicable—The rule requiring proof beyond a reasonable doubt is applicable to all grades of crime (10-407, 325), and to proceedings for criminal contempt (65-146, 67+796). It is not applicable to bastardy proceedings (29-357, 13+153), or to civil actions, although the issues involve a charge of crime (22-206; 29-107, 12+154; 29-357, 13+153).

5. Requests—Defendant not having asked for an instruction upon the presumption of innocence cannot now complain that none was given, (130-34, 153+271). See 123-128, 143+119; 130-84, 153+271; 130-347, 153+845, 135-479, 160+486.

9953. Conviction—When had—No person indicted for any offense shall be convicted thereof, unless by admitting the truth of the charge in his demurrer or plea, by confession in open court, or by verdict of a jury, accepted and recorded by the court. (4785) [8509]

9954. Dismissal, when—Whenever any person has been held to answer for a public offense, if an indictment is not found against him at the next term of the court to which he is held, said court shall order the prosecution to be dismissed, unless good cause to the contrary be shown. If indicted, and trial is not postponed upon his own application, unless tried at the next term of the court in which it is triable, the indictment shall be dismissed, unless good cause to the contrary be shown. (4786) [8510]

Dismissal on failure to prosecute seasonably (66-294, 69+25). Cited as to when a prosecution is pending (18-398, 359). Cited (109-437, 124+13). Cited (127-505, 150+171; 147-272, 180+99; 189+408; 191+607)

9955. Continuance—Effect—Bail—Whenever the defendant is not indicted or tried as herein provided, and good reasons therefor are shown, the court may order the action continued from term to term, and in the meantime commit the defendant, or, in case the offense is bailable, admit him to bail, on his furnishing satisfactory sureties. Whenever the action is dismissed, the defendant shall be discharged from custody, or, if admitted to bail, his bail shall be exonerated, and, if money has been deposited for bail, that shall be refunded. (4787) [8511]

Cited (109-437, 124+13). Cited (147-272, 180+99).

9956. Defendant entitled to blank subpoenas—The clerk of the court in which any indictment is to be tried shall at all times, upon application of defendant, and without charge, issue as many blank subpoenas, under the seal of the court, and subscribed by him as clerk, for witnesses in the state, as are required by such defendant. (4788) [8512]

9957. Counsel for defense; public defender in certain counties—Whenever a defendant shall be arraigned upon indictment or information for any felony or gross misdemeanor and shall request the court to

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1927

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for purposes of impeachment. *Jache's Estate*, 199M177, 271NW452. See Dun. Dig. 10348.

While a party may not impeach a witness called by him or his own testimony, he may contradict such testimony, especially narration of events, by other witnesses; but it was not error of which defendant may complain to exclude offer of evidence to contradict testimony of defendant given understandingly of a fact peculiarly within his own knowledge and apparently honestly and in good faith. *Vondrashek v. D.*, 200M530, 274NW609. See Dun. Dig. 10351, 10356.

Facts tending to show that a witness is interested in result of litigation or is biased in favor of, or against, one of parties, or has a motive for favoring one party against the other, may be shown, as bearing on weight to be given testimony. *Timm v. S.*, 203M1, 279NW754. See Dun. Dig. 3232.

It is competent to show that a witness was under influence of liquor at time of occurrences which he assumes to relate, in order to show impairment of his powers of observation and recollection. *Olstad v. F.*, 204M118, 282NW694. See Dun. Dig. 10343a.

It was error to exclude evidence of previous statements contradictory to those made by a witness upon trial. *Id.* See Dun. Dig. 10351.

A party is not bound by evidence of a witness to extent that he may not show a different state of facts by other witnesses. *Keough v. S.*, 285NW809. See Dun. Dig. 10356.

Whether claim of surprise, made in support of a litigant's request for leave to impeach his own witness, is well founded in fact, is a preliminary question for the trial judge, and his ruling thereon will not be disturbed unless abuse of discretion appears. *State v. Saporen*, 285NW898. See Dun. Dig. 10356.

There is no occasion for impeachment of a witness by party who calls him unless to caller's surprise he testifies adversely on some material point; and then impeachment must be confined to subject matter of surprising adverse statement. *Id.* See Dun. Dig. 10356.

Only function of impeaching testimony (consisting of previous contradictory statement of a witness) is negative, extrajudicial statement so used not being affirmative evidence of facts. *Id.* See Dun. Dig. 10351.

#### 18. Striking out evidence.

Where plaintiff testified on direct examination that insured would have been plowing all afternoon in order to finish; and on cross-examination, she testified that her husband had told her that he was going to finish plowing that afternoon, denial of defendant's motion to strike answer given on direct examination as hearsay was not error. *Pankonin v. F.*, 187M479, 246NW14. See Dun. Dig. 3290.

It was error to deny a motion to strike opinion evidence which cross-examination had shown to be based, insubstantial degree, upon an element improper to be considered in determining damage arising from establishment of a highway. *State v. Horman*, 188M252, 247NW4. See Dun. Dig. 3745.

Court did not err in denying defendant's motion to strike out all evidence as to injury to plaintiff's kidney as a result of accident in question. *Orth v. W.*, 190M193, 251NW127. See Dun. Dig. 2528.

#### 19. Discovery.

In automobile collision case, court properly excluded notice served by plaintiffs upon defendant requiring him to state what information he had obtained at scene of accident. *Dickinson v. L.*, 188M130, 246NW669. See Dun. Dig. 2735.

Where request of an autopsy in action on life policy was delayed until a few days before day set for trial, refusal to grant same cannot be held an abuse of discretion. *Müller v. M.*, 198M497, 270NW559. See Dun. Dig. 4872(88).

#### 20. Telephone conversations.

Use of transcripts of pamograph recorded conversations by court and counsel for their convenience while records reproduced conversations in court, transcriptions being identified as correct, but not introduced in evidence, was not prejudicial to defendant. *State v. Raasch*, 201M158, 275NW620. See Dun. Dig. 3245.

## Part IV. Crimes, Criminal Procedure, Imprisonment and Prisons

### CHAPTER 93

#### General Provisions

#### 9906. Crimes defined and classified.

##### 1. Definition of "crime," "offense," "misdemeanor."

Where defendant was permitted but not induced to complete the offense charged, the defense of entrapment is not available. *State v. McKenzie*, 182M513, 235NW274. See Dun. Dig. 2448b.

A penal statute creating a new offense must plainly inform those upon whom it operates where line of duty is drawn and what law will do if it is overpassed. *State v. Northwest Poultry & Egg Co.*, 203M438, 281NW753. See Dun. Dig. 2417a.

An uncontrollable and insane impulse to commit crime, in mind of one who is conscious of nature and quality of act, is not allowed to relieve a person of criminal liability. *State v. Probate Court*, 287NW297. See Dun. Dig. 2406.

##### 4. Acts constituting different offenses.

Multiple consequences of a single criminal act. 21 MinnLawRev805.

#### 9907. Meaning of words and terms.

Op. Atty. Gen., Jan. 11, 1930.

#### 9908. Rules of construction.

The provisions of the game law are to be construed according to the fair import of their terms, viewed in the light of the purpose of the law. 177M483, 225NW 430.

Where the Legislature declares an offense in terms so indefinite that they may embrace, not only acts commonly recognized as reprehensible, but also others which it is unreasonable to believe were intended to be made unlawful, the statute is void for uncertainty. *State v. Parker*, 183M588, 237NW409. See Dun. Dig. 8989.

Courts will favor conclusion that terms of a statute are reasonably certain if they are widely used in same sense in legislative enactment, and also language which has been a part of a statute for a long term of years. *State v. Northwest Poultry & Egg Co.*, 203M438, 281NW 753. See Dun. Dig. 2417.

Courts are obliged to sustain legislative enactments as reasonably certain when possible and will resort to all acceptable rules of construction to discover a competent and efficient expression of legislative will, but are not free to substitute amendment for construction and thereby supply omissions of legislature. *Id.* See Dun. Dig. 2417.

#### 9909. Persons punishable.

Indians are not subject to state prosecution for crimes on Bois Fort Indian Reservation, but non-Indians are. Op. Atty. Gen. (494b-19), May 31, 1935.

#### 9912. Duress—How constituted.

176M175, 222NW906.

#### 9914. Intoxication or criminal propensity no defense.

##### 1. Intoxication.

Defendant in homicide case held not so intoxicated as to make that a defense. *State v. Norton*, 194M410, 260NW502. See Dun. Dig. 2447.

#### 9915. Criminal responsibility of insane persons.

Acts of cruel and inhuman treatment which result from a diseased mind are no cause for divorce. 171M 253, 213NW906.

Statute directing district court not to try a person for crime while he is in state of insanity, imposes a duty on, but does not go to jurisdiction of, the court, and failure to comply with the statute is no ground for collateral attack, as by habeas corpus, on judgment of conviction. *State v. Utecht*, 203M448, 281NW775. See Dun. Dig. 2476a.

Fact that one is subject to epileptic fits does not exempt him from being tried for crime. Op. Atty. Gen., Jan. 16, 1933.

#### 9916. Conviction of lesser crime, when.

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 and assault in third degree. *State v. Nelson*, 199M86, 271NW114. See Dun. Dig. 544.

#### 9917. Principal defined.

Owner of business maintaining sign over sidewalk was liable for punishment for maintaining sign in violation of ordinance, although the sign was installed by a sign hanger and though ordinance provided that no one unless a licensed sign hanger should install any sign and should obtain a permit before installing one. 176M151, 222NW639.

Evidence sustains a conviction of manslaughter in the second degree. *State v. Stevens*, 184M286, 238NW673. See Dun. Dig. 4241.

Evidence held sufficient to sustain conviction of arson in third degree. *State v. Lynch*, 192M534, 257NW278. See Dun. Dig. 520a.

All persons concerned in the commission of a crime may be indicted and punished as principals. *State v. Barnett*, 193M336, 258NW608. See Dun. Dig. 2415.

Evidence held to warrant conviction of first degree assault though defendant was not present at time of assault, being a member of a racketeering gang. *Id.* See Dun. Dig. 534.

All persons concerned in arson may be indicted and punished as principals. *State v. Tsiolis*, 202M117, 277NW109. See Dun. Dig. 2416.

Where defendant procured Arthur, 19 years old, to bring his friend Allen, 16 years old, to defendant's apartment, where he, in presence of Arthur, committed sodomy with Allen, and then with Arthur in presence of Allen, and was indicted for act with Allen, both boys being witnesses called by state, court charged correctly that Allen was an accomplice, but erred in charging that Arthur was not an accomplice as a matter of law. *State v. Panetti*, 203M150, 280NW181. See Dun. Dig. 2415.

A person may be convicted for riot even though not actively engaged therein when he was present and ready to give support if necessary. *State v. Winkels*, 204M466, 283NW763. See Dun. Dig. 2415.

Where one of a number engaged in high-jacking liquor shot prosecuting witness, and it is unknown which one fired shot, anyone of them may be prosecuted under an information for aiding and abetting John Doe, but any of them may also be informed against as principals. *Op. Atty. Gen.*, Feb. 15, 1933.

Venue in abortion cases involving accomplices. *Op. Atty. Gen.* (133b-3), Oct. 15, 1935.

#### 9918. Accessory defined.

Whether defendant charged with misprision of felony made disclosure "as soon as may be" within federal misprision statute, held question for jury. *Neal v. U. S.*, (CCA8), 102F(2d)643.

In prosecution for being accessory after the fact and for misprision of felony evidence held to support conclusion of jury that principal was guilty of felony charged against him and that defendant had knowledge of the fact. *Id.*

To warrant conviction of being accessory after the fact to theft, burden was upon government to show the theft by the principal as charged, defendant's knowledge thereof, and his aid and assistance to principal to escape punishment by suppressing important evidence through concealment of fruits and proceeds of offense. *Id.*

To convict of misprision of felony proof must show that principal committed and completed felony prior to date of misprision and that defendant with full knowledge of fact failed to disclose it and affirmatively concealed the crime by positive acts, and proof of either failure to disclose or affirmative concealment without proof of the other is insufficient. *Id.*

Defendant did not waive statute of limitations by pleading guilty after his demurrer to information had been overruled. *State v. Tupa*, 194M488, 260NW875. See Dun. Dig. 4418.

#### 9920. Certain duties of courts and juries.

No conviction for perjury for untrue answers to questions after plea of guilty. 171M246, 213NW900.

#### 9922. Punishment of misdemeanors when not fixed by statute.

Prosecutions under §3200-51 are to be in District Court, and maximum penalty is 90 days in jail and \$100 fine and costs of prosecution. *Op. Atty. Gen.* (494b-23), Apr. 16, 1937.

If neither owner nor operator of a vehicle is a party to a strike, it is unlawful to interfere in any manner with operation of vehicle or operator thereof whether it be upon any of the public streets or highways or upon premises of any business establishment or elsewhere, and such violation is a misdemeanor within meaning of §10047 with punishment prescribed by §9922. *Op. Atty. Gen.* (270d-7), August 11, 1939.

#### 9923. Punishment of gross misdemeanor when not fixed by statute.

Hardware Dealers' M. F. I. Co. v. Glidden Co., 284US 151, 52SCR69, aff'g 181M518, 233NW310; §3512, note 10.

Place of imprisonment for offense of checking at bank without funds should be county jail and not reformatory. *Op. Atty. Gen.* (605b-10), July 12, 1935.

Prisoners may be sentenced for gross misdemeanors to term less than a year in state reformatory for women. *Op. Atty. Gen.* (341k-8), Mar. 20, 1936.

#### 9924. Crimes punishable under different provisions.

Multiple consequences of a single criminal act. 21 MinnLawRev805.

#### 9930. Attempts—How punished.

Evidence held to warrant a conviction of attempt to commit rape. 171M515, 213NW923.

Evidence held to support conviction of attempt to commit arson. 173M368, 217NW378.

#### 9931. Second offenses—Punishment.

The procedure prescribed in this section and in §§9931-1 to 9931-4 does not place the defendant twice in jeopardy. 175M508, 221NW900.

Laws 1927, c. 236 (§§9931 to 9931-4), is constitutional. 175M508, 221NW900.

Identity of names is sufficient prima facie evidence of identities. 175M516, 221NW903.

This section as it stood prior to 1927 amendment does not prevent fixing of maximum term of imprisonment under §10765. 179M532, 229NW787.

The prior convictions in order to be available for increased punishment must precede the commission of the offense for which sentence is being imposed. *State v. McKenzie*, 182M513, 235NW274. See Dun. Dig. 2503c.

Proof of identity, see *Op. Atty. Gen.*, Apr. 28, 1929.

Minimum punishment is two years, in view of Mason's Stat. 1927, §9921-1. *Op. Atty. Gen.*, July 19, 1929.

Judge has power to fix a maximum sentence of less than life for robbery of a bank. *Op. Atty. Gen.*, Nov. 25, 1933.

#### 9931-1. Conviction of three or more felonies—Punishment.

*Op. Atty. Gen.*, Nov. 19, 1931; note under §9936.

This law applies where conviction of prior felony took place before law went into effect. *Op. Atty. Gen.*, May 13, 1932.

Prior felony against juvenile, disposed of in district court, is considered prior conviction, though adjudication of delinquency by juvenile court is not conviction of crime. *Op. Atty. Gen.*, May 13, 1932.

#### 9931-2. Punishment not dependent upon indictment and conviction as previous offender.

Prosecution may be initiated by information though it may result in a sentence of imprisonment for more than ten years. 175M508, 221NW900.

#### 9931-3. Same—Information, etc.

Section 10666 has no application to the procedure under this section and is not repealed by the act of which this section is a part. 175M508, 221NW900.

Court did not err in charging the jury "As you all know the defendant at this term of court was convicted of burglary in the third degree." 175M516, 221NW903.

#### 9932. Imprisonment on two or more convictions.

Where execution of sentence was stayed and relator was placed on probation and was later sentenced and committed for a subsequent crime at which time stay of first sentence was revoked, the first sentence did not start to run until the expiration of the second sentence. 177M338, 225NW154.

Where defendant is brought before court having been convicted of two or more crimes and not having been sentenced on any of them, statute applies and sentences must be served consecutively. *Op. Atty. Gen.*, Aug. 16, 1933.

Where defendant is convicted of one offense and is sentenced thereon and is convicted of second offense, second sentence can be served concurrently with first one. *Id.*

Where prisoner is under sentence for felony and commits another felony, statute applies and, commission of second felony cannot be served concurrently with first sentence. *Id.*

Where one out on parole commits crime and receives sentence, and parole is suspended, new sentence should be added to old sentence as one continuous sentence, subject to classification of prisoner in due course at St. Cloud reformatory. *Op. Atty. Gen.* (341k-10), Aug. 11, 1937.

Where defendant was sentenced for two and a half years and was released on bond pending appeal, and later received a sentence from another judge for three years, to be concurrent with service of sentence in first conviction, defendant was entitled to credit on first sentence for time served on second sentence pending appeal on first sentence. *Op. Atty. Gen.* (341k-1), Aug. 13, 1937.

One under sentence for one felony when sentenced to another term of imprisonment could not serve second sentence concurrently with first sentence, though judgment so provided. *Op. Atty. Gen.* (341k-1), Aug. 23, 1938.

9934. Sentences of convicts.—Whenever a convict is sentenced to the state prison for more than one year, unless the exact period be fixed by law, the court shall so limit the term that it will expire between the months of March and November. Whenever a sentence may be imprisonment in a county jail, the offender, if there be one in the county where he is tried or where the offense was committed—and if there be no workhouse in the county where the offender is tried or where the offense was committed, then the offender may be sentenced to and imprisoned in a workhouse in any county in this state; provided that the county board of the county where the offender is tried shall

have some agreement for the receipt, maintenance and confinement of the prisoners with the latter county. The place of imprisonment shall be specified in the sentence. But convicts may be removed from one place of confinement to another when so provided by statute. (R. L. '05, §4775; G. S. '13, §8494; Apr. 20, 1933, c. 329.)

Contempt is not a "crime" within §9934, and, in view of §9802, punishment can only be by imprisonment in county jail and not in a workhouse. 175M57, 220NW414.

This section, as amended by Laws 1933, c. 329, does not prevent release of prisoner at any time during year when sentence expires by reason of good conduct. Op. Atty. Gen., Aug. 25, 1933.

**9936. Suspension of sentence.**—That the several courts of record of this state having jurisdiction to try criminal causes shall have power, upon the imposition of sentence by said court against any person who has been convicted of the violation of a municipal ordinance or by-law, or of any crime for which the maximum penalty provided by law does not exceed imprisonment in the state prison for ten years, to stay the execution of such sentence which said court has imposed whenever the court shall be of the opinion that by reason of the character of such person, or the facts and circumstances of his case, the welfare of society does not require that he shall suffer the penalty imposed by law for such offense so long as he shall thereafter be of good behavior, and at any time after the imposition of sentence in all cases where the sentence imposed is to a county jail, work farm or work house, any such court of this state shall have like power upon application of a prisoner and after notice to the county attorney. Before suspending sentence in any such case the court may require an investigation and a written report concerning the previous history and conduct of the offender by the county probation officer where such officer is provided by law, and, in those counties or districts having no county probation officer, but in which the services of state probation agents are available, by such state officer. For the information of the court the chairman of the State Board of Parole shall advise the clerk of court in each county in the district to which a parole or probation agent has been assigned, of such appointment and that the services of such state agent are available to the court. ('09, c. 391, §1; G. S. '13, §8496; '21, c. 298, §1; Apr. 1, 1933, c. 133; Apr. 29, 1935, c. 324.)

In absence of statute court cannot change or modify valid sentence after expiration of term. State v. Carlson, 178M626, 228NW173.

A justice of the peace has no authority to permit a defendant to defer payment of any part of the fine, but he has authority to receive the fine at any time. Op. Atty. Gen., Sept. 5, 1931.

A municipal court organized under the 1895 law is a court of record, and judge thereof has power to suspend jail sentences after the prisoner has commenced serving the same upon notice to the county attorney. Op. Atty. Gen., Sept. 22, 1931.

Since the maximum penalty upon conviction of forgery in the second degree with a prior conviction is twenty years, court is without authority to stay execution of sentence, even though judge imposes a maximum sentence of less than ten years. Op. Atty. Gen., Nov. 19, 1931.

Any court having criminal jurisdiction, even though not court of record, may now suspend sentences. Op. Atty. Gen., Nov. 24, 1933.

A justice of the peace has power to suspend a sentence, and this authority extends to cases where defendant has partially served his sentence. Op. Atty. Gen. (266b-21), July 20, 1934.

A justice of the peace has no power to suspend a sentence. Op. Atty. Gen. (266b-21), No. 5, 1935.

Municipal courts may suspend payment of fine, and are not responsible for fines not collected. Op. Atty. Gen. (306b-6), June 1, 1937.

**9937. Suspension of sentences and probation.**—

Such stay shall be for the full period of sentence; and during such time the person so sentenced may be placed on probation under the supervision of a probation officer in counties where such officer is provided by law, and in other counties under the supervision of the state board of parole or of some discreet person who will accept such supervision and serve without pay, making report to the court as required.

Provided, however, that nothing herein contained shall prevent juvenile courts, in appropriate cases, from placing persons on probation to the state board of parole for supervision. The court shall in each case set forth the reason for the order of probation and may make such terms and conditions of probation as are deemed suitable, and may require a recognizance or other surety, conditioned upon the performance of such terms and conditions and may enforce the same. Prior to the expiration of the sentence, but not until after one year from the time the person has been placed on probation, the court, or the board of parole where the case has been referred to such board, shall have the power, when in its judgment the facts in the case and the behavior of the probationer so warrants, to indefinitely suspend such sentence, provided, however, the period of suspension of sentence shall not exceed the maximum sentence imposed except where such maximum penalty is less than one year, when such stay may be for a period not exceeding one year, unless otherwise provided by law. The court may in its discretion suspend sentence indefinitely. The court may make such order in or out of term, and at any place within the judicial district in which the case was tried. When a person is placed on probation under the supervision of the state board of parole, the clerk of the district court shall immediately upon the entry of the order of probation, certify a copy of the record of the case upon the blanks supplied by the state board of parole, set forth the reasons, terms and conditions of probation, and deliver the same to the state board of parole, whereupon, the custody of the person so placed on probation shall vest in the said board with the same power as is exercised over persons on parole from the state prison or state reformatory. The chairman of the board of parole shall act as director of probation and parole, and, for the purpose of carrying out the provisions of this act, the state board of parole is authorized and empowered to provide such probation agents, not exceeding five, to fix their compensation and to prescribe their duties. ('09, c. 391, §2; G. S. '13, §8497; Mar. 31, 1933, c. 135; Apr. 13, 1935, c. 167.)

Order of suspension of sentence in original instance should be for a definite period of time, and court cannot grant an indefinite suspension until expiration of that time. Op. Atty. Gen. (341k-9), May 16, 1935.

**9938. Revocation.**

Vacating a stay of execution of sentence under which accused had been on probation, is matter of discretion of trial judge. State v. Wall, 189M265, 249NW37.

Stating reasons for revocation of orders suspending sentence is not jurisdictional. State v. Municipal Court, 197M141, 266NW433. See Dun. Dig. 2487.

Suspension of sentence is a matter of grace, and court may revoke such suspension at any time during stay, without notice to defendant. Id.

After sentence has been indefinitely suspended court cannot revoke such suspension. Op. Atty. Gen. (341k-9), May 16, 1935.

**9940. Restoration to civil rights.**

Person convicted in federal court cannot vote or hold office without Presidential pardon. Op. Atty. Gen., Apr. 3, 1930; Apr. 21, 1930.

Governor may not restore a person convicted of a felony in federal court, who can only be restored to his civil rights in the state by a presidential pardon. Op. Atty. Gen. (68h), Feb. 1, 1937.

Conviction of a felony does not render certified public accountant ineligible to hold certificate. Op. Atty. Gen. (882e), Oct. 6, 1937.

**9942. Certificate by governor.**

Conviction of crime vacates office of notary public and restoration of civil rights does not reinstate officer and he cannot take acknowledgment without issue of a new commission. Op. Atty. Gen. (320j), Dec. 13, 1934.

**9944. Restoration to civil rights, etc.**

Person convicted under §9983 in 1925 and incarcerated in the state penitentiary is not entitled to restoration of civil rights under §9944. Op. Atty. Gen. (184i), Mar. 29, 1935.

**9946. Incriminating testimony not to be used.**

Introduction in evidence of defendant's petition to suppress evidence as having been obtained by an illegal search and seizure, held not violative of this section. Kaiser v. U. S. (CCA8), 60F(2d)410. Cert. den., 287US 654, 53SCR118. See Dun. Dig. 10337.

**9947. Commitment of child to state training school upon conviction of crime.**

County must stand the expense of transporting a minor committed to the State Training School at Red Wing. Op. Atty. Gen., Sept. 1, 1931.

Where juvenile was bound over to district court by juvenile court of same county and was committed to state training school at Red Wing by district court, expenses of transportation must be paid by county. Op. Atty. Gen. (345d), Apr. 16, 1937.

**9948. Convict as witness.**

State v. McTague, 190M449, 252NW446; note under §9815, note 2.

Misconduct of prosecuting attorney in cross-examining defendant with respect to other charges of crime, held to require a new trial. 176M442, 223NW769.

Insinuations that defendant had been involved in like affairs before, held prejudicial notwithstanding this section. 179M436, 229NW564.

Evidence of conviction of a gross misdemeanor, such as violation of §5714, is admissible for purpose of affecting weight of testimony of witness. Brase v. W., 192M304, 256NW176. See Dun. Dig. 10349.

A defendant may be cross-examined upon collateral matters to affect his credibility and to discredit him, and to some extent state may inquire into his past life, and extent of cross-examination is largely within discretion of trial court. State v. Tsiolis, 202M117, 277NW409. See Dun. Dig. 10309.

## CHAPTER 93A

## Prevention and Control of Crime—Bureau of Criminal Apprehension

**9950-6. Superintendent—Appointment, terms of office, removal, vacancy in office and salary—Rules and regulations made by—Bureau to assist sheriffs.**—Said bureau shall be under the supervision and control of a superintendent, who shall be appointed by the governor by and with the consent of the Senate. The term of office of the superintendent first appointed shall continue until February 1, 1929, and thereafter the term shall be two years. The incumbent shall serve until a successor is appointed and qualified. The governor may remove the superintendent at any time at his pleasure. Any vacancy shall be filled for the unexpired portion of the term. The superintendent shall receive a salary of \$5,000.00 per year, payable semi-monthly, and shall devote his entire time to the duties of his office. The superintendent from time to time shall make such rules and regulations and adopt such measures as he deems necessary, within the provisions and limitations of this act, to secure the efficient operation of the bureau. The bureau shall co-operate with the respective sheriffs, constables, marshals, police and other peace officers of the state in the detection of crime and the apprehension of criminals throughout the state and shall have the power to conduct such investigations as the superintendent may deem necessary to secure evidence which may be essential to the apprehension and conviction of alleged violators of the criminal laws of the state. The various members of the bureau shall have and may exercise throughout the state the same powers of arrest possessed by a sheriff, but they shall not be employed to render police service in connection with strikes and other industrial disputes. ('27, c. 224, §2; Apr. 17, 1935, c. 197, §1.)

**9950-7. Employees of bureau—Identification expert—Expenses of superintendent and employees—Division of criminal statistics.**—The superintendent is hereby authorized to appoint, in the manner provided, and to remove as provided by the state civil service act and to prescribe the duties of such skilled and unskilled employees, including an identification expert as may be necessary to carry out the work of said bureau, but not exceeding 28 in number; provided, however, that the appointment and removal of such skilled and unskilled employees shall be in the manner provided by the state civil service act. The superintendent and all officers and employees of said bureau shall, in addition to their compensation, receive their actual and necessary expenses incurred in the discharge of their duties, provided that the total expense of said bureau during any year shall not exceed the appropriation therefor.

There is hereby established within the bureau a division of criminal statistics, and the superintendent within the limits of membership herein prescribed shall appoint a qualified statistician and one assistant to be in charge thereof. It shall be the duty of this division to collect, and preserve as a record of the

bureau, information concerning the number and nature of offenses known to have been committed in the state of the legal steps taken in connection therewith from the inception of the complaint to the final discharge of the defendant and such other information as may be useful in the study of crime and the administration of justice. The information so collected and preserved shall include such data as may be requested by the United States Department of Justice at Washington under its national system of crime reporting.

It shall be the duty of all sheriffs, chiefs of police, city marshals, constables, prison wardens, superintendents of insane hospitals, reformatories and correctional schools, probation and parole officers, school attendance officers, coroners, county attorneys, court clerks, the liquor control commissioner, the commissioner of highways, the state fire marshal to furnish to said division, statistics and information regarding the number of crimes reported and discovered, arrests made, complaints, informations and indictments, filed and the disposition made of same, pleas, convictions, acquittals, probations granted or denied, receipts, transfers and discharges to and from prisons, reformatories, correctional schools and other institutions, paroles granted and revoked, commutation of sentences and pardons granted and rescinded and all other data useful in determining the cause and amount of crime in this state and to form a basis for the study of crime, police methods, court procedure and penal problems. Such statistics and information shall be furnished upon the request of the division and upon such forms as may be prescribed and furnished by it. The division shall have the power to inspect and prescribe the form and substance of the records kept by those officials from which the information is so furnished. ('27, c. 224, §3; Apr. 17, 1935, c. 197, §2; Apr. 22, 1939, c. 441, §41.)

The 28 employees authorized by §9950-7 includes those necessary to operate the radio broadcasting station under Laws 1935, c. 195, §1. Op. Atty. Gen. (985h), June 7, 1935.

Board of regents may not fix age or educational requirements of applicant desiring to take examination. Op. Atty. Gen. (618a-2), July 27, 1935.

Veteran's preference law applies to employees under this act. Id.

Though home rule charter provides that mayor shall be chief of police, city marshal may make reports to bureau of criminal apprehension. Op. Atty. Gen. (985f), Feb. 5, 1936.

One passing examination and being classified as an identification expert was qualified for appointment as investigator. Op. Atty. Gen. (985h), Aug. 20, 1938.

No new appointment can be made, except from a list of applicants who have passed examination prepared and supervised by board of regents. Op. Atty. Gen. (985), Feb. 1, 1939.

Appointment and removal of employee must be made as provided by civil service act where there is a list of eligibles available, and until there is such a list appointment and removal is governed by Laws 1939, c. 441, §10, 11. Op. Atty. Gen. (644), May 5, 1939.

**9950-8. Bonds of superintendent and employees.**—The superintendent and each employee in the bureau whom he shall designate, before entering upon the performance of his duties under this act, shall take the usual oath and give bond to the state, in such amount as the governor shall direct and approve, conditioned for the faithful performance of his duties. If a surety bond is given, the premium thereon shall be paid as an expense of the bureau, upon the approval of the amount of the premium by the commission of administration and finance. The state, the several governmental subdivisions thereof, or any person damaged by any wrongful act or omission of either the superintendent or any of such employees in the performance of his duties under this act may maintain an action on such bond for the recovery of damages so sustained. ('27, c. 224, §4; Apr. 17, 1935, c. 197, §3.)

**9950-10. Taking of finger prints, Bertillon measurements, photographs, etc.—Powers of sheriffs and police officers.**—It is hereby made the duty of the sheriffs of the respective counties and of the police officers in cities of the first, second and third classes under the direction of the chief of police in such cities, to take or cause to be taken immediately finger and thumb prints, photographs and such other identification data as may be requested or required by the superintendent of the bureau: (a) of all persons arrested for felony, (b) of all persons reasonably believed by the arresting officer to be fugitives from justice, (c) of all persons in whose possession, when arrested, are found concealed firearms or other dangerous weapons, burglar tools or outfits, high-power explosives, or articles, machines or appliances usable for an unlawful purpose and reasonably believed by the arresting officer to be intended for such purposes and within 24 hours thereafter to forward such finger print records and other identification data on such forms and in such manner as may be prescribed by the superintendent to the bureau of criminal apprehension. ('27, c. 224, §6; Feb. 28, 1929, c. 46, §1; Apr. 17, 1935, c. 197, §4.)

Villages and cities of the fourth class may authorize their officers to take finger prints, photographs and other identification data and send them to the bureau of apprehension or the national bureau in Washington, though this act does not require it. Op. Atty. Gen. (985d), July 23, 1935.

Authority to take finger prints and other identification data need not be obtained from court. Op. Atty. Gen. (605a-7); May 14, 1937.

It is doubtful whether employers would have right to subject their employees to fingerprinting without their express consent. Op. Atty. Gen. (828c), June 3, 1937.

**9950-11. Same—Prints, etc., furnished to bureau by sheriffs and chiefs of police.**—The sheriff of each county and the chief of police of each city of the first, second and third classes shall furnish the bureau, upon such form as the superintendent shall prescribe, with such finger and thumb prints, photographs and other identification data as may be requested or required by the superintendent of the bureau, which may be taken under the provisions of section 6 of this act, of persons who shall be convicted of a felony or who shall be found to have been convicted of a felony within ten years next preceding their arrest. Upon the determination of all pending criminal actions or proceedings in favor of the arrested person, he shall, upon demand, have all such finger and thumb prints, photographs, and other identification data, and all copies and duplicates thereof, returned to him, provided it is not established that he has been convicted of any felony either within or without the state within the period of ten years immediately preceding such determination. ('27, c. 224, §7; Feb. 28, 1929, c. 46, §2; Apr. 17, 1935, c. 197, §5.)

**9950-12. Records of felonies committed to be kept by peace officers—Reports to bureau.**

There is no law requiring city to keep register or record of offenses except as part of records of court, except such records as are required by superintendent of bureau of criminal apprehension. Op. Atty. Gen. (985f), Feb. 5, 1936.

**9950-18. Reports to bureau by clerks of courts.**—The superintendent shall have power to require the clerk of court of any county to file with the department, at such time as the superintendent may designate a report, upon such form as the superintendent may prescribe, furnishing such information as he may require with regard to the prosecution and disposition of criminal cases. A copy of the report shall be kept on file in the office of the clerk of court. ('27, c. 224, §14; Apr. 17, 1935, c. 197, §6.)

**9950-19. Reports by superintendent to governor and legislators.**—The superintendent shall submit annually to the governor a detailed report of the operations of the bureau, of information about crime and the handling of crimes and criminals by state and local officials collected by the bureau, and his interpretations of the information, with his comments and recommendations. In such reports he shall from time to time include his recommendations to the legislature for dealing with crime and criminals and information as to conditions and methods in other states in reference thereto and shall furnish a copy of such report to each member of the legislature. ('27, c. 224, §15; Apr. 17, 1935, c. 197, §7.)

**9950-22. Bureau to notify state of refusal to comply with requirements.**—If any public official charged with the duty of furnishing to the bureau fingerprint records, reports or other information required by this act shall neglect or refuse to comply with such requirement, the bureau in writing shall notify the state, county or city officer charged with the issuance of a warrant for the payment of the salary of such official. Upon the receipt of such notice, such state, county or city official shall withhold the issuance of a warrant for the payment of the salary or other compensation accruing to such officer for the period of thirty days thereafter until notified by the bureau that such suspension has been released by the performance of the required duty. (Act Apr. 17, 1935, c. 197, §8.)

**9950-22a. Physicians, etc., to report injuries.**—Every physician, every surgeon, every person authorized to engage in the practice of healing, every superintendent or manager of a hospital, every nurse and every pharmacist whether such physicians, surgeons, persons engaged in the practice of healing, superintendent or manager of any hospital, nurse and pharmacist be licensed or not, shall immediately report to the proper police authorities as herein defined all bullet wounds, gun-shot wounds, powder burns, or any other injury arising from, or caused by the discharge of any gun, pistol or any other firearm, which wound he is called upon to treat, dress or bandage. (Act Apr. 13, 1935, c. 165, §1.)

**9950-23. Methods of reporting.**—The report required by the preceding section shall be made forthwith by telephone or in person, and shall be promptly supplemented by letter, enclosed in a securely sealed, postpaid envelope, addressed to the sheriff of the county in which such wound is examined, dressed or otherwise treated; except that if the place in which such patient is treated for such injury or his wound dressed or bandaged be in a city of the first, second or third class, such report shall be made and transmitted as herein provided to the chief of police of such city instead of the sheriff. The office of any such sheriff and of any such chief of police shall keep such report as a confidential communication and shall not disclose the name of the person making the same, and the party making such report shall not by reason thereof be subpoenaed, examined, or forced to testify in court as a consequence of having made such a report. (Act Apr. 13, 1935, c. 165, §2.)

**9950-24. Application of act.**—The requirements of this act shall not apply to a nurse employed in a hospital nor to a nurse regularly employed by a physician, surgeon or other person practicing healing

where the employer has made a proper report in compliance herewith. (Act Apr. 13, 1935, c. 165, §3.)

**9950-25. Violation a gross misdemeanor.**—Any person who violates any provision of this act is guilty of a gross misdemeanor. (Act Apr. 13, 1935, c. 165, §4.)

#### BROADCASTING STATIONS

**9950-41. Radio stations may be installed.**—The commission of administration and finance is hereby authorized to purchase, secure the necessary air privilege, lease or otherwise acquire, and install one or more radio broadcasting stations to be used for police purposes only, under the direction of the bureau of criminal apprehension. (Act Apr. 17, 1935, c. 195, §1.)

The 23 employees authorized by §9950-7 includes those necessary to operate the radio broadcasting station under Laws 1935, c. 195, §1. Op. Atty. Gen. (985h), June 7, 1935.

**9950-42. Bureau to maintain station.**—The bureau is hereby charged with the maintenance, operation and conduct of all radio broadcasting stations established under the provisions of this act. (Act Apr. 17, 1935, c. 195, §2.)

**9950-43. Police cars to have radios.**—When the broadcasting station or stations authorized by this act have been established and are ready for operation, the bureau shall notify immediately the board of county commissioners in each county of the state that such radio service has been established; and forthwith the board shall provide for the purchase and installation in the office of the sheriff and at such other places within each county as it may direct, and in at least one motor vehicle used by the sheriff in the conduct of his office, a locked-in radio receiving set of the character prescribed by the bureau for use in connection with the broadcasting station or stations so established. (Act Apr. 17, 1935, c. 195, §3; Jan. 27, 1936, Ex. Ses., c. 104, §1.)

Requirement that county boards install radio receiving sets is mandatory. Op. Atty. Gen. (390a-10), Oct. 16, 1935.

**9950-44. Receiving stations in cities and villages.**—The council of each city in the state shall, and the council of each village in the state may, purchase, install and maintain in such place as said council may determine at least one such locked-in radio receiving set as may be prescribed by the bureau for use in law enforcement and police work in such city or village in connection with the broadcasting system thereby established. (Act Apr. 17, 1935, c. 195, §4; Jan. 27, 1936, Ex. Ses., c. 104, §2.)

Requirement that city councils install radio receiving sets is mandatory. Op. Atty. Gen. (390a-10), Oct. 16, 1935.

**9950-45. Commission to supply broadcasting sets.**—The commission shall purchase and supply the bureau of criminal apprehension with such locked-in radio receiving sets as are deemed necessary by the superintendent. (Act Apr. 17, 1935, c. 195, §5; Jan. 27, 1936, Ex. Ses., c. 104, §3.)

Receiving sets must be purchased and paid for by municipality. Op. Atty. Gen. (985j), Nov. 14, 1935.

**9950-46. Bureau to broadcast criminal information.**—It shall be the duty of the bureau to broadcast all police dispatches and reports submitted which in the opinion of the superintendent shall have a reasonable relation to or connection with the apprehension of criminals, the prevention of crime and the maintenance of peace and order throughout the state. Every sheriff, peace officer or other person employing a radio receiving set under the provisions of this act shall make report to the bureau at such times and containing such information as the superintendent shall direct. (Act Apr. 17, 1935, c. 195, §6.)

**9950-47. Telephone and telegraph companies to give priority to messages.**—Every telegraph and telephone company operating in the state shall give priority to all messages or calls directed to the broadcasting station or stations established under this act. (Act Apr. 17, 1935, c. 195, §7.)

**9950-48. Permission for short wave sets must be secured.**—No person other than peace officers within the state and the members of the state highway patrol shall equip any motor vehicle with a short wave length radio receiving set or use the same in such motor vehicle without first obtaining permission to do so from the superintendent of the bureau upon such form of application as he may prescribe. (Act Apr. 17, 1935, c. 195, §8.)

**9950-49. Appropriation.**—There is hereby appropriated out of any money in the treasury not otherwise appropriated \$25,000.00 for the fiscal year ending July 1, 1936, and \$12,500.00 for the fiscal year ending July 1, 1937, or so much thereof as may be necessary to carry out the provisions of this act. (Act Apr. 17, 1935, c. 195, §9.)

**9950-50. Violations—Penalties.**—Any telegraph or telephone operator who shall fail to give priority to police messages or calls as provided herein; any person who installs or uses a short wave length radio receiving set in any motor vehicle contrary to the provisions of this act; and any person who wilfully makes any false, misleading or unfounded report to any broadcasting station established hereunder for the purpose of interfering with the operation thereof or with the intention of misleading any officer of this state shall be guilty of a misdemeanor. (Act Apr. 17, 1935, c. 195, §10.)

## CHAPTER 94

### Rights of Accused

#### 9951. To know grounds of arrest.

Constable arresting person without warrant must take him before a magistrate without delay. Op. Atty. Gen., Feb. 28, 1933.

General rules stated for arrests with and without warrants and force that may be used, together with rights as to breaking into buildings to make arrests. Op. Atty. Gen., Mar. 19, 1934.

Insanity as defense—tests for determining criminal responsibility. 17MinnLawRev630.

#### 9953. Conviction—When had.

A "confession in open court" is a formal admission that the specific crime or one included within the indictment was committed. State v. O., 182M48, 233NW590. See Dun. Dig. 2462.

#### 9954. Dismissal, when.

"Good cause" means a substantial reason, one that affords a legal excuse. 173M153, 216NW787.

Defendant's silence, in the face of numerous continuances and long delay, waives right to a speedy trial. 173M153, 216NW787.

#### 9957. Counsel for defense; public defender in certain counties.

Attorney is only entitled to compensation for days he is actually in court regardless of service out of court in preparation for trial. Op. Atty. Gen., June 14, 1933.

#### 9966. Acquittal—When a bar.

One acquitted of charge of rape where age of female is not alleged in indictment may again be tried for same act on same facts under an indictment charging carnal knowledge and abuse of a female child under eighteen years of age. State v. Winger, 204M164, 282NW 819. See Dun. Dig. 2425.