

# MASON'S MINNESOTA STATUTES

1927

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## CHAPTER 98

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RAPE—ABDUCTION—CARNAL ABUSE, ETC.			
10124. Rape—Rape is an act of sexual intercourse with a female not the wife of the perpetrator, com-			

mitted against her will or without her consent. Every person who shall perpetrate such an act of sexual intercourse with a female of ten years or upwards, not his wife—

1. When through idiocy, imbecility, or any unsoundness of mind, either temporary or permanent, she is incapable of giving consent;

2. When her resistance is forcibly overcome;

3. When her resistance is prevented by fear of immediate and great bodily harm, which she has reasonable cause to believe will be inflicted upon her;

4. When her resistance is prevented by stupor or by weakness of mind produced by an intoxicating, narcotic, or anaesthetic agent administered by or with the privity of the defendant; or

5. When she is at the time unconscious of the nature of the act, and this is known to the defendant—

Shall be punished by imprisonment in the state prison for not less than seven nor more than thirty years. (4926) [8655]

1. **What constitutes**—39-277, 39+497, 796; 41-285, 43+5; 145-278, 196+985.

2. **Resistance**—99-123, 108+851.

3. **Indictment**—41-134, 43+324; 73-140, 76+33. Under former statute (6-279, 190).

4. **Evidence**—Held sufficient (103-428, 115+275). Held corroborating testimony insufficient (105-410, 117+617). Held insufficient (99-123, 108+851).

The question of the identification of the defendant as the one committing an assault, and the effect of the testimony in support of an alibi, were for the jury, and the evidence sustains the verdict. 161-26, 200+746.

The verdict that defendant was guilty of rape is sustained by the evidence. 162-346, 202+892.

5. **Instructions**—Held sufficient (103-428, 115+275). See 109-270, 123+474.

A definition "reasonable doubt," which states it to be "a doubt for which 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.

6. **Assault with intent to commit rape**—35-182, 28+192; 41-285, 43+5; 133-425, 158+793; 149-134, 182+961.

10125. **Carnal knowledge of children**—Every person who shall carnally know and abuse any female child under the age of eighteen years shall be punished as follows:

1. When such child is under the age of ten years, by imprisonment in the state prison for life.

2. When such child is ten and under the age of fourteen years, by imprisonment in the state prison for not less than seven nor more than thirty years.

3. When such child is fourteen and under the age of eighteen years, by imprisonment in the state prison for not more than seven years, or by imprisonment in the county jail for not more than one year. (R. L. § 4927, amended '09 c. 92 § 1) [8656]

1. **Validity and scope of statute**—76-526, 79+518; 80-216, 83+141. Cited (118-170, 136+746).

2. **What constitutes**—93-393, 101+499. See 83-78, 82, 85+911; 114-493, 131+629. 166-300, 207+623.

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. 157-408, 196+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.

The evidence sustains the verdict finding the defendant guilty of carnal intercourse. 158-122, 198+296.

It was error to exclude a letter written by the prosecuting witness containing statements tending to exculpate the defendant. The defendant had the right to put the letter before the jury and to cross-examine the prosecutrix thereon. 165-473, 206+933.

It was error to permit the state to go into the particulars of offenses committed by the defendant, and of

other misconduct, to the extent permitted. 165-473, 206+933.

The evidence supports the verdict of the jury finding the defendant guilty of the crime of carnal knowledge of a female child. 210+286.

Absence of evidence of a struggle is not a discrediting circumstance, unless the act is claimed to have been accomplished by force and violence. 212+588.

The verdict of guilty of carnal knowledge of a girl under the age of consent is sustained by the evidence. 212+588.

3. **Indictment**—81-134, 83+512; 149-297, 183+669; 196+645.

4. **Assault with intent to commit**—90-526, 97+131.

5. **Prosecutrix not accomplice**—151-318, 186+580.

10126. **Physical ability, etc.**—No conviction for rape shall be had against one under the age of fourteen years at the time of the alleged act, unless his physical ability to accomplish penetration is proved as an independent fact, beyond a reasonable doubt. In all cases of rape any sexual penetration, however slight, is sufficient to complete the crime. (4928) [8657] 80-216, 83+141; 93-393, 101+499.

10127. **Compelling woman to marry**—Every person who, by force, menace, or duress, shall compel a woman against her will to marry him, or to marry any other person, or to be defiled, shall be punished by imprisonment in the state prison for not less than three nor more than thirty years, or by a fine of not more than one thousand dollars, or by both. (4929) [8658]

10128. **Abduction—Evidence**—Every person who—

1. Shall take a female under the age of eighteen years, for the purpose of prostitution or sexual intercourse, or, without the consent of her father, mother, guardian or other person having legal charge of her person, for the purpose of marriage;

2. Shall inveigle or entice an unmarried female under the age of twenty-five years, of previous chaste character, into a house of ill fame or assignation, or elsewhere for the purpose of prostitution or sexual intercourse;

3. Shall take or detain a woman unlawfully against her will, with intent to compel her by force, menace, or duress to marry him or any other person, or to be defiled, or,

4. Being parent, guardian, or other person having legal charge of the person of a female under the age of eighteen years, shall consent to her taking or detention by any person for the purpose of prostitution or sexual intercourse—

Shall be guilty of abduction and punished by imprisonment in the state prison for not more than five years, or by a fine of not more than one thousand dollars, or both. But no conviction shall be had for abduction or compulsory marriage upon the unsupported testimony of the female abducted or compelled. (R. L. § 4930, amended '09 c. 92 § 2) [8659]

1. **What constitutes**—38-21, 35+712; 38-154, 36+102; 47-559, 50+691. Gist of offense (99-54, 108+812). 188-558, 196+930.

"Prostitution," as used in the statute defining abduction, does not refer to sexual intercourse with a defendant alone, but to an offering of the female person to an indiscriminate intercourse with men. 158-111, 196+930.

The purpose of the taking of a female is the gravamen of the offense of abduction. 158-111, 196+930.

2. **Indictment**—38-21, 35+712; 47-559, 50+691; 99-54, 108+812.

3. **Corroboration**—47-559, 50+691.

10129. **Enticement into state for prostitution, etc.**—It shall be unlawful for any person to induce, entice or procure, or attempt to induce, entice or procure to come into this state, any female person for the purpose of prostitution or concubinage, or for any other

immoral purpose, or to induce, entice or procure any female person in this state to enter any house of ill fame, assignation or prostitution. ('09 c. 404 § 1) [8660]

Offense is committed in this state if in consequence of enticements here female enters resort in another state. Indictment sufficient (118-64, 136+419).

**10130. Penalty**—Any person who violates the provisions of this act shall, upon conviction thereof, be punished by imprisonment in the state prison for a period of not more than ten (10) years. ('09 c. 404 § 2, amended '11 c. 202 § 1) [8661]

**10131. Seduction under promise of marriage—Evidence**—Every person who, under promise of marriage, shall seduce and have sexual intercourse with an unmarried female of previous chaste character, shall be punished by imprisonment in the state prison for not more than five years, or by a fine of not more than one thousand dollars, or by both. But no conviction shall be had for the offense specified herein upon the unsupported testimony of the female seduced. The subsequent intermarriage of the parties, or the lapse of two years after the commission of the offense before the finding of an indictment, shall be a bar to a prosecution for a violation of this section. (4931) [8662]

1. **Indictment**—27-52, 6+404; 41-41, 42+543; 41-196, 42+933; 100-12, 110+100; 112-108, 127+438.

2. **Corroboration**—4-325, 241; 34-285, 25+642; 41-196, 42+933; 50-363, 52+958, 36 Am. St. Rep. 656; 112-108, 127+438.

3. **Proof of chaste character**—4-325, 241; 34-285, 25+642; 41-196, 42+933; 50-363, 52+958; 112-108, 127+438.

4. **Proof of promise**—4-325, 241; 34-285, 25+642; 112-108, 127+438. Includes any promise absolute or conditional effect of which is to induce female to consent to intercourse (100-12, 110+100).

5. **Proof of intercourse**—4-325, 241; 41-196, 42+933.

6. **Want of chastity**—4-325, 241; 34-285, 25+642; 50-363, 52+958, 36 Am. St. Rep. 656; 112-108, 127+438.

7. **Offer of marriage**—50-363, 52+958.

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

39-321, 40+249; 90-526, 97+131; 151-261, 186+574; 196+645.

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. 196+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.

**10133. Soliciting boy under 18 to house of ill fame, etc.**—Any person who shall solicit any boy under the age of eighteen years to visit a house of ill fame or assignation for the purpose of prostitution or sexual intercourse, or shall direct or accompany such boy to any such house of ill fame or assignation for such purpose, or shall arrange or assist in arranging any meeting for such purpose between any boy under the age of eighteen years and any female of dissolute character or any inmate of any house of ill fame or assignation, shall be guilty of a felony, and upon con-

viction thereof shall be punished by imprisonment for not less than six months nor more than five years. ('07 c. 320 § 1) [8664]

**10134. Admitting or cohabiting**—Any keeper of any house of ill fame or assignation who shall for any unlawful purpose admit to such house any boy under the age of eighteen years, or any female inmate of any such house of ill fame or assignation who shall cohabit with any boy under the age of eighteen years, shall be guilty of a felony, and upon conviction thereof shall be punished by imprisonment for not less than eight-een months nor more than seven years. ('07 c. 320 § 2) [8665]

#### CRIMES AGAINST CHILDREN, ETC.

**10135. Desertion of child or pregnant wife**—Every parent or other person having legal responsibility for the care or support of a child who is under the age of sixteen years and unable to support himself by lawful employment, who deserts and fails to care for and support such child with intent wholly to abandon him; and every husband who, without lawful excuse, deserts and fails to support his wife, while pregnant, with intent wholly to abandon her is guilty of a felony and upon conviction shall be punished therefor by imprisonment in the state prison for not more than five years. Desertion of and failure to support a child or pregnant wife for a period of three months shall be presumptive evidence of intention wholly to abandon. (R. L. '05 § 4933, amended '11 c. 144 § 1; '15 c. 336 § 1; '17 c. 213 § 1) [8666]

148-389, 182+452; 151-382, 186+812; 195+901.

157-250, 195+901; 209+529, note under § 10136.

The verdict that defendant had abandoned his infant child is sustained by the evidence. 211+305.

**10136. Failure to support wife or child**—Every man who, without lawful excuse wilfully fails to furnish proper food, shelter, clothing or medical attendance to his wife, such wife being in destitute circumstances; and every person having legal responsibility for the care or support of a child who is under sixteen years of age and unable to support himself by lawful employment, who wilfully fails to make proper provision for such child, is guilty of a misdemeanor. But if any person convicted under this section gives bond to the state, in such amount and with such sureties as the court prescribes and approves, conditioned to furnish the wife or child with proper food, shelter, clothing, and medical attendance for such a period, not exceeding five years, as the court may order, judgment shall be suspended until some condition of the bond is violated. The bond may, in the discretion of the court, be conditioned upon the payment of a specified sum of money at stated intervals. Upon the filing of an affidavit showing the violation of any of the conditions of the bond, the accused shall be heard upon an order to show cause, and, if the charge be sustained, the judgment shall be executed. The wife or child, and any person furnishing necessary food, shelter, clothing, or medical attendance to either, may sue upon the bond for a breach of any condition thereof. (R. L. '05 § 4934, G. S. '13 § 8667, amended '17 c. 213 § 2)

91-165, 97+671; 149-62, 182+717; 189+124; 129-389, 152+762.

The willful and inexcusable failure of a father to provide for the support of his minor children is a continuing offense. An acquittal in a prosecution for deserting them is not a bar to another prosecution for non-support subsequent to the date of the alleged desertion. 209+529.

After divorce. 299+901.

**10137. Prosecution**—On complaint being made in writing and under oath by the wife or any reputable person to a justice of the peace or judge of a municipal court, accusing any person of the offense defined in section 10136, the justice or judge shall issue his warrant against the person accused, directed to the sheriff or constable of the county, commanding him forthwith, to bring such accused person before the justice or judge to answer such complaint. ('03 c. 222 § 1, amended '05 c. 217 § 1; '17 c. 213 § 3) [8668]

**10138. Proof of relationship**—In any prosecution for desertion of or failure to support a wife or child no other or greater evidence shall be required to prove the relationship of the defendant to such wife or child than is or shall be required to prove such relationship in civil action. ('03 c. 222 § 1, amended '05 c. 217 § 1; '17 c. 213 § 4) [8668-A]

**10139. Endangering life, health, or morals of minors**—Every person having the care or custody of a minor who—

1. Shall wilfully cause or permit his life to be endangered, his health to be injured, or his morals to become depraved; or who

2. Shall wilfully cause or permit such minor to be placed in a situation, or to engage in an occupation, which will be likely to endanger his life, injure his health, or impair his morals—

Shall be guilty of a gross misdemeanor. (4935) [8669]

140-259. 167+1035.

**10140. Keepers of public places to exclude minors**—Whoever permits any person under the age of twenty-one years to be or remain in any dancehouse, concert saloon, place where intoxicating liquors are sold or given away, or any place of entertainment injurious to the morals, owned, kept, or managed by him in whole or in part, or shall permit any person under the age of twenty-one years to play any game of skill or chance in any such place, shall be guilty of a misdemeanor, and be punished by a fine of not less than twenty-five dollars. (4936) [8670]

Constitutional. "Dance house" defined. Complaint (111-301, 126+1068).

**10141. Minors—Gaming by prohibited, where—How punished**—All persons under the age of twenty-one years are prohibited from playing pool or billiards or cards in any saloon or room connected therewith, or in any restaurant or public place of amusement in which tobacco, confectionery, or drinks of any kind, except water, are in any manner disposed of; and every keeper or person in charge of any such place who shall permit or suffer any person under the age of twenty-one years to play pool, billiards, or cards therein shall be guilty of a misdemeanor, and be punished by a fine of not less than twenty-five dollars, or by imprisonment in the county jail not exceeding thirty days. (4937) [8671]

**10142. Minors unaccompanied, etc.—Playing pool, billiards, or bowling prohibited, where—How punished**—Any person under the age of eighteen years or who is a minor pupil in any school, college or university is prohibited from playing pool, billiards or ten pins or bowling whether on a ten pin alley or a box ball alley in any public pool or billiard room or bowling alley or in any public place of business, unless accompanied by his parent or guardian, and any person under the age of eighteen years or who is a minor pupil in any school, college or university who shall engage in any game of pool or billiards or bowling in any such place, or frequent or loiter within any pool or

billiard room or bowling alley, or any public place of business where pool, billiards or bowling are played, unless accompanied by his parent or guardian, shall be guilty of a misdemeanor and shall be punished by a fine of not exceeding ten dollars. ('13 c. 572 § 1) [8672]

**10143. Keepers of public places to exclude—Penalty**—Every keeper or person in charge of any pool or billiard room, public bowling alley or public place of business where pool, billiards or bowling are played who shall permit or allow any person under the age of eighteen years or any minor pupil of any school, college or university to play any of said games, therein, or to gather in, loiter or frequent any such place unless accompanied by his parent or guardian, shall be guilty of a misdemeanor and be punished by a fine of not less than twenty-five (\$25.00) dollars or by imprisonment in the county jail not exceeding thirty (30) days. ('13 c. 572 § 2) [8673]

**10144. Use of tobacco by minors**—Every person under the age of eighteen years, and every minor pupil in any school, college, or university, who shall smoke or use cigarettes, cigars, or tobacco in any form on any public road, street, alley, park, or other lands used for public purposes, or in any public place of business, shall be guilty of a misdemeanor, and punished for each offense by a fine of not more than ten dollars, or by imprisonment in the county jail for not more than five days; and every person who shall furnish any cigarettes, cigars, or tobacco in any form to any such minor person, or who shall permit any such minor person to frequent any premises owned, held, or managed by him, for the purpose of indulging in the use of cigarettes, cigars, or tobacco in any form, shall be guilty of a misdemeanor, and punished by a fine of not more than fifty dollars, or by imprisonment in the county jail not exceeding thirty days, for each offense. (4938) [8674]

**10145. Minors—Sale of tobacco to**—Any person within this state who sells, gives to, or in any way furnishes any cigarettes, cigars or tobacco in any form to any person under eighteen years of age, or to any minor pupil in any school, college or university, shall be punished by a fine not to exceed fifty dollars or imprisonment in the county jail not to exceed thirty days for each offense. ('07 c. 386 § 2) [8675]

For section 1, see 10457. Section 6 repeals inconsistent acts, etc.

**10146. Use of tobacco in public place—Arrest—Penalty—Evidence**—Any person under eighteen years of age, any minor pupil, as described in section two [10145] of this act, who shall smoke or use cigarettes, cigars or tobacco in any form on any public highway, street, alley, park or other lands used for public purposes, or in any public place of business, shall be arrested by an officer of the law, who may be cognizant of such offense; and further, it shall be the duty of all such officers, upon complaint of one citizen, to arrest such offenders and take them before the proper court. The court shall impose a punishment at its discretion in the sum of not to exceed ten dollars, or imprisonment in the county jail not to exceed five days for each offense; provided, if said minor person shall give information which may lead to the arrest of the person or persons violating section two [10145] of this act, in giving or selling to, or in any way furnishing said minor person tobacco, and shall give evidence as a witness in such proceedings against said party or parties, the court shall have power to suspend sentence against such minor person. ('07 c. 386 § 3) [8676]

**10147. Harboring, etc.**—Any person who harbors or

grants to persons under eighteen years of age, or to minor pupils as described in section two [10145] of this act, privilege or gathering upon or frequenting any property or lands held by him, for the purpose of indulging in the use of cigarettes, cigars or tobacco in any form, shall be held in the same penalty as provided for in section two [10145] of this act; provided, that no part of this act shall be so construed as to interfere with the rights of parents or lawful guardians in the rearing and management of their minor heirs or wards, within the bounds of their own private premises. ('07 c. 386 § 4) [8677]

**10148. Powers of grand jury**—Be it further enacted that grand juries shall have inquisitorial powers over offenses committed under this act. ('07 c. 386 § 5) [8678]

**10149. Liquors in school grounds or houses**—Any person who shall introduce upon, or have in his possession upon, or in, any school ground, or any school house or school building any spirituous or malt liquors, except for experiments in laboratories, shall be guilty of a misdemeanor, the minimum punishment whereof shall be a fine of twenty-five dollars (\$25.00) or imprisonment for ten (10) days, in the county jail. ('13 c. 415 § 1) [8679]

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

**10151. Sale of liquor or cigarettes within 1,000 feet of certain institutions**—Any person who shall sell or dispose of any intoxicating liquor or cigarettes at retail, or who shall maintain or assist in maintaining any place where such articles or subjects of commerce are kept for sale or disposal, and any person who shall maintain any pool or billiard room or bowling alley, or any place of amusement where persons are permitted to assemble or loiter within one thousand (1,000) feet of any of the following named state institutions, to-wit:

The St. Peter state hospital for the insane, the Rochester state hospital for the insane, the Fergus Falls state hospital for the insane, the first state asylum for the insane at Anoka, Minnesota, the second state asylum for the insane at Hastings, Minnesota, the state training school at Red Wing, Minnesota, the Minnesota home school for girls at Sauk Centre, Minnesota, the state reformatory at St. Cloud, Minnesota, the state prison at Stillwater, Minnesota, the state public school at Owatonna, Minnesota, the state sanitarium for consumptives at Walker, Minnesota, the hospital for crippled and deformed children at St. Paul, Minnesota, and the state hospital for inebriates at Willmar, Minnesota, shall be guilty of a gross misdemeanor. Provided that the provisions of this act shall not apply to any manufacturer of intoxicating liquors or drug store whose place of manufacture or business is at the time of the passage of this act located within one thousand feet of any of the insti-

tutions herein named or the grounds thereof. Provided further, that the provisions of this act shall not apply to any person lawfully licensed to sell intoxicating liquors, nor to the premises so licensed, located at the time of the passage of this act within one thousand feet of any of the institutions herein named and the grounds and premises thereof. No license for the doing of any of the things herein prohibited shall be granted by the governing body of any town, county or municipality. ('13 c. 507 § 1) [8681]

**10152. [Repealed.]**

This section is repealed by Laws 1927, c. 388, § 2. See § 4103, herein.

**10153. Cruelty to children**—Every person who shall torture, torment, or cruelly or unlawfully punish any child under the age of eighteen years, or who shall commit any act of cruelty toward such child, shall be guilty of a misdemeanor. (R. L. '05 § 4940, G. S. '13 § 8683, amended '17 c. 240 § 1)

**10154. Distribution of certain literature among minors prohibited**—No person shall sell, lend, give away, show, advertise or otherwise offer for loan, gift, sale or distribution to any minor under the age of eighteen years, any book, pamphlet, magazine, newspaper or other printed paper devoted to the publication or largely made up of criminal news, police reports, accounts of criminal deeds, or pictures or stories of deeds of bloodshed, lust or crime; nor shall any person hire, use or employ a minor under the age of eighteen years to sell or give away, or in any manner distribute, or permit any such minor in his custody or control to sell, give away or in any manner distribute, any material herein described. ('17 c. 242 § 1)

**10155. Penalty**—Any person who violates any provision of this act is guilty of a misdemeanor. ('17 c. 242 § 2)

**10156. Unlawful confinement of idiots—Misdemeanor for unlawful confinement of feeble-minded persons**—Every person who shall confine a lunatic, insane or feeble-minded person in any other manner or in any other place than is authorized by law, or who shall be guilty of harsh, cruel, or unkind treatment of, or neglect of duty toward, any feeble-minded person, lunatic or insane person under confinement, whether lawfully or unlawfully confined, shall be guilty of a misdemeanor. (R. L. '05 § 4941, G. S. '13 § 8684, amended '17 c. 209 § 1)

#### HABITUAL OFFENDERS

**10157. Habitual offenders defined—Penalties**—Every person who shall hereafter be guilty of being a vagrant or of unlawfully selling, giving to another or using any drug or narcotic, or of any unlawful, lewd or lascivious behavior or public indecency, or of any criminal offense against women or children as defined in Section 8666 or 8667 of the General Statutes for 1913, [10135, 10136] or of any misdemeanor or gross misdemeanor involving moral turpitude, who within the previous period of five years shall have been twice convicted in this state of one or more of the offenses hereinbefore named shall be guilty of being a habitual offender and shall be punished for such third offense, if a woman by imprisonment in the State Reformatory for Women, and if a man between the ages of eighteen and thirty years by imprisonment in the State Reformatory at St. Cloud, and if a man above the age of thirty years by imprisonment in the State Prison at Stillwater, for a term not exceeding three years. ('21 c. 455 § 1)

**10158. Certified copy of record to be prima facie evidence**—A duly certified copy of the record of a con-

viction and judgment of any court in this state against the person indicted or complained of shall be prima facie evidence of such former conviction, and may be used in evidence against such person. ('21 c. 455 § 2)

10159. Prisoners subject to parole—Any person so committed to the State Reformatory for Women or the State Reformatory at St. Cloud, or the State Prison at Stillwater, shall be subject, except as herein otherwise provided, to parole and discharge by the State Board of Parole as in the case of other persons subject to parole and discharge by said Board. ('21 c. 455 § 3)

10160. Not to be paroled nor discharged until examined—No person convicted hereunder shall be paroled or discharged until he shall have been first examined by a licensed physician, and if it appears that such person has a venereal or other infectious disease, the board of parole in granting a parole or discharge, shall include in the conditions of said parole or discharge, a condition requiring suitable medical treatment of such person by a duly licensed physician under a supervision of the State Board of Health. ('21 c. 455 § 4)

#### DANCE HALLS

10161. Definition—A public dancing place, as the term is used in this act, shall be taken to mean any room, place or space open to public patronage in which dancing, wherein the public may participate, is carried on and to which admission may be had by the public by payment either directly or indirectly of an admission fee or price for dancing. A public dance, as the term is used in this act, shall be taken to mean any dance wherein the public may participate by payment, either directly or indirectly, of an admission fee or price for dancing or a fee for a membership in a club, and shall include any manner of holding a dance which may be participated in by the public through the payment of money, directly or indirectly. Wherever used in this act the term "intoxicating liquor" and "liquor," "sell" and "sale" shall be given the same meaning, respectively, as is prescribed therefor in Section 1 of Chapter 455 Laws of Minnesota for 1919, and acts amendatory thereof. ('23 c. 139 § 1)

For Laws 1919, c. 455, § 1, referred to in this section, see § 3200, herein.

10162. Proprietors must obtain permits—It shall be unlawful for any person to give, hold or conduct a public dance unless the owner or proprietor of the public dancing place, or the person giving the same or in charge thereof, shall first have procured a permit to hold, give and conduct such public dance from the public authorities hereinafter designated, as hereinafter provided. ('23 c. 139 § 2)

10163. Issuance of permit—In all cities and villages of this state said permit must be procured from the governing body of the municipality except when said public dancing place is owned by the municipality and the dance to be given or held therein is to be given by and under the supervision of the public authorities of said municipality. In all other cases such permit must be procured from the town board of the county in which said public dance is to be held. Such permits may be issued for one or more public dances or for a period of time not exceeding one year. Said permit shall be issued at a fee and under such conditions as such governing body or town board may prescribe, not inconsistent with the provisions of this act. Provided further, that in or for territory not included within an organized by-law or resolution prohibiting dances therein; provided further, that in or for territory not

included within an organized town, city, village or borough, such permit shall be procured from the county board of the county within which such territory is situated, and in such case the county board and county auditor shall have the powers, functions and duties of town boards and town clerks respectively in this act provided. ('23 c. 139 § 3)

A town by-law regulating public dances and dance halls is not invalid because it imposes a license fee of \$30 for each dance 159-421, 139+175.

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

10165. Application—All applications for such permit shall be made upon blanks furnished by the city, village, town or county as the case may be and shall be accompanied by the affidavit of two freeholders and shall affirmatively show by the application and affidavits that the applicant is a person of good moral character and reputation in the community in which he lives and that the applicant has not, within five years prior to the making of such application, been convicted of a felony, gross misdemeanor, or of any of the provisions of this act, and no such application shall be granted to any person of bad character or who has been so convicted as aforesaid, nor to any person who is a keeper of any disorderly house of any kind nor for any place which has any direct or indirect communication with any room in which intoxicating liquor is sold, given away or otherwise used, nor for any place having any so-called "private apartments" or "private rooms" furnished or used for any other than legitimate business purposes which adjoin such dancing place or which may be reached by stairs, elevator or passageway leading from such dancing place. No permit shall be issued under the terms of this act unless the governing body or town board are satisfied that the place

where said public dance is to be given or held is properly ventilated and equipped with necessary toilets, wash rooms, lighting facilities and that such place is not likely to become a public nuisance or detrimental to public morals. ('23 c. 139 § 5)

**10166. Intoxicating liquors forbidden**—No person shall suffer or permit any intoxicating liquor to be sold, given away, furnished or used in any public dancing place and no person shall in any such public dancing place or in any ante-room, corridor, cloak room, hallway, toilet, or dressing room thereof, or in any room connected therewith, or within one thousand feet of any entrance thereof, drink any intoxicating liquor; nor shall any person holding or giving said dance knowingly suffer or permit any person to drink any intoxicating liquor in violation of this act. Whenever it shall appear to the governing body of any municipality that intoxicating liquor is sold or that persons in attendance upon such dance drink intoxicating liquor within 1,000 feet of the entrance of such dancing place and that the licensee of such dancing place suffers or permits the same, or that the holding of such public dance at any such place causes or contributes thereto or is detrimental to public morals, then it shall be the duty of such governing body to revoke such permit. Provided this section shall be construed as cumulative and additional and as not modifying or affecting any law of this state relating to intoxicating liquor. ('23 c. 139 § 6)

**10167. Immodest dances prohibited**—No person or persons shall dance, nor shall any person to whom such permit is issued permit or suffer any person or persons to dance in any public dance hall any indecent or immodest dances, or any dance which is characterized by immodest motion of the body. No person shall in any public dance hall act or speak in rude, boisterous, obscene or indecent manner, nor shall any person to whom a permit has been issued suffer or permit any person to so act or speak therein. ('23 c. 139 § 7)

**10168. Lights**—Every public dancing place shall be brightly illuminated while in public use and dancing therein while the lights are extinguished, dimmed, or turned low so as to give imperfect illumination, is hereby prohibited. ('23 c. 139 § 8)

**10169. Not to admit certain persons**—No person to whom a permit has been issued shall permit to be or remain in any public dancing place any intoxicated person, any prostitute, any person of known immorality, or any unmarried person under the age of sixteen years, unless such person is accompanied by a parent or guardian, nor any unmarried person more than sixteen years and under the age of eighteen years unless such person is accompanied by a parent or guardian or presents the written consent of his parent or guardian to the officer in charge of such dance, and every such written permit shall be retained by such officer. ('23 c. 139 § 9)

**10170. Officer must attend all public dances**—It shall be incumbent upon the person to whom said permit is issued to have an officer of the law present at every public dance to be given or held thereunder during all the time said public dance is being held. In the case of a public dance to be held or given in a city, village or borough, said officer of the law shall be designated by the chief peace officer thereof. In all other cases said officer of the law shall be designated by the sheriff of the county. In all cases the fees and expenses of such officer of the law shall be paid in advance by the person to whom said permit has been issued. In case any person, not a public officer, shall

be designated as such officer of the law, the person or persons to whom said permit has been issued shall be responsible for his acts and conduct and there shall be no liability for his acts and conduct on the part of the officer designating him under the provisions of this act. ('23, c. 139, § 10; amended '27, c. 321)

**10171. Hours**—No public dance shall be held or conducted between the hours of one and six o'clock A. M. of any day; provided that no public dance shall be held or conducted on Sunday during the hours preceding twelve o'clock noon thereof. In all other cases the public authorities issuing the permit herein provided for may, if they so desire, fix the hours within which public dances may be held, not inconsistent herewith, and shall also have authority by ordinance, resolution or by law to regulate or to prohibit the same on Sunday, within the limits of the city, village or territory within which such public authorities may grant permits for public dancing as herein provided. ('23, c. 139, § 11; amended '25, c. 302)

**10172. Disposition of fees**—All fees for permits hereunder shall be paid into the treasury of the municipality or into the county treasury, as the case may be. ('23 c. 139 § 12)

**10173. Revocation of permit**—The governing body or town board issuing a permit hereunder may at any time revoke the same and shall revoke any such permit held by any person convicted of violating any of the provisions of this act. Provided any five or more freeholders residing in any village having a population of not more than one thousand inhabitants, or in any town, may petition such town board or village council of any such town or village, setting forth that any dancing place for which a permit has been issued is being conducted contrary to law, whereupon it shall be the duty of such board or village council to hear and act upon such petition with ten (10) days after the same shall have been filed with the town clerk or village recorder, and in case any such petition shall be denied, or not acted upon, within said time, then any five (5) freeholders of such town or village may file a petition with the county board of the county, setting forth the facts. Thereupon it shall be the duty of such county board to hear and determine such petition and such board shall have power, and it shall be the duty of such board to revoke any such permit if it finds that such dancing place has been conducted contrary to law. It shall be the duty of the county attorney in each county to enforce the provisions of this act and prosecute all violations thereof. ('23 c. 139 § 13)

**10174. Violations a misdemeanor**—Any person, firm, or corporation violating any of the provisions of this act shall be guilty of a misdemeanor. ('23 c. 139 § 14)

#### ABORTION, ETC.

**10175. Abortion, how punished**—Every person who, with intent thereby to produce the miscarriage of a woman, unless the same is necessary to preserve her life, or that of the child with which she is pregnant, shall—

1. Prescribe, supply, or administer to a woman, whether pregnant or not, or advise or cause her to take, any medicine, drug, or substance; or,

2. Shall use, or cause to be used, any instrument or other means—

Shall be guilty of abortion, and punished by imprisonment in the state prison for not more than four years, or in a county jail for not more than one year. (4942) [8693]

22-238; 56-226, 57+652, 1065; 85-101, 88+417; 99-74, 108+833.

Under the statute making the administering of drugs or the use of instruments with intent to produce a miscarriage, the crime of abortion, it is not essential to the commission of the crime that a miscarriage result. 161-132, 201+297.

**10176. Pregnant woman attempting abortion**—A pregnant woman who takes any medicine, drug, or substance, or uses or submits to the use of any instrument or other means, with intent thereby to produce her own miscarriage, unless the same is necessary to preserve her life, or that of the child whereof she is pregnant, shall be punished by imprisonment in the state prison for not less than one nor more than four years. (4943) [8694]

**10177. Selling drugs, etc.**—Whoever shall manufacture, give, or sell an instrument, drug, or medicine, or any other substance, with intent that the same may be unlawfully used in producing the miscarriage of a woman, shall be guilty of a felony. (4944) [8695]

**10178. Evidence**—In any prosecution for abortion or attempting abortion, no person shall be excused from testifying as a witness on the ground that his testimony would tend to criminate himself. (4945) [8696]

**10179. Concealing birth—Second offense**—Every person who shall endeavor to conceal the birth of a child by any disposition of its dead body, whether the child died before or after its birth, shall be guilty of a misdemeanor; and every woman who, having been convicted of endeavoring to conceal the still-birth of any issue of her body, which if born alive would be illegitimate, or the death of such issue under the age of two years, shall, subsequent to such conviction, endeavor to conceal any such birth or death, shall be punished by imprisonment in the state prison for not more than five years. (R. L. '05 § 4946, G. S. '13 § 8697, amended '17 c. 231 § 1)

#### BIGAMY—ADULTERY, ETC.

**10180. Bigamy defined—How punished—Exceptions**—Every person who, having a husband or wife living, marries another person, or continues to cohabit with such second husband or wife in this state, shall be guilty of bigamy, and be punished by imprisonment in the state prison for not more than five years, provided that this section shall not extend—

1. To a person whose former husband or wife has been absent for five years successively then last past, without being known to him or her to be living, and believed to be dead; or

2. To a person whose former marriage has been pronounced void, or annulled or dissolved, by a court of competent jurisdiction. (4947) [8698]

25-29; 43-385, 45+848.

**10181. Punishment of consort**—Every person who knowingly enters into a marriage with another which is prohibited to the latter by § 10180 shall be punished by imprisonment in the state prison for not more than five years or by a fine of not more than one thousand dollars, or by both. (4948) [8699]

124-467, 145+167.

**10182. Incest**—Whenever any male and female persons, nearer of kin to each other than first cousins, computing by the rules of the civil law, whether of the half or the whole blood, shall have sexual intercourse together, each shall be guilty of incest, and be punished by imprisonment in the state prison for not more than ten years. (4949) [8700]

55-464, 57+205, 123-128, 143+119.

**10183. Crime against Nature**—A person who carnally knows in any manner any animal or bird, or carnally knows any male or female person by the anus or by or with the mouth; or voluntarily submits to such carnal knowledge; or attempts sexual intercourse with a dead body, is guilty of sodomy, and is punishable with imprisonment in the state prison for not more than twenty years, and any sexual penetration, however slight, shall be sufficient to complete the crime. (R. L. '05 § 4950, amended '09 c. 270 § 1; '21 c. 224 § 1) [8701]

**10184. Adultery**—Whenever any married woman shall have sexual intercourse with a man, other than her husband, whether married or not, both shall be guilty of adultery, and punished by imprisonment in the state prison for not more than two years, or by a fine of not more than three hundred dollars; but no prosecution shall be commenced except on complaint of the husband or the wife, save when such husband or wife shall be insane, nor after one year from the commission of the offense. (4951) [8702]

41-50, 42+602; 57-225, 58+878. Under different statute (4-335, 251).

123-392, 143+971; 140-363, 168+174.

**10185. Fornication**—Whenever any man and single woman have sexual intercourse with each other, each is guilty of fornication and shall be punished by imprisonment in the county jail for not more than ninety days, or by a fine of not more than one hundred dollars. (R. L. '05 § 4952, G. S. '13 § 8703, amended '19 c. 193 § 1)

23-352; 27-52, 6+404; 94-319, 102+722. Cited (103-428, 115+275). See 125-497, 147+663.

**10185A. Absconding by father to evade bastardy proceedings**—If issue is conceived of fornication, and within the period of gestation or within sixty days after the birth of a living child the father absconds from the state with intent to evade proceedings to establish his paternity of such child, he is guilty of a felony and shall be punished by imprisonment in the state prison for not more than two years. ('17 c. 211 § 1, adding § 8703A to G. S. '13)

#### OBSCENITY

**10186. Exposure of person—Public indecency**—Every person who shall wilfully and lewdly expose his person, or the private parts thereof, in any public place, or in any place where others are present, or shall procure another to so expose himself, and every person who shall be guilty of any open or gross lewdness or lascivious behavior, or any public indecency other than hereinbefore specified, shall be guilty of a misdemeanor, and punished by a fine of not less than five dollars, or by imprisonment in a county jail for not less than ten days. (4953) [8704]

213+46.

**10187. Obscene literature**—Every person who—

1. Shall sell, lend, give away, or offer to give away, show, have in his possession with intent to sell, give away, show, advertise, or otherwise offer for loan, gift, sale or distribution, any obscene or indecent book, magazine, pamphlet, newspaper, story paper, writing, picture, drawing, photograph, or any article or instrument of indecent or immoral character; or who shall design, copy, draw, photograph, print, utter, publish, or otherwise prepare such a book, picture, drawing, paper, or other article; or write or print, or cause to be written or printed a circular, advertisement, or notice of any kind, or give oral information stating when, where, how, or of whom or by what means such

an indecent or obscene article or thing can be purchased or obtained; or

2. Shall exhibit upon any public road, street, or other place within view of any minor any of the books, papers, or other things hereinbefore enumerated; or

3. Shall hire, use, or employ any minor to sell or give away, or in any manner distribute, or shall permit any minor in his custody or control to sell, give away, or in any manner distribute, any of the articles hereinbefore mentioned—

Shall be guilty of a gross misdemeanor, and be punished by imprisonment in the county jail for not more than one year nor less than ninety days, or by a fine not less than one hundred dollars nor more than five hundred dollars, or by both. (R. L. '05 § 4954, G. S. '13 § 8705, amended '17 c. 241 § 1)

**10188. Indecent articles, etc.**—Every person who shall sell, lend, or give away, or in any manner exhibit, or offer to sell, lend, or give away, or have in his possession with intent to sell, lend, give away, or advertise or offer for sale, loan, or distribution, any instrument or article, or any drug or medicine, for the prevention of conception or for causing unlawful abortion; or shall write or print, or cause to be written or printed, a card, circular, pamphlet, advertisement, or notice of any kind, or shall give oral information, stating when, where, how, of whom, or by what means such article or medicine can be obtained or who manufactures it—shall be guilty of a gross misdemeanor, and punished by imprisonment in the county jail for not more than one year, or by a fine of not more than five hundred dollars, or by both. (4955) [8706]

Powers of justice of the peace as to punishment. 164-283, 204+955.

**10189. Mailing and carrying obscene matter**—Every person who shall deposit or cause to be deposited in any postoffice in the state, or place in charge of any express company or other common carrier or person for transportation any of the articles or things specified in §§ 10187, 10188, or any circular, book, pamphlet, advertisement, or notice relating thereto, with the intent of having the same conveyed by mail, express, or in any other manner; or who shall knowingly or wilfully receive the same with intent to carry or convey it, or shall knowingly carry or convey the same by express, or in any other manner except by United States mail—shall be guilty of a misdemeanor. But the provisions of this section and § 10188 shall not be construed to apply to an article or instrument used by physicians lawfully practicing, or by their direction or prescription, for the cure or prevention of disease. (4956) [8707]

**10190. Search warrant—Destruction of property**—Every municipal court and justice of the peace, upon complaint under oath that any person has in his possession or under his control any of the obscene books, papers, or other matter specified in §§ 10187-10189, shall issue a warrant directed to the sheriff or any constable of the county, therein directing him to search for, seize, and take possession of such obscene matter; and, upon conviction of the person in whose possession the same shall be found, shall cause such matter to be destroyed, and the fact to be entered upon the records of the court. (4957) [8708]

**10191. Certain medical advertisements—Penalty**—Any person who shall advertise, in his own name or the name of another person, firm or pretended firm, association, corporation or pretended corporation, in any newspaper, pamphlet, circular, or other written or printed paper, or the owner, publisher, or manager of any newspaper or periodical who shall permit to be

inserted or published in any newspaper or periodical owned or controlled by him, the treatment or curing of venereal diseases, the restoration of "lost manhood" or "lost vitality," or shall advertise in any manner that he is a specialist in diseases of the sexual organs, or diseases caused by sexual weakness, self-abuse, or excessive sexual indulgence, or in any disease of like causes, or who shall advertise in any manner any medicine, drug compound, appliance or any means whatever whereby it is claimed that sexual diseases of men and women may be cured or relieved, or miscarriage or abortion produced, shall be guilty of a gross misdemeanor and shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for not more than six months. ('09 c. 162 § 1) [8709]

**10192. Publication, etc.**—Penalty—Any person publishing, distributing, or causing to be distributed or circulated, any of the advertising matter herein above prohibited shall be guilty of a misdemeanor and punished as prescribed in section 1 of this act. ('09 c. 162 § 2) [8710]

**10193. Evidence**—The production of any advertisement or advertising matter published or distributed contrary to the provisions of this act shall be of itself prima facie evidence of the guilt of the person or persons advertising to cure any such disease herein above mentioned, or of the publishers who publish any matter such as is herein prohibited. ('09 c. 162 § 3) [8711]

#### HOUSES OF PROSTITUTION, ETC.

**10194. Keeper of disorderly resort**—Every person who shall keep a house of ill fame or assignation, or a house, tent, vehicle, resort, or place of any description for persons to visit for unlawful sexual intercourse, or for any other lewd, obscene, or indecent purpose, shall be guilty of felony. And every person who shall keep a disorderly house, or any place of public resort by which the peace, comfort, or decency of a neighborhood is habitually disturbed, or who, as agent or owner, lets a building or any portion thereof, knowing that it is intended to be used for any purpose specified in this section, or who permits a building or any portion thereof to be used for any of the aforesaid purposes, shall be guilty of a gross misdemeanor. (4958) [8712]

21-47; 29-193, 12+524; 59-281, 61+450; 89-340, 94+1078; 89-343, 94+1077; 123-451, 143+1126; 126-95, 147+953.

"Prostitution" is not synonymous with "concubinage" and other terms indicating a more restricted degree of abandonment; a "prostitute" being one who offers herself for purposes of sexual intercourse indiscriminately, with or without hire. 153-111, 196+930.

**10195. Detention in house of ill fame for debt**—It shall be unlawful for any person to hold, detain or restrain in any house of ill fame or prostitution, any female person for the purpose of compelling such female directly or indirectly by her voluntary or involuntary service or labor, to pay, liquidate or cancel any debt, dues or obligations incurred or said to have been incurred in such house of ill fame or prostitution. ('09 c. 461 § 1) [8713]

**10196. How punished**—Any person who violates or suffers the violation of any of the provisions of this act shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the state prison for not more than two years. ('09 c. 461 § 2) [8714]

**10197. Receiving earnings of prostitute**—It shall be unlawful for any person to knowingly accept or receive in whole or in part his or her support or main-

tenance from the proceeds or earnings of any woman engaged in prostitution. ('09 c. 475 § 1) [8715]  
193+303.

**10198. How punished**—Any person who violates the provisions of this act shall be guilty of a felony and upon conviction thereof shall be punished by imprisonment in the state prison for not less than one year nor more than three years. ('09 c. 475 § 2) [8716].

**10199. Houses of prostitution, etc., nuisances**—Whoever shall erect, establish, continue, maintain, use, own or lease any building, erection or place used for the purpose of lewdness, assignation or prostitution is guilty of a nuisance, and the building, erection or place, or the ground itself, in or upon which such lewdness, assignation or prostitution is conducted, permitted or carried on, continued or exists, and the furniture, fixtures, musical instruments, and movable property used in conducting or maintaining such public nuisance, are also declared a nuisance and shall be enjoined and abated as hereinafter provided. ('13 c. 562 § 1) [8717]

126-78, 147+951; 126-95, 147+953; 131-349, 154+1073.

**10200. Action to enjoin—Restraining order—Answer, etc.**—Whenever a nuisance is kept, maintained or exists, as defined in this act, the county attorney or any citizen of the county may maintain an action in equity in the name of the state of Minnesota, upon the relation of such county attorney or citizen, to perpetually enjoin said nuisance, the person or persons conducting or maintaining the same from further conducting or maintaining the same and the owner or agent of the building or ground upon which said nuisance exists from further permitting such building or ground or both to be so used. The defendants shall be served therein as in other actions and in such action the court, or judge in vacation, shall upon the presentation of a verified complaint therefor alleging that the nuisance complained of exists, allow a temporary writ of injunction without bond, if the existence of such nuisance shall be made to appear to the satisfaction of the court or judge by evidence in the form of affidavits, depositions, oral testimony or otherwise as the complainant may elect, unless the court or judge by previous order, shall have directed the form and manner in which such evidence shall be presented, in which case it shall be so presented. Where a temporary injunction is prayed for, the court, on the application of plaintiff, may issue an ex parte restraining order, restraining the defendants and all other persons from removing or in any manner interfering with the furniture, fixtures, musical instruments and movable property used in conducting the alleged nuisance, until the decision of the court or judge granting or refusing such temporary injunction and until the further order of the court thereon. The restraining order may be served by handing to and leaving a copy of said order with any person in charge of said property or residing in the premises or apartment wherein the same is situated, or by posting a copy thereof in a conspicuous place at or upon one or more of the principal doors or entrances to such premises or apartment where such nuisance is alleged to be maintained, or by both such delivery and posting. The officer serving such restraining order shall forthwith make a return into court and inventory of the personal property situated in and used in conducting or maintaining such nuisance. Any violation of such restraining order shall be a contempt of court, and where such order is so posted mutilation or removal thereof, while the same remains in force, shall be a contempt of court; provided, such posted order contains thereon or therein

a notice to that effect. Three days' notice in writing shall be given the defendants of the hearing of the application for temporary injunction, and if then continued at the instance of defendant, the temporary writ as prayed shall be granted as a matter of course. Each defendant so notified, shall serve upon the complainant or his attorney a verified answer on or before the date fixed in said notice for said hearing, and such answer shall be filed with the clerk of the district court of the county wherein such cause is triable, but the court may allow additional time for so answering, providing such extension of time shall not prevent the issuing of said temporary writ as prayed for. The allegations of the answer shall be deemed to be traversed without further pleading. When an injunction has been granted, it shall be binding on the defendants throughout the judicial district in which it was issued, and any violation of the provisions of the injunction herein provided shall be a contempt as hereinafter provided. ('13 c. 562 § 2) [8718]

126-78, 147+951; 126-95, 147+953; 131-308, 155+90; 131-349, 154+1073.

**10201. Trial—Action by citizen, etc.**—The action when brought shall be noticed for and triable at the first term of the court the same as other actions triable in the district court of such county, and in such action evidence of the general reputation of the place shall be admissible for the purpose of proving the existence of said nuisance and shall be prima facie evidence of such nuisance and of knowledge thereof and of acquiescence and participation therein on the part of the owners, lessors, lessees, users and all those in possession of or having charge of, as agent or otherwise, or having any interest in any form of property used in conducting or maintaining said nuisance. If the complaint is filed by a citizen, it shall not be dismissed except upon a sworn statement made by the complainant and his attorney, setting forth the reasons why the action should be dismissed, and the dismissal approved by the county attorney in writing or in open court. If the court is of the opinion that the action ought not to be dismissed, he may direct the county attorney to prosecute said action to judgment at the expense of the county, and if the action is continued more than one term of court, any citizen of the county or the county attorney may be substituted for the complaining party and prosecute said action to judgment. If the action is brought by a citizen and the court finds there was no reasonable grounds or cause for said action, the cost may be taxed to such citizen. ('13 c. 562 § 3) [8719]

126-78, 147+951; 126-95, 147+953; 131-308, 155+90; 131-349, 154+1073.

**10202. Contempts**—In case of the violation of any injunction granted under the provisions of this act, or of a restraining order or the commission of any contempt of court in proceedings under this act, the court, or in vacation, a judge thereof, may summarily try and punish the offender. The proceedings shall be commenced by filing with the clerk of the court a complaint under oath, setting out and alleging facts constituting such violation, upon which the court or judge shall cause a warrant to issue, under which the defendant shall be arrested. The trial may be had upon affidavits or either party may demand the production and oral examination of the witnesses. A party found guilty of contempt under the provisions of this act shall be punished by a fine of not less than one hundred nor more than one thousand dollars or by imprisonment in the county jail not less than three nor

more than six months or by both fine and imprisonment. ('13 c. 562 § 4) [8720]

126-95, 147+953; 131-308, 155+90; 131-349, 154+1073.

**10203. Order of abatement—Personal property—Contempt—Fees—**If the existence of the nuisance be admitted or established in an action as provided in this act, or in a criminal proceeding in the district court, an order of abatement shall be entered as a part of the judgment in the case, which order shall direct the removal from the building or place of all fixtures, furniture, musical instruments or movable property used in conducting the nuisance, and shall direct the sale of such thereof as belong to the defendants notified or appearing, in the manner provided for the sale of chattels under execution, and shall direct the effectual closing of the building or place against its use for any purpose, and so keeping it closed for a period of one year, unless sooner released. Owners of unsold personal property so seized must appear and claim same within ten days after such order of abatement is made, and prove innocence, to the satisfaction of the court, of any knowledge of said use thereof and that with reasonable care and diligence they could not have known thereof. Every defendant in the action shall be presumed to have had knowledge of the general reputation of the said place. If such innocence be so established, such unsold personal property shall be delivered to the owner, otherwise it shall be sold as hereinbefore provided. If any person shall break and enter or use a building, erection or place so directed to be closed, he shall be punished as for contempt, as provided in the preceding section. For removing and selling the movable property, the officer shall be entitled to charge and receive the same fees as he would for levying upon and selling like property on execution, and for closing the premises and keeping them closed, a reasonable sum shall be allowed by the court. ('13 c. 562 § 5) [8721]

126-79, 147+951; 126-95, 147+953; 131-308, 155+90; 131-349, 154+1073.

**10204. Duty of county attorney, etc.—**In case the existence of such nuisance is established in a criminal proceeding in a court now having equitable jurisdiction, it shall be the duty of the county attorney to proceed promptly under this act to enforce the provisions and penalties thereof, and the finding of the defendant guilty in such criminal proceeding, unless reversed or set aside, shall be conclusive as against such defendant as to the existence of the nuisance. All moneys collected under this act shall be paid to the county treasurer. The proceeds of the sale of the personal property, as provided in the preceding section, shall be applied in payment of the costs of the action and abatement or so much of such proceeds as may be necessary, except as hereinafter provided. ('13 c. 562 § 6) [8722]

126-78, 147+951; 131-308, 155+90; 131-349, 154+1073.

**10205. Intervention by owner—**If the owner of the premises in which said nuisance has been maintained appears and pays all costs of the proceeding, and files a bond with sureties to be approved by the court in the full value of the property, to be ascertained by the court, or in vacation, by the judge thereof, conditioned that he will immediately abate said nuisance and prevent the same from being established or kept therein within a period of one year thereafter, the court, or in vacation the judge, if satisfied of his good faith, may order the premises closed or sought to be closed under the order of abatement, to be delivered to said owner, and said order of abatement cancelled so far as the

same may relate to said real property. The release of the property under the provisions of this section shall not release it from any judgment, lien, penalty or liability to which it may be subject by law. ('13 c. 562 § 7) [8723]

126-95, 147+953; 131-308, 155+90; 131-349, 154+1073.

**10206. Permanent injunction—Penalty and lien—**Whenever a permanent injunction issues against any person for maintaining a nuisance as herein defined, or against any owner or agent of the building kept or used for the purpose prohibited by this act, there shall be imposed upon said building and the ground upon which the same is located and against the person or persons maintaining said nuisance, and the owner or agent of said premises, a penalty of three hundred dollars. The imposing of said penalty shall be made by the court as a part of the proceeding, and the clerk of said court shall make and certify a return of the imposition of said penalty forthwith to the county auditor, who shall enter the same as a tax upon the property and against the persons upon which or whom the lien was imposed as and when other taxes are entered, and the same shall be and remain a lien on the land upon which lien was imposed until fully paid; provided that any such lien imposed while the tax books are in the hands of the auditor shall be immediately entered therein. The payment of said penalty shall not relieve the persons or property from any other penalties provided by law. The provisions of the law relating to the collection of taxes in this state, the delinquency thereof and sale of property for taxes shall govern in the collection of the penalty herein prescribed in so far as the same are applicable, and the said penalty collected shall be applied in payment of any deficiency in the costs of the action and abatement on behalf of the state to the extent of such deficiency after the application thereto of the proceeds of the sale of personal property as hereinbefore provided, and the remainder of said penalty together with the unexpended portion of the proceeds of the sale of personal property shall be distributed in the same manner as fines collected for the keeping of houses of ill fame, excepting that ten per cent of the amount of the whole penalty collected and of the whole proceeds of the sale of said personal property as provided in this act shall be paid by the treasurer to the attorney representing the state in the injunction action, at the time of final judgment. ('13 c. 562 § 8) [8724]

126-95, 147+953; 131-308, 155+90; 131-349, 154+1073.

**10207. Owners and agents—Parties to action—**When such nuisance has been found to exist under any proceeding in the district court or as in this act provided, and the owner or agent of such building or ground whereon the same has been found to exist, was not a party to such proceeding, nor appeared therein, the said penalty of three hundred dollars shall, nevertheless, be imposed against the persons served or appearing and against the property as in this act set forth. But before such penalty shall be enforced against such property, the owner or agent thereof shall have appeared therein or shall be served with summons therein, and the provisions of sections 4111 and 4112 of Revised Laws of Minnesota, 1905, shall apply to service in proceedings under this act. The person in whose name the real estate affected by the action stands on the books of the county auditor for purposes of taxation shall be presumed to be the owner thereof, and in case of unknown persons having or claiming any ownership, right, title, or interest in property affected by the action, such may be made parties to the action

by designating them in the summons and complaint as "all other persons unknown claiming any ownership, right, title or interest in the property affected by the action" and service thereon may be had by publishing such summons in the manner prescribed in said § 4111. Any person having or claiming such ownership, right, title or interest, and any owner or agent in behalf of himself and such owner may make, serve and file his answer therein within twenty days after such service and have trial of his rights in the premises by the court; and if said cause has already proceeded to trial or to findings and judgment, the court shall by order fix the time and place of such further trial and shall modify, add to or confirm such findings and judgment as the case may require. Other parties to said action shall not be affected thereby. ('13 c. 562 § 9) [8725]

126-95, 147+953; 131-308, 155+90; 131-349, 154+1073.

**10208. Unconstitutional provisions**—Should any provision or item of this act be held to be unconstitutional, such fact shall not be held to invalidate the other provisions and items thereof. ('13 c. 562 § 10) [8726]

131-308, 155+90; 131-349, 154+1073.

### LOTTERIES

**10209. Defined—A nuisance—Drawing—How punished**—A lottery is a scheme for the distribution of property by chance, among persons who have paid or agreed to pay a valuable consideration for the chance, whether it shall be called a lottery, raffle, gift enterprise, or by any other name, and is hereby declared unlawful and a public nuisance.

Every person who shall contrive, propose, or draw a lottery, or shall assist in contriving, proposing, or drawing a lottery, shall be punished by imprisonment in the state prison for not more than two years, or by a fine of not more than one thousand dollars, or by both. (4959) [8727]

48-555, 51+618; 95-442, 104+556.

The action was to enjoin and abate the plan outlined. No search warrant was issued, and there was no seizure of the tickets. They were not brought within the jurisdiction of the court. They were not harmful except as used in connection with prize drawings, and had a property value aside from such use. It was error to direct the sheriff to seize and destroy the tickets. 212+169.

A plan whereby the merchants of a city gave tickets to their customers upon the purchase of merchandise and afterwards a drawing was had on chance for cash or other prizes was a lottery. 212+169.

**10210. Selling tickets, advertising**—Every person who shall sell, give, or in any way whatever furnish or transfer to or for another a ticket, chance, share, or interest, or any paper, certificate, or instrument purporting to be or to represent a ticket, chance, share, or interest, in or dependent upon the event of a lottery, to be drawn within or without the state; or who, by writing, printing, circular, or letter, or in any other way, shall advertise or publish an account of a lottery, in or out of the state, stating how, when, or where the same is to be or has been drawn, or what are the prizes therein, or any of them, or the price of a ticket, or any share or interest therein, or where or how it may be obtained—shall be guilty of a misdemeanor. (4960) [8728]

151-59, 185+1017.

**10211. Disposal of property by lottery—Keeping office—Letting building**—Every person who shall offer for sale or distribution in any way real or personal property, or any interest therein, to be determined by lot or chance dependent upon the drawing of a lottery in or out of the state; or who shall sell, furnish, or

procure, or cause to be sold, furnished, or procured, in any manner, a chance or share or any interest in property offered for sale or distribution in violation of this subdivision, or a ticket or other evidence of such chance, share, or interest; or who shall open, set up, or keep, by himself or another, an office or place for registering the numbers of tickets in a lottery in or out of the state, or for making, receiving, or registering any bets or stakes, for the drawing or result of such lottery; or who shall advertise or in any way publish any account of an opening, setting up, or keeping of such an office or place; or who shall let or permit to be used any building or portion thereof, knowing that it is intended to be used for any of the purposes specified in this subdivision—shall be guilty of a misdemeanor. (4961) [8729]

**10212. Insuring lottery tickets—Advertising offers to insure**—Every person who shall insure, or receive any consideration for insuring, for or against the drawing of a ticket, share, or interest in a lottery, or of a number of such ticket, share, or interest, or who shall receive any valuable consideration upon an agreement to pay money, or deliver property, in the event that a ticket, share, or interest, or a number of such a ticket, share, or interest, in a lottery shall prove fortunate or unfortunate, or shall be drawn or not drawn in a particular way or in a particular order; or who shall promise or agree or offer to pay money or deliver property, or do or forbear to do any act, for the benefit of any person, with or without consideration, upon any accident or contingency dependent on the drawing thereof, or of any number or ticket therein; or who, by writing, printing, circular, or letter, or in any other way, advertises or publishes an offer, notice, or proposition in violation of the provisions of this section—shall be guilty of a misdemeanor. (4962) [8730]

**10213. Lotteries out of state—Advertisements by non-residents**—The provisions of this subdivision are applicable to lotteries drawn or to be drawn out of the state, whether authorized or not by the laws of the state where they are drawn or to be drawn, in the same manner as to those in the state, and every provision of law relating to advertising lotteries or offers to insure lottery tickets shall be applicable whenever the advertisement was published, or the letter or circular sent or delivered, through or in the state, though the person causing or procuring the same to be published, sent; or delivered was out of the state at the time of so doing. (4963) [8731]

### GAMING

**10214. Gambling**—Gambling with cards, dice, gaming tables, or any other gambling device whatever is hereby prohibited. Every person who deals cards at the game called "faro," "pharo," or "forty-eight," whether the same is dealt with fifty-two or any other number of cards, and every person who shall keep any gambling device whatsoever designed to be used in gambling, shall be punished by imprisonment in the county jail for not more than six months, or by a fine of not more than two hundred dollars, or by both; and every person who shall bet any money or other property at or upon a gaming table, game, or device shall be punished by a fine of not less than five dollars nor more than twenty dollars. (4964) [8732]

1. **What is gambling device**—39-153, 39+305; 49-443, 52+42; 74-257, 77+4; 84-357, 87+935. Cited (115-235, 132+266).

2. **What constitutes gambling**—39-153, 39+305; 74-257, 77+4; 138-79, 164+307.

3. **Indictment**—84-357, 87+935.

**10215. Gambling devices on premises**—Every person who shall suffer any gaming table, faro bank, or gambling device to be set up or used for the purpose of gambling in any house, building, steamboat, raft, keelboat, or boom, lot, yard, or garden, owned, occupied, or controlled by him, shall be punished by imprisonment in the county jail for not more than six months, or by a fine of not more than two hundred dollars, or by both. (4965) [8733]

79-388, 82+850; 84-357, 87+935. At common law (17-72, 50; 39-153, 39+305). Under city ordinance (74-257, 77+4). Cited (115-235, 132+266. See 138-79, 164+807.

**10216. Evidence—Testimony of player**—No person shall be excused from testifying touching an offense committed by another against any provision of this subdivision relating to gambling, by reason of his having bet or played at the prohibited game or gambling device. (4966) [8734]

**10217. Recovery of money, etc., lost**—Every person who, by playing at cards, dice, or other game, or by betting on the hands or sides of such as are gambling, shall lose to any person so playing or betting any sum of money or any goods, and pays or delivers the same, or any part thereof, to the winner, may sue for and recover such money by a civil action before any court of competent jurisdiction. (4967) [8735]

34-247, 25+400; 94-416, 103+163. Recovery of money lost at gambling from keeper or lessee (115-235, 132+266).

Where a check or money is delivered by the loser to the winner in payment of a bet, by placing the same on the table, and the winner takes it, the loser cannot recover either the money or the check. 157-491, 196+653.

**10218. Notes, etc., for gambling debt void**—Every note, bill, bond, mortgage, or other security or conveyance in which the whole or any part of the consideration shall be for any money or goods won by gambling or playing at cards, dice, or any other game whatever, or by betting on the sides or hands of any person gambling, or for reimbursing or repaying any money knowingly lent or advanced at the time and place of such gambling or betting, or lent or advanced for any gambling or betting to any person so gambling or betting, shall be void and of no effect as between the parties to the same, and as to all persons except such as hold or claim under them in good faith, without notice of the illegality of the consideration of such contract or conveyance. (4968) [8736]

75-68, 77+558.

Where a check or money is delivered by the loser to the winner in payment of a bet, by placing the same on the table, and the winner takes it, the loser cannot recover either the money or the check. 157-491, 196+653.

The evidence sustains the finding that the promissory note in suit was given by defendant to plaintiff in consideration of a loan of money, and such finding warrants the conclusion of law, so that it is immaterial whether there is support for the further finding that the dealings between the parties, previous to the giving of the note, were not gambling transactions. 163-162, 203+521.

**10219. Swindling by cards, etc.**—Every person who, by means of three-card monte, so called, or of any other form or device, sleight of hand, or other means, by use of cards or instruments of like character, or by any other instrument, trick, or device, obtains from another person any money or other property of any description, shall be deemed guilty of the crime of swindling, and be punished by imprisonment in the state prison for not less than two nor more than five years, or by a fine of not less than two hundred dollars nor more than two thousand dollars; and every person aiding, encouraging, advising, or confederating with or knowingly harboring or concealing, any such person, or in any manner being accessory to the commission of the above-described offense, and all persons

who shall confederate together for the purpose of playing such games, shall be deemed principals therein and punished as such. (4969) [8737]

1. **What constitutes**—29-142, 12+455; 72-522, 75+715; 82-342, 85+12.

2. **Indictment**—29-142, 12+455; 88-262, 92+976; 151-502, 187+607.

3. **Evidence admissible**—72-522, 75+715; 88-262, 92+976.

4. **Sufficiency of the evidence**—29-142, 12+455; 82-342, 85+12; 88-262, 92+976; 95-467, 104+295.

**10220. Arrests**—Every person may, and every conductor or other employee on any railway car or train, captain, clerk, or other employee on any boat, station agent at any depot, officer of any fair or fair ground, proprietor or employee of any place of public resort, with or without warrant, shall arrest any person found in the act of committing any of the offenses mentioned in § 10219, or any person whom he has good reason to believe has been guilty of any such offense, and take him before a magistrate or court having jurisdiction, and make written complaint under oath against him. Every person so making such arrest shall have the same power and authority in all respects as an officer with a warrant, including the power to summon assistance, and shall also arrest the person injured by reason of such offense, and take him before such magistrate or court, who shall require him to give security for his appearance as a witness on trial of the case; and he shall receive for such services the same compensation as is provided for sheriffs. (4970) [8738]

**10221. Swindlers ejected, when—Law to be posted**—Every conductor, captain, hotel or saloon keeper, proprietor or manager of any public conveyance or place of public resort, and the officer of any fair or fair grounds, shall eject from his car, train, boat, hotel, saloon, public conveyance, fair grounds, or place of public resort any person known to him, or whom he has good reason to believe, to be a three-card monte man, or who offers to wager or bet money or other valuable thing upon what is commonly known as "three-card monte," or on any trick or game with cards or other gaming device, and for such ejection no action for damages shall be maintained; and every person operating any public conveyance by which passengers are carried shall keep posted in such conveyance a copy of this subdivision. (4971) [8739]

**10222. Neglect of conductor, etc., to arrest**—Every conductor of a railway train, every station agent, captain of any steamboat, proprietor of any public conveyance, officer of any fair or fair grounds or place of public resort, every hotel or saloon keeper, or any agent or employee thereof, who shall fail, neglect, or refuse to perform such duty, or who shall knowingly suffer or permit any violation of any provision of this subdivision, shall be guilty of a misdemeanor. (4972) [8740]

**10223. Evidence of accomplice**—Any person may be convicted for violation of this subdivision on his own confession out of court, or upon the testimony of an accomplice. (4973) [8741]

**10223-1. Contracts for future delivery of wheat, grain or other farm produce—When deemed gambling contracts**—Every contract of sale for future delivery of wheat, grain or other farm products wherein the actual delivery of the commodity sold is not, in good faith, contemplated or intended by the contracting parties, is hereby declared to be a gambling contract; is hereby made illegal and the parties thereto made liable to the penalties hereinafter provided.

And every such contract is hereby declared to be prima facie a gambling contract when to the knowledge of the buyer the seller does not have in his pos-

session, actually or potentially, the commodity sold. ('21, c. 98, § 1)

**10223-2. Same—Punishment—**Any person whether acting individually or as a member of a firm, or as an officer or employee of any corporation, who shall be found guilty of being a party, directly or indirectly, to any gambling contract, as defined in Section 1 hereof, shall be deemed guilty of a gross misdemeanor and shall upon conviction thereof be punished by a fine of not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1,000.00) and be imprisoned in the county jail until such fine is paid, not exceeding one year; and any such person who shall be found guilty of a second or further offense under this statute, in addition to the penalty above prescribed, shall upon conviction be imprisoned in the county jail for a period of not less than thirty days nor more than ninety days, and if a corporation, shall be liable to forfeiture of its charter. ('21, c. 98, § 2)

**10223-3. Same—Hedging not prohibited—**This act shall not be construed so as to prohibit any producer of, or dealer in grain or any grain product, or other farm products from buying or selling any such grain or product in good faith for future delivery on any grain exchange, according to the customary method of making such contracts on such grain exchange; and if either party to a contract of sale for future delivery enters into such contract in good faith as a protection against loss, on any product herein mentioned, such contract shall be lawful, and may be carried out by delivery of the contract sold at the time specified in such contract, or may be settled by novation or by payment of the difference between the contract price and the market price of the product at or before the time of delivery specified in such contract. ('21, c. 98, § 3)

**10223-4. Same—Contracts not enforceable—**It shall be unlawful for any chamber of commerce, board of trade or other association of persons conducting, maintaining or carrying on an exchange or place of business where wheat, other grains or farm products are bought or sold, to make, promulgate or enforce any rule or regulation which in any way penalizes or imposes a disability on any member, of such chamber of commerce, board of trade or other exchange, or person authorized or permitted to trade thereat, by reason of the failure or refusal of such member or person to carry out or observe the terms and provisions of any such gambling contract. Any chamber of commerce, board of trade or other association conducting or maintaining such an exchange, and every officer, agent or employee of any such chamber of commerce; board of trade or other association, who shall violate or knowingly aid or assist in the violation of the provisions of this section shall be guilty of a gross misdemeanor. ('21, c. 98, § 4)

#### PAWNBROKERS

**10224. License—Refusal to exhibit stolen goods—Selling before time of redemption—**Every person who shall carry on the business of a pawnbroker by receiving goods in pledge for loans at a rate of interest above that allowed by law, except by virtue of a license from a municipal corporation or other authority empowered to grant such license; every person carrying on the business of a pawnbroker or junk dealer who, having received any goods which have been embezzled or stolen, refuses or omits to exhibit them, upon demand, during the usual business hours, to the owner thereof,

or his agent authorized to demand an inspection thereof, or to any public officer; and every pawnbroker who shall sell any article, received by him in pledge, before the time to redeem the same has expired, or who wilfully refuses to disclose the name of the purchaser, or the price received by him for any article so received by him in pledge and subsequently sold—shall be guilty of a misdemeanor. (4974) [8742]

**10225. Junk dealers, pawnbrokers, etc.—Purchase or pledge from minor prohibited—**It shall be unlawful for any junk dealer, pawnbroker or second hand dealer to purchase or to receive on deposit or pledge any thing of value as security for a loan of money from any person, male or female, under lawful age. ('07 c. 228 § 1) [8743]

**10226. Same—Gross misdemeanor—**Any person violating this act shall be guilty of a gross misdemeanor. ('07 c. 228 § 2) [8744]

#### RIGHTS OF SEPULTURE

**10227. Dissection—When permitted—**The right to dissect the dead body of a human being shall be limited to cases specially provided by statute, or by the direction or will of the deceased; cases where a coroner is authorized to hold an inquest upon the body, and then only so far as he may authorize dissection; and cases where the husband, wife, or next of kin, charged by law with the duty of burial, shall authorize dissection for the purpose of ascertaining the cause of death, and then only to the extent so authorized. Every person who shall make, cause, or procure to be made any dissection of the body of a human being, except as hereinbefore provided, shall be guilty of a gross misdemeanor. (4975) [8745]

140-16, 167+113.

**10228. Burial or cremation—**Except in cases of dissection provided for in § 10227, and where a dead body shall rightfully be carried through or removed from the state for the purpose of burial elsewhere, every dead body of a human being lying within this state, and the remains of any dissected body after dissection, shall be decently buried, or cremated, within a reasonable time after death. (4976) [8746]

**10229. Opening grave—Stealing body—Receiving same—**Every person who shall remove the dead body of a human being, or any part thereof, from a grave, vault, or other place where the same has been buried, or deposited awaiting burial or cremation, without authority of law, with intent to sell the same, or for the purpose of procuring a reward for its return, or for dissection, or from malice or wantonness, shall be punished by imprisonment in the state prison for not more than five years, or by a fine of not more than one thousand dollars, or by both. Every person who shall purchase or receive, except for burial or cremation, any such dead body, or any part thereof, knowing that the same has been removed contrary to the foregoing provisions, shall be punished by imprisonment in the state prison for not more than three years. Every person who shall open a grave or other place of interment, temporary or otherwise, or a building where such dead body is deposited while awaiting burial or cremation, with intent to remove such body, or any part thereof, for the purpose of selling or demanding money for the same, for dissection, from malice or wantonness, or with intent to steal or remove the coffin or any part thereof, or anything attached thereto, or any vestment or other article interred or intended to be interred with the body, shall be punished by

imprisonment in the state prison for not more than two years, or by a fine of not more than two hundred and fifty dollars, or by both. (4977) [8747]

**10230. Interfering with dead body or funeral**—Every person who shall arrest or attach the dead body of a human being upon a debt or demand, or shall detain or claim to detain it for any debt or demand, or upon any pretended lien or charge, or who, without authority of law, shall obstruct or detain a person engaged in carrying or accompanying the dead body of a human being to a place of burial or cremation, shall be guilty of a misdemeanor. (4978) [8748]

**10231. Opening road through cemetery**—Every person who shall make or open any road, or construct any railway, turnpike, canal, or other public easement, over, through, in, or upon such part of any inclosure as may be used for the burial of the dead, without authority of law or the consent of the owner thereof, shall be punished by fine not exceeding three hundred dollars. (4979) [8749]

**10232. Cemetery near university or soldiers' home**—It shall be unlawful for any person, firm, association or corporation, to locate or maintain a cemetery or burial ground for the purpose of burying any human body, or the burying of any human body within three-quarters of a mile of the university of the state of Minnesota, or the Minnesota soldiers' home. ('11 c. 4 § 1) [8750]

**10233. Same—Penalty**—Any person, firm, association or corporation, violating section 1 of this act shall be guilty of a gross misdemeanor for each and every offense. ('11 c. 4 § 2) [8751]

#### SABBATH BREAKING, ETC.

**10234. Definitions**—The law prohibits the doing on the first day of the week of the certain acts in § 10235 specified, which are serious interruptions of the repose and religious liberty of the community, and the doing of any of said acts on that day shall constitute Sabbath breaking. Under the term "day" as used in this section and § 10235 is included all the time from midnight to midnight. (4980) [8752]

Cited (97-125, 105+1127; 112-52, 127+444). See 126-257, 148+100; 127-84, 148+891; 149-410, 184+275.

**10235. Things prohibited—Exceptions**—All hunting, shooting, fishing, playing, horse racing, gaming and other public sports, exercises, and shows; all noises disturbing the peace of the day; all trades, manufactures, and mechanical employments, except works of necessity performed in an orderly manner so as not to interfere with the repose and religious liberty of the community; all public selling or offering for sale of property, and all other labor except works of necessity and charity are prohibited on the Sabbath day: Provided, that meals to be served upon the premises or elsewhere by caterers, prepared tobacco in places other than where intoxicating liquors are kept for sale, fruits, confectionery, newspapers, drugs, medicines, and surgical appliances may be sold in a quiet and orderly manner. In works of necessity or charity is included whatever is needful during the day for good order, health or comfort of the community; but keeping open a barber shop or shaving and hair cutting shall not be deemed works of necessity or charity, and nothing in this section shall be construed to permit the selling of uncooked meats, groceries, clothing, boots, or shoes. Provided, however, that the game of base ball when conducted in a quiet and orderly manner so as not to interfere with the peace, repose and comfort of the community, may be played between the

hours of one p. m. and six p. m. on the Sabbath day. (R. L. § 4981, amended '09 c. 267 § 1) [8753]

The casual execution of contracts on Sunday is not illegal (86-297, 90+531). The statute forbids public but not private sales (75-269, 77+965). G. S. 1866 c. 100 § 19 prohibiting work on Sunday held constitutional (21-202). The provisions as to barber shops and the sale of uncooked meats are constitutional (74-376, 77+225; 91-447, 98+325; 177 U. S. 164, 20 Sup. Ct. 666, 44 L. Ed. 716). 1903 c. 362, prohibiting traffic in certain articles on Sunday, constitutional (97-125, 105+1127). Prior to the Penal Code the statutes were more strict in prohibiting business on Sunday (8-13, 1; 8-41, 23; 9-194, 179; 14-174, 134; 20-419, 374; 23-551; 26-362, 4+610; 38-395, 38+101; 41-188, 42+872; 43-149, 45+617; 65-135, 67-799). "Shows" refers to cut of door amusements. Moving picture exhibition held not included (112-52, 127+444; 126-257, 148+100. Cited (127-84, 148+891; 149-410, 184+275; 150-228, 148+967).

**10236. Punishment**—Every person who breaks the Sabbath shall be guilty of a misdemeanor, and punished by a fine of not less than one dollar nor more than ten dollars, or by imprisonment in the county jail for not more than five days; but it shall be a sufficient defense to a prosecution for Sabbath breaking that the defendant uniformly keeps another day of the week as holy time, and that the act complained of was done in such manner as not to disturb others in the observance of the Sabbath. (4982) [8754]

G. S. 1894 § 6514 which provided that "it is a sufficient defense to a prosecution for servile labor on the first day of the week that the defendant uniformly keeps another day of the week as holy time and does not labor upon that day." had no application to proprietor publicly selling groceries on Sunday (97-125, 105+1127; 126-257, 148+100).

**10237. Service of process on the Sabbath prohibited**—Every service of legal process upon the Sabbath day, except in case of a breach or apprehended breach of the peace, or when sued out for the apprehension of a person charged with crime, or where such service is expressly authorized by statute, is hereby prohibited. (4983) [8755]

**10238. Preventing religious act**—Every person who, by threats or violence, shall wilfully prevent another person performing any lawful act enjoined upon or recommended to him by the religion which he professes, shall be guilty of a misdemeanor. (4984) [8756]

**10239. Disturbing religious meeting**—Every person who shall wilfully disturb, interrupt, or disquiet any assemblage of people met for religious worship—

1. By noisy, rude, or indecent behavior, profane discourse, either within the place where such meeting is held or so near it as to disturb the order and solemnity of the meeting;

2. By exhibiting shows or plays, or promoting, within one mile of the place where such meeting is held, any racing of animals, or gaming of any description;

3. By obstructing in any manner, without authority of law, within the like distance, free passage along a highway to the place of such meeting; or

4. By maliciously cutting or otherwise injuring or destroying any harness, conveyance, tent, or other property belonging to any person in attendance upon any such meeting—

Shall be guilty of a misdemeanor; but no prosecution therefor shall be sustained unless commenced within sixty days after the commission of the offense. (4985) [8757]

90-72, 95+580.

**10240. Trading near camp meeting—Prohibition**—Exception—No person shall keep any shop, tent, booth, or carriage of any kind for the sale of, or sell, furnish, or expose for sale, any intoxicating liquors, or other goods or merchandise, within two miles of any public assembly, camp or grove meeting, convened for the

purpose of religious worship. But this shall not be so construed as to prevent any person from continuing business where previously located, or from selling such liquors where he had been licensed to sell before the appointment of such meeting. Every person who shall

violate any provision of this section shall be punished by a fine not exceeding thirty dollars, or by imprisonment in a county jail for not more than thirty days, or by both. (4986) [8758]

CHAPTER 99

CRIMES AGAINST PUBLIC HEALTH AND SAFETY

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this act is any itinerant carnival, show, act or exhibition, or any other carnival, show, act or exhibition, which is held in the open or indoors or upon or within any public or private grounds of the state, or of any incorporated municipality thereof at which congregates and assembles with or without payment of an admission fee, a promiscuous gathering of people as spectators or otherwise, and at which lewd or obscene features are a part, or at which any gambling concessions are given or games of chance practiced, or in or about which actors or other persons connected therewith are engaged in immoral pursuits, or at which attractions are exhibited which affect the health or morals of the community. ('23 c. 428 § 2)

10244. Penalties for violation—Any person who shall participate in allowing or conducting any itinerant carnival herein prohibited shall be guilty of a misdemeanor and shall be punishable by a fine of not less than Fifty (\$50.00) Dollars nor exceeding One Hundred (\$100.00) Dollars or imprisonment in the county jail, or the city workhouse not less than thirty days nor more than three months. ('23 c. 428 § 3)

10245. Maintaining or permitting building as a nuisance—Every person who shall commit or maintain a public nuisance, for which no special punishment is prescribed; or who shall wilfully omit or refuse to perform any legal duty relating to the removal of such nuisance; and every person who shall let, or permit to be used, any building or portion thereof, knowing that it is intended to be used for committing or maintaining any such nuisance—shall be guilty of a misdemeanor. (4988) [8760]

126-95, 147+953.  
147-52, 179+566.

10246. Keeping gunpowder unlawfully—Every person who shall make or keep gunpowder, nitroglycerin, or other explosive or combustible material in a city or village, or carry it through the streets thereof in a quantity or manner prohibited by law or by ordinance of such municipality, shall be guilty of a misdemeanor. And every person who by the careless, negligent, or unauthorized use or management of gunpowder or other explosive substance shall injure, or cause injury to, the person or property of another, shall be punished by imprisonment in the county jail for not more than one year. (4989) [8761]

10247. Obstructing health officer—Every person who shall wilfully oppose or obstruct a health officer or physician charged with the enforcement of the health laws, in performing any legal duty, shall be guilty of a misdemeanor. (4990) [8762]

10248. Wilful violation of health laws—Every person who shall wilfully violate any provision of the health laws, the punishment for which is not specially provided for therein, shall be punished by imprisonment in the county jail for not more than one year, or by a fine of not more than two thousand dollars, or by both. (4991) [8763]

10241. Public nuisance defined—A public nuisance is a crime against the order and economy of the state, and consists in unlawfully doing an act or omitting to perform a duty, which act or omission—

1. Shall annoy, injure, or endanger the safety, health, comfort, or repose of any considerable number of persons;
2. Shall offend public decency;
3. Shall unlawfully interfere with, obstruct, or tend to obstruct or render dangerous for passage, a lake, navigable river, bay, stream, canal, or basin, or a public park, square, street, alley, or highway; or
4. Shall in any way render a considerable number of persons insecure in life or the use of property. (4987) [8759]

Cited (101-197, 112+395). 126-95, 147+953; 126-477, 148+466; 153-229, 190+278.  
157-430, 196+487; 211+328.

10242. Itinerant carnivals prohibited—Itinerant carnivals as defined in Section 2 hereof are hereby declared to be a public nuisance and are prohibited. ('23 c. 428 § 1)

Licenses or permits for street shows, carnivals, etc., within one mile of corporate limits of city of fourth class. See §§ 1929-1 to 1929-5, herein.

10243. Defining itinerant carnival—An itinerant carnival within the meaning and for the purposes of

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1927

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on date of robbery defendant was in another state. *State v. Chick*, 192M539, 257NW280. See Dun. Dig. 8491.

There is a distinction between robbery and larceny, and the theft of several articles at the same time and place by the same act constitutes a single offense whether the articles belong to the same owner or to different owners. *Op. Atty. Gen.*, Dec. 15, 1931.

Where partners in a store are robbed, and robber takes money from the persons of each and from the store till, three offenses are committed, and there should be three separate indictments. *Op. Atty. Gen.*, Dec. 15, 1931.

Where two or more persons are robbed at the same time, a separate offense is committed as to each and separate indictments are necessary. *Op. Atty. Gen.*, Dec. 15, 1931.

#### 10102. In first degree, how punished.

Conviction for robbery in taking shotgun by force during attempt to rob held sustained by evidence. 173M232, 217NW104.

Evidence in relation to weapons and shells found at the time of defendant's arrest was properly received in prosecution for taking shotgun. 173M232, 217NW104.

Evidence held to support conviction and rulings on evidence approved. 179M301, 229NW99.

Evidence, held to present a question for the jury as to the identity of defendant. 181M203, 232NW111. See Dun. Dig. 2468d, 2477.

Evidence held to support verdict of robbery in first degree. *State v. Stockton*, 186M33, 242NW344. See Dun. Dig. 8491.

#### 10103. Same.

179M532, 229NW787.

#### 10104. In second degree, how punished.

A second degree conviction may be had under an indictment charging robbery in the first degree upon the customary allegation as to the use of force and violence. *Op. Atty. Gen.*, Dec. 15, 1931.

#### 10106. Life imprisonment for bank robbers.

Statute is constitutional. 171M158, 213NW735.

Charge held not objectionable as permitting conviction of crime other than that charged. 171M158, 213NW735.

Admissibility and sufficiency of evidence. 171M158, 213NW735.

Evidence justified in finding of participation in robbery of bank. 177M363, 225NW278.

Statute applies to bandits who enter bank when there is no human being there and commit robbery when employees arrive. *Op. Atty. Gen.*, May 24, 1933.

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

### LIBEL AND SLANDER

#### 10112. Libel defined—Gross misdemeanor, etc.

##### 1. What constitutes.

See notes under §9164, note 22.

A paragraph in a letter to law firm "We now learn that said L. solicited each of these stockholders in an attempt to get them to entrust their affairs to you and L." held not libelous per se as charging solicitation. *Brill v. M.*, 200M454, 274NW631. See Dun. Dig. 5509, 5520.

A paragraph in a letter to law firm "It is obvious that the real purpose of L. and yourselves is to create all the trouble that you can and if your efforts should produce anything, the real beneficiaries would be L. and yourselves and not the stockholders whom you purport to represent." held libelous per se. *Id.*

Statements contained in letter held not to constitute criminal libel. *Op. Atty. Gen.*, Sept. 1, 1933.

##### 2. Indictment.

In a prosecution for criminal libel, where indictment charges that libelous matter was published of and con-

cerning a person or persons named, it need not otherwise state the extrinsic facts to show that language used applied to person or persons named in indictment as being libeled. Such extrinsic facts are to be shown by evidence at trial. *State v. Cramer*, 193M344, 258NW525. See Dun. Dig. 4384.

Where a libelous article charges a named voluntary unincorporated association of persons with wrongdoing, the libel applies to the members of such association, although not specifically named in the article. *Id.* See Dun. Dig. 4360.

Where an indictment for libel sufficiently charges that libelous language tended to and did expose persons named therein as having been libeled, to hatred, contempt, ridicule, and obloquy, and caused them to be shunned and avoided, a further but insufficient charge as to injury to business and occupation of such persons may be disregarded as surplusage. *Id.* See Dun. Dig. 4364.

#### 10114. Publication defined.

There is no liability for sending a libelous letter to the person defamed, though a third person reads the letter. 181M364, 232NW625. See Dun. Dig. 5507(67).

#### 10115. Liability of editors and others.

Recent developments in newspaper libel. 13MinnLaw Rev21.

#### 10120. Slander of women.

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

#### 10123. Slander.

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

#### 10123-1. Lewd, scandalous and defamatory newspaper.

*Hague v. C.I.O.* (CCA3), 101F(2d)774, aff'g (DC-NJ), 25FSupp127.

This act [§§10123-1 to 10123-3] does not violate Const., art. 1, §§3, 4. 174M457, 219NW770.

This act is constitutional. *State v. Gullford*, 179M40, 228NW326. Reversed by U. S. Sup. Ct., 283US697, 51SCR 625.

Power of state to enjoin publication of a newspaper as public nuisance. 14MinnLawRev787.

#### 10123-3. Same—Trial—Injunction—Contempt.

There is no right to a jury trial. 174M457, 219NW770.

10123-4. Certain statements to be unlawful.—It shall be unlawful for any person, firm or corporation to falsely and maliciously state, utter, publish or cause to be falsely and maliciously stated, uttered, or published, any report, rumor or statement directly or indirectly tending to disclose that any bank, public or savings institution is in an existing or probable insolvent financial condition. (Act Apr. 17, 1929, c. 212, §1.)

10123-5. Violation a gross misdemeanor.—Any person, firm or corporation violating any of the provisions of Section 1 hereof shall be deemed guilty of a gross misdemeanor and shall be punished by imprisonment in the county jail of any county wherein such false, slanderous declarations are made or published, for a term of not less than 30 days nor more than 6 months or by a fine of not less than \$100.00 or both. (Act Apr. 17, 1929, c. 212, §2.)

Each single statement or utterance would constitute a separate offense. Disclosure of truth concerning a bank would not be an offense. The rules of law with respect to malice in the law of libel and slander applies. Form of complaint suggested. *Op. Atty. Gen.*, Jan. 11, 1930.

## CHAPTER 98

### Crimes Against Morality, Decency, Etc.

#### RAPE—ABDUCTION—CARNAL ABUSE, ETC.

#### 10124. Rape.

##### 1. What constitutes.

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, 282NW819. See Dun. Dig. 8229.

##### 4. Evidence.

Guilt held for jury. 171M187, 213NW740.

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

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

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

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

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

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

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

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

#### 10125. Carnal knowledge of children.

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

##### 2. What constitutes.

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

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, 282NW819. See Dun. Dig. 8240.

##### 6. Evidence.

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

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

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

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

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

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

Evidence held to support conviction for carnal knowledge of female less than fifteen years old. *State v. Kossek*, 136M119, 242NW473. See Dun. Dig. 8244.

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

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

##### 7. Trial.

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

#### 10128. Abduction—Evidence.

##### 1. What constitutes.

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

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

##### 3. Corroboration.

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

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

*State v. Winger*, 204M164, 282NW819; note under §10124. Title of laws 1927, c. 394, does not express the subject of the act in so far as it refers to change of age of consent, and act is ineffective to that extent. 173M 221, 217NW108.

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

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

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

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

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

#### CRIMES AGAINST CHILDREN, ETC.

#### 10135. Desertion of child and pregnant wife.

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

Op. Atty. Gen., Oct. 11, 1933; note under §10136. This section cannot be used merely to coerce the payment of money. 178M568, 227NW896.

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

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

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

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

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

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

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

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

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

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

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

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

Where desertion occurs in another state and wife and children subsequently move to this state, Minnesota warrant cannot issue. Op. Atty. Gen. (840a-6), Oct. 20, 1937.

Where woman and children resided in another state, and a divorce with custody of children was obtained from husband in that state, and mother voluntarily brought children into this state, father cannot be charged with criminal offense in this state. Op. Atty. Gen. (336b), Dec. 6, 1937.

A resident of this state who goes to Canada and marries a Canadian, and there abandons her, and returns to Minnesota, cannot be prosecuted in Minnesota. Op. Atty. Gen. (605a-19), Dec. 7, 1937.

Prosecution does not lie where father is deprived of custody of child by action other than divorce proceedings. Op. Atty. Gen. (840a-1), Mar. 16, 1938.

Abandonment is a continuing crime and prosecution may be had in any county in which wife and children lived after desertion. Op. Atty. Gen. (133b-1), July 15, 1938.

Whether extradition will lie depends on whether defendant has been in this state after date alleged in complaint. Op. Atty. Gen. (494b-15), Oct. 6, 1938.

A father who has been divorced, children being in custody of mother, and father under court order to make monthly payments for support of children, may be prosecuted under this section. Op. Atty. Gen. (133B-1), July 10, 1939.

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

178M568, 227NW896.

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

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

This section refers only to legitimate children. 175M547, 221NW911.

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

Where, after conviction, defendant was deprived of custody of child, a charge for abandonment thereafter occurring must be based on this section. 179M32, 228NW337.

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

Neither wife nor minor child may recover damages for personal injuries to husband and father, remedy being solely in husband and father. Eschenbach v. B., 195M378, 263NW154. See Dun. Dig. 4288b, 7305b.

A judgment obtained in a competent court of this state for payments due under a judgment entered by a competent court of a sister state under the illegitimacy statutes of the latter may be enforced, when so ordered by our court, by the same means as if the judgment had been originally obtained in this state and under our laws. Ladd v. M., 285NW281. See Dun. Dig. 850.

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

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

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

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

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

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

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

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

A husband deserting wife and children in county where he has an established home must be prosecuted in that county, and not in county into which wife subsequently moved, in absence of some subsequent conduct amounting to desertion in the new county. Op. Atty. Gen. (840a-1), Dec. 23, 1936.

Father cannot evade duty to children by agreement with wife in connection with a division of property. Op. Atty. Gen. (840a-1), Aug. 23, 1938.

A father who has been divorced, children being in custody of mother, and father under court order to make monthly payments for support of children, may be prosecuted under this section. Op. Atty. Gen. (133B-1), July 10, 1939.

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

In prosecution of tavern owner, acts and omissions of defendant's servants contributed to minor's delinquency, and court did not err in refusing to submit that question as a fact issue. State v. Sobelman, 199M232, 271NW484. See Dun. Dig. 4465a.

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

#### 10143. Keepers of public places to exclude—Penalty.

A student under 21 years of age is a "minor." Op. Atty. Gen. (829f-2), March 14, 1939.

#### 10147. Harboring, etc.

Consent of parents is no defense and is only effective within privacy of their own home. Op. Atty. Gen. (829f-2), March 14, 1939.

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

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

#### 10151. Sale of liquor or cigarettes within 1,000 feet of certain institutions.

Malt liquors of 3.2 per cent alcoholic content may be sold within 1000 feet of state prison. Op. Atty. Gen. (217f), July 29, 1938.

**10151-1. Peddling, canvassing or loitering on school grounds prohibited.**—No person shall offer for sale, sell or peddle any goods, wares, books, newspapers, magazines or merchandise, insurance, course of instruction or any other thing whatsoever, or canvass or take orders therefor, or solicit the endorsement of any goods, wares, books, newspapers, magazines, merchandise, insurance or course of instruction or other thing or loiter for any of the purposes hereinbefore referred to in any public school building or upon any public school grounds not located within the limits of any city, village or borough whether or not such person has a license to offer for sale, sell, solicit or canvass for such goods, wares, books, newspapers, magazines, merchandise, insurance, course of instruction or any other thing whatsoever; provided this act shall not be construed as prohibiting the soliciting of or taking of such orders from, or making such sale to the school board or any member thereof, the board of education or any member thereof, or the superintendent of schools. (Act Apr. 13, 1929, c. 181, §1; Apr. 8, 1939, c. 155.)

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

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

#### 10153. Cruelty to children.

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

### HABITUAL OFFENDERS

#### 10157. Habitual offenders defined—Penalties.

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

### DANCE HALLS

#### 10161. Definitions.

Op. Atty. Gen., June 5, 1933: note under §10171. One charging only for checkroom and lunches, held guilty of maintaining dance hall without permit. 176M86, 222NW575.

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

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

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

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

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

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

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

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

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

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

#### 10162. Proprietors must obtain permits.

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

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

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

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

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

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

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

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

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

Town board may grant a permit to a third person not connected with dancing pavilion in question to conduct

a single dance at the pavilion on a date other than that licensed by the board of county commissioners to the pavilion owners. Op. Atty. Gen., July 7, 1931.

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

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

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

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

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

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

Refusal of county board to issue permit to company owning a dancing pavilion did not prevent town board from issuing single permits to individuals to hold dances in such pavilion. Op. Atty. Gen. (802a-19), Mar. 25, 1938.

Town board may properly issue a license to successive applicants, but if one person is in fact operating a dance hall and, using others as nominal licensees, they are criminally liable, and town board may issue more than one permit to same person during a year if there is no intent to evade the statute. Op. Atty. Gen. (802a-20), May 25, 1939.

Op. Atty. Gen. (802a-14), June 14, 1939; note under §10171.

Sections 10163 and 10164 are unaffected by Laws 1939, c. 255, amending §1049, and town board may issue permits only for one single dance, and any license or permit for more than one dance must be issued by county board. Op. Atty. Gen. (802a-20), August 15, 1939.

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

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

**10165. Applications.**—All applications for such permit shall be made upon blanks furnished by the city, village, or county as the case may be and shall be ac-

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

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

No license may be issued in a city of the second class to a restaurant which holds an on-sale liquor license. Op. Atty. Gen. (802a-3), August 14, 1939.

#### 10166. [Repealed].

Repealed Jan. 6, 1934, Ex. Ses., c. 46, §7, ante §3200-27. Town board may require applicant for permit to patrol at his own expense within a radius of 1,000 feet to prevent sale of liquor. Op. Atty. Gen., June 4, 1930.

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

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

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

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

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

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

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

Person designated by sheriff is not a public officer and is not deputized, and all liability for his acts falls upon operator of dance hall. Op. Atty. Gen. (802a-10), Jan. 28, 1938.

#### 10171. Hours.

Defendant held to have violated this section by permitting dancing with the aid of a piano and phonograph operated by placing a nickel in a slot. State v. Bennett, 179M289, 229NW388.

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

County board issuing license under §10163 may insert restriction that there shall be no dance on Sunday. Op. Atty. Gen. (802a-14), June 14, 1939.

#### 10173. Revocation of permit.

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

### BIGAMY—ADULTERY, ETC.

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

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

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

#### 10182. Incest.

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

#### 10183. Crime against nature.

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

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

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, 280NW131. See Dun, Dig. 2415.

#### 10184. Adultery.

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

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

#### 10185. Fornication.

173M158, 217NW146.

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

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

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

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

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

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

Venue of paternity proceedings is set by statute, but act of absconding from state with intent to evade proceedings to establish paternity determines venue for prosecution for felony. Op. Atty. Gen. (193b-20), Jan. 28, 1939.

Extradition may not be secured on a charge of illegitimacy, but may be secured for absconding from the state with intent to evade proceedings to establish paternity. Id.

### OBSCENITY

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

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

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

#### 10187. Obscene literature.

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

#### 10188. Indecent articles, etc.

Prophylactics can only be sold under direction of registered pharmacist. Op. Atty. Gen. (337c), Dec. 16, 1938.

### HOUSES OF PROSTITUTION, ETC.

#### 10194. Keeper of disorderly resort.

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

Complaint charging keeping of disorderly house under city ordinance held sufficient, in view of fact that there

was but one ordinance to which it could apply. *State v. McDow*, 183M115, 235NW637. See Dun. Dig. 2754(94).

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

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

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

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

174M457, 219NW770.

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

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

### LOTTERIES

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

174NW457, 219NW770.

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

Whether bank night at a theater constitutes a lottery is a question of fact. *State v. Stern*, 201M139, 275NW626. See Dun. Dig. 5719.

Fact that those who appear in lobby of theater and request chance obtain it free, could be found by jury a mere device to evade or circumvent law. *State v. Schubert Theatre Players Co.*, 203M366, 281NW369. See Dun. Dig. 5719.

A person may distribute or give away his property or money by lot or chance provided he does so without a consideration. *Id.* See Dun. Dig. 5719.

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

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

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

A nickel slot machine which always gives a package of gum considered worth \$.05 violates this law where it does not always give out exactly the same merchandise. *Op. Atty. Gen.* (7331), Oct. 15, 1934.

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

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

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

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

It is essential to a lottery that there be a prize, a chance to get it, and a consideration given for the chance. *Op. Atty. Gen.* (510c-9), Feb. 18, 1938.

Whether there is a consideration for a chance for a prize constitutes a question of fact which should be determined by county attorney in first instance. *Op. Atty. Gen.* (510c-9), Feb. 18, 1938.

It would seem that there was a lottery where car dealer having a sale of used cars gave tickets to purchasers of cars and after 50 cars were sold there would be a drawing and lucky number would be entitled to trade in old car for new. *Op. Atty. Gen.* (510c-9), Mar. 11, 1938.

Sale of admission tickets by a school district to a carnival, prizes to be given to purchasers whose names are drawn, constitutes a lottery. *Op. Atty. Gen.* (510a-1), July 28, 1938.

Bingo or corn game operated for prizes constitutes a lottery. *Op. Atty. Gen.* (510c-9), Aug. 18, 1938.

Whether "bank-nite" is a lottery is a question of fact. *Op. Atty. Gen.* (510-9), Dec. 20, 1938.

Three elements are essential to existence of a lottery, a prize, chance to get it, and a consideration given for chance. *Op. Atty. Gen.* (510B), Feb. 17, 1939.

Game of Hollywood played by patrons of theaters violates this section. *Op. Atty. Gen.* (510a), July 15, 1939.

Nature of consideration required—theatre "bank nights". 23MinnLawRev101.

#### 10210. Selling tickets, advertising.

Evidence held not to warrant conviction for advertising a lottery. *State v. Stern*, 201M139, 275NW626. See Dun. Dig. 5719.

Tickets which will in effect operate like a punch board violate this section, whether prize is large or small. *Op. Atty. Gen.* (510c-4), August 14, 1939.

### GAMING

#### 10214. Gambling.

##### 1. What is a gambling device.

There was no error in condemning and destroying slot machines, though there was no search warrant. 176M346, 223NW455.

A nickel slot machine which always gives a package of gum considered worth \$.05 violates this law where it does not always give out exactly the same merchandise. *Op. Atty. Gen.* (7331), Oct. 15, 1934.

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

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

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

##### 1. What is a gambling device.

City council may refuse to grant license to pin ball machines if it believes it to be a gambling device, though ordinance permits license to game of skill. *Op. Atty. Gen.* (59a-26), May 10, 1938.

Whether pin ball machine is a gambling device is a question of fact. *Op. Atty. Gen.* (733d), June 17, 1938.

##### 2. What constitutes gambling.

A contract in form for future delivery of personal property not intended to represent an actual transaction but merely to pay and receive difference between agreed price and market price at a future day is in nature of a wager on future market price of commodity and is void, but burden of establishing that such a contract is a wager is upon party who asserts fact. *Peterson's Estate*, 203M491, 281NW877. See Dun. Dig. 10133.

Village may not license places for card playing, winner to be paid in chips which will be taken in trade by the house. *Op. Atty. Gen.* (733e), March 28, 1939.

#### 10215. Gambling devices on premises.

176M346, 223NW455; note under §10214.

A gum vending machine, which also sets in motion discs which would entitle player to free glass of beer if letters spelled word "beer," was a gambling device, though there was no proof that any one ever succeeded in getting such combination. *State v. La Due*, 198M255, 269NW527. See Dun. Dig. 3943.

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

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

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

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

Pin-ball machine passing non-redeemable chips is a gambling device. *Op. Atty. Gen.* (733d), May 26, 1939.

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

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

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

A contract in form for future delivery of personal property not intended to represent an actual transaction but merely to pay and receive difference between agreed price and market price at a future day is in nature of a wager on future market price of commodity and is void, but burden of establishing that such a contract is a wager is upon party who asserts fact. *Peterson's Estate*, 203M491, 281NW877. See Dun. Dig. 10133.

### RIGHTS OF SEPULTURE

#### 10227. Dissection—When permitted.

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

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

#### SABBATH BREAKING, ETC.

##### 10234. Definitions.

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

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

Provided, that meals to be served upon the premises or elsewhere by caterers, prepared tobacco in places

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

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

## CHAPTER 99

### Crimes Against Public Health and Safety

#### 10241. Public nuisance defined.

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

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

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

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

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

Patch of ice on walk formed by melting of snow on cornice was not a public nuisance, for which building owner would be liable. Mesberg v. C., 191M393, 254NW597. See Dun. Dig. 6845.

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

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

Trap door in lavatory in restaurant held not a nuisance, nor so faulty in design or construction that landlord could be held responsible for creation of an unreasonable risk to patrons of lessee. Lyman v. H., 203M225, 280NW862. See Dun. Dig. 5869(39).

Right to use a highway extends only to its use for communication or travel, and members of a labor union have no right to park an automobile on highway in night time for the purpose of signaling and stopping trucks, and such conduct constitutes a public nuisance and is a crime against order and economy of the state. Hanson v. H., 202M381, 279NW227. See Dun. Dig. 4168.

Violation of statute does not give a private individual a cause of action unless he has suffered some special damage. Id. See Dun. Dig. 7285.

Jury might reasonably find that violation of plaintiff's rights was proximate cause of damage where evidence would support findings that plaintiff was traveling at a lawful speed, turned into left lane of highway to pass a truck ahead of him in a lawful manner, was compelled to turn back into right lane because of defendant's obstruction of highway, and that as a result his truck collided with other truck and was damaged. Id. See Dun. Dig. 4168, 7002.

Where injury complained of is caused by defendant's intentional invasion of plaintiff's right of unobstructed travel on a public highway, plaintiff's contributory negligence is no defense. Id. See Dun. Dig. 4168.

When a small loan business, catering to the large class of the poor and necessitous wage earners, is so conducted

that in every loan made usury statute is flagrantly and intentionally violated, and there is no adequate or effective remedy which borrowers are willing or able to use to obtain redress for violation, it constitutes a public nuisance which may be enjoined. State v. O'Neil, 286NW316. See Dun. Dig. 7240.

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

A misdemeanor. Op. Atty. Gen., June 20, 1930. Villages may refer buildings which are life and limb hazards to persons on sidewalks to state fire marshal or deal with owners thereof under nuisance statute. Op. Atty. Gen. (477b-20), Mar. 23, 1937.

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

Council of Belle Plaine has no authority to enact ordinance requiring filling stations to close at night. Op. Atty. Gen. (477b-20), Aug. 25, 1937.

Automobile or general junk yards within a village are not a nuisance per se and may not be prohibited, though they may be regulated. Op. Atty. Gen. (477b-20), May 11, 1938.

Where walls of a vault under sidewalk are in such condition as to necessitate filling to protect new walk, doorways and window frames below sidewalk level may be declared a nuisance and property owners be compelled to fill them to protect inside of building and support walk. Op. Atty. Gen. (480), Aug. 4, 1938.

Whether a large sign on a small parcel of land at intersection of street constitutes a public nuisance is a question of fact. Op. Atty. Gen. (396c), Aug. 11, 1938.

If a hog feeding ranch is dangerous to health and constitutes a nuisance, nuisance may be abated and criminal proceedings instituted. Op. Atty. Gen. (225j), Dec. 31, 1938.

(3).

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

City council may not grant a permit to erect a permanent outside stairway over a sidewalk. Op. Atty. Gen. (63b-17), June 23, 1938.

#### 10242. Itinerant carnivals prohibited.

174M457, 219NW770.

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

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

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

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

#### 10255. Deadly weapons.

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

There was no error in refusing to hold that weapon was not loaded nor admitting it in evidence against objection that, because the prosecuting witness had by force taken it from defendant, it would virtually be com-