

1934 Supplement  
To  
**Mason's Minnesota Statutes**  
1927

(1927 to 1934)  
(Superseding Mason's 1931 Supplement)

Containing the text of the acts of the 1929, 1931, 1933 and 1933-34 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state, federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota



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## CHAPTER 94

## Rights of Accused

**9951. To know grounds of arrest.**

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

**9953. Conviction—When had.**

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

**9954. Dismissal, when.**

"Good cause" means a substantial reason, one that affords a legal excuse. 173M153, 216NW787. Defendant's silence, in the face of numerous continuances and long delay, waives right to a speedy trial. 173M153, 216NW787.

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

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

## CHAPTER 95

## Crimes Against the Sovereignty of the State

**9970. Wilful neglect of official duty.**

Village officers refusing to comply with section 1175 requiring publication of annual financial statement, would violate this section. Op. Atty. Gen., Sept. 30, 1931.

Mayor of Minneapolis has no power to remove civil service commissioner from office. Op. Atty. Gen., July 12, 1932.

Proper procedure with reference to improper conduct of justice of peace would be to advise with county attorney. Op. Atty. Gen., Jan. 24, 1933.

**9971. Acting in public office without having qualified.**

Where a justice of the peace was elected in 1929 and due to the change in date of village elections his term expired and no successor was elected, and during such vacancy he continued to act and collect fines which he refused to turn over to the village, he might technically be prosecuted under §9971, but preferably under §10302. Op. Atty. Gen., Jan. 6, 1932.

## CHAPTER 96

## Crimes Against Public Justice

## BRIBERY AND CORRUPTION

**9982. Bribery of public officer or legislator.**

This section is constitutional. 176M308, 223NW144. Variance between allegations and proof; admissibility of evidence. 180M450, 231NW225.

**9983. Asking or receiving bribes.****2. Indictment.**

Indictment charging that defendant did "ask, agree to receive, and receive" a bribe, was not duplicitous or repugnant, and state need not elect. 178M437, 227NW497.

Proof of acceptance of credit on price of automobile not fatal variance from allegation of acceptance of money. 178M437, 227NW497.

Admissibility of evidence, and variance between allegations and proof. 180M450, 231NW225.

## RESCUES AND ESCAPES

**10005. Taking property from office.**

Owner of growing crops levied on by officer violates this section by feeding the crops to his live stock. Op. Atty. Gen., Mar. 9, 1929.

## PERJURY AND OTHER CRIMES

**10016. Perjury defined.****1. What constitutes.**

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

**5. Evidence.**

Evidence held to sustain verdict of guilty of perjury. State v. Olson, 186M45, 242NW348. See Dun. Dig. 7476.

**10018. Knowledge of materiality not necessary.**

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

**10028. Neglect of duty by officers, trustees, etc.**

If a recorder of a village fails to perform his duties, he may be prosecuted under this section, and his conviction would create a vacancy in his office under section 6953(5). Op. Atty. Gen., Oct. 20, 1931.

**10030. Arrest without authority.**

Railroad held liable for unlawful arrest by special agent at depot. 176M203, 223NW94.

**10034. Compounding crimes.**

Complaint held not bad for duplicity, and evidence held to support conviction. 181M106, 231NW804.

**10044. Misconduct by attorneys.**

This section trebles damages in actions therein referred to, but does not create any new cause of action. 181M322, 232NW515. See Dun. Dig. 674.

**10047. Punishment for prohibited acts.**

This section provides penalties for those sections in Laws 1931, c. 70, for which no penalty is provided in section 9 of such act. Op. Atty. Gen., Oct. 19, 1931.

**10052. Other false certificates.**

Civil liability for false certificate as to tax liens. 181M334, 232NW359. See Dun. Dig. 2314a.

## CHAPTER 97

## Crimes Against the Person

## HOMICIDE

**10065. Defined and classified.**

Evidence that defendant was the possessor of a weapon of the kind with which a homicide was committed is not rendered incompetent by reason of the fact that it tends incidentally to prove the commission of other and unrelated offenses. 172M106, 214NW782.

State's rebuttal evidence was admissible. 172M106, 214NW782.

A conviction for homicide cannot stand on evidence of motive with nothing more; there must be enough ad-

ditional evidence so that whole shows guilt beyond reasonable doubt. State v. Waddell, 187M191, 245NW140. See Dun. Dig. 4247.

**10067. Murder in first degree.****8. Evidence.**

No reversible error found in reception of evidence of conversation between killer and defendant after arrest. 176M562, 223NW917.

Finding that defendant, with knowledge of killer's intent to kill, encouraged and abetted him, held justified by the evidence. 176M562, 223NW917.

Dying declarations, res gestae, and sufficiency to support conviction. 180M221, 230NW639.  
Circumstantial evidence held to support conviction for first degree murder of one upon whom accused carried life insurance. State v. Waddell, 187M191, 245NW 140. See Dun. Dig. 4247.

#### 10068. Murder in second degree.

Evidence sustained finding of murder in second degree. State v. Quinn, 186M242, 243NW70. See Dun. Dig. 4233.

#### 10070. Murder in third degree.

One killing another with an automobile while recklessly driving it in an intoxicated condition may be convicted of murder in the third degree. 171M414, 214NW 280.

Evidence held not to require an instruction that defendant should be acquitted if he was so drunk that he did not know what he was doing. 171M414, 214NW 280.

#### 10072. [Repealed].

Repealed by Act Mar. 31, 1933, c. 130.

#### 10072-2. [Repealed].

Repealed by Act Mar. 31, 1933, c. 130.

#### 10073. Manslaughter defined.

State v. Quinn, 186M242, 243NW70.

#### 10074. Manslaughter in first degree.

Upon an indictment charging manslaughter in the first degree, trial court properly submitted to the jury question of manslaughter in the second degree. State v. Stevens, 184M286, 238NW673. See Dun. Dig. 4243.

#### 5. Evidence.

Statement of deceased forty minutes after assault, "Oh, Mother, my head hurts me, one held me while the other hit me," held admissible. 173M410, 217NW373.

Defendant advancing good character to show improbability of his guilt is not limited to general repute but may show as a fact that he possesses a certain disposition or certain characteristics. 173M410, 217NW 373.

#### 10078. Manslaughter in second degree.

State v. Stevens, 184M286, 238NW673; note under § 10074.

Automobilist held properly convicted of manslaughter in the second degree. 175M537, 221NW899.

Conviction of manslaughter for culpable negligence in running down pedestrian on street, held sustained by evidence. 179M1, 228NW171.

Evidence, held to support conviction for death of person by culpable negligence. 181M68, 231NW721.

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

Evidence held to sustain conviction for manslaughter in second degree arising out of negligent operation of automobile. State v. Geary, 184M387, 239NW158. See Dun. Dig. 4241.

Indictment held sufficient to charge manslaughter in second degree as against one operating an automobile. State v. Geary, 184M387, 239NW158. See Dun. Dig. 4244.

#### 10089. Homicide by other person, justifiable when.

State v. Quinn, 186M242, 243NW70.

#### 1. Self-defense.

Burden of proving self-defense is not upon defendant. State v. Quinn, 186M242, 243NW70. See Dun. Dig. 4245.

### ASSAULT

#### 10097. Assault in first degree defined—How punished.

Sufficiency of identification of accused. 179M516, 229 NW789.

Evidence, held to support conviction. Expert testimony as to signature of person purchasing revolver, held properly received in evidence. 181M28, 231NW411.

#### 10098. Assault in second degree defined—How punished.

#### 1. What constitutes in general.

Assault upon a de facto officer to prevent a lawful arrest is an assault in the second degree under this section. 174M565, 219NW877.

It is sufficient if the intended "felony" is involved in the offender's conduct in his relation towards some person or persons other than the one actually assaulted. State v. Jankowitz, 175M409, 221NW533.

The word "willfully" means evil intent or bad purpose, but does not require a specific intent to inflict grievous bodily injury. 178M589, 228NW164.

Whether defendant inflicted grievous bodily harm, held for jury. 178M589, 228NW164.

#### 3. Indictment.

Where one of a number engaged in highjacking liquor shot prosecuting witness and it is unknown which one fired shot, anyone of them may be prosecuted under an information for aiding and abetting John Doe, but any

of them may also be informed against as principals. Op. Atty. Gen., Feb. 15, 1933.

### ROBBERY

#### 10101. Defined.

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. 173 M232, 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, 217NW 104.

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, 213NW 735.

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.

### LIBEL AND SLANDER

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

#### 1. What constitutes.

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

#### 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).

#### 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.

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

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

#### 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 provi-

sions 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.

###### 4. Evidence.

Guilt held for jury. 171M187, 213NW740.

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

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

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

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

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

##### 10125. Carnal knowledge of children.

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

###### 2. What constitutes.

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

###### 6. Evidence.

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

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

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

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

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

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

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

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

Evidence held sufficient to establish corpus delicti in prosecution for carnal knowledge of girl. State v. Bauer, 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.

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

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

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

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

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

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

#### 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.

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, chapter 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.

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

178M568, 227NW896.

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

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

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

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

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

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