

MINNESOTA STATUTES 1953 ANNOTATIONS

618.01 OFFENSES RELATING TO NARCOTICS

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618.01 DEFINITIONS

HISTORY. 1915 c 260 s 5; 1937 c 74 s 1; 1945 c 41 s 1, 2; 1949 c 360 s 1, 2; 1953 c 431 s 1, 2.

A licensed chiropodist may lawfully use narcotics in the practice of his profession, provided he limit the use of such narcotics to use as a local anaesthetic. OAG April 25, 1951 (546-D).

618.02 ACTS PROHIBITED

HISTORY. 1915 c 260 s 1; 1937 c 74 s 2.

618.06 SALES BY RETAIL DRUGGISTS

HISTORY. 1915 c 260 s 2, 3; 1919 c 208 s 1; 1937 c 74 s 6.

618.08 PREPARATIONS EXEMPTED; CONDITION OF EXEMPTION

HISTORY. 1937 c 74 s 8; 1941 c 157 s 1; 1953 c 431 s 3.

618.14 DRUG ADDICT RESORTS A COMMON NUISANCE

HISTORY. 1889 c 17 s 1; GS 1894 s 6950; RL 1905 s 6152; GS 1913 s 8965; 1937 c 74 s 14.

618.16 BOARD MAY SUSPEND OR REVOKE LICENSES

HISTORY. 1915 c 260 s 4; 1937 c 74 s 16.

618.21 VIOLATIONS

HISTORY. 1937 c 74 s 21; 1953 c 431 s 4.

CHAPTER 619

CRIMES AGAINST THE PERSON

HOMICIDE

619.05 HOMICIDE CLASSIFIED

HISTORY. 1851 c 100 s 1; PS 1858 c 89 s 1; GS 1866 c 94 s 1; GS 1878 c 94 s 1; Penal Code s 148, 149; GS 1894 s 6433, 6434; RL 1905 s 4874; GS 1913 s 8601.

Criminal prosecution; blood samples obtained without consent, as evidence. 37 MLR 208.

To support a conviction of manslaughter in the second degree the prosecution must prove beyond a reasonable doubt that the defendant's acts were a proximate cause of the victim's death; and whether acts of third parties are intervening causes of victim's death is a question for the jury. *State v Schaub*, 231 M 512, 44 NW(2d) 61.

Where a view of the locus in quo is ordered by trial court in a criminal case an official court reporter should be present at such time. *State v Shetsky*, 229 M 566, 40 NW(2d) 337.

In homicide prosecution, evidence of defendant's flight during trial while on bail, was admissible, since flight in connection with other proof may form the basis from which guilt may be inferred. *State v Shetsky*, 229 M 556, 40 NW(2d) 337.

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In a homicide prosecution a statement by the trial court in commenting on defendant's absence during the trial that he wanted the jury to cooperate with him and help to see that the law and order would be victorious, delivery in an atmosphere of judicial indignation deprived the defendant of his constitutional right to an impartial trial and a new trial is granted. *State v Shetsky*, 229 M 566, 40 NW(2d) 337.

619.07 MURDER IN FIRST DEGREE

HISTORY. RS 1851 c 100 s 2-6; 1852 Amend p 22 s 101; 1853 c 2 s 7; PS 1858 c 89 s 2-6; 1866 c 14 s 1; GS 1866 c 94 s 2-6; GS 1878 c 94 s 2-6; 1883 c 122 s 1, 2; Penal Code s 152, 156; GS 1894 s 6437, 6441; RL 1905 s 4876; 1911 c 387; GS 1913 s 8603.

Premeditation, being an entirely subjective process, must be inferred from objective manifestations, and it is for the jury to judge the credibility of witnesses, finding of facts, and draw the inference which would support a finding of premeditated murder. *State v Gavle*, 234 M 186, 48 NW(2d) 44.

Photographs are admissible as competent evidence where they accurately portray anything which it is competent for a witness to describe in words; or where they are helpful as an aid to a verbal description of objects and conditions, provided they are relevant to some material issue; and they are not rendered inadmissible merely because they vividly bring to the jury the details of a shocking crime or incidentally tend to arouse passion or prejudice. *State v De Zeler*, 230 M 39, 41 NW(2d) 313.

Evidence consisting of a signed confession, coupled with proof of the corpus delicti and corroborated by evidence of defendant's presence at the time of the crime and his sole knowledge of the instrumentalities he confessed were used in committing the crime, was sufficient to sustain his conviction. *State v Doan*, 225 M 193, 30 NW(2d) 540.

Admitted and undisputed facts in a prosecution for murder in the first degree, relative to purchase of poison and mixing it with liquor, which was placed in automobile of defendant's husband, form a sufficient basis for jury to infer that defendant perpetrated the death of a third person with a premeditated design to effect the death of her husband. *State v Gavle*, 234 M 186, 48 NW(2d) 44.

Coercing or persuading another to do an act which is likely to prove fatal is murder or manslaughter. *Vesey v Vesey*, 237 M 10, 54 NW(2d) 385.

619.08 MURDER IN SECOND DEGREE

Where from the evidence presented it might fairly be found that defendant had time for premeditation prior to the commission of the crime, or from such evidence it might likewise be fairly concluded that the crime was committed without premeditation, the jury's verdict of murder in the second degree was not perverse. *State v Doan*, 225 M 193, 30 NW(2d) 540.

619.09 DUEL FOUGHT OUT OF STATE

HISTORY. RS 1851 c 100 s 26; PS 1858 c 89 s 26; GS 1866 c 94 s 27; GS 1878 c 94 s 37; PS 1854 c 64 s 8605; Penal Code s 154; GS 1894 s 6439; RL 1905 s 4878; GS 1913 s 8605.

619.15 MANSLAUGHTER IN FIRST DEGREE

HISTORY. RS 1851 c 100 s 8, 9, 20, 21; 1852 Amend p 22 s 106; PS 1858 c 89 s 8, 9, 20, 21; GS 1866 c 94 s 8, 9, 20, 21, 22; GS 1878 c 94 s 13, 14, 31, 32; Penal Code s 160; GS 1894 s 6445; 1905 c 125 s 1; RL 1905 s 4881; GS 1913 s 8608, 8609.

619.16 KILLING OF UNBORN CHILD OR MOTHER

HISTORY. RS 1851 c 100 s 10, 11; PS 1858 c 89 s 10, 11; GS 1866 c 94 s 10, 11; 1873 c 9 s 2; 1875 c 49 s 1; GS 1878 c 94 s 15, 17; Penal Code s 161, 162; GS 1894 s 6446, 6447; RL 1905 s 4882; GS 1913 s 8610; 1935 c 108.

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619.17 CRIMES AGAINST THE PERSON

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619.17 MANSLAUGHTER IN FIRST DEGREE; PENALTY

HISTORY. RS 1851 c 100 s 22, 23; PS 1858 c 89 s 22, 23; GS 1866 c 94 s 23, 24; GS 1878 c 94 s 33, 34; 1881 c 62 s 1; Penal Code s 163; GS 1894 s 6448; RL 1905 s 4883; GS 1913 s 8611.

619.18 MANSLAUGHTER IN SECOND DEGREE

HISTORY. RS 1851 c 100 s 12-15, 20, 21; 1852 Amend p 22 s 102-106; 1862 c 14 s 2; GS 1866 c 94 s 12-15, 21, 22; GS 1878 c 94 s 23-25, 31, 32; Penal Code s 164; GS 1894 s 6449; RL 1905 s 4884; GS 1913 s 8612.

To support a conviction of manslaughter in the second degree the prosecution must prove beyond a reasonable doubt that the defendant's acts were a proximate cause of the victim's death; and whether acts of third parties are intervening causes of victim's death is a question for the jury. *State v Schaub*, 231 M 512, 44 NW(2d) 61.

Defendant's requested instructions as far as they were proper were adequately covered by the court's general charge. While the argument of the prosecuting attorney was vigorous it was adequately answered by counsel for the defendant, and this, coupled with cautionary instructions of the trial court, amply protected defendant's right to a fair trial. *State v Pankratz*, M, 57 NW(2d) 635.

Where conviction of a crime rests upon circumstantial evidence all the circumstances proved must be consistent with the hypothesis that the accused is guilty and inconsistent with a rational hypothesis except that of his guilt. Where the evidence will justify a verdict of a lesser degree of the crime than that charged in the indictment, the defendant may not demand as a matter of right that the court submit only the degree of the crime charged in the indictment. *State v Pankratz*, M, 57 NW(2d) 635.

619.19 VOLUNTARY MISCARRIAGE; DEATH OF CHILD

HISTORY. 1873 c 9 s 3, 6; GS 1878 c 94 s 18, 21; Penal Code s 165; GS 1894 s 6450; RL 1905 s 4885; GS 1913 s 8613.

619.20 NEGLIGENT USE OF MACHINERY

Coercing or persuading another to do an act which is likely to prove fatal is murder or manslaughter. *Vesey v Vesey*, 237 M 10, 54 NW(2d) 385.

Where a drunken driver strikes another motor car injuring a person, the charge of driving while under the influence of liquor should not be placed against the drunken driver until the question of mortality is decided, as it may be necessary to place a more serious charge and a plea of double jeopardy might ensue. OAG May 18, 1949 (133-B-8).

619.21 DEATH CAUSED BY MISCHIEVOUS ANIMALS

HISTORY. RS 1851 c 100 s 16; PS 1858 c 89 s 16; GS 1866 c 94 s 16; GS 1878 c 94 s 26; Penal Code s 167; GS 1894 s 6452; RL 1905 s 4887; GS 1913 s 8615.

In order to render an owner liable in damages to anyone bitten by a domestic animal it must be proved not only that the animal is vicious, but that the owner had knowledge of its vicious nature or propensity. The gravamen of the action is the neglect of the owner of an animal known by him to be vicious and liable to attack and injure people to restrain it, to avert the risk of damage. The notice of such propensity must be such as to put a prudent man on his guard. *Hagerty v Radle*, 228 M 487, 37 NW(2d) 819.

619.22 OVERLOADING PASSENGER VESSEL

HISTORY. RS 1851 c 100 s 17; PS 1858 c 89 s 17; GS 1866 c 94 s 17; GS 1878 c 94 s 27; Penal Code s 168, 311; GS 1894 s 6453, 6605; RL 1905 s 4888; GS 1913 s 8616.

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619.23 RECKLESS OPERATION OF STEAMBOATS OR ENGINES

HISTORY. RS 1851 c 100 s 18; PS 1858 c 89 s 18; GS 1866 c 94 s 18, 19; GS 1878 c 94 s 28, 29; Penal Code s 169, 170; GS 1894 s 6454, 6455; RL 1905 s 4889; GS 1913 s 8617.

619.24 PHYSICIAN WHEN INTOXICATED

HISTORY. RS 1851 c 100 s 19; RS 1851 c 108 s 5; PS 1858 c 89 s 19; PS 1858 c 97 s 5; GS 1866 c 94 s 20; GS 1866 c 101 s 5; GS 1878 c 94 s 30; GS 1878 c 101 s 6; Penal Code s 171, 309; GS 1894 s 6456, 6603; RL 1905 s 4890; GS 1913 s 8618.

619.26 MANSLAUGHTER IN SECOND DEGREE; PENALTY

HISTORY. RS 1851 c 100 s 22; PS 1858 c 89 s 22; GS 1866 c 94 s 23; GS 1878 c 94 s 33; Penal Code s 173; GS 1894 s 6458; RL 1905 s 4892; GS 1913 s 8620.

619.27 EXCUSABLE HOMICIDE

HISTORY. RS 1851 c 100 s 3, 6, 7; 1852 Amend p 22 s 101; PS 1858 c 89 s 3, 6, 7; GS 1866 c 94 s 3, 6, 7; GS 1878 c 94 s 8, 11, 12; Penal Code s 174; GS 1894 s 6459; RL 1905 s 4893; GS 1913 s 8621.

619.28 JUSTIFIABLE HOMICIDE BY PUBLIC OFFICER

HISTORY. RS 1851 c 100 s 4; PS 1858 c 89 s 4; GS 1866 c 94 s 4; GS 1878 c 94 s 9; Penal Code s 175; GS 1894 s 6460; RL 1905 s 4894; GS 1913 s 8622.

619.29 HOMICIDE BY OTHER PERSON, JUSTIFIABLE WHEN

HISTORY. RS 1851 c 100 s 5; PS 1858 c 89 s 5; GS 1866 c 94 s 5; GS 1878 c 94 s 10; Penal Code s 176; GS 1894 s 6461; RL 1905 s 4895; GS 1913 s 8623.

MAIMING

619.30 MAIMING, HOW PUNISHED

HISTORY. RS 1851 c 100 s 31; PS 1858 c 89 s 30; GS 1866 c 94 s 31; GS 1878 c 94 s 41; Penal Code s 177; GS 1894 s 6462; RL 1905 s 4896; GS 1913 s 8624.

KIDNAPPING

619.34 KIDNAPPING, HOW PUNISHED

HISTORY. RS 1851 c 100 s 42, 43; 1852 Amend p 22 s 108; PS 1858 c 89 s 41, 42; GS 1866 c 94 s 42, 43; GS 1878 c 94 s 52, 53; Penal Code s 182; GS 1894 s 6467; 1901 c 14; RL 1905 s 4900; 1909 c 325 s 1; GS 1913 s 8628.

Conviction of kidnapping where abduction is also applicable. 35 MLR 306.

The common law definition of kidnapping has been enlarged by our statute to include the crime of false imprisonment. Each of the clauses of our statute defining kidnapping is separate, and the crime may be committed by wilfully seizing, confining, or inveigling another, with intent to cause him, without authority of law: (1) to be secretly confined or imprisoned within the state; (2) to be sent out of the state; (3) to be sold as a slave; (4) to be in any way held to service; (5) to be kept or detained against his will. State v Croatt, 227 M 185, 34 NW(2d) 717.

ASSAULT

619.37 ASSAULT IN FIRST DEGREE, HOW PUNISHED

HISTORY. RS 1851 c 100 s 32, 35, 41; PS 1858 c 89 s 31, 34, 40; 1864 c 41 s 1; GS 1866 c 94 s 32, 33, 35, 41; GS 1878 c 94 s 42, 43, 45, 51; Penal Code s 186, 189; GS 1894 s 6471, 6474; RL 1905 s 4903; GS 1913 s 8631.

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619.38 CRIMES AGAINST THE PERSON

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Assault and battery; provocation by words. 37 MLR 199.

In action for assault, parties are liable if evidence establishes that they in any manner advised, counseled, or directed the assault. *Bukowski v Juranek*, 227 M 313, 35 NW(2d) 427.

619.38 ASSAULT IN SECOND DEGREE, HOW PUNISHED

HISTORY. RS 1851 c 100 s 45; PS 1858 c 89 s 44; GS 1866 c 94 s 45; GS 1878 c 94 s 55; Penal Code s 187, 190; GS 1894 s 6472, 6475; 1897 c 345; RL 1905 s 4904; GS 1913 s 8632.

A "res gestae" statement must be contemporaneous with the act or transaction of which it is a part and it is sufficient if made so soon after the act or transaction that it may fairly be regarded as a part or incident thereof. In determining whether an utterance or statement is a part of the res gestae, the trial court has a wide discretion which is not absolute. *State v Gorman*, 229 M 524, 40 NW(2d) 347.

Where defendant pleaded guilty to assault in the first degree, and was delivered to a veterans hospital for treatment without sentence having been imposed on the guilty plea, and the sentence stayed until defendant returned from the hospital, the defendant after his return from the hospital was properly permitted to withdraw his plea of guilty and enter a new plea of guilty to assault in the second degree. OAG July 7, 1947 (341-B).

619.40 FORCE AND VIOLENCE, WHEN LAWFUL

In the light of the evidence as a whole, taking the view most favorable to plaintiff, it was not error for the trial court to find as a matter of law that defendant committed an assault and battery. The evidence as a whole furnishes no basis for sustaining a finding that defendant had any occasion or justification for striking plaintiff in self-defense. *Crea v Wuellner*, 235 M 408, 51 NW(2d) 283.

ROBBERY

619.42 IN FIRST DEGREE, HOW PUNISHED

HISTORY. RS 1851 c 100 s 34; PS 1858 c 89 s 33; GS 1866 c 94 s 34; GS 1878 c 94 s 44; Penal Code s 197, 200; GS 1894 s 6482, 6485; 1905 c 114 s 1; RL 1905 s 4908; GS 1913 s 8636, 8637.

Where the night was dark, but not cloudy, and the victim of a robbery had an opportunity to see his assailants while they were giving him a severe beating and the victim remembered some details of the clothing they were wearing, it was not error for the court to submit to the jury the victim's identification of defendants as such assailants, the credibility of witnesses being for the jury to decide. *State v Bailey*, 235 M 204, 50 NW(2d) 272.

619.43 IN SECOND DEGREE, HOW PUNISHED

HISTORY. RS 1851 c 100 s 36, 37; PS 1858 c 89 s 35, 36; GS 1866 c 94 s 36, 37; GS 1878 c 94 s 46, 47; Penal Code s 198, 201; GS 1894 s 6483, 6486; RL 1905 s 4909; GS 1913 s 8638.

DUELS

619.46 DUEL AND CHALLENGE, HOW PUNISHED

HISTORY. RS 1851 c 100 s 24, 25; PS 1858 c 89 s 24, 25; GS 1866 c 94 s 25, 26; GS 1878 c 94 s 35, 36; Penal Code s 203; GS 1894 s 6488; RL 1905 s 4911; GS 1913 s 8640.

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619.47 CHALLENGER OR ABETTOR

HISTORY. RS 1851 c 100 s 27, 28; PS 1858 c 89 s 27, 28; GS 1866 c 94 s 28, 29; GS 1878 c 94 s 38, 39; Penal Code s 204; GS 1894 s 6489; RL 1905 s 4912; GS 1913 s 8641.

619.48 ATTEMPT TO INDUCE CHALLENGE; POSTING

HISTORY. RS 1851 c 100 s 29; PS 1858 c 89 s 29; GS 1866 c 94 s 30; GS 1878 c 94 s 40; Penal Code s 206, 207; GS 1894 s 6491, 6492; RL 1905 s 4913; GS 1913 s 8642.

619.49 DUEL OUTSIDE OF STATE, WHERE INDICTABLE

HISTORY. RS 1851 c 100 s 26; PS 1858 c 89 s 26; GS 1866 c 94 s 27; GS 1878 c 94 s 37; Penal Code s 208, 209; GS 1894 s 6493, 6494; RL 1905 s 4914; GS 1913 s 8643.

LIBEL, SLANDER

619.51 LIBEL; GROSS MISDEMEANOR; PUNISHMENT; PROSECUTIONS BY COUNTY ATTORNEYS OR ATTORNEY GENERAL

Distinction between libel and slander; broadcasting from written script. 32 MLR 78.

Political epithets; false accusation of communism. 32 MLR 80.

The law of defamation; proposals for reform. 33 MLR 609.

False accusation of communism. 32 MLR 412.

Libel and slander; mental suffering as an element of damages. 33 MLR 324.

Multi-state libel; measure of damages. 34 MLR 332.

Scope of immunity of public officials in libel and slander actions. 37 MLR 141.

A newspaper which published a false obituary notice stating that plaintiff had died and was "lying in state" at an address at which was located a bar and grill, was not libelous although the plaintiff was alive at the time of the publication. *Cardiff v Brooklyn Eagle*, 75 NYS(2d) 222.

Notice of separation required by the state labor commissioner submitted by an employer upon the form provided by the commissioner and indicating the employer's reason for discharging the employee, is a privileged communication even though proceedings had not yet been initiated by a claim for unemployment benefits. The employee has no cause of action for libel based upon the statement in the notice. *White v United Mills*, 208 SW(2d) 803.

619.52 HOW JUSTIFIED OR EXCUSED; MALICE, WHEN PRESUMED

Printed words which tend to injure the reputation of a person, expose him to contempt, degrade him in society, or lessen him in the esteem and confidence of his neighbors are, if untrue, libelous per se, though they involve no imputation of crime. The word "deficit" is broad enough to cover shortages due to defalcations and misappropriations, although it also may relate to losses occasioned by mistakes or shrinkage. Until the claimed deficit in funds for which obligor on plaintiff's bond became responsible is established as a check, published article expressing such a conclusion cannot be said to be a publication of the truth so as to bar an action for libel based thereon. *Gadach v Benton County Co-op. Assn.*, 236 M 507, 53 NW(2d) 230.

619.53 PUBLICATION

No proof of third person having read the libel; criminal statute applied to a civil suit. 32 MLR 841.

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619.54 CRIMES AGAINST THE PERSON

1608

Libel and slander; publication; application of "single publications" rule to the distribution of books. 33 MLR 87.

619.54 LIABILITY OF EDITORS AND OTHERS

A newspaper which published a false obituary notice stating that plaintiff had died and was "lying in state" at an address at which was located a bar and grill, was not libelous although the plaintiff was alive at the time of the publication. *Cardiff v Brooklyn Eagle*, 75 NYS(2d) 222.

619.62 SLANDER

Law of defamation. 33 MLR 609.

Testamentary libel; right to recover damages for libel contained in will. 33 MLR 171.

619.63 BANKING AND SIMILAR INSTITUTIONS; MALICIOUS AND FALSE UTTERANCE CONCERNING INSOLVENCY

HISTORY. 1929 c 212 s 1, 2; 1953 c 369 s 1.

CHAPTER 620

OFFENSES AGAINST PROPERTY BY FRAUD

MISAPPROPRIATION, OFFICIAL MISCONDUCT

620.01 MISAPPROPRIATION AND FALSIFICATION OF ACCOUNTS BY PUBLIC OFFICIALS

HISTORY. RS 1851 c 101 s 22; 1852 Amend. p 24 s 113, 114; PS 1858 c 90 s 22, 24-30; GS 1866 c 95 s 22, 24-30; 1877 c 175 s 1; GS 1878 c 95 s 32, 34-41; Penal Code s 369; GS 1894 s 6663; RL 1905 s.5029; GS 1913 s 8814; 1953 c 362 s 1.

In an action for an accounting for funds allegedly embezzled by defendant employee, the burden was on the employer to produce evidence showing what funds came into the employee's possession. The employee's admission made in the course of an investigation rather than in negotiations for settlement was admissible in evidence in an action for accounting for funds allegedly embezzled by the defendant in the amount of \$20,920.71 plus interest, but the evidence was insufficient to establish that \$80,995.42 additional, was misappropriated. *Physicians and Hospitals Supply Co. v Johnson*, 231 M 548, 44 NW(2d) 224.

An order of the district court granting the motion of a defendant charged with the commission of a felony to quash an indictment is not subject to review by the supreme court on a writ of certiorari. The state has no right to appeal in a criminal case, and questions of law may not be certified to the supreme court without the consent of the defendant. The state may review a judgment quashing an indictment for an information, or sustaining a demurrer thereto, only when such power is expressly conferred by a constitutional or statutory provision. *State v Ruegemer*, M 57 NW(2d) 153.

620.02 OTHER VIOLATIONS BY OFFICIALS

A common school district which does not maintain a school within its boundaries but educates the pupils of the district at schools outside its boundary, must provide transportation for such pupils. The cost of transportation is paid in part by the school district and the balance from state public funds. The revenue from both sources is derived from taxation. A large percentage of the pupils are transported to parochial schools. Should it be determined that public funds are being wrong-