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

Edited by

WILLIAM H. MASON, Editor-in-Chief

W. H. MASON, JR.
R. O. MASON
J. S. O'BRIEN
} Assistant Editors

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Part IV. Crimes, Criminal Procedure, Imprisonment and Prisons

CHAPTER 93

General Provisions

9906. Crimes defined and classified.

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

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

9907. Meaning of words and terms.

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

9908. Rules of construction.

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

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

9912. Duress—How constituted.

176M175, 222NW906.

9915. Criminal responsibility of insane persons.

Acts of cruel and inhuman treatment which result from a diseased mind are no cause for divorce. 171M 258, 213NW906.

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

9917. Principal defined.

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

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

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

9920. Certain duties of courts and juries.

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

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

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

9930. Attempts—How punished.

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

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

9931. Second offenses—Punishment.

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

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

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

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

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

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

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

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

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

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

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

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

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

9931-3. Same—Information, etc.

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

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

9932. Imprisonment on two or more convictions.

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

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

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

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

9934. Sentences of convicts.—Whenever a convict is sentenced to the state prison for more than one year, unless the exact period be fixed by law, the court shall so limit the term that it will expire between the months of March and November. Whenever a sentence may be imprisonment in a county jail, the offender may be sentenced to and imprisoned in a workhouse, if there be one in the county where he is tried or where the offense was committed—and if there be no workhouse in the county where the offender is tried or where the offense was committed, then the offender may be sentenced to and imprisoned in a workhouse in any county in this state; provided that the county board of the county where the offender is tried shall have some agreement for the receipt, maintenance and confinement of the prisoners with the latter county. The place of imprisonment shall be specified in the sentence. But convicts may be removed from one place of confinement to another when so provided by statute. (R. L. '05, §4775; G. S. '13, §8494; Apr. 20, 1933, c. 329.)

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

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

9936. Suspension of sentence.—That the several courts of this state having jurisdiction to try criminal causes shall have power, upon the imposition of sentence by said court against any person who has been convicted of the violation of a municipal ordinance or by-law, or of any crime for which the maximum penalty provided by law does not exceed imprisonment in the state prison for ten years, to stay the execution of such sentence which said court has imposed when-

ever the court shall be of the opinion that by reason of the character of such person, or the facts and circumstances of his case, the welfare of society does not require that he shall suffer the penalty imposed by law for such offense so long as he shall thereafter be of good behavior, and at any time after the imposition of sentence in all cases where the sentence imposed is to a county jail, work farm or work house, any such court of this State shall have like power upon application of a prisoner and after notice to the county attorney. ('09, c. 391, §1; G. S. '13, §8496; '21, c. 298, §1; Apr. 1, 1933, c. 133.)

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

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

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

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

9937. Suspension of sentences and probation.—Such stay shall originally be for a definite time; and during such time the person so sentenced may be placed upon probation under the supervision of a probation officer in counties where such officer is provided by law, and in other counties under the supervision of the State Board of Parole or of some discreet person who will accept such supervision and serve without pay, making report to the court as required. Provided, however, that nothing herein contained shall prevent the court from placing such persons under the supervision of a constable, sheriff or police officer specially detailed for that purpose. The court shall in each case set forth the reason for the order of probation and may make such terms and conditions of probation as are deemed suitable and may require a recognizance or other surety conditioned upon the performance of such terms and conditions and may enforce the same. On the expiration of the original period of probation the court may from time to time renew or extend the same for additional definite periods upon such conditions as are deemed proper, provided, the total period of such suspension of sentence shall not exceed one year except in case of conviction of a crime the maximum penalty for which is imprisonment for a term exceeding one year, and in such case such total period of suspension of sentence shall not exceed the term of such maximum penalty. The court may in its discretion suspend sentence indefinitely. The court may make such order in or out of term, and at any place within the judicial district in which the case was tried. When a person is placed on probation under the supervision of the State Board of Parole, the clerk of the district court shall immediately upon the entry of the order of probation, certify a copy of the record of the case upon blanks supplied by the State Board of Parole, set forth the reasons, terms and conditions of probation, and deliver the same to the State Board of Parole, whereupon, the custody of the person so placed on probation shall vest in the said board with the same power as is exercised over persons on parole from the State Prison or State Reformatory. The chairman of the Board of Parole shall act as director of probation and parole, and, for the purpose of carrying out the provisions of this act, the State Board of Parole is authorized and empowered to provide such probation agents, not exceeding five, to fix their compensation and to prescribe their duties. ('09, c. 391, §2; G. S. '13, §8497; Mar. 31, 1933, c. 135.)

9938. Revocation.

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

9940. Restoration to civil rights.

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

9946. Incriminating testimony not to be used.

Kaiser v. U. S., (CCA8), 60F(2d)410. Certiorari denied 53SCR118.

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

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

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

9948. Convict as witness.

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

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

CHAPTER 93A

Prevention and Control of Crime—Bureau of Criminal Apprehension

9950-10. Taking of finger prints, etc.—All sheriffs and deputies in their respective counties with the consent of the judge of the District Court or a court commissioner of or for the county in which the arrest is made and all police officers in cities of the first and second classes under the direction of the chief of police in such cities, shall have the power to take or cause to be taken finger and thumb prints, bertillon measurements, photographs and other identification data; (a) of all persons arrested for felony, (b) of all persons reasonably believed by the arresting officer to be fugitives from justice, (c) of all persons in whose possession, when arrested, are found concealed firearms or other dangerous weapons, burglar tools or outfits, high power explosives, or articles, machines or appliances usable for an unlawful purpose and reasonably believed by the arresting officer to be intended for such purposes. ('27, c. 224, §6; Feb. 28, 1929, c. 46, §1.)

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