

Nineteen Hundred Thirty-One
Supplement

to

Mason's Minnesota Statutes

(1927 thru 1931)

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



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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, 213NW 923.

Evidence held to sustain conviction. 172M226, 215NW189.

§10125. Carnal knowledge of children.

2. What constitutes.

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

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. 175 M174, 220NW547.

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, 220NW547.

Verdict held sufficiently supported. 176M604, 224NW144.

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 admission of the court to the jury. 172 M372, 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. (As amended 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. 173M221, 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, 223NW98.

CRIMES AGAINST CHILDREN, ETC.

§10135. Desertion of child and pregnant wife.—Every parent, including the duly ad-

judged 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. (As amended Mar. 27, 1931, c. 94.)

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.

§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.

§10151-1. Peddling and canvassing prohibited on school grounds.—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 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.)

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.)

DANCE HALLS

§10161. Definition.

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, 229NW88.

§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. (As amended 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.

§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. (As amended 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 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 intoxicat-

ing 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. (As amended Apr. 20, 1929, c. 264, §3.)

§10166. Intoxicating liquors prohibited.

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.

Marshall 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.

§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, 229NW88.

BIGAMY—ADULTERY, ETC.

§10180. Bigamy defined—How punished—Exceptions.

One who married during the existence of a voidable marriage was guilty of bigamy. 175M 498, 221NW867.

§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.

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. (As amended Apr. 24, 1931, c. 321.)

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

HOUSES OF PROSTITUTION, ETC.

§10194. Keeper of disorderly resort.

Admissibility and sufficiency of evidence. 174 M143, 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, 235 NW637. See Dun. Dig. 2754(94).

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

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

174M457, 219NW770.

LOTTERIES

§10209. Defined—a nuisance—Drawing.

174NW457, 219NW770.

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

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.

§10215. Gambling devices on premises.

176M346, 223NW455; note under §10214.

SABBATH BREAKING, ETC.

§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; 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. (As amended Apr. 23, 1929, c. 308, §1.)

CHAPTER 99

Crimes against Public Health and Safety

§10241. Public nuisance defined.

Logging railroad over highway under Mason's Minn. Stat. 1927, §2558-1, 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.

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

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.

§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 informant 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 compelling defendant to furnish evidence against himself. 176M238, 222NW925.

The question of criminal intent of defendant in carrying automatic pistol, held so far doubtful as to require new trial. 176M238, 222NW925.

Does not prohibit the use or possession of a pistol in the absence of an intent to use it against another. *Clarine v. A.*, 234NW295. See Dun. Dig. 10200a(2).

A father who furnished him with the pistol cannot be held liable for an accidental shooting by his son, in the absence of evidence that, because of youth, mental deficiency, recklessness, or other cause, it was unsafe to intrust the son with the weapon, and that the father was chargeable with knowledge of that fact. *Clarine v. A.*, 234NW295. See Dun. Dig. 10200.

§10263. Failure to ring bell, etc.

Liabilities for death resulting from failure to give signals. 173M7, 216NW245.

Failure to give crossing signal as proximate cause of collision at crossing. 178M322, 227NW45.

Evidence of failure to give signal. 179M480, 229NW797.

CHAPTER 100

Crimes against Public Peace

§10291. Use of firearms by minors.

A father who furnished him with the pistol cannot be held liable for an accidental shooting by his son, in the absence of evidence that, because of youth, mental deficiency, reckless-

ness, or other cause, it was unsafe to intrust the son with the weapon, and that the father was chargeable with knowledge of that fact. *Clarine v. A.*, 234NW295. See Dun. Dig. 4466, 10200.

CHAPTER 101

Crimes against Property

§10303. Other violations by officers.

City treasurer did not commit an offense under this section by making deposits in excess of collateral securities given by a bank in lieu of a depository bond under §1973-1. 172M324, 215NW174.

§10305. Officer interested in contract.—

Every public officer who shall be authorized to sell or lease any property, to make any contract in his official capacity, or to take part in making any such sale, lease, or con-

tract, and every employee of such officer, who shall voluntarily become interested individually in such sale, lease, or contract, directly or indirectly, shall be guilty of a gross misdemeanor; provided, however, that any village or city council, town board, or school board, of any town, village or city of the fourth class, otherwise having authority to designate depository for village, city, town or school district funds, of any town, village, or city of the fourth class, may designate a bank