# 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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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. Kosek, 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.

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.

**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.

**10151-1. 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.**

Op. Atty. Gen., June 5, 1933; note under §10171.

One charging only for checkroom and lunches, held guilty of maintaining dance hall without permit. 176M 86, 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.

**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., April 11, 1933.

**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 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.)

**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.

**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, 229NW88.

"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.

**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.

**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.

**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, 247 NW692.

## 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.

## 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).

**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., 248NW715. See Dun. Dig. 2753a(92).

## 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.

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.

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.

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. (R. L. '05, §4981; '09, c. 267, §1; G. S. '13, §8753; Apr. 23, 1929, c. 308, §1.)

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.**

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, 219 NW770.

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.

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, 248NW751. See Dun. Dig. 7240n. 58.

**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 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., 182M310, 234NW295. See Dun. Dig. 10200a (2).

A father who furnished him with the pistol cannot be held liable for a 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., 182M310, 234NW295. See Dun. Dig. 10200.

A village constable has right to carry firearm. Op. Atty. Gen., Feb. 10, 1933.

**10255-1. Definitions.**—(a) Any firearm capable of loading or firing automatically, the magazine of which is capable of holding more than twelve cartridges, shall be a machine gun within the provisions of this Act.

(b) Any firearm capable of automatically reloading after each shot is fired, whether firing singly by separate trigger pressure or firing continuously by continuous trigger pressure; which said firearm shall have been changed, altered or modified to increase the magazine capacity from the original design as manufactured by the manufacturers thereof, or by the addition thereto of extra and/or longer grips or stocks to accommodate such extra capacity, or by the addition, modification and/or attachment thereto of any other device capable of increasing the magazine capacity thereof, shall be a machine gun within the provisions of this Act.

(c) A twenty-two caliber light sporting rifle, capable of firing continuously by continuous trigger pressure, shall be a machine gun within the provisions of this Act. But a twenty-two caliber light sporting rifle, capable of automatically reloading but firing separately by separate trigger pressure for each shot, shall not be a machine gun within the provisions of this Act and shall not be prohibited hereunder, whether having a magazine capacity of twelve cartridges or more. But if the same shall have been changed, altered, or modified, as prohibited in section one (b) hereof, then the same shall be a machine gun within the provisions of this Act. (Act Apr. 10, 1933, c. 190, §1.)

**10255-2. Application.**—This Act shall not apply to sheriffs, coroners, constables, policemen or other peace officers, or to any warden, superintendent or head keeper of any prison, penitentiary, county jail or other institution for retention of any person convicted of or accused of crime, while engaged in the discharge of official duties, or to any public official engaged in the enforcement of law; nor to any person or association possessing a machine gun not useable as a weapon and possessed as a curiosity, ornament or keepsake; when such officers and persons and associations so excepted shall make and file with the Bureau of Criminal Apprehension of this state within 30 days after the passage of this Act, a written report showing the name and address of such person or association and the official title and position of such officers and showing a particular description of such machine gun now owned or possessed by them or shall make such report as to hereinafter acquired machine guns within 10 days of the acquisition thereof; nor to any person legally summoned to assist in making arrests or preserving peace, while said person so summoned is engaged