PROPOSED
MINNESOTA CRIMINAL CODE

Prepared by

ADVISORY COMMITTEE
ON REVISION OF THE CRIMINAL LAW

Established by
Minnesota Legislative Interim Commission

Comments, suggestions, or criticisms with respect to this report should be directed promptly and not later than December 20, 1962 to either of the following —

SENATOR HAROLD W. SCHULTZ
Minnesota Building
St. Paul, Minn.

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Printed and Distributed to the Lawyers and Judges of Minnesota
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Minn.Crim.Code '63 Revision

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INTRODUCTORY STATEMENT OF ADVISORY COMMITTEE

In 1955 when the Legislature established the Interim Commission on Juvenile Delinquency, Adult Crime, and Corrections it directed the Commission, as one of its major assignments, to revise Minnesota's criminal code. The Commission, renewed at each legislative session until 1961, carried through the complicated task of revision almost but not quite to completion. For reasons not related to this Commission, the 1961 Legislature did not establish any interim commissions. Fortunately, in December 1961, state funds were made available by Governor Elmer L. Andersen to permit the revision to be completed in time for submission to the 1963 legislative session.

The legislators who served on the Interim Commission on Juvenile Delinquency, Adult Crime, and Corrections are listed below. Those serving throughout the six-year life of the Commission are identified by asterisk.

From the Senate:	From the House of Representatives:
A. A. Anderson	Harold J. Anderson
Ernest J. Anderson*	Walter E. Day
Robert R. Dunlap	Jack Fena
Daniel S. Feidt,* *Chairman, 1957–58*	Carroll F. King
Harold W. Schultz*	John J. Kinzer
Paul A. Thuet	Alfred J. Otto
Harry L. Wahlstrand	Joseph Prifrel, Jr.,* *Chairman, 1955–56 & 1959–60*
	Emil Schaffer
	Marvin C. Schumann
	William L. Shovell
	Edmund C. Tiemann
	Reuben Wee

John R. Ellingston, *Executive Secretary, 1955–1961*

The 1955 Commission recognized that while ultimate responsibility for revising Minnesota's criminal code rests with the Legislature, the technical nature of the task imposes the major

burden upon the bench and the bar of the State. Accordingly as a first step, the Commission wrote to all district judges and all county attorneys asking their opinion of the need for and the feasibility of revising the criminal laws. A substantial number urged the necessity for revision and many made constructive suggestions. So did the leadership of the Minnesota State Bar Association. Thereupon, in response to invitations from the Commission, the legal organizations most concerned designated representatives to serve on an Advisory Committee on Revision of the Criminal Law. The present Committee members are listed under the organizations that first appointed them.

INTERIM COMMISSION

Harold W. Schultz, State Senator, Chairman

SUPREME COURT

Chief Justice Oscar R. Knutson
Associate Justice William Murphy

ATTORNEY GENERAL

Mr. Charles Houston, Solicitor General

DISTRICT COURT JUDGES' ASSOCIATION

Hon. Arlo E. Haering, Waconia
Hon. C. A. Rolloff, Montevideo

COUNTY ATTORNEYS' ASSOCIATION

Hon. R. C. Nelson, Judge of District Court, formerly Dakota County Attorney
Hon. Bruce Stone, Judge of Municipal Court, formerly Assistant County Attorney, Hennepin County

REVISOR OF STATUTES

Mr. Joseph J. Bright, Revisor

STATE BAR ASSOCIATION

Hon. Herbert W. Estrem, Judge of Municipal Court, Hennepin County
Mr. Fred Fisher, St. Paul
Hon. Robert Gillespie, Judge of District Court, Cambridge
Hon. John W. Graff, Judge of District Court, St. Paul
Mr. Henry Haverstock, Jr., Minneapolis
Mr. Robert McNeill, Minneapolis
Mr. William B. Randall, St. Paul
Mr. Richard B. Ryan, St. Paul
Mr. Robert J. Sheran, Mankato
Mr. Chester Wilson, Stillwater

OTHER MEMBERS

Professor Yale Kamisar, U. of M. Law School
Mr. T. Eugene Thompson, Chairman, Criminal Law Committee, State Bar Association
Professor John R. Ellingston, U. of M. Law School, Executive Secretary
Professor Maynard E. Pirsig, U. of M. Law School, Reporter

The following are former members of the Advisory Committee:

Mr. William W. Essling, St. Paul
Mr. Attel P. Felix, Morrison County Attorney
Mr. C. M. Fredin, Duluth
Mr. Arthur F. Gillen, South St. Paul
Mr. Richard A. Grayson, St. Paul
Mr. Einar C. Iversen, Waseca County Attorney
Mr. Duncan Kennedy, former Revisor of Statutes
Mr. Lewis E. Lohmann, Public Defender, Hennepin County
Mr. L. T. Merrigan, Minneapolis
Mr. Philip Neville, Minneapolis
Mr. John J. Scanlon, St. Paul

The Advisory Committee was fortunate in the fact that the neighboring state of Wisconsin had recently gone through the difficult and lengthy task of revising its criminal code. Its new code was adopted in 1955 following many years of research, study, and drafting. The Minnesota Interim Commission and its Advisory Committee benefited greatly from the Wisconsin code and from the experience and personal advice of those who drafted it.

The proposed revision has also greatly benefited from the work of the American Law Institute which has been engaged in the preparation of a Model Penal Code for the past ten years. The scholarly studies that have resulted from the Institute's work are among the best available in the field. In this report frequent references to its recommendations will be observed.

In 1961, Illinois adopted a revision of its criminal code. However, by the time this became available to those responsible for the Minnesota revision, the work on the Minnesota code had been substantially completed. The Illinois code, however, has been of considerable help in re-examining the policies pursued and recommendations made in many parts of this proposed revision.

DRAFTING PROCESS

The experience in Wisconsin and of the American Law Institute, later confirmed by the efforts in Illinois, demonstrated the necessity for extensive research and the preparation of preliminary drafts of proposed revisions and the need of centering this responsibility upon a single individual. Accordingly, the Commission appointed Professor Maynard E. Pirsig, Law School, University of Minnesota, as the Reporter for the Advisory Committee. It also provided funds for the employment of law student assistants to aid in the necessary research.

The origin and history of each of the sections of the present criminal code were examined, together with Minnesota Supreme Court decisions concerned with the section, the laws and cases in other jurisdictions, particularly New York and Wisconsin, and such legal literature as might exist dealing with the crime involved. With this material before him, the Reporter would draft a suggested revision of a section, supported by comments and materials from cases, statutes and other authorities.

The Reporter's proposals were then submitted to a Drafting Subcommittee, appointed from the membership of the Advisory Committee, which was small enough in number to permit close and intensive scrutiny of each proposed section. The Drafting Subcommittee consists of the following members:

Hon. Harold W. Schultz, *Chairman*
Mr. Joseph Bright
Professor John R. Ellingston
Mr. Charles Houston
Hon. Oscar Knutson
Professor Maynard E. Pirsig
Hon. Bruce Stone

Hon. John Graff, former member.

The results of the work of the Drafting Subcommittee were incorporated into Progress Reports which were submitted to the Advisory Committee for their study and final action.

Each recommended section herewith submitted has, accordingly, had the consideration of the Reporter, the Drafting Subcommittee, and, finally, the Advisory Committee.

OBJECTIVES OF REVISION

The first question which faced the Advisory Committee was the degree of revision which should be undertaken. One approach might have been to leave the wording of the sections of the present criminal code substantially unaffected and to direct the efforts of revision only toward deletion of obsolete provisions, removal of inconsistencies, and better classification and rearrangement. The Advisory Committee concluded that this would not meet the needs of the present criminal code nor the intent of the legislation which established the Commission. It was not the approach adopted in the states which heretofore have revised their criminal codes; namely, Louisiana, Wisconsin, and Illinois.

The Committee felt that the revision should reflect present-day standards in the science of legislation, the progress that has been made in the administration of criminal justice, and the improvements which present-day standards, experience and practice have indicated are needed in the substantive provisions of the criminal code.

The present code was enacted in 1885 and consisted at that time largely of adaptations of the then existing New York 1881 Penal Code. Since that time, numerous additions have been made to the criminal code without much regard for their relationship to or consistency with prior provisions.

At the same time, the Advisory Committee considered that the revision should not be the occasion for the introduction of an entirely new criminal code. It was felt that the legal principles of each crime should be examined and restated and, where necessary, improved; however, remaining within the general framework of present legislation.

More specifically the objectives sought to be accomplished may be summarized as follows.

First, to remove duplications, inconsistencies, invalid provisions, and obsolete materials.

Second, to state in clear, simple, and understandable terms the elements of the crime; avoiding over-generality on the one hand and detailed enumeration, so characteristic of present provisions, on the other.

The statement of the offense should not be so general that a reading of the statute leaves unclear the prohibited conduct. At the same time, it should not be so detailed that it runs the

risk of omission of specific acts not thought of when the enumeration was made and invites technicality in the administration of criminal justice.

Third, to conform the law to accepted modern standards and concepts within the field of the specific crime considered.

Fourth, to confine the provisions of the criminal code to those matters of substantive criminal law which properly belong there. The present criminal code encompasses two categories of provisions which a substantive code should not contain. One of these consists of procedural provisions of which there are considerable numbers in the present criminal code. The Committee had recommended that these be transferred to other appropriate chapters.

The other category consists of what may be termed regulatory measures. These consist of provisions intended to control and regulate some particular activity, usually involved in the manufacture, sale, or distribution of goods or services. These statutes commonly contain a provision making violation of the regulations so prescribed a crime, usually a misdemeanor.

Most of such provisions now appear in the statutes of Minnesota outside of the criminal code. They cannot be incorporated into the code since it would bring into the code a vast amount of statutory material, the criminal aspects of which are only incidental. A glance at some of the provisions dealt with by this report, and labeled as related sections outside of the criminal code and not affected by the revision, will reveal the extent of these statutory provisions. They deal with such matters as traffic offenses; the regulation and control of the manufacture, sale, and distribution of intoxicating liquors; the control of the production, sale, and distribution of food, drugs, and so forth.

At times such regulatory measures have found their way into the criminal code but no consistent pattern or policy has heretofore been followed.

It is the policy of this revision to recommend removal of these measures and transfer to an appropriate chapter which undertakes to deal with the subject matter.

Whether a particular section belongs in the criminal code or should be classified as regulatory and removed from it involves a question of judgment of what are oftentimes borderline cases and which the Advisory Committee has resolved to the best of its ability.

Where conflict has appeared between a regulatory provision outside the criminal code and a provision in the criminal code, the Committee has either eliminated the provision in the criminal code or recommended an amendment of the regulatory measure. In a few instances provisions have been removed from the chapters outside the criminal code and brought into the code. The more important of such provisions are those on unauthorized use of a motor vehicle and negligence resulting in death.

Beyond this, the Committee felt it could not go in dealing with the criminal provisions outside of the criminal code. It would require examination not only of the criminal provisions but of the entire subject matter with which they incidentally deal. To do this would have been beyond the compass of this revision. There still remain, therefore, some instances of overlapping between criminal provisions outside of the criminal code and those in the recommended revision.

The reasons for the recommendations appear in the comments appended to each section. The comments, of course, will form no part of the legislation adopting the revision.

CRIMINAL PROCEDURE

While the 1955 legislation creating the Interim Commission contemplated also the revision of the statutes on criminal procedure, it was the conclusion of the Advisory Committee that it should not at this time undertake this task. It is believed more appropriately a matter to be left to be developed by rules promulgated by the Supreme Court. The success of the rules of civil procedure demonstrates the practicality and desirability of this method of developing such rules. The Committee recommends that legislation be adopted authorizing the Supreme Court to make such rules. Once such legislation is adopted, a committee would be established by the Court to prepare the necessary rules for recommendation to the Court.

ACKNOWLEDGMENTS

The Advisory Committee is indebted to the West Publishing Company for its generous offer to print and distribute this report without obligation on the part of the Committee and as a public service. The Committee is also obligated to the American Law Institute for their permission to reproduce portions of their reports on the Model Penal Code, and to the Southern

California Law Review, the Hastings Law Journal, and the Texas Law Review for permission to reproduce excerpts from articles appearing in those publications.

COMMENTS REQUESTED

The report is being published and distributed in the hope that it will give all lawyers, judges, and others interested in the revision or in parts of it an opportunity to examine the provisions and to offer any comments, suggestions, or criticisms which they may have to offer.

Communications with respect to the report should be directed promptly and not later than December 20, 1962, to the Chairman of the Advisory Committee, Senator Harold W. Schultz, Minnesota Building, St. Paul, Minnesota or to the Reporter, Professor Maynard E. Pirsig, Law School, University of Minnesota, Minneapolis 14, Minnesota.

It is the intention of the Advisory Committee to submit the recommendations in final form to the 1963 Legislature.

CRIMINAL CODE OF 1963

GENERAL PRINCIPLES

SENTENCES

ANTICIPATORY CRIMES

HOMICIDE AND SUICIDE

CRIMES AGAINST THE PERSON

CRIMES OF COMPULSION

SEX CRIMES

CRIMES AGAINST THE FAMILY

Sec.

CRIMES AGAINST THE GOVERNMENT

CRIMES AFFECTING PUBLIC OFFICER OR EMPLOYEE

CRIMES AGAINST THE ADMINISTRATION OF JUSTICE

THEFT AND RELATED CRIMES

DAMAGE OR TRESPASS TO PROPERTY

FORGERY AND RELATED CRIMES

CRIMES AGAINST PUBLIC SAFETY AND HEALTH

CRIMES AGAINST PUBLIC DECENCY

Sec.

PUBLIC MISCONDUCT OR NUISANCE

GAMBLING

CRIMES AGAINST REPUTATION

CRIMES RELATING TO COMMUNICATIONS

CRIMES RELATING TO A BUSINESS

MISCELLANEOUS CRIMES

GENERAL PRINCIPLES

609.01 Name and Construction

This chapter may be cited as the Criminal Code of 1963. Its provisions shall be construed according to the fair import of its terms, to promote justice, and to effect its purposes which are declared to be:

(1) To protect the public safety and welfare by preventing the commission of crime through the deterring effect of the sentences authorized, the rehabilitation of those convicted, and their confinement when the public safety and interest requires; and

(2) To protect the individual against the misuse of the criminal law by fairly defining the acts and omissions prohibited, authorizing sentences reasonably related to the conduct and character of the convicted person, and prescribing fair and reasonable post-conviction procedures.

COMMENT

The first sentence is similar to that appearing in Wisconsin St. 939.01 and the Illinois Criminal Code of 1961, § 1–1.

The balance of the recommended section is an expansion of Minn. St. § 610.03 which does not contain the clauses numbered (1) and (2). The Illinois Act, § 1–2 has a statement of purposes but worded differently.

It is believed desirable to have a general statement of purposes as some guide to the courts in their approach to the code.

609.015 Scope and Effect

Subdivision 1. Common law crimes are abolished and no act or omission is a crime unless made so by this chapter or by other applicable statute, but this does not prevent the use of common law rules in the construction or interpretation of the provisions of this chapter or other statute. Crimes committed prior to the enactment of this chapter are not affected thereby.

Subd. 2. Unless expressly stated otherwise, or the context otherwise requires, the provisions of this chapter apply to crimes created by statute other than in this chapter.

COMMENT

Subdivision 1: This states the present law on the subject, although the original express provision in the 1885 code has not been retained. See State v. Hayes, 1955, 244 Minn. 296, 70 N.W.2d 110, stating:

"While common-law offenses were abolished by virtue of the adoption of our penal code, resort may be made to common-law concepts in aiding the construction of such common-law terms as may have been used in the code."

Wisconsin St. 939.10 contains a similar provision. See also Illinois Criminal Code of 1961, § 1–3.

Subd. 2: This subdivision is needed to make clear that the provisions of this revision of general application extend to crimes outside of the criminal code. These include crimes appearing in sections recommended to be transferred to other chapters, as well as those presently appearing in those chapters. For example, the sections of the revision appearing under such labels as "General Principles" and "Sentences" should apply to any crime whether appearing in the revised code or not.

609.02 Definitions

Subdivision 1. "Crime" means conduct which is prohibited by statute and for which the actor may be sentenced to imprisonment or fine or both.

Subd. 2. "Felony" means a crime for which a sentence of imprisonment for more than one year may be imposed.

Subd. 3. "Misdemeanor" means a crime for which a sentence of not more than 90 days or a fine of not more than $100 may be imposed.

Subd. 4. "Gross misdemeanor" means any crime which is not a felony or misdemeanor.

Subd. 5. "Conviction" means:

(1) A judgment entered upon failure to plead as provided by law when a demurrer is overruled; or

(2) Any of the following accepted and recorded by the court:

(a) A plea of guilty; or

(b) A confession in open court; or

(c) A verdict of a jury.

Subd. 6. "Dangerous weapon" means any firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or great bodily harm, or any other device or instrumentality which, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm.

Subd. 7. "Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.

Subd. 8. "Great bodily harm" means bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm.

Subd. 9. Mental State. (1) When criminal intent is an element of a crime in this chapter, such intent is indicated by the term "intentionally," the phrase "with intent to," the phrase "with intent that," or some form of the verbs "know" or "believe."

(2) "Know" requires only that the actor believes that the specified fact exists.

(3) "Intentionally" means that the actor either has a purpose to do the thing or cause the result specified or believes that his act, if successful, will cause that result. In addition, except as provided in clause (6), the actor must have knowledge of those facts which are necessary to make his conduct criminal and which are set forth after the word "intentionally."

(4) "With intent to" or "with intent that" means that the actor either has a purpose to do the thing or cause the result specified or believes that his act, if successful, will cause that result.

(5) Criminal intent does not require proof of knowledge of the existence or constitutionality of the statute under which he is prosecuted or the scope or meaning of the terms used in that statute.

(6) Criminal intent does not require proof of knowledge of the age of a minor even though age is a material element in the crime in question.

COMMENT

The policy pursued in this revision has been to define the terms as used with respect to the specific crimes. Also where words have been defined elsewhere in the statutes for the purposes of the statutes generally it was the policy not to duplicate or undertake a different definition of the same term. These definitions appear particularly in Minn.St. §§ 645.44 and 645.45.

This has reduced the number of definitions needed for the criminal code and many of the definitions now appearing in Minn.St. §§ 610.01 and 610.02 have not been duplicated.

A number of terms, however, of special application to the criminal code are used in the revision in a number of instances and in connection with different crimes and general definitions are needed in these instances.

These definitions will apply to sections outside of the revised criminal code under the provisions of § 609.015 Subd. 2.

Minn.St. § 610.02, by its terms, applies to Part V of the Minnesota Statutes. In a few sections of Part V not being repealed as a result of this revision, terms are used which are presently defined in § 610.02, and which are not defined under the recommended § 609.02. The definitions involved are of limited value and it is believed the courts will experience little difficulty in construing the terms in their context without the need for statutory definitions.

Subds. 1 to 4: The words "crime," "felony," "misdemeanor," and "gross misdemeanor" are now defined in Minn.St. § 610.01, substantially as recommended.

Subd. 5: Since the term "conviction" is frequently used in the revised code it was felt desirable to define the term. This has been done in accordance with presently prescribed criminal procedure.

Minn.St. § 611.03 provides:

> "No person indicted for any offense shall be convicted thereof, unless by admitting the truth of the charge in his demurrer, or plea, by confession in open court, or by verdict of a jury, accepted and recorded by the court."

Minn.St. § 630.26 provides in part:

> "If the demurrer shall be disallowed or the indictment amended, the court shall permit the defendant, at his election, to plead forthwith or at such time as the court may allow. If he does not plead, judgment shall be pronounced against him."

The recommended definition incorporates the principles of these provisions.

In State v. Corey, 1931, 182 Minn. 48, 52, 233 N.W. 590, the court defined "confession in open court" as "a formal admission that the specific crime or one included within the indictment was committed, the confession being entered of record virtually amounting to a change of plea to guilty."

Defendant's testimony given in open court showing as a matter of law that he had committed the crime was held not to come within the definition.

Subd. 6: There is presently no definition of the term "dangerous weapon" in the Minnesota statutes. The definition recommended is taken without change from the Wisconsin code, § 939.22, Clause (1). The term is used in several sections of the recommended code.

Subds. 7 and 8: These definitions are taken from the Wisconsin code, 939.22, Clauses (4) and (14). There are presently no corresponding Minnesota definitions.

Subd. 9: These terms are uniformly used throughout the criminal code. Such terms as "knowingly," "wilfully," "maliciously," and the like have led to great confusion in their interpretation by the courts. In place, if knowledge of a fact is required, the term "know" has been used. Where an intent is required to establish a crime these definitions will indicate the meaning with which the term is used.

The definitions are taken verbatim from Wisconsin St. § 939.23. Uniformity of definitions and interpretations of the terms will thus result.

609.025 Jurisdiction of State

A person may be convicted and sentenced under the law of this state if:

(1) He commits a crime in whole or in part within this state; or

(2) Being without the state, he causes, aids or abets another to commit a crime within the state; or

(3) Being without the state, he intentionally causes a result within the state prohibited by the criminal laws of this state.

It is not a defense that the defendant's conduct is also a criminal offense under the laws of another state or of the United States or of another country.

COMMENT

Clause (1) of the recommended section corresponds to Clause (1) of Minn.St. § 610.04.

Clause (2) of the recommended section duplicates Clause (3) of Minn.St. § 610.04.

Clause (3) of the recommended section states in revised terms the substance of Clause (5) of Minn.St. § 610.04.

Clause (2) of Minn.St. § 610.04 provides that an offense committed outside the state which, if committed here, would be larceny and afterwards the defendant is found within the state with the stolen property, he is liable to punishment. This is sufficiently covered by recommended § 609.525 of the recommended theft statutes.

Clause (4) of Minn.St. § 610.04 gives jurisdiction where a person abducts or kidnaps someone outside the state and brings such person into this state. This is sufficiently covered by the kidnapping and false imprisonment statutes as recommended, § 609.25 and § 609.255.

The last paragraph of recommended § 609.025 incorporates the provisions of Minn.St. § 610.22 which will be superseded.

Minn.St. § 610.04 will be superseded.

Minn.St. § 619.09 will also be superseded. This makes death resulting from a duel murder whether arranged without the state and death results in the state or the reverse. Duels are no longer recognized as a separate crime in this revision. See comment to § 609.225.

Minn.St. § 627.10 provides that when a death outside of the state results from an act within the state, the criminal charge shall be tried in the county in which the act occurred. This is essentially a venue statute, is consistent with recommended § 609.025 and will not be affected.

609.03 Punishment When Not Otherwise Fixed

If a person is convicted of a crime for which no punishment is otherwise provided he may be sentenced as follows:

(1) If the crime is a felony, to imprisonment for not more than five years or to payment of a fine of not more than $5,000, or both; or

(2) If the crime is a gross misdemeanor, to imprisonment for not more than one year or to payment of a fine of not more than $1,000, or both; or

(3) If the crime is a misdemeanor, to imprisonment for not more than 90 days or to payment of a fine of not more than $100; or

(4) If the crime is other than a misdemeanor and a fine is imposed but the amount is not specified, to payment of a fine of not more than $500, or to imprisonment for a specified term of not more than six months if the fine is not paid.

COMMENT

Clause (1): This will supersede Minn.St. § 610.16 which, however, permits sentences of not more than seven years or fine of not more than $1,000, or both.

A provision of this kind is necessary in view of the various sections outside of the criminal code creating crimes and labeling them as felonies, misdemeanors, or gross misdemeanors without the further specification of punishment.

Clause (2): This will supersede Minn.St. § 610.20 providing for the same sentences but not adding the words "or both."

Clause (3): This will supersede Minn.St. § 610.19 permitting the same sentences.

Clause (4): This will supersede Minn.St. § 610 36 which provides that commitment for nonpayment of the fine is not to exceed "a reasonable time, to be graduated according to the amount of the fine."

The recommended code does not contain any provisions for a fine without the amount being specified. However, there are probably offenses created outside the code in which a fine only is imposed and retention, therefore, of some such provision as that recommended is desirable.

No provision has been recommended corresponding to Minn.St. § 610.34, which states that a sentence may be for life if a minimum but no maximum imprisonment sentence is provided. There are no crimes under this revision for which no maximum imprisonment is provided.

609.035 Crime Punishable Under Different Provisions

Except as provided in section 609.585, if a person's conduct constitutes more than one offense under the laws of this state he may be punished for only one of such offenses and a conviction or acquittal of any one of them is a bar to prosecution for any other of them. All such offenses may be included in one prosecution which shall be stated in separate counts.

COMMENT

This will supersede Minn.St. § 610.21 reading:

"Any act or omission declared criminal and punishable in different ways by different provisions of law shall be punished under only one of such provisions, and a conviction or acquittal under any one shall bar a prosecution for the same act or omission under any other provision."

The purpose of Minn.St. § 610.21 was to limit punishment to a single sentence where a single behavioral incident resulted in the violation of more than one criminal statute.

Except for some earlier Minnesota cases (see State v. Moore, 1902, 86 Minn. 422, 90 N.W. 787 and State v. Klugherz, 1904, 91 Minn. 406, 98 N.W. 99) Minnesota cases have tended to defeat this purpose by identifying the act or omission with specific crimes committed even though those crimes were the product of but a single performance of the defendant. See State v. Fredlund, 1937, 200 Minn. 44, 273 N.W. 353, death of two persons in an automobile collision held to authorize separate prosecutions for each death.

State v. Winger, 1939, 204 Minn. 164, 282 N.W. 819, acquittal of rape does not bar later conviction of carnal knowledge.

State v. Thompson, 1954, 241 Minn. 59, 62 N.W.2d 512, acquittal of receiving money as a public officer and failing to pay it not a bar to prosecution for receiving and appropriating the same money to his own use.

Under an identical statute New York decisions have been to the contrary.

People v. Repola, 1953, 280 A.D. 735, 281 A.D. 679, 117 N.Y.S.2d 283, possessing and selling narcotics cannot both be punished.

People v. Savarese, 1954, 1 Misc.2d 305, 114 N.Y.S.2d 816, robbing a truck and holding the truck driver permitted only one punishment of either kidnapping or robbery.

People v. Florio, 1950, 301 N.Y. 46, 92 N.E.2d 881, defendant could be punished for only one of the three crimes of kidnapping, rape, and assault, of which he was convicted.

The California law is in accord with that of New York. Neal v. State, 1960, 35 Cal.2d 175, 9 Cal.Rptr. 607.

The recommended section has been drawn with the view to incorporating the New York and California laws and effectuating the original purpose of Minn.St. § 610.21.

As drawn, the recommended section will not prevent a single indictment from charging several offenses arising out of the same conduct and obtaining convictions for any or all of them, but a sentence may be imposed for only one of them which may be for the highest sentence which any one of them carries.

What is a person's single unit of conduct which constitutes more than one offense is not capable of more precise definition. The test developed by the New York Courts is indicated by the following quotation from People v. Savarese, 1952, 1 Misc.2d 305, 114 N.Y.S.2d 816 at 835:

"Although our statute . . . speaks of 'an act' we know that few, if any, crimes are committed by a single act. A crime unless it is a crime of omission results from a series of acts or a

transaction motivated by a criminal intent. The true factual test is 'Were all of the acts performed necessary to or incidental to the commission of a single crime and motivated by an intent to commit that crime?' Then even if any other separate crime be committed or another statute also violated, the defendant may not be doubly punished. He may be punished only for the highest offense committed. But if any of the acts were not necessary or incidental to the commission of the crime intended, those acts result in the commission of a separate crime, then the defendant may be doubly punished for each crime."

609.04 Conviction of Lesser Offense

Subdivision 1. Upon prosecution for a crime, the actor may be convicted of either the crime charged or an included crime, but not both. An included crime may be any of the following:

(1) A lesser degree of the same crime; or

(2) An attempt to commit the crime charged; or

(3) An attempt to commit a lesser degree of the same crime; or

(4) A crime necessarily proved if the crime charged were proved.

Subd. 2. A conviction or acquittal of a crime is a bar to further prosecution of any included crime, or other degree of the same crime.

COMMENT

Subdivision 1: The first sentence is based on the Wisconsin statute, § 939.66.

Clauses (1), (2), and (3) derive from Minn.St. § 610.11 which will be superseded.

Clause (4) states the present Minnesota law. See State v. McLeavey, 1924, 157 Minn. 408, 196 N.W. 645.

The last sentence of Minn.St. § 610.11, providing that on a charge of an assault with intent to commit a felony the jury may convict of assault, has not been included since assaults with intent to commit a felony are not dealt with as separate offenses in this revision but are treated as attempts. See § 609.22 and comment thereto. Decisions under Minn.St. § 610.11 have raised the question under what state of the proof must the court give or not give an instruction to the jury that the jury may convict of the included offenses involved in the crime being charged. If there is no evidence warranting the lesser offense, it is error to give the charge. If there is such evidence it is error not to give the charge if requested by the defendant. For illustrations see State v. Jenkins, 1927, 171 Minn. 173, 213 N.W. 923; State v. Coon, 1927, 170 Minn. 343, 212 N.W. 588; State v. Stevens, 1931, 184 Minn. 286, 238 N.W. 673; State v. Tennyson, 1942, 212 Minn. 158, 2 N.W.2d 833; State v. Nelson, 1937, 199 Minn. 86, 271 N.W. 114; and State v. Bryant, 1928, 174 Minn. 565, 219 N.W. 877.

Minn.St. § 610.15 provides that the jury may convict for a lesser degree of the crime charged. This will also be covered by the recommended § 609.04.

Minn.St. § 610.15 also provides that the court shall pass sentence imposing the prescribed punishment or when punishment is within certain limits the court determines punishment within those limits.

These provisions are sufficiently covered by the provisions authorizing sentences for each specific crime.

Accordingly, it is recommended that Minn.St. § 610.15 be repealed.

Subd. 2: This will supersede Minn.St. § 611.10 reading:

"When a defendant shall be acquitted or convicted upon an indictment for a crime consisting of different degrees, he cannot thereafter be indicted or tried for the same crime in any other degree, nor for an attempt to commit the crime so charged, or any degree thereof."

The effect of recommended Subd. 2 will go beyond that of Minn.St. § 611.10, particularly in view of Clause (4) of Subd. 1.

Recommended § 609.04 will also supersede Minn.St. § 611.09 which provides that if there is an acquittal of part of the offense charged and conviction of the balance, the verdict may be received and the defendant adjudged guilty accordingly.

609.045 Foreign Conviction or Acquittal

If an act or omission constitutes a crime under both the laws of this state and the laws of another jurisdiction, a conviction or acquittal of such crime in the other jurisdiction bars prosecution for the crime in this state.

COMMENT

This is a rewording of Minn.St. § 610.23 without change in substance except that for the words "in another state or country" have been substituted the words "the laws of another jurisdiction." The recommended section will thus include convictions in Federal courts as well as in the courts of another state.

609.05 Liability for Crimes of Another

Subdivision 1. A person is criminally liable for a crime committed by another if he intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime.

Subd. 2. A person liable under subdivision 1 is also liable for any other crime committed in pursuance of the intended crime if reasonably foreseeable by him as a probable consequence of committing or attempting to commit the crime intended.

Subd. 3. A person who intentionally aids, advises, hires, counsels, or conspires with or otherwise procures another to commit a crime and thereafter abandons his purpose and makes

a reasonable effort to prevent the commission of the crime prior to its commission is not liable if the crime is thereafter committed.

Subd. 4. A person liable under this section may be charged with and convicted of the crime although the person who directly committed it has not been convicted or has been convicted of some other degree of the crime or of some other crime based on the same act.

COMMENT

This will supersede Minn.St. § 610.12 which makes one who is guilty of similar conduct liable as a "principal." Minn.St. § 610.12 was intended to abolish the distinction existing at common law between the several categories of parties to criminal offenses; namely, principals in the first degree, principals in the second degree, and accessories before the fact.

Minn.St. § 610.12 makes all of these parties liable as principals without distinction.

The recommended section does not use the term "principal" but states the rule in terms of criminal liability. This makes no change in substance.

The word "abet" has not been used in the recommended section. It is believed it adds nothing to what is already provided.

Cases construing Minn.St. § 610.12 turn principally on the question when has such aid, advise, etc., been given as to make the defendant criminally liable.

Many of these cases involve the question whether a witness is disqualified from testifying against the defendant because he was an accessory.

It would be possible to state the principles of liability in cases other than for the acts of another; namely, the principles of liability for one's own act or non-action. This is undertaken in Wisconsin and Illinois. It was believed that no more should be attempted in the revision than in the present statutes; namely, to provide for liability for the criminal conduct of another person.

Subd. 2: This subdivision deals with liability for unintended crimes caused while committing a crime intended. The question arises principally in cases where several parties participate in the commission of a crime. It is believed consistent with the philosophy of personal fault underlying criminal liability that a person should not be liable for crimes not intended by him but stemming from another criminal act unless they were reasonably foreseeable by him.

This probably states present Minnesota law. For example, in State v. Hurst, 1923, 153 Minn. 525, 193 N.W. 680, the court stated: "If one procures or conspires with another to commit a crime, he is guilty of everything done by his confederates, which follows incidentally in the execution of the common design, as one of its probable and natural consequences, even though it was not intended as a part of the original plan."

Subd. 3: The usual rule is that withdrawal and communication of the withdrawal to the confederate terminates the liability of defendant for any further crimes which the confederate may commit.

See State v. Peterson, 1942, 213 Minn. 56, 4 N.W.2d 826. The recommended subdivision requires something further than this. The defendant must not only abandon his purpose but must make a reasonable effort to prevent the commission of the crime prior to its commission. Communication of the withdrawal to the other would meet this requirement if the intent and communication were to prevent the other from committing the crime.

Subd. 4: This makes clear that a contrary rule prevailing at common law is not in effect in this state. There is now no present provision directly to this effect. Probably by mistake it was incorporated in Minn.St. § 610.14 dealing with accessories after the fact.

609.055 Liability of Children

Children under the age of 14 years are incapable of committing crime. Children of the age of 14 years or over but under 18 years may be prosecuted for a criminal offense if the alleged violation is duly referred to the appropriate prosecuting authority in accordance with the provisions of Minnesota Statutes Chapter 260.

COMMENT

This will supersede Minn.St. § 610.08 which creates a presumption of responsibility for acts committed and places the burden on the defendant to rebut the presumption. This is contrary to the general requirement of proof by the state beyond a reasonable doubt in a criminal case and it is believed should not be retained.

Minn.St. § 610.08 also provides that persons under "7 years, idiots, imbeciles, lunatics, or insane persons are incapable of committing crime." This is covered by recommended § 609.07.

Minn.St. § 610.08 further provides that children between the age of seven and 12 are presumed incapable of committing crime but that this may be rebutted. This is no longer present law since Minn.St. § 260.215 of the Juvenile Court Act provides that a violation of law by a child before becoming 18 years of age is not a crime unless the juvenile court refers the matter to the appropriate prosecuting authority. Minn.St. § 260.125 authorizes transfer only in cases where the offense occurred after the child became 14 years of age. The recommended section corresponds to these provisions.

Minn.St. § 610.08 further permits proof of age "in legal proceedings" by inspection or by examination by physician. This has been omitted. It is believed the mode of proof of age should be left to the general principals of the law of evidence.

609.06 Authorized Use of Force

Reasonable force may be used upon or toward the person of another without his consent when the following circumstances exist or the actor reasonably believes them to exist:

(1) When used by a public officer or one assisting him under his direction:

(a) In effecting a lawful arrest; or

(b) In the execution of legal process; or

(c) In enforcing an order of the court; or

(d) In executing any other duty imposed upon him by law; or

(2) When used by a person not a public officer in arresting another in the cases and in the manner provided by law and delivering him to an officer competent to receive him into custody; or

(3) When used by any person in resisting or aiding another to resist an offense against the person; or

(4) When used by any person in lawful possession of real or personal property, or by another assisting him, in resisting a trespass upon or other unlawful interference with such property; or

(5) When used by any person to prevent the escape, or to retake following the escape, of a person lawfully held on a charge or conviction of a crime; or

(6) When used by a parent, guardian, teacher or other lawful custodian of a child, in the exercise of lawful authority, to restrain or correct such child; or

(7) When used by a common carrier in expelling a passenger who refuses to obey a lawful requirement for the conduct of passengers and reasonable care is exercised with regard to his personal safety; or

(8) When used to restrain a mentally ill or mentally defective person from injuring himself or another or when used by one with authority to do so to compel compliance with reasonable requirements for his control, conduct or treatment; or

(9) When used by a public or private institution providing custody or treatment against one lawfully committed to it to compel compliance with reasonable requirements for his control, conduct or treatment.

COMMENT

This will supersede Minn.St. § 619.40 which states the instances in which force may be used. It also contains provisions which now appear in Minn.St. § 619.28, stating when homicide is justifiable by a public officer, and also Minn.St. § 619.29 which states when homicide is justifiable when committed by others than public officers.

No attempt has been made to amplify and cover instances not contemplated by the present statutes. In this respect the Wisconsin revision and the American Law Institute recommendations were not followed. For example, such questions have not been covered as what is reasonable force; when is there a duty to retreat; and when does withdrawal from a provoked attack restore the right of self-

defense. Such questions are left for judicial development in construing the words "reasonable force" with which § 609.06 begins.

This follows the policy of the present statutes where such terms as "necessary," "in a reasonably and moderate manner," and "the force used is no more than shall be necessary" are used.

In some instances the authorized use of force has been expanded in coverage. These are indicated in the comments below.

In the introductory clause of recommended § 609.06, the words "reasonable force may be used when the following circumstances exist or the actor reasonably believes them to exist" appear. The phrase "the actor reasonably believes them to exist" does not now appear in present Minnesota sections. It is believed, however, to state present Minnesota law. See State v. Shippey, 1851, 10 Minn. 223, 231; State v. Tripp, 1885, 34 Minn. 25, 24 N.W. 290.

The court in the Tripp case stated: "This does not require that the necessity for doing the act must be actual; for it is sufficient if there is either a real or apparent necessity for so doing. But the mere belief of a person that it is necessary to use force to prevent an injury to himself is not alone sufficient to make out a case of self-defense, for the facts as they appear to him at the time must be such as reasonably to justify such belief."

Clause (1): This states the substance, with greater amplification, of Clause (1) of Minn.St. § 619.40.

Clause (2): This is based on Clause (2) of Minn.St. § 619.40. The phrase "in the cases and in the manner provided by law" is not in the present statute. It has been added to emphasize the necessity of conforming to the limitations on arrest which now appear in Minn.St. §§ 629.30 to 629.40.

Clause (3): This appears now as part of Clause (3) of § 619.40. It covers also Minn.St. § 610.05.

Clause (4): This now appears in the remaining part of Clause (3) of § 619.40.

Clauses (5), (6), (7), and (8): These now appear only in Minn.St. § 619.28 dealing with justifiable homicide.

Clause (9): This is largely new although it is to some extent indicated by the last portion of Clause (6) of Minn.St. § 619.40. See also § 609.23 dealing with liability of a person in charge of or employed in an institution for abuse or ill-treatment of its patients.

609.065 Justifiable Taking of Life

The intentional taking of the life of another is not authorized by section 609.06, except when necessary in the following cases:

(1) In resisting or preventing an offense which the actor reasonably believes exposes him or another to great bodily harm or death; or

(2) By a public officer, or person assisting him, to overcome resistance to the execution of legal process or order of a court

when he reasonably believes that such resistance exposes him or another to great bodily harm or death; or

(3) By a public officer, or person assisting him, in effecting a lawful arrest for a felony or in preventing an escape of a person held therefor.

COMMENT

This section operates as a limitation on the preceding section, § 609.06. The subject is now covered by Minn.St. §§ 619.28 and 619.29, which will be superseded. The following, appearing in those Minnesota sections, have not been included:

"In obedience to the judgment of a competent court." This appears in Minn.St. § 619.28, (1), and contemplates capital punishment, no longer existing.

"Or in the discharge of a legal duty." This was considered too vague and broad on a subject of this importance.

"Or in lawfully suppressing a riot or preserving the peace." This again was considered too broad and covers cases in which an intentional killing should not be allowed.

Note that an unintended killing is not covered by the proposed section. Thus if a person is accidentally killed in the lawful use of force pursuant to § 609.06, it would not be a homicide in any respect. Of course, if gross negligence, etc., were to be shown, it would come under the provisions of the homicide section.

The phrase "reasonably believes exposes him or another to great bodily harm or death" replaces the phrase "reasonable ground to apprehend a design on the part of the person slain to commit a felony, or to do some great personal injury to the slayer or to any such person, and there is imminent danger of such design being accomplished;" appearing in Clause 1 of Minn.St. § 619.29. It supersedes also the phrase "resistance of an attempt to commit a felony upon the slayer, in his presence, or upon or in a dwelling or other place of abode in which he is," appearing in Minn.St. § 619.29, Clause 2. The recommended language does not encompass all felonies "in his presence" or "in a dwelling or other place of abode." It was felt that to warrant the killing of another, the defendant's own life should be in danger. Being in a dwelling goes only to the question of his duty to leave it before attempting to kill. Case law is to the effect that he need not so retreat. See State v. Touri, 1907, 101 Minn. 370, 112 N.W. 422.

Such questions as duty to retreat involve the use of reasonable force and will be left to case law as they now are.

The phrase "or any person under his care or custody" has been used instead of "master or servant." Under modern conditions the terms "master" and "servant" have an uncertain meaning and the original relation intended no longer prevails. The test should be responsibility for the person sought to be protected.

The phrase "reasonably believes" that bodily injury or death may occur has been added but it is believed expresses present Minnesota law. See comment to § 609.06.

Minn.St. § 619.27, providing that "homicide is excusable when committed by accident or misfortune in doing any lawful act, by lawful

means, with ordinary caution, and without any unlawful intent," states what is the automatic and obvious consequence of the law of homicide and is unnecessary. It accordingly is recommended to be repealed.

609.07 Mental Illness as a Defense

A person is not responsible for criminal conduct if, at the time of such conduct, as a result of mental disease or defect, he lacked substantial capacity either to comprehend the criminality of his conduct or to refrain from committing the act with which he is charged.

COMMENT

Minn.St. § 610.10 now provides:

"No person shall be tried, sentenced, or punished for any crime while in a state of idiocy, imbecility, lunacy, or insanity, so as to be incapable of understanding the proceedings or making a defense; but he shall not be excused from criminal liability except upon proof that at the time of committing the alleged criminal act he was laboring under such a defect of reason, from one of these causes, as not to know the nature of his act, or that it was wrong."

A portion of Minn.St. § 610.09 also provides:

"A morbid propensity to commit prohibited acts existing in the mind of a person who is not shown to have been incapable of knowing that such acts were wrong shall constitute no defense."

Minn.St. § 610.10 incorporates the test of insanity as a defense which originated in M'Naghten's case, 10 Clark & Finelly 200, decided in England in 1843. The court there said: ". . . to establish a defense on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong."

The case did not involve an appeal but was the pronouncement of the judges in answer to a question from the House of Lords provoked by the acquittal of an insane person who had attempted to kill the Prime Minister but mistakenly had killed another.

Almost from the day of its pronouncement this rule has been subject to attack and criticism, particularly on the part of the medical profession and, more recently, the pyschiatric profession.

The criticism has centered in part on the fact that according to modern psychological and psychiatric knowledge human conduct is not controlled by a compartmentalized mind but that human emotions and responses play a major role and that insanity may affect this side of the human mind without necessarily destroying its capacity for reason. Hence a person may know the nature and quality of his act and know that what he is doing is wrong but is led to the conduct nevertheless by the disturbed and diseased state of mind of the subject.

A second criticism has been that the test puts the psychiatrist as a witness in an intolerable position in that he is compelled by legal definition to state that a person is sane because he knows right from wrong when in fact the psychiatrist is convinced that the mental illness under which the patient is suffering directly caused the criminal act.

Notwithstanding this vigorous attack, the M'Naghten Rule became almost universally the test of insanity in criminal cases. The first departure occurred in New Hampshire under the leadership of their outstanding judge, John Doe, who was influenced by the views of his medical friend, Dr. Ray. In 1870 he convinced his colleagues that the M'Naghten Rule should be abandoned and the broad test laid down to the jury that the defendant was not to be convicted if he was suffering from a mental disease at the time of the criminal act and the act was the off-spring or product of the mental disease. See State v. Pike, 1869, 49 N.H. 399, 6 Am.R. 533. Thereafter some states adopted an additional test; namely, the so-called irresistible impulse test. This in substance provided that if the defendant were driven by the mental disease irresistibly to the commission of the crime he would be exonerated from criminal liability. Only a minority of states adopted this qualification. It was held not to be in force in Minnesota since the matter was covered by statute. See State v. Simenson, 1935, 195 Minn. 258, 262 N.W. 638.

This remained the state of the law until the decision in Durham v. United States, 1954, 94 U.S.App.D.C. 228, 214 F.2d 862, 45 A.L.R.2d 1430, in which the Court of Appeals of the District of Columbia abandoned the M'Naghten Rule and irresistible impulse rule and laid down a new criterion substantially identical to that formerly prevailing in New Hampshire. The rule laid down in that case was as follows: "The rule we now hold must be applied on the re-trial of this case and in future cases is not unlike that followed by the New Hampshire court since 1870. It is simply that an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect.

"We use 'disease' in the sense of a condition which is considered capable of either improving or deteriorating. We use 'defect' in the sense of a condition which is not considered capable of either improving or deteriorating and which may be either congenital, or the result of injury, or the residual effect of a physical or mental disease."

The decision immediately became the subject of much controversy. The majority, but not all, of the psychiatrists upheld it as a solution to their problems and the proper approach to the subject of insanity as a defense.

Without exception appellate courts, both state and federal, rejected it either on the basis (1) of *stare decisis*; or (2) that in the particular jurisdiction the question was foreclosed by statutory provisions; or (3) that the Durham Rule was inherently unsound.

One of the difficulties encountered in the District of Columbia has been the rule earlier laid down by the U. S. Supreme Court that while there is a presumption of sanity upon which prosecution can rely, if any evidence appears suggesting that the defendant may be suffering from mental illness, the prosecution must then prove that he is sane beyond a reasonable doubt. This has led to the rather incongruous result that defendants have been committed to mental institutions because of failure to prove sanity on the part of the state rather than on the basis of an affirmative proof of insanity.

Another objection to the Durham Rule has sprung from concepts of logical coherence between the defense of insanity and the necessary assumption of criminal responsibility where the issue is not involved. The criminal law must proceed on the premise that a person has a free choice between committing a criminal act or abstaining and that he is a moral agent against whom the state can take appropriate measures in the event that his choice is to commit the crime. To exonerate on the ground of insanity a person who retains his faculty of making a choice but whose emotional faculties have been disturbed by mental illness appears to run counter to this inherent requirement of the criminal law.

A further objection to the Durham Rule has been that it leaves the jury without a guide and substitutes the judgment of a psychiatrist for that of the jury on the question of whether the man is suffering from a mental disease. Dramatizing this particular criticism was the case in the District of Columbia in which at an earlier stage of a hearing a psychiatrist had testified that a psychopath was not suffering from a mental disease and later, after a meeting of the physicians of the hospital, returned to testify that the psychiatrists had changed their minds and that a psychopath was in fact suffering from a mental disease or disorder. As stated by Judge Burger in his concurring opinion in Blocker v. United States, 1961, 110 U.S.App. D.C. 41, 288 F.2d 853: "In holding as we did, we tacitly conceded the power of St. Elizabeths Hospital Staff to alter drastically the scope of a rule of law by a 'week-end' change in nomenclature which was without any scientific basis, so far as we have any record or information. . . . this change altered the scope of the 'disease-product' test to embrace a vast number of people and problems not contemplated by this court when the rule was adopted."

Under this criticism, the point is emphasized that the jury must have some guide or measure by which they can determine whether the defendant in the particular case before them was in fact suffering from a mental disease so as to exonerate him from criminal liability.

In line with this thesis, stress is also laid on the fact that the objectives of the criminal law are different from that of phychiatry and that a person may be suffering from a mental disease according to psychiatric analysis and yet not be free from criminal responsibility for his acts.

This position stems essentially from the belief already mentioned that a person who retains his capacity of choice should suffer the consequences of the wrong choice in order that he and others may be deterred and if he has the capacity for deterrence the law should look no further.

A further criticism, stemming mainly from Professor Wechsler, Reporter for the American Law Institute on the Model Penal Code, is directed at the term "product of disease" and emphasizes the difficulties in ascertaining when a criminal act is a product of the disease. An attempt was made by the Court of Appeals of the District of Columbia to meet this objection in Carter v. United States, 1958, 102 U.S.App.D.C. 305, 252 F.2d 608.

These criticisms have been confined almost exclusively to the Durham decision. Its counterpart in New Hampshire appears to have met with little adverse criticism. The New Hampshire rule was favorably commented upon in Reid "Understanding the New Hampshire Doctrine of Criminal Insanity," 69 Yale L.R. 367.

Minnesota has adopted the Durham Rule insofar as it is applied to civil cases. See Anderson v. Grasberg, 1946, 247 Minn. 538, 78 N.W.2d 450. In this case it was held that a person who killed his wife as a result of mental illness could take the interest of the wife in property held by them jointly. The rule is otherwise in the absence of insanity. The court said:

"In determining that Alfred was not insane at the time of the killing, the trial court made the following finding of fact: '* * * He [Alfred] knew at all times that it was unlawful to kill Katherine. He knew that he would be punished by imprisonment if he killed her. His act was wilful, premeditated, and consummated as planned.'

"The court followed the rules laid down in M'Naghten's Case, 10 Clark & F. 200, 209, 210, which determined that a person 'is nevertheless punishable according to the nature of the crime committed, if he knew at the time of committing such crime that he was acting contrary to law;' and 'that to establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong.' See, State v. Scott, 1887, 41 Minn. 365, 370, 34 N.W. 62, 64. This so-called 'right-and-wrong' test has been attacked as obsolete because it ignores the great advances made in the science of psychiatry which recognize 'that a man is an integrated personality and that reason, which is only one element in that personality, is not the sole determinant of his conduct' Durham v. United States, 1954, 94 App.D.C. 228, 237, 214 F.2d 862, 871, 45 A.L.R.2d 1430, 1441, 39 Minn.L.Rev. 573.

". . . From this testimony it becomes obvious that the use of the 'right-and-wrong' test of insanity, which has been replaced in at least one jurisdiction insofar as criminal responsibility is concerned, would not be appropriate in this case where the defendant apparently knew that what he did was wrong, and yet it was his mental disease and not his own conscious act that caused the death of his wife. * * *

"The fact that Alfred committed the act knowing it was wrong with full realization of its consequences should not be considered in a vacuum apart from the disease which produced the act. We feel that the better rule to be applied to the case before us is that the slayer will not be barred from taking the property where his unlawful act was the product of mental disease. In light of the present-day medical knowledge of the nature of mental diseases, it is not realistic to apply the arbitrary right-and-wrong test to the facts in this case."

The Minnesota court in State v. Finn, 1960, 257 Minn. 138, 100 N.W. 2d 508, held that in criminal cases Minn.St. § 610.10 was controlling and that the court was not free to adopt any other test.

The American Law Institute has recommended the following:

"(1) A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.

"(2) The terms 'mental disease or defect' do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct."

These provisions were adopted in the Illinois Criminal Code revision in 1961 without change.

The Maine Legislature in 1961 adopted the Durham Rule. In United States v. Currens, 290 F.2d 751, 1961, Judge Biggs, a leading authority on this subject, adopted a modified version of the American Law Institute proposal.

The Wisconsin revision contained no provision on the subject. It was left, therefore, to judicial decision. In State v. Esser, 16 Wis.2d 567, 115 N.W.2d 505, decided May 25, 1962, the court adopted the M'Naghten Rule but with a new interpretation of the phrase "incapable of understanding the nature and quality of the alleged wrongful act." The interpretation appears to permit any psychiatric testimony tending to show misjudgments of fact and conduct stemming from mental illness or defect. It thus gives a much wider sweep to the M'Naghten Rule than has heretofore prevailed.

The court stated that it might have adopted an even more liberal rule if its rule of procedure were that the burden of establishing mental illness were on the defendant. In Wisconsin the burden is on the state to prove normality beyond a reasonable doubt.

In view of the unsettled condition of the law among the courts which have had occasion to examine the subject and in the legislation which has recently been adopted in Maine and Illinois, it was concluded by the Advisory Committee that, with some clarification, the American Law Institute version represented for the time being the most that could be achieved and that it was a distinct improvement over the M'Naghten Rule which now prevails in this state and which, as it is presently in force in Minnesota, is the least satisfactory of the several possible alternatives.

609.075 Intoxication as Defense

An act committed while in a state of voluntary intoxication is not less criminal by reason thereof, but when a particular intent or other state of mind is a necessary element to constitute a particular crime, the fact of intoxication may be taken into consideration in determining such intent or state of mind.

COMMENT

This is a rewording of the substance of Minn. St. § 610.09.

609.08 Duress

Except as provided in section 609.20, (3), when any crime is committed or participated in by two or more persons, any one of whom participates only under compulsion by another engaged therein, who by threats creates a reasonable apprehension in the mind of such participator that in case of refusal he is liable to instant death, such threats and apprehension constitute duress which will excuse such participator from criminal liability.

COMMENT

This is identical to Minn.St. § 610.07 which will be superseded except that the words "except murder" are deleted and the words

"except as provided in section 609.20, (3)" have been added. The section referred to makes it first degree manslaughter where through coercion a defendant was forced to kill another.

609.085 Sending Written Communication

Subdivision 1. When the sending of a letter or other written communication is made an offense, the offense is complete upon deposit of the letter or communication in any official depository of mail or given to another for the purpose of delivery to the receiver.

Subd. 2. The offense is committed in both the county in which the letter is so deposited or given and the county in which it is received by the person for whom it is intended.

COMMENT

This supersedes Minn.St. § 610.25. Changes introduced are:

(1) Minn.St. § 610.25 is limited to letters; and

(2) "In any official depository of mail" is substituted for "in any post office or other place." "Or other place" was deemed too indefinite.

Placing a written communication such as a defamatory writing under the door of the receiver would not come under the terms of the recommended section.

609.09 Compelling Testimony; Immunity from Prosecution

Subdivision 1. In any criminal proceeding, in which a violation of a provision of this chapter is charged, if a person refuses to answer a question or produce evidence of any other kind on the ground that he may be incriminated thereby, and if the prosecuting attorney, in writing, requests a judge of the district court to order that person to answer the question or produce the evidence, the judge, after notice to the witness and hearing, shall so order if he finds that to do so would not be contrary to the public interest, and that person shall comply with the order.

After complying, and if, but for this section, he would have been privileged to withhold the answer given or the evidence produced by him, he shall not be prosecuted or subjected to penalty or forfeiture for or on account of any transaction, matter or thing concerning which, in accordance with the order, he gave, answered, or produced evidence, but he may be prosecuted or subjected to penalty or forfeiture for any perjury, false swearing or contempt committed in answering, or in failing to answer, or in producing, or failing to produce, evidence in accordance with the order.

Subd. 2. In every case not provided for in subdivision 1 and in which it is provided by law that a witness shall not be excused from giving testimony tending to criminate himself, no person shall be excused from testifying or producing any papers or documents on the ground that his testimony may tend to criminate him or subject him to a penalty or forfeiture; but he shall not be prosecuted or subjected to a penalty or forfeiture for or on account of any action, matter, or thing concerning which he shall so testify, except for perjury committed in such testimony.

COMMENT

Minnesota Constitution, Article I, Section 7, provides in part: "No person . . . shall be compelled in any criminal case to be a witness against himself . . ." This is identical with the Federal constitutional provisions.

States generally have statutory provisions which undertake to enable the obtaining of testimony from a witness who plead the protection of this constitutional provision by granting him immunity from prosecution.

At the present time the Minnesota statutes on the subject are in a very considerable degree of confusion. Minn.St. § 610.47 represents the general immunity statute. It becomes operative wherever other statutes dealing with specific crimes grant immunity to a person compelled to testify with respect to those crimes.

In addition to Minn.St. § 610.47, there are numerous specific statutory provisions relating to specific crimes which appear to be complete in themselves and do not depend upon the provisions of Minn.St. § 610.47. These are listed below. It will be noted that some of them appear in the criminal code; others are outside of it. The principal characteristics of the present Minnesota statutes are:

(1) Minnesota does not have a general immunity statute. Minn.St. § 610.47 is operative only when other specific sections so provide.

(2) Immunity is automatic. In other words, immunity follows by operation of the statute rather than by order of the court or decision of the prosecuting attorney.

(3) The statutes do not make clear whether the defendant must invoke the privilege against self-incrimination expressly before immunity under the statute is conferred.

(4) The statutes differ in their terminology. To meet constitutional requirements, it is not enough that the immunity extends to the use in any other proceeding of the evidence given. Counselman v. Hitchcock, 1892, 12 S.Ct. 195, 142 U.S. 547, 35 L.Ed. 1110. The immunity granted must be such that the witness cannot be prosecuted or subjected to any penalty or forfeiture by virtue of any transaction or matter with respect to which he testifies or gives evidence. Brown v. Walker, 1896, 16 S.Ct. 644, 161 U.S. 591, 40 L.Ed. 819. In State v. Ruff, 176 Minn. 308, 223 N.W. 144, this constitutional requirement was held to be complied with by Minn.St. § 613.04 which grants immunity of this breadth in bribery cases.

While there has been little legislative development in the United States on this subject, it is believed desirable to provide for an adequate immunity statute in this revision.

For this purpose it is believed that the Model State Witness Immunity Act prepared by the National Conference of Commissioners on Uniform State Laws provides the best available draft which should be followed. The Model Act was a product of careful consideration and is recommended by Professor McCormick in his work on Evidence, page 287. Recommended § 609.09 represents this model with adaptations to Minnesota and some changes in wording. The words appearing in that section "if he finds that to do so would not be contrary to the public interest" have been substituted for the phrase in the Model draft reading "unless it finds that to do so would not be clearly contrary to the public interest." This will make the grant of immunity dependent upon such a finding rather than upon the absence of such a finding. The section as recommended fully meets the constitutional requirements.

The scope of Subdivision 1 of recommended § 609.09 is limited to proceedings brought for the violation of provisions of the revised criminal code. It will not extend to grants of immunity outside of that code. Hence Minn.St. § 610.47 is retained as Subd. 2 without change in substance or wording except for the introductory clause.

Under Subdivision 1 of recommended § 609.09, the immunity granted must be by a judge of the district court upon application of the prosecuting attorney regardless of the court in which the prosecution may be pending. This will promote consistency of policy. While most municipal courts and probate courts might be given this power, it is believed unwise to extend the authority beyond the district court. Certainly, justices of the peace should not be entrusted with this power.

Minnesota cases have held under present statutes that if the defendant is required to give testimony, as by way of subpoena or threat of subpoena, he cannot later be prosecuted for the crime disclosed. State v. Rixon, 1930, 180 Minn. 573, 231 N.W. 217. State v. Gardner, 1903, 88 Minn. 130, 92 N.W. 529. In each of these cases the defendant was required to give testimony before a grand jury on a subject for which he was later indicted. These cases will no longer be controlling under recommended § 609.09.

Present provisions which will be superseded by the recommended immunity statute are as follows:

§§ 613.04 & 613.07:

A portion of these sections grants immunity in cases of bribery of public officials or members of the Legislature.

§ 613.16:

This grants immunity where testimony is compelled by a person "offending against any provision of law relating to bribery."

§ 614.08:

This provides that "no person shall be excused from testifying touching an offense committed by another against any provisions of" designated gambling sections, by reason of his having participated.

§ 615.14:

This provides that no person shall be excused from testifying in a prosecution under Minn.St. § 615.12 or § 615.13 which relate to the use of offensive and quarrelsome language in a public conveyance or refusal to pay a fare thereon or, contrary to its rules, smoking or taking a dog into the conveyance.

§ 617.13:

This grants immunity to persons under 18 years of age in incest cases.

§ 617.21:

This provides that no one shall be excused from testifying in any prosecution for abortion or attempted abortion.

§ 617.325:

This provides that no person shall be excused from testifying with respect to the crime of transporting or sharing in the earnings of a prostitute.

§ 619.50:

This grants immunity in prosecutions for engaging in duels.

§ 620.34:

This provides that no testimony given in a civil action shall be used in a criminal prosecution for fraudulent use of labor union trade marks, etc.

Sections Outside of the Criminal Code

The following sections providing for immunity appear outside of the criminal code. There may be others which were not found. These sections will not be superseded, but Subd. 2 of recommended § 609.09 will apply.

§ 60.875:

This authorizes the Insurance Commissioner to conduct hearings, compel testimony, and grant immunity to witnesses.

§ 72.33:

This grants immunity to a person who is compelled to testify at a hearing provided for in Chapter 72 concerning violations of the provisions regulating trade practices.

§ 80.22:

This gives the Security Commissioner the power to compel testimony coupled with immunity from prosecution.

§ 215.16:

This authorizes the Public Examiner to compel testimony but is silent on the question of immunity. The effect of the omission was considered in State v. Nolan, 1930, 231 Minn. 522, 44 N.W.2d 66, and State v. Lowrie, 1931, 235 Minn. 82, 49 N.W.2d 631.

§ 246.08:

This empowers the Commissioner of Public Welfare, in examining public institutions, to compel testimony and grant immunity from prosecution.

§ 268.12, Subd. 10:

This permits the Department of Employment and Security to compel testimony and grant immunity from prosecution.

§ 297.37, Subd. 4:

This authorizes the Tax Commissioner to compel testimony regarding taxes on tobacco products and confer immunity from prosecution for the purpose.

§ 32A.04, Subd. 3:

This authorizes the Department of Business Development, in inquiring into trade practices, to compel testimony and grant immunity from prosecution.

§ 575.04:

This provides that a party may be compelled to testify in proceedings supplementary to execution but that his answer shall not be used as evidence against him. This section does not conform to constitutional requirements.

SENTENCES

COMMENT

The numerous provisions on sentencing appearing in the present criminal code are the product of additions made from time to time over the past 75 years. As originally adopted, the code was concerned primarily with punishment and the function of the sentence was to mete out the punishment which the particular crime warranted. More recently, rehabilitation of the convicted person has been widely accepted as a primary goal of post-sentence procedures and has resulted in the enactment of provisions authorizing the granting of probation under supervision, the establishment of parole boards with power to parole, the indeterminate sentence, etc. At the same time, there has been recognition of the fact that some individuals cannot be rehabilitated, at least without long periods of confinement, and that in the public interest longer periods of imprisonment are required than is permitted by law for the particular offense for which the defendant is being sentenced. This has led to the adoption of the so-called habitual offender laws, authorizing or requiring sentences for longer periods of imprisonment.

The resulting miscellany of statutes dealing with sentencing in this state are scattered among several chapters, are confused in their meaning, and are sometimes inconsistent.

It was considered necessary, therefore, to undertake a substantial revision of the law relating to sentencing and to recast the provisions into clearer, consistent terms which carry out the objectives above indicated. This was believed particularly desirable at this time in view of the establishment of the new Department of Corrections which now permits a better organized program of post conviction treatment, and better integration of the sentencing process with the post conviction procedures. It would seem evident that the sentencing function of the courts can be effective only to the extent that it is coordinated with post conviction facilities, procedures, and program which exist to carry out the sentence.

Under the recommended sections, the judge retains full power to impose any sentence which he considers proper within the limits set by statute. There is, however, a greater flexibility open to the judge. The judge may fix any maximum not exceeding that provided by statute. However, if the sentence is for less than a year, the defendant cannot be committed to imprisonment in a state penal institution. A sentence for less than one year makes the conviction one for a misdemeanor or gross misdemeanor, depending upon whether the sentence fits one or the other category, regardless of the fact that the defendant was convicted of a felony.

The judge may also stay imposition of sentence and place the defendant on probation. Under present law only execution of sentence may be stayed. If probation is revoked the judge may then impose sentence and have before him the conduct of the defendant following his conviction.

Since the proper execution of the sentencing function is all important to the effective administration of criminal justice, provision has been made to assure that the court before imposing sentence be fully informed about the defendant and his history. Hence, a presentence report is required in all cases. The court may also request a diagnostic study and report by the Department of Corrections when these services are made available. To assure that the information therein contained is reliable and adequate, the defendant's attorney is afforded an opportunity to inspect the reports and to question their accuracy, a provision believed also to be required by concepts of rudimentary fairness to the defendant.

Two measures have been incorporated designed to assure that the hardened or professional criminal does not escape with a light sentence. One of these requires that a diagnostic study and report be made by the Department of Corrections in cases where crimes have been committed which under the revised code carry relatively long maximum sentences and which thus evidence the gravity of the offenses committed. The other measure relates to the habitual offender. The recommended provisions substantially modify existing law. The extended term of imprisonment authorized by these provisions cannot be imposed unless a diagnostic study and report has been made. It is then discretionary with the judge whether or not to impose the extended term. Questions of fact such as identity of the defendant and existence of the prior convictions are determined through an informal procedure by the court. By these measures, it is believed, greater assurance is given that the extended term will not be applied where it is not warranted and will be imposed to keep in confinement those criminals who are not susceptible to rehabilitation during normal periods of confinement.

The automatic consecutive service of multiple sentences has been eliminated. Such sentences are served concurrently unless the judge otherwise directs. Credit is also given for confinement imposed following conviction and before commitment unless the court orders otherwise.

The recommended sections also revise the rather extensive present provisions relating to the restoration of civil rights. This may be discretionary with the Governor, but in practice it appears that the restoration of civil rights has been granted almost as a matter of course. Under the recommended provisions, these rights will be automatically restored when the defendant is discharged following satisfactory service of sentence, probation or parole. This is deemed desirable to promote the rehabilitation of the defendant and his return to his community as an effective participating citizen.

Other changes from present law have been noted in the comments to particular recommended sections.

In preparing these provisions, the Advisory Committee has had the benefit of the draft of the Committee on Sentencing of the National Advisory Council of Judges. The Chairman of that Committee is the Honorable Theodore B. Knudson of Minneapolis, Minnesota, who attended the meetings and participated in the deliberations of the Advisory Committee while it was considering this subject.

609.095 Limits of Sentences

No other or different sentence or punishment shall be imposed for the commission of a crime than is authorized by this act or other applicable law.

COMMENT

The only sentences authorized by the revised code consist of either imprisonment or fine, or both.

The recommended section makes unnecessary Minn.St. § 631.47 prohibiting the use of ball and chain or binding or tying the defendant in public as punishment.

Handcuffing or other security measures designed to protect an officer and others or to prevent escape would not be encompassed since punishment is not the purpose of such measures.

Repeal Recommended

§ 610.18:

This authorizes "imprisonment for not less than five years" for a felony committed while armed, but does not reduce a greater maximum if otherwise provided.

It is recommended that this be repealed. The policy of the revision is to state in the sections creating the crime the elements of the crime and the sentence permitted, e. g., being armed is an element of burglary, § 609.52; aggravated robbery, § 609.245; and aggravated assault, § 609.225.

Section 610.18 appears to have had little use. There are no Minnesota cases on it. This is undoubtedly because there are so few felonies in which an armed weapon could be used which does not already carry a permissible sentence of more than five years. The section is inconsistent also with the policy of this revision of making the sentence turn on a complete investigation and report on the history and character of the defendant rather than on a single factor present at the time of the commission of the offense.

609.10 Sentences Available

Upon conviction of a felony and compliance with the other provisions of this chapter the court, if it imposes sentence, may sentence the defendant to the extent authorized by law as follows:

(1) To life imprisonment; or

(2) To imprisonment for a maximum term of years fixed by the court; or

(3) To an indeterminate term of imprisonment which shall be deemed to be for the maximum term authorized by law; or

(4) To both imprisonment and payment of a fine; or

(5) To payment of a fine without imprisonment or to imprisonment if the fine is not paid.

COMMENT

There is no similar provision in the present code spelling out the several alternatives open to the court.

It was thought desirable to set out in one section the alternatives open to the court under this code.

609.105 Sentence of Imprisonment

Subdivision 1. A sentence to imprisonment for more than one year shall commit the defendant to the custody of the commissioner of corrections.

Subd. 2. The commissioner of corrections shall determine the place of confinement in a prison, reformatory, or other facility of the department of corrections established by law for the confinement of convicted persons and prescribe reasonable conditions, rules, and regulations for their employment, conduct, instruction, and discipline within or without the facility.

Subd. 3. A sentence to imprisonment for a period of one year or any lesser period shall be to a workhouse, work farm, county jail, or other place authorized by law.

COMMENT

Recommended Subdivisions 1 and 2 do not represent a substantial change. Minn.St. § 243.77, which will be superseded, now permits the Commissioner of Corrections to transfer prisoners from the reformatory to the state prison and the reverse. The recommended Subd. 2 will permit also transfers to other facilities within the jurisdiction of the Commissioner, such as forestry camps and the like if and as these are made available.

Under recommended Subd. 3, a sentence to imprisonment for a gross misdemeanor or misdemeanor is not to the Commissioner of Corrections but directly as under present law to a workhouse, jail, and so forth.

Minn.St. § 243.70 will also be repealed. This provides that persons between 17 and 30 and not previously convicted may be sent by the court, in its discretion, to either the state prison or the reformatory.

Subd. 2 of Minn.St. § 243.76 is deemed unnecessary and will be repealed. It provides that a youth convicted of a felony while on parole from the state training school shall not be returned to the school but shall be sentenced as if he were not a minor. This is believed undesirable insofar as it limits the Youth Conservation Commission from revoking parole and returning the youth to the school. Sentence for the conviction should be under the present chapter and will be covered by the recommended sections and the provisions of the Youth Conservation Act.

609.11 Minimum Terms of Imprisonment

All commitments to the commissioner of corrections for imprisonment of the defendant are without minimum terms except when sentence is to life imprisonment as required by law.

COMMENT

This will replace Minn.St. § 610.17 which provides for a one year minimum term. In the recommended sections, no minimums appear and none are contemplated by this revision.

The court may, however, fix a maximum period of imprisonment not exceeding the maximum fixed by law for the crime committed.

Minn.St. § 243.76 will be repealed. This provides for indeterminate sentence on commitments to the state reformatory for men.

Minn.St. § 243.60 provides that the court upon imposing a sentence to imprisonment shall ascertain certain facts about the defendant. This will be covered in the presentence report required in all cases. Repeal of Minn.St. § 243.60 is therefore recommended.

609.115 Presentence Investigation

Subdivision 1. When a defendant has been convicted of a felony, and a sentence of life imprisonment is not required by law, the court shall, before sentence is imposed, cause a presentence investigation and written report to be made to the court concerning the defendant's individual characteristics, circumstances, needs, potentialities, criminal record and social history, the circumstances of the offense and the harm caused thereby to others and to the community. If the court so directs, the report shall include an estimate of the prospects of the defendant's rehabilitation and recommendations as to the sentence which should be imposed.

The investigation shall be made by a probation officer of the court, if there is one, otherwise by the commissioner of corrections.

Pending the presentence investigation and report, the court may commit the defendant to the custody of the commissioner of corrections who shall return the defendant to the court when the court so orders.

Subd. 2. (1) After such presentence investigation, the court may commit the defendant to the custody of the commissioner of corrections for not to exceed 90 days who shall make a diagnostic evaluation of the defendant and shall report to the court in writing his findings, together with an estimate of the prospects of the defendant's rehabilitation and recommendations as

to the sentence which should be imposed and return him to the custody of the court unless the court orders otherwise.

(2) The court shall commit the defendant to the custody of the commissioner of corrections for such diagnostic evaluation:

(a) If imprisonment for more than ten years is authorized by law for the crime of which the defendant was convicted or may result from service of consecutive sentences; or

(b) Before sentence is imposed under the provisions of §§ 609.155 and 609.16.

(3) A commitment to the commissioner of corrections shall not be made under this subdivision until he has certified in writing to the secretary of state that he is prepared to discharge the duties imposed by this subdivision or any part thereof and has filed certified copies thereof in the office of the clerk of the district court in each county.

Subd. 3. If the defendant has been convicted of a crime for which a mandatory sentence of life imprisonment is provided by law, the probation officer of the court, if there is one, otherwise the commissioner of corrections, shall forthwith make a post-sentence investigation and make a written report as provided by subdivision 1.

Subd. 4. All law enforcement agencies shall make available to the probation officer or the commissioner of corrections the criminal record and other relevant information relating to the defendant which they may have, when requested for the purposes of subdivisions 1, 2, and 3.

Subd. 5. Any report made pursuant to subdivisions 1 and 2 of this section shall be open to inspection by the prosecuting attorney and the defendant's attorney prior to sentence and on the request of either of them a summary hearing in chambers shall be held on any matter brought in issue, but confidential sources of information shall not be disclosed unless the court otherwise directs. If the defendant is not represented by an attorney, the court shall either permit the defendant to inspect the report or appoint an attorney for the defendant to make the inspection and to advise and assist the defendant with respect thereto.

Subd. 6. If the defendant is sentenced to the commissioner of corrections, a copy of any report made pursuant to this section and not made by the commissioner shall accompany the commitment.

Subd. 7. Except as provided in subdivisions 5 and 6 or as otherwise directed by the court any report made pursuant to this section shall not be disclosed.

Subd. 8. Whenever a defendant is committed by the court to the commissioner of corrections under this section the defendant shall be delivered to the commissioner of corrections by the sheriff of the county in which the conviction occurred and at the expense of the county. When he is returned to the court pursuant to this section he shall be delivered to the sheriff of the county by the commissioner of corrections and at the commissioner's expense.

Subd. 9. If imposition of sentence is stayed by reason of an appeal taken or to be taken, the presentence investigation and the diagnostic evaluation provided for in this section shall not be made until such stay has expired or has otherwise been terminated.

COMMENT

Subdivision 1: Minn.St. § 610.37 now makes it optional with the judge whether he will require an investigation and report or not and it is silent with respect to the right of the defendant's attorney to see the report.

The Committee was advised that the great majority of judges now require presentence investigations and reports in nearly all cases. Practices vary with respect to the disclosure of the content of these reports to the defendant or his attorney.

In view of the importance of full information before sentence is imposed, it is believed that an investigation should be required in all cases for the protection of the judge as well as the public and the defendant against unwise sentences. There may be an occasional case where the court may feel it unnecessary, but it is believed better to make the requirement general and thus assure the adequacy of the information before the court in all cases.

A number of other states now require presentence investigations in all felony cases, such as California, Colorado, Connecticut, Indiana, Michigan, Montana, and Rhode Island.

Subd. 2: This subdivision provides for a diagnostic study in addition to the presentence investigation. This is designed to provide a study which cannot ordinarily be made on the local level and requires a central diagnostic center.

Clause (2) of Subd. 2: This makes the diagnostic study mandatory where a sentence of more than ten years is authorized for the crime for which the defendant stands convicted. As recommended by the Committee these crimes include the following:

1. Aggravated arson.
2. Subd. 2, Clause (1) of burglary.
3. Aggravated robbery.
4. Kidnapping.
5. Abortion in the case of unborn quick child or death of a mother.

6. Sodomy—child involved or use of force.
7. Aggravated rape.
8. Carnal knowledge of a child under 14.
9. Sedition.
10. Second and third degree murder.
11. First degree manslaughter.
12. Aiding suicide.
13. Attempt or conspiracy to commit any crime carrying more than 20 years imprisonment.

It will be observed that these include for the most part serious crimes of violence and where short sentences based on inadequate study might not adequately protect the public.

After the diagnostic study and report is made, the judge is free to impose such sentence as he deems appropriate in the particular case. The intent is that the sentence should be made on the basis of the fullest available information about the defendant.

A like requirement is imposed before sentence can be imposed under sections 609.155 and 609.16 which designates the extended term of imprisonment which will replace the present habitual offender provisions.

Clause (3) of Subd. 2: This suspends the operation of the subdivision until such a center is established.

Subd. 3: This requires a post-sentence investigation where a mandatory life sentence is required. While of no assistance to the court, the information gathered by such an investigation will be valuable in the later years when the defendant becomes eligible for parole and may also prove highly valuable in the event attacks are made upon the validity of the conviction through habeas corpus and the like.

Subd. 5: The provision in Subd. 5 that the reports required by the section may be inspected by the prosecuting attorney or the defense attorney is believed not only to conform to the dictates of fairness but to assure more adequate and reliable reports. This has been the law in California since 1957. Inquiries addressed to prosecuting attorneys, defense counsels, judges and probation officers indicate general agreement that the provision is a desirable one. It has not led to any increased difficulty in obtaining information. Nor has it led to any delay in the sentencing process.

Confidential sources of information are not to be disclosed. They will be given to the judge either orally or in a separate document not available to the defendant or others.

It will be noted that in Subd. 5 if the defendant does not have a lawyer the court has the option to disclose the contents either to the defendant or to appoint an attorney for him and disclose it to the attorney. The option was thought desirable in view of the possibility that some of the information should not be disclosed to the defendant in his own interest, such as a psychiatric diagnosis of his own conduct or that of a member of his family. The option should be available since in many cases the content of the report could be of no possible harm and knowledge of it might well benefit the defendant.

Where an attorney has been employed or is appointed it will be his determination whether or not the content of the report shall be given to the defendant. If both the probation officer and judge deemed it undesirable and so advise the attorney, the professional judgment of the attorney could be relied upon to arrive at a sound decision.

Subd. 8: This subdivision divides the expense of conveying the defendant to the Commissioner of Corrections and return to the court between the county and the state. The cost of delivering him to the Commissioner is borne by the county; the cost of the return, by the state. Of course, in the case of the presentence investigation, such commitment to the Commissioner would only be in cases where the investigation appears to require a substantial period of time and where it would be undesirable to require the defendant to stay within the confines of a county jail.

Any confinement following conviction, whether in the county or under the Commissioner of Corrections, will be credited toward his sentence under § 609.145 unless the court otherwise directs.

Subd. 9: This is intended to assure that the defendant is not subjected to an unnecessary investigation or diagnostic evaluation if he appeals his conviction. Such a stay probably can be granted without this express provision. See Minn.St. §§ 632.02, 632.03, and 632.10. In State v. Langum, 112 Minn. 121, 127 N.W. 465, the court stated: "Our statutes provide a manner in which a person convicted of crime may obtain a stay of proceedings as a matter of right; but this does not exclude the inherent power in the court to grant the same whenever in its discretion it is deemed proper. This the authorities generally sustain, remarking, in some instances, that it should be exercised with caution."

The provision is nevertheless considered desirable to assure this protection pending the appeal. Of course, if the defendant succeeds in his appeal, there will be no possible sentence and hence no possible investigation or evaluation. If he fails, the stay ends and the investigation, etc. will proceed.

609.12 Parole or Discharge

Subdivision 1. A person sentenced to the commissioner of corrections for imprisonment for a period less than life may be paroled or discharged at any time without regard to length of the term of imprisonment which the sentence imposes when in the judgment of the adult corrections commission, and under the conditions it imposes, the granting of parole or discharge would be most conducive to his rehabilitation and would be in the public interest.

Subd. 2. If a sentence of more than five years has been imposed on a defendant for a crime authorizing a sentence of not more than ten years, the adult corrections commission shall grant him parole no later than the expiration of five years of imprisonment, less time granted for good behavior, unless the commission finds that his parole would not be conducive to his rehabilitation or would not be in the public interest.

Subd. 3. All sentences to the commissioner of corrections for the imprisonment of the defendant are subject to the laws relating to parole and the powers of the adult corrections commission and the commissioner of corrections, except as modified in

subdivisions 1 and 2, and to all other laws relating to persons in said institutions and their imprisonment.

COMMENT

Subdivision 1: This will supersede Minn.St. § 243.01. The intent of this subdivision is to emphasize the right of the Adult Corrections Commission to grant parole or discharge at any time. This is the present law.

Subd. 2: This, however, imposes the obligation on the Adult Corrections Commission to grant parole not later than five years, if the sentence runs that long, unless the Commission makes the finding required.

The purpose of Subd. 2 is to emphasize the desirability of early release unless there is a reason for retaining the prisoner other than the length of the sentence imposed. It will also contribute to a greater degree of uniformity in the period of imprisonment of those who are confined for lesser degrees of criminal offenses.

It will be noted that Subd. 2 does not apply if the sentence is for a crime carrying more than a maximum of ten years imprisonment. Under § 609.115 if the crime carries a possible sentence of more than ten years there must be first a diagnostic study and recommendation from the Department of Corrections before sentence is imposed. This will identify professional and serious offenders and it is believed with respect to them no obligation should be imposed upon the Adult Corrections Commission to release under the provisions of Subd. 2.

Subd. 3: Except as the power of parole and discharge of the Adult Corrections Commission are affected by the sentences authorized by this revision no attempt has been made to alter or affect the powers and duties of the Adult Corrections Commission as they appear in Chapter 243. This chapter, except for § 243.01, will be continued. This is the purport of recommended Subd. 3.

609.124 Sentence for Misdemeanor or Gross Misdemeanor

Upon conviction of a misdemeanor or gross misdemeanor the court, if sentence is imposed, may, to the extent authorized by law, sentence the defendant:

(1) To imprisonment for a definite term; or

(2) To payment of a fine, or to imprisonment for a specified term if the fine is not paid; or

(3) In the case of a conviction of a gross misdemeanor, to both imprisonment for a definite term and payment of a fine.

COMMENT

Under § 609.105 only commitments to imprisonment for more than one year may be to the Commissioner of Corrections. Crimes which carry a maximum sentence of less than one year are either misdemeanors or gross misdemeanors as defined in § 609.02. Sentences of this length must be to local institutions.

609.13 Convictions of Felony; When Deemed Misdemeanor or Gross Misdemeanor

Notwithstanding a conviction is for a felony:

(1) The conviction is deemed to be for a misdemeanor or a gross misdemeanor if the sentence imposed is within the limits provided by law for a misdemeanor or gross misdemeanor as defined in section 609.02;

(2) The conviction is deemed to be for a misdemeanor if the imposition of the sentence is stayed, the defendant is placed on probation and he is thereafter discharged without sentence.

COMMENT

There is no similar provision in the present law. It adopts the California law which has worked successfully.

It is believed desirable not to impose the consequences of a felony if the judge decides that the punishment to be imposed will be no more than that provided for misdemeanors or gross misdemeanors.

Clause 2: This covers cases where suspension of imposition of sentences is ordered, the defendant is placed on probation, and he is thereafter discharged without sentence.

609.135 Stay of Imposition or Execution of Sentence

Subdivision 1. Except when a sentence of life imprisonment is required by law, any court, including a justice of the peace to the extent otherwise authorized by law, may stay imposition or execution of sentence and place the defendant on probation with or without supervision and on such terms as the court may prescribe. The court may order the supervision to be under the probation officer of the court, or, if there is none and the conviction is for a felony, by the commissioner of corrections, or in any case by some other suitable and consenting person.

Subd. 2. (1) In case the conviction is for a felony such stay shall be for not more than the maximum period for which the sentence of imprisonment might have been imposed.

(2) In case the conviction is for a misdemeanor the stay shall not be for more than one year.

(3) In case the conviction is for a gross misdemeanor the stay shall not be for more than two years.

(4) At the expiration of such stay, unless the stay has been revoked or the defendant discharged prior thereto, the defendant shall be discharged.

COMMENT

This will supersede Minn.St. §§ 610.37, 610.38, and 636.02.

Indefinite suspension of sentence referred to in Minn.St. § 610.38 has not been provided for. Instead, Subd. 2 fixes the limits for which the stay may be imposed. In felony cases this is for the maximum period for which sentence might have been imposed. In misdemeanor cases it was deemed desirable to extend this to a maximum of one year and in the case of gross misdemeanors to two years in order to permit a substantial period of supervision while on probation.

Justices of the peace have a limited power to suspend sentence under Minn.St. § 633.18.

609.14 Revocation of Stay

Subdivision 1. When it appears that the defendant has violated any of the conditions of his probation or has otherwise been guilty of misconduct which warrants the imposing or execution of sentence, the court may without notice direct that the defendant be taken into immediate custody.

Subd. 2. The defendant shall thereupon be notified in writing and in such manner as the court directs of the grounds alleged to exist for revocation of the stay of imposition or execution of sentence. If such grounds are brought in issue by the defendant, a summary hearing shall be held thereon at which he is entitled to be heard and to be represented by counsel.

Subd. 3. If any of such grounds are found to exist the court may:

(1) If imposition of sentence was previously stayed, again stay sentence or impose sentence and stay the execution thereof, and in either event place the defendant on probation pursuant to section 609.135, or impose sentence and order execution thereof; or

(2) If sentence was previously imposed and execution thereof stayed, continue such stay and place the defendant on probation in accordance with the provisions of section 609.135, or order execution of the sentence previously imposed.

Subd. 4. If none of such grounds are found to exist, the defendant shall be restored to his liberty under the previous order of the court.

COMMENT

Minn.St. § 610.39 now permits the revocation of probation without notice. This provision has been sustained in several Minnesota cases. See State v. Chandler, 1924, 158 Minn. 447, 197 N.W. 847; State ex

rel. Jenks v. Municipal Court, 1936, 197 Minn. 141, 266 N.W. 433, and Guy v. Utecht, 1944, 216 Minn. 255, 12 N.W.2d 753.

However, the trend is in the direction of providing for notice and informal hearing before revocation. The reasons therefore are similar to those discussed in connection with the disclosure of presentence reports. The defendant's liberty on probation ought not to be terminated arbitrarily or without some opportunity to the defendant to show that the grounds claimed do not exist.

New York has had such a statute since at least 1928. See New York Code of Criminal Procedure, § 935. For recent cases applying the statute, see People v. Combs, 1962, 33 Misc.2d 360, 224 N.Y.S.2d 874 and People v. Blanchard, 1944, 267 A.D. 663, 1018, 48 N.Y.S.2d 22.

The provisions do not contemplate any formal trial. Notification of grounds can be simple and without any formal requirements and proof is not limited to the type of proof in either a civil or criminal trial. The essentials are that the defendant be informed of the grounds warranting the revocation of his probation and that he be given a chance to tell the court his disagreement with these charges and to offer proof that they are unfounded.

Of course, in the great majority of cases the violation will be clear and no hearing will be asked for or if asked for can be promptly disposed of.

609.145 Credit for Prior Imprisonment

Subdivision 1. When a person has been imprisoned pursuant to a conviction which is set aside and is thereafter convicted of a crime growing out of the same act or omission, the maximum period of imprisonment to which he may be sentenced is reduced by the period of the prior imprisonment and the time earned thereby in diminution of sentence. If sentence is for less than this maximum, the prior imprisonment and time earned in diminution of sentence shall be credited toward the sentence unless the court otherwise directs.

Subd. 2. A sentence of imprisonment upon conviction of a felony is reduced by the period of confinement of the defendant following his conviction and before his commitment to the commissioner of corrections for execution of sentence unless the court otherwise directs.

COMMENT

This is based on Minn.St. § 631.49 enacted in 1959 which will be superseded. Subdivision 1, however, applies to all convictions whereas Minn.St. § 631.49 is limited to persons imprisoned in the state prison or state reformatory. The last sentence of recommended § 609.145, Subdivision 1, is new. The same consideration would seem to apply.

Subd. 2 carries out the same policy with respect to confinement after conviction and before commitment. This section is needed in view of the period of time frequently required for presentence investigation and for the diagnostic study called for in § 609.115.

Consideration was given to the question whether confinement prior to conviction should also be credited toward the sentence later received. The Committee decided against such extension on the ground that this would add an incentive to postpone the trial as long as possible in order to avoid sentence to state penal institutions, credit being obtained by his confinement in the meantime.

609.15 Multiple Sentences

Subdivision 1. When separate sentences of imprisonment are imposed on a defendant for two or more crimes, whether charged in a single indictment or information or separately, or when a person who is under sentence of imprisonment in this state is being sentenced to imprisonment for another crime committed prior to or while subject to such former sentence, the court in the later sentences shall specify whether the sentences shall run concurrently or consecutively. If the court does not so specify, the sentences shall run concurrently.

Subd. 2. If the court specifies that the sentence shall run consecutively, the total of the terms of imprisonment imposed, other than a term of imprisonment for life, shall not exceed 40 years. If all of the sentences are for misdemeanors the total of the terms of imprisonment shall not exceed one year; if for gross misdemeanors the total of such terms shall not exceed three years.

COMMENT

This will supersede Minn.St. § 610.33. The recommended section will make separate sentences run concurrently unless the judge orders otherwise. The contrary is now provided in Minn.St. § 610.33. Minnesota is one of but a few states having this requirement.

Minn.St. § 610.33 is in a measure inconsistent in its application. Thus:

(1) If two charges of criminal offenses are made such as burglary and larceny and the defendant either pleads guilty or is convicted of both, the judge in fixing sentence must impose consecutive sentences.

(2) However, if one of these charges is tried first and he pleads guilty or is convicted and is sentenced on this charge, a conviction on the second charge permits the judge to impose concurrent sentences.

Cases and Attorney General Opinions indicate that at times judges have been confused and have attempted to impose concurrent sentences only to find that the law treats them as consecutive. See State ex rel. Keyes v. Vasaly, 1929, 177 Minn. 338, 225 N.W. 154; Atty.Gen. Opin., 1934, No. 676; Atty.Gen.Opin.1938, No. 193.

The statute also requires consecutive sentences if following conviction and sentence for one crime he commits another felony for which he is convicted. The sentence for the latter conviction must be served consecutively to the prior sentence.

The second felony may have been committed while the defendant was on probation or on parole or during an escape or while in confinement.

State ex rel. Keyes v. Vasaly, 1929, 177 Minn. 338, 225 N.W. 154, illustrates a case where a second felony was committed while the defendant was on probation. Sentence was imposed for the second felony and the defendant was committed to a penal institution. Thereafter, the judge who sentenced in the prior case and had placed the defendant on probation revoked the probation. It was held that he automatically began serving the sentence on the first felony, the other being served thereafter.

609.155 Extended Term for Dangerous Offenders

Subdivision 1. Definition. "Extended term of imprisonment" means a term of imprisonment the maximum of which may be for the maximum term authorized by law for the crime for which the defendant is being sentenced multiplied by the number of his prior felony convictions, but not to exceed 40 years.

Subd. 2. When applicable. Whoever, having previously been convicted of one or more felonies, commits another felony other than murder in the first degree may upon conviction thereof be sentenced to an extended term of imprisonment if:

(1) A presentence investigation and report has been made pursuant to section 609.115; and

(2) A diagnostic evaluation and report has been made by the commissioner of corrections pursuant to section 609.115, subdivision 2, but such evaluation and report is not required until after the certificate of preparation has been filed by the commissioner of corrections pursuant to section 609.115, subdivision 2, clause (3); and

(3) Findings are made by the court as required by section 609.16.

Subd. 3. Limitations. Subdivision 2 does not apply unless:

(1) The prior convictions occurred within ten years prior to the commission of the crime of which the defendant presently stands convicted; and

(2) The prior convictions occurred:

(a) In this state; or

(b) In another state and were for crimes which would have been felonies if they had been committed in this state; or

(c) In a federal court.

COMMENT

The principal statutes on this subject appear in Minn.St. §§ 610.28 to 610.32 and 617.75 as they relate to felonies. § 610.28 provides that

a prior conviction for a felony authorizes a sentence to imprisonment in the state prison for twice the longest term otherwise specified for the crime of which the defendant now stands convicted. Section 610.29 provides that for three or more prior convictions for felonies the sentence may be for life. Sections 610.30 and 610.31 provide for the accusation of a prior conviction being made by information. If the prior conviction is brought in issue, the issue is tried by jury. Section 610.32 provides that specified public officials shall report any known prior convictions to the county attorney. Section 617.75 deals with prior convictions for vagrancy; selling narcotics; lewd or indecent behavior; desertion and non-support; or "any misdemeanor or gross misdemeanor involving moral turpitude" and provides upon third conviction for imprisonment up to three years.

These sections, particularly as they relate to prior felony convictions, are typical of the habitual offender acts of this country. They are mechanical in their operation, looking only to the prior convictions, and the procedure for determining prior convictions is analogized to that of a criminal trial.

A further criticism has been that the present law has been applied very unevenly. In some counties it is used rather regularly; in other counties it is used hardly at all even though the type of cases coming before the court is the same.

Under the above and the next succeeding recommended sections neither the automatic features of these statutes nor the procedure heretofore prescribed have been adhered to.

Under the recommended sections it is discretionary with the trial judge whether or not the extended term shall be imposed. Also it cannot be imposed unless certain conditions have been met. Namely, a presentence report, a diagnostic evaluation report and recommendation, a hearing, and findings which will include a finding that the defendant is disposed to the commission of criminal acts of violence and that an extended term of imprisonment is required.

These requirements are intended to assure that the habitual offender act is applied only in those cases of the serious offender who for his own sake or in the interest of the public should be confined for a period longer than the maximum provided by the statute violated and that it should not be applied to the offender who is guilty of two or more isolated criminal acts and not otherwise shown to be disposed to criminal behavior dangerous to the public.

By their very nature, misdemeanors and gross misdemeanors do not involve acts of violence, dangerous to the public and calling for extended periods of confinement of the perpetrator. Hence, they have been excluded from the application of the recommended sections.

The procedural requirements have been simplified and the criminal trial approach abandoned. This is constitutionally permissible. The imposition of an extended term of imprisonment by reason of prior conviction is not for the prior crimes but is part of the sentence for the crime for which the defendant is being sentenced. The existence of the prior convictions cannot be the basis of a criminal charge. See State ex rel. Hansen v. Rigg, 1960, 258 Minn. 388, 104 N.W.2d 553, stating "habitual-criminal statutes do not create a crime. They merely increase punishment for a crime where the defendant has been convicted of prior offenses. . . . Courts are agreed that habitual-offender statutes merely define a status justifying a more severe penalty for commission of certain designated crimes because of prior

offenses, and that such statutes do not in themselves define a criminal offense."

Hence, some states have abandoned the criminal procedure approach and provide merely for notice and an opportunity to be heard on the proposed imposition of an extended term of imprisonment. These statutes have been sustained as constitutional. For example, State v. Guidry, 1961, 169 La. 215, 124 So. 832, held that the decision as to the existence of prior convictions may be left to the judge and need not be decided by a jury.

Accord: Levell v. Simpson, 1936, 142 Kan. 892, 52 P.2d 372; State v. Morton, 1960, 338 S.W.2d 858 (Mo.). Contra: State v. Furth, 1940, 5 Wash.2d 1, 104 P.2d 925.

Supporting this position are also those cases holding that the judge rather than a jury may determine informally for the purpose of applying additional imprisonment as authorized by statute whether the crime was committed while armed. See Minn.St. § 610.18. Such procedure was sustained in People v. Caruso, 1929, 249 N.Y. 302, 164 N.E. 106. See also People v. Krennen, 1934, 264 N.Y. 108, 190 N.E. 167.

The U.S. Supreme Court has held that notice and hearing cannot be entirely abolished. Chandler v. Fretag, 1954, 75 S.Ct. 1, 348 U.S. 3, 99 L.Ed. 4. In this case the Tennessee statute was considered. This statute authorized the defendant to be orally advised at the time his case came up for trial that he would also be tried as an habitual offender. His request for a continuance for the purpose of obtaining an attorney was denied. This was held to be a denial of due process.

See also Oyler v. Boles, 1962, 368 U.S. 448, 82 S.Ct. 501, 71 L.Ed.2d 446.

In U. S. ex rel. Collins v. Claudy, 1953, 204 F.2d 624 the defendant was sentenced as an habitual offender without being advised that this was being done. Again this was held to be a denial of due process. The court states, "essential fairness dictates that the disposition of any issue thus determinative of the legal power of the tribunal and thereafter influential upon its discretion to punish a defendant must be after some notice to the accused that the issue is before the court followed by an opportunity to be heard."

Accord: Com. ex rel. Lewis v. Keenan, 1961, 171 A.2d 895, 195 Pa. Super. 188.

The American Law Institute in its draft has followed these principles and drawn its proposed act accordingly. See tentative Draft No. 2, page 36, etc.

All of the several sections relating to habitual offenders, both general and specific, will be superseded by the recommended sections.

Subdivision 1: This subdivision does not authorize a life sentence. Likewise the limitation of 40 years is new.

The present law fails to provide any extended term for a second prior conviction other than exists for a single prior conviction. The third prior conviction leads to a possible life sentence.

It is believed that a life sentence is too extreme. A 40 year maximum sentence will cover all cases where the application of the extended term is needed and will help to remove the reluctance to apply the habitual offender act which might otherwise exist.

Subd. 2: See the discussion in the general comment above.

Subd. 3: Clause (1) is new. It is believed desirable to put some limit on the time of occurrence of the prior convictions. The considerations which justify statutes of limitations generally, including limitations on prosecutions for crimes, would appear to have equal relevance.

Clause (2) of Subd. 3 extends the act to convictions occurring in Federal courts. This does not appear in the present statutes. On the other hand, paragraph (b) is less inclusive than present law in that crimes committed in other countries have not been included. See Minn.St. §§ 610.28 and 610.29.

Specific Crimes Carrying Habitual Offender Provisions

§ 614.16:

This section is not clear. It probably means that any member of a firm or officer or employee of a corporation who is a party to a contract for future delivery of farm products which is considered gambling is guilty of a gross misdemeanor, punishable by fine. On the second offense he may be punished by jail sentence of not less than 30 days nor more than 90. Recommended § 609.75 will supersede this section.

§ 617.22:

This section makes concealment of the birth of a child, then dead or thereafter dying, a misdemeanor and a subsequent offense is made punishable by imprisonment for not more than five years. Repeal of this section is recommended in connection with § 609.35. There will be no similar specific provisions imposing more severe punishment for subsequent offenses of this character.

§ 617.23:

This increases the penalty for second conviction for indecent exposure from a misdemeanor to a gross misdemeanor. Repeal of this section is recommended in connection with § 609.695.

§ 618.21:

This provides for doubling the penalty upon second conviction for violation of the Uniform Narcotics Act. It is recommended that this be revised to read as follows:

"Section 618.21. Violations, penalties. **Subdivision 1.** Except as provided in subdivision 2, any person violating any provisions of this chapter shall be punished by a fine of not exceeding $10,000 and by imprisonment in a state penal institution for not more than 20 years.

"**Subd. 2.** Any person convicted of selling, prescribing, administering, dispensing or furnishing any narcotic drug to a minor under the age of 18 years shall be punished by a fine of not exceeding $20,000 and by imprisonment in a state penal institution for not less than ten nor more than 40 years."

The violations of the Uniform Narcotics Act will then come under § 609.155 on extended terms of imprisonment. The Uniform Narcotics Act is not being retained in this revision but will be transferred to another chapter.

§ 621.37:

This increases the penalty from misdemeanor to gross misdemeanor for a second or subsequent violation of sections relating to cutting of certain trees. This will be transferred but with this provision deleted.

§ 623.22:

This requires a jail sentence from 30 to 90 days for a second offense of conducting a bucket shop. Repeal of this section is recommended in connection with § 609.75.

609.16 Extended Term for Dangerous Offenders; Hearing

A sentence to an extended term of imprisonment under section 609.155 shall not be imposed unless:

(1) At the instance of the prosecuting attorney or by order of the court on its own motion, written notice is served by the prosecuting attorney on the defendant or his attorney personally setting forth the prior convictions and advising the defendant that the court may sentence him to an extended term of imprisonment for the crime of which he has been convicted and that he is entitled to be heard thereon if he denies such prior convictions or brings in issue any matter in the presentence report or in the report and recommendations of the commissioner of corrections, and fixing a time not less than five days after service of such notice for such hearing and sentence.

(2) The court commits the defendant to the commissioner of corrections for a diagnostic evaluation, report and recommendations pursuant to section 609.115, subdivision 2, but this clause does not apply until the commissioner of corrections has filed the certificate of preparation pursuant to section 609.115, subdivision 2, (3).

(3) A summary hearing is thereafter held pursuant to such notice at which evidence for and against the imposition of a sentence for an extended term may be received and at which the defendant is entitled to be heard on the issues raised and to be represented by counsel.

(4) The court finds on the basis of such hearings, the defendant's admissions, the evidence at the trial, the presentence report and the report and recommendations of the commissioner of corrections:

(a) That the defendant was previously convicted of one or more of the crimes specified in section 609.155; and

(b) That the defendant is disposed to the commission of criminal acts of violence and that an extended term of imprisonment is required for his rehabilitation or for the public safety.

COMMENT

This section provides a simplified procedure discussed in the comment to § 609.155. While a hearing is required this does not contem-

plate a formal trial of the nature of a criminal trial. If the defendant contests the existence of the prior conviction he will be entitled to offer proof of his position and the issue will be one for the court to determine. The prosecution will initially be required to establish by adequate proof the existence of the prior conviction and its identification with the defendant.

The defendant will also have the opportunity of questioning the presentence report and the report and recommendations of the Commissioner of Corrections, which must be made before the extended term can be imposed.

609.165 Restoration of Civil Rights

Subdivision 1. When a person has been deprived of his civil rights by reason of conviction of a crime and is thereafter discharged, such discharge shall restore him to all his civil rights and to full citizenship, with full right to vote and hold office, the same as if such conviction had not taken place, and the order of discharge shall so provide.

Subd. 2. The discharge may be:

(1) By order of the court following stay of sentence or stay of execution of sentence; or

(2) By order of the adult corrections commission or youth conservation commission prior to expiration of sentence; or

(3) Upon expiration of sentence.

Subd. 3. This section does not apply to a forfeiture of and disqualification for public office as provided in section 609.42, subdivision 2.

COMMENT

Minn.St. §§ 610.41 to 610.46 provide for a discretionary power in the Governor to issue a certification of restoration of civil rights and provides the procedure for bringing the question to his attention. A portion of Minn.St. § 243.18 also provides that upon discharge from a satisfactory service of the entire period of imprisonment he "shall" be restored to his rights and privileges and receive a certificate from the Governor accordingly. This leaves no discretion in the Governor or anyone else.

Minn.St. § 242.31 authorizes the Youth Conservation Commission to restore all civil rights and this has the effect of "setting aside the conviction and nullifying the same and purging such person thereof." A similar authorization was given to the district court in cases where the youth is put on probation in Minn.St. § 242.31, 1961. This goes farther than the recommended section. Section 242.31 will be retained. It is believed, however, that if the Youth Conservation Commission or the court does not act, the discharge of a youth convicted of a crime should not have any less consequences in restoring his civil rights than in the case of the adult.

It is believed that where a sentence has either been served to completion or where the defendant has been discharged after parole or

probation his rehabilitation will be promoted by removing the stigma and disqualification to active community participation resulting from the denial of his civil rights. The present practice it is understood is for the Governor to restore civil rights almost automatically.

Minn.St. §§ 610.41 to 610.46 and the portion of Minn.St. § 243.18 referred to will be repealed.

Other Present Sections Relating to Sentencing Not Previously Discussed

§ 610.35:

It is recommended that the first sentence be repealed. This prescribes that the sentence should be limited so that it expires between the months of March and November. The balance of the section deals with the right to commit to a workhouse in the county or in another county. This portion will be retained.

§ 631.46:

This authorizes the court to sentence to a county jail in another county. It is recommended that this section be retained.

§ 631.48:

This authorizes the court to require the cost of prosecution to be paid by the defendant. It is recommended that this be retained.

§ 613.78:

This provides that when the performance of any act is prohibited by a statute and no penalty has been provided the act shall be a misdemeanor. It is recommended that this be repealed. The phrase "any act is prohibited" by a statute is too broad and inclusive. If any particular statute is intended to make the act a crime it should so specifically provide. The section has seldom been used although in one or two instances the Attorney General has ruled that a given statute fell within terms of Minn.St. § 613.78.

§ 631.42:

This prescribes that the form of a sentence to the state prison shall be at hard labor. It is recommended that this be repealed.

§§ 631.44 & 631.45:

These provide for requiring a bond to keep the peace. It is recommended that these be retained.

§ 243.11:

This provides that the county attorney upon sentence to the state prison or reformatory must furnish the warden specified information. With a presentence investigation and report required in all cases under recommended § 609.115, and the report required to be forwarded to the Commissioner of Corrections, Minn.St. § 243.11 is no longer needed and its repeal is recommended.

§ 243.49:

Since this deals only with the documents which must accompany a commitment and does not deal with sentences or substantive offenses no recommendation is made with respect to it. The Advisory Committee notes that this section was amended in 1961, Chapter 602, deleting the requirement that a synopsis of the testimony shall be provided as the judge may direct. This in effect nullifies the effort made by the Supreme Court in State v. Dahlgren, 1961, 259 Minn. 307, 107 N.W.2d 299, to provide some rea-

sonable basis of review of convictions without requiring a transcript in every case and the financial burden which this imposes. It is believed that the amendments were made without adequate presentation of the difficulties involved and that further legislative consideration should be given this section.

§ 243.18:

This provides for good time allowance and except for the last sentence it is recommended to be retained. The last sentence is considered in the comment on § 609.165.

§§ 643.01 & 643.02:

These provide for transfer of prisoners on order of the district court from one jail to another or to a workhouse. It is recommended that these be retained.

§ 643.13:

This authorizes judges of the several courts to sentence persons to work or correctional farms. It is recommended that this be retained.

§ 643.18:

This authorizes district courts, juvenile courts, and municipal courts to place a boy in a home school. This is properly a matter for the juvenile court and repeal is recommended.

§ 643.29:

This provides for good time allowance in work farms, jails, etc. It is recommended that the section be retained.

ANTICIPATORY CRIMES

609.17 Attempts

Subdivision 1. Whoever, with intent to commit a crime, does an act which is a substantial step toward, and more than preparation for, the commission of the crime is guilty of an attempt to commit that crime, and may be punished as provided in subdivision 4.

Subd. 2. An act may be an attempt notwithstanding the circumstances under which it was performed or the means employed to commit the crime intended or the act itself were such that the commission of the crime was not possible, unless such impossibility would have been clearly evident to a person of normal understanding.

Subd. 3. It is a defense to a charge of attempt that the crime was not committed because the accused desisted voluntarily and in good faith and abandoned his intention to commit the crime.

Subd. 4. Whoever attempts to commit a crime may be sentenced as follows:

(1) If the maximum sentence provided for the crime is life imprisonment, to not more than 20 years; or

(2) For any other attempt, to not more than one-half of the maximum imprisonment or fine or both provided for the crime attempted, but such maximum in any case shall not be less than imprisonment for 90 days or a fine of $100.

COMMENT

Minn.St. § 610.27 defines an attempt as "an act done with intent to commit a crime and tending, but failing, to accomplish it."

The distinctive feature of an attempt is that an act is punished which in itself was harmless but which was designed to carry out a criminal purpose and which failed of accomplishment.

The important element, therefore, of an attempt is the intent. There must, however, be some act manifesting that intent.

Statutes of the several states on this subject are without uniformity. Minn.St. § 610.27 was adopted in 1886 from the 1881 New York Penal Code.

These statutes do not usually deal with the two principal problems which have confronted the courts.

The first is how far may the ultimate commission of the crime be removed from the conduct of the defendant which occurred prior to his attempt being frustrated. For example, "A" buys a gun to hold up a bank. He has taken a step toward the commission of the crime. This, however, is not enough to constitute an attempt. If, however, he goes to the bank and on arriving is frightened away by the presence of police this probably would constitute an attempt in most jurisdictions, including Minnesota. State v. Dumas, 1912, 118 Minn. 77, 136 N.W. 311. At some point between these two acts the preparation for the crime ends and the attempt begins. What the courts appear to seek is a demonstration that the defendant lacks the capacity to refrain from committing the crime and, therefore, would have committed it except for intervening circumstances.

Wisconsin St. § 939.32 appears to have this concept in mind. It reads:

> "An attempt to commit a crime requires that the actor have an intent to perform acts and attain a result which, if accomplished, would constitute such crime and that he does acts toward the commission of the crime which demonstrates unequivocally, under all the circumstances, that he formed that intent and would commit the crime except for the intervention of another person or some other extraneous factor."

A different approach is illustrated by the new Illinois Act, § 8–4, which makes it an attempt if there has been a "substantial step toward the commission of that offense." This phrase is broad enough to encompass the purchase of the gun in the illustration above. Generally, this would not be held to be an attempt.

The second problem confronting the courts has been that of determining when impossibility to commit the crime prevents the attempt from being committed. Some examples may be given.

"A" points a gun at "B" thinking it is loaded and pulls the trigger, but the gun is empty. This was held to be an attempt in State v. Damms, 1960, 9 Wis.2d 183, 100 N.W.2d 592.

"A" tries to perform an abortion on "B," but "B" is not pregnant. This is generally held to be an attempt. Eg. People v. Huff, 1930, 339 Ill. 328, 171 N.E. 261.

"A" buys some goods from "B" thinking they are stolen when in fact they are not. This was held to be an attempt in People v. Jaffe, 1906, 185 N.Y. 497, 78 N.E. 169. Contra, People v. Rojas, 10 Cal.Rptr. 465.

"A" represents a fact to "B" intending to defraud "B," but "B" is fully aware of "A's" intention and can't be deceived. This is an attempt under most recent cases: People v. Camodeca, 1959, 52 C.2d 142, 338 P.2d 903 overruling prior case; State v. Visco, 1958, 183 Kan. 562, 331 P.2d 318; and Commonwealth v. Johnson, 1933, 312 Pa. 140, 167 A. 344.

More difficult of resolution are cases like the following:

A stuffed deer is erected in a pasture to snare poachers. "A" shoots at the stuffed deer thinking it a real one. Some courts would approach this by saying that "A's" intent is to shoot at the object he saw which is merely a stuffed deer and the shooting at a stuffed deer is not a crime and, therefore, not an attempt at committing a crime. The same logic would apply if "A" shoots at a stump thinking it to be "B," intending to kill him but "B" is nowhere in sight.

There are no cases in Minnesota dealing with this second problem.

It is believed that the revised section should deal with these problems which have been the concern of the courts.

Subdivision 1: The term "substantial step," as already indicated, appears in the Illinois act which in turn adopted it from the American Law Institute Model Criminal Code. The words "and more than preparation for" have been added. This will then state the distinction now present in Minnesota cases. For example, in State v. Dumas, 1912, 118 Minn. 77, 136 N.W. 311, the court said: "The overt acts need not be such that, if not interrupted, they must result in the commission of the crime. They must, however, be something more than mere preparation, remote from the time and place of the intended crime; but if they are not thus remote, and are done with the specific intent to commit the crime, and directly tend in some substantial degree to accomplish it, they are sufficient to warrant a conviction."

The words in the present Minn.St. § 610.27 "but failing, to accomplish it" have not been included. Making this an element of the crime would require that the state would have to prove beyond a reasonable doubt that the crime was not in fact committed.

Under the recommended section evidence that the crime had been committed would not prevent conviction of the attempt.

Subd. 2: This deals with the problem of impossibility discussed in the general comment. There is presently no such provision in the statutes. The phrase "unless such impossibility would have been clearly evident to a person of normal understanding" is designed to exclude cases of such obvious impossibility that some other explanation than normal criminal design must account for the act. For example, the defendant tries to sink a battleship with a pop-gun or to

kill "X" by magic as by sticking a needle in an image of "X." Judicial doctrine is to the effect that there is no attempt in such cases.

Subd. 3: This is likewise new both to this and other states. In some decisions this result has been arrived at by holding that if the defendant voluntarily refrains from committing the act toward which substantial steps have been taken, it has not gone beyond the stage of preparation. See Mullins v. Commonwealth, 1940, 174 Va. 477, 5 S.E.2d 491, where the defendant about to commit a rape repented and released the girl. See also Commonwealth v. Peaslee, 1901, 177 Mass. 267, 59 N.E. 55, where the defendant set up materials in a building for the purpose of igniting it and committing the crime of arson. He lost his nerve on returning to ignite it. It was held not an attempt.

Most cases, however, are probably against the provision stated in the subdivision. It is believed, however, to be desirable to encourage the voluntary good faith withdrawal from the commission of the crime. It is the position adopted by the American Law Institute.

Of course, if in his conduct designed to bring about the commission of the intended offense, he commits some other offense the latter offense can still be prosecuted. If, for example, the defendant enters a building for the purpose of committing a robbery but after entering changes his mind and leaves without committing the robbery, he has been guilty of burglary but not of the attempt to rob.

Subd. 4: This increases the punishment from that presently provided. Under Minn.St. § 610.27 ten years is the maximum punishment for attempting a crime carrying a life imprisonment sentence. In other cases covered by that section the punishment is one-half of that provided for the crime intended but not to exceed seven years.

The maximum for an attempt to commit a crime carrying life imprisonment is, in Wisconsin, 30 years, and in Illinois, 20 years.

609.175 Conspiracy

Subdivision 1. To Cause Arrest or Prosecution. Whoever conspires with another to cause a third person to be arrested or prosecuted on a criminal charge knowing the charge to be false may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100.

Subd. 2. To Commit Crime. Whoever conspires with another to commit a crime and in furtherance of the conspiracy one or more of the parties does some overt act in furtherance of such conspiracy may be sentenced as follows:

(1) If the crime intended is a misdemeanor, by a sentence of not more than 90 days or to payment of a fine of not more than $100; or

(2) If the crime intended is murder in the first degree or treason, to imprisonment for not more than 20 years; or

(3) If the crime intended is any other felony, to imprisonment or to payment of a fine of not more than one-half the imprisonment or fine provided for that felony or both.

Subd. 3. Application of Section. This section applies if:

(1) The defendant in this state conspires with another outside of this state; or

(2) The defendant outside of this state conspires with another in this state; or

(3) The defendant outside of this state conspires with another outside of this state and an overt act in furtherance of the conspiracy is committed within this state by either of them.

COMMENT

Subdivision 1: This states the content of Minn.St. § 613.70, (2).

Subd. 2: Section 613.70 now makes it a crime to conspire to commit a crime. Clause (4) of that section includes a conspiracy to cheat and defraud another, or to obtain money or property by false pretenses. This has not been duplicated. The general provision in recommended Subd. 2 prohibiting a conspiracy to commit a crime sufficiently covers the point.

Clause (3) of § 613.70 relates to a conspiracy to bring a false action or special proceeding. This has not been included. Its origin is in early history and is believed no longer necessary under modern conditions.

Clause (5) of § 613.70 prohibits a conspiracy to prevent another from exercising a trade or doing any other lawful act by threats and so forth. This again is sufficiently covered by the provision prohibiting a conspiracy to commit a crime and by the extortion sections. Its early origin was probably aimed at discouraging united efforts by employees to improve their working conditions.

Clause (6) of § 613.70 is a broad prohibition against conspiring to commit any act injurious to public health, public morals, etc. This is probably unconstitutional for vagueness. See Musser v. Utah, 1948, 68 S.Ct. 397, 333 U.S. 95, 92 L.Ed. 562. It is also contrary to the policy of this revision to make the statement of crimes clear and specific.

Minn.St. § 613.71 requires an overt act except where the conspiracy is to commit arson, burglary, or a felony upon the person of another. In the recommended section the overt act is required in all cases. This is particularly desirable in view of the increased penalty that the recommended section prescribes.

Since conspiracy is an anticipatory crime very much like attempts it is believed that the punishment should be graded to the gravity of the crime planned. This is not done under the present § 613.70. The recommended section in this respect corresponds to the provisions of the attempt provision, § 609.17, which is being recommended.

Subd. 3: The subject matter of this subdivision is now dealt with as a question of jurisdiction of the state over persons committing crimes. See Minn.St. § 610.04. It is believed, however, desirable to include specifically the proposed provision as part of the conspiracy section.

For a statement of the existing law see State v. Hicks, 1951, 233 N.C. 511, 64 S.E.2d 871, stating: "While the conspiracy was formed in South Carolina, one of the conspirators, namely, Chesley Morgan Lowell, committed overt acts in Mecklenburg County, North Carolina, in

furtherance of the common design. As a consequence, the Superior Court of Mecklenburg County had jurisdiction to try the action. State v. Davis, 203 N.C. 14, 164 N.E. 737, 22 C.J.S., Criminal Law, Section 136. In legal contemplation, a criminal conspiracy is continued and renewed as to all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design. 11 Am. Jur., Conspiracy, Section 23."

It is believed desirable to have an explicit provision clarifying the point.

Minn.St. §§ 613.70 and 613.71 will be superseded.

Repeal Recommended

§ 615.07:

This makes it a gross misdemeanor to combine with another to resist execution of legal process or other mandate of the court. This is sufficiently covered by recommended § 609.175 on conspiracy.

§ 621.34:

That portion reading: "or shall . . . conspire with any other person to do any of such acts, . . ." (Namely, appropriate electricity, gas, water, or heat.)

Recommended § 609.175 on conspiracy covers the point adequately together with the provisions in the theft sections.

Statutes Outside the Criminal Law Relating to Conspiracy and not Affected by the Revision

§ 126.16:

This deals with combinations, understandings, or agreements to control prices and competition in the sale of school books.

§ 181:52:

This prohibits conspiring to prevent another from obtaining employment or securing his discharge because of a strike.

§ 340.55:

This makes it a felony to conspire to violate certain provisions relating to the sale of liquor.

HOMICIDE AND SUICIDE

COMMENT

In 1959, the Legislature gave substantial consideration to the present provisions dealing with first and second degree murder. Therefore, only limited changes have been introduced in this revision with respect to these crimes.

Departures from the present law appear principally in the manslaughter provisions. These changes are in line with current thought on the subject but are more limited than the changes frequently suggested.

609.18 Definition

For the purposes of sections 609.185 and 609.19, "premeditation" means to consider, plan or prepare for, or determine to commit, the act referred to prior to its commission.

COMMENT

In 1959, Minn.St. § 619.08 was revised so that murder in the second degree, with certain exceptions, no longer carries a penalty of life imprisonment. With this change, substantial consequences in terms of possible punishment now turn on the meaning of the word "premeditation." The definition in recommended § 609.18 undertakes to give this distinction some substance. Heretofore it has been largely without meaning. All the time presently needed for premeditation or deliberation is that required to form the intent to kill. Thus the following instruction was sustained in State v. Prolow, 1906, 98 Minn. 459, 108 N.W. 873:

The "premeditation may be formed at any time, moment or instant before the killing. Premeditation means thought of beforehand for any length of time, no matter how short. There need be no appreciable space of time between the intention of killing and the act of killing. They may be as instantaneous as the successive thoughts of the mind."

The recommended definition is directed at the calculated murder although the intention need not be to kill any specific person. Thus, arming oneself prior to a robbery expecting to kill if need be anyone obstructing the plans would be sufficient to come within the definition even though it may be hoped and anticipated that the need for killing would not occur.

609.185 Murder in the First Degree

Whoever does either of the following is guilty of murder in the first degree and shall be sentenced to imprisonment for life:

(1) Causes the death of a human being with premeditation and with intent to effect the death of such person or of another; or

(2) Causes the death of a human being while committing or attempting to commit rape or sodomy with force or violence, either upon or affecting such person or another.

COMMENT

This combines what now appears in Minn.St. § 619.07 and the exceptions to murder in the second degree in Minn.St. § 619.08 as amended by Laws 1959, Chapter 683, Sec. 1.

A change, however, in present law is made in Clause (2) by the addition of the words "with force or violence." It is believed that this expresses the intent of present legislation.

Indecent assault presently included in Minn.St. § 619.08 has also been deleted in Clause (2) in view of the wide variety of conduct encompassed in this term. See §§ 609.23 and 609.315.

Minn.St. § 243.05, as amended in 1959, dealing with the powers of the Parole Board, denies parole to a person serving a life sentence for murder unless certain conditions have been complied with, such as serving his sentence for a stated number of years and the parole is with the unanimous consent of the Parole Board.

In combining the present first and second degree murder sections into a single first degree murder section as is done in Clauses (1) and (2) of recommended § 609.185, parole will be denied under Clause (2), whereas presently it may be granted without the conditions stated being met.

The statutes relating to parole should, accordingly, be amended by a separate bill to take care of this situation. It was not deemed properly a matter to be incorporated within this revision.

609.19 Murder in the Second Degree

Whoever causes the death of a human being with intent to effect the death of such person or another, but without premeditation, is guilty of murder in the second degree and may be sentenced to imprisonment for not more than 40 years.

COMMENT

This states the present provisions of Minn.St. § 619.08 as amended by Laws 1959, Chapter 683, Sec. 1, with the exceptions deleted. These exceptions now appear as affirmative statements in Clause (2) of recommended § 609.185.

609.195 Murder in the Third Degree

Whoever, without intent to effect the death of any person, causes the death of another by either of the following means, is guilty of murder in the third degree and may be sentenced to imprisonment for not more than 25 years:

(1) Perpetrates an act eminently dangerous to others and evincing a depraved mind, regardless of human life; or

(2) Commits or attempts to commit a felony upon or affecting the person whose death was caused or another, except rape or sodomy with force or violence within the meaning of section 609.185.

COMMENT

Clause (1) of the recommended section is covered by Minn.St. § 619.10 which, however, imposes imprisonment of not more than 30 years.

Clause (2) incorporates part of Minn.St. § 619.10 with the words "or otherwise" after the word "another" deleted.

The effect of the clause is therefore restricted to those felonies committed upon or affecting the person whose death was caused or another. For example, death resulting from the commission of a purely property crime would not fall within the clause.

There has been considerable criticism of the felony murder doctrine in any form on the ground that it imposes the penalties of murder for a wholly unintended death.

In 1957, England abolished the doctrine except an intentional murder may be punished by death if committed in connection with certain specified felonies.

Wisconsin retained the doctrine to a limited degree in § 940.03 by adding 15 years to the possible penalty for the felony which caused the death.

Section to be Repealed

It is recommended that Minn.St. § 340.69 be repealed. This provides that "any person who unlawfully sells intoxicating liquor which, when drunk, causes the death of the person drinking the same is guilty of murder in the third degree."

Minn.St. § 340.69 was enacted in 1923. There are no cases dealing with the section.

The section is unclear in meaning and if given its widest possible scope would impose criminal responsibility for murder for relatively innocent acts.

It is believed that the subject should be left to the general homicide statutes as recommended.

Minn.St. § 340.70 would still remain. This provides that a person so selling intoxicating liquor which causes permanent physical or mental injury to the person drinking the same is guilty of a felony.

If death should result from the physical or mental injury thus caused it would fall within recommended Clause (2).

Action with respect to Minn.St. § 340.70 has not been recommended since this would require consideration of the whole of Chapter 340 which is beyond the purposes of the present revision.

609.20 Manslaughter in the First Degree

Whoever does any of the following is guilty of manslaughter in the first degree and may be sentenced to imprisonment for not more than 15 years or to payment of a fine of not more than $15,000, or both:

(1) Intentionally causes the death of another person in the heat of passion provoked by such words or acts of another as would provoke a person of ordinary self-control under like circumstances; or

(2) Causes the death of another in committing or attempting to commit a crime with such force and violence that death of or great bodily harm to any person was reasonably foreseeable, and murder in the first or second degree was not committed thereby; or

(3) Intentionally causes the death of another person because the actor is coerced by threats made by someone other than his co-conspirator and which cause him reasonably to believe that his act is the only means of preventing imminent death to himself or another.

COMMENT

Clause 1: Clause (1) will supersede Clause (2) of Minn.St. § 619.15 reading:

> "In the heat of passion, but in a cruel and unusual manner, or by means of a dangerous weapon."

Changes made from Minn.St. § 619.15, (2) are:

(1) The phrase "when committed without a design to effect death" has been omitted. It appears only in a few states, including New York. It evidently originated in the 1829 New York revision and is in the 1851 Minnesota statutes. The common law was otherwise.

The phrase appears not to have much meaning. If the killing is without design to kill, it cannot be first or second degree murder and it would require a strained construction to bring it under third degree murder. It would have to encompass "a depraved mind, regardless of human life." This could hardly be construed as a "design to kill."

(2) A standard is given by the recommended clause by which to measure the kind of provocation required to bring the case within the section. The usual test developed by courts is whether a reasonable man under like circumstances would be so provoked. The situations principally recognized are: assault, finding a spouse in an act of adultery, seduction of daughter, rape of close relative, and a few others. Words and civil trespasses are not considered sufficient provocation. See State v. Smith, 1894, 56 Minn. 78 at 88, 57 N.W. 325, 327. The recommended section is broader than this and meets the criticism commonly made of present law. A death caused by one in a high emotional state should not be treated the same as murder. For cases supporting the recommendation see Maher v. People, 1862, 10 Mich. 212; State v. Gounagias, 1915, 88 Wash. 304, 153 P. 9, 12; People v. Bridgehouse, 1957, 303 P.2d 1018, 47 Cal.2d 406.

See also Louisiana Statutes Annotated–Revised Statutes 14:31.

The words "heat of passion" have been construed to extend to cases of fright. See State v. Miller, 1922, 151 Minn. 386, 186 N.W. 803.

(3) The phrase "but in a cruel and unusual manner, or by means of a dangerous weapon" which now distinguishes first and second

degree manslaughter has been omitted. It is not in the Wisconsin or Louisiana revisions.

The assumption is that the defendant does not act rationally but uses whatever means he has at hand. It is believed that the degree of criminality under these circumstances should not turn on the means that happen to be used. The assumption is that in the absence of provocation the death would have been murder.

Clause 2: Clause (2) will supersede Clause (1) of Minn.St. § 619.15. The following changes are made:

(1) Non-violent misdemeanors are not included.

(2) The requirement has been added that the crime committed entails a foreseeable risk of death or harm. This is essentially a requirement of negligence. It is less than culpable negligence. See recommended § 609.205, Clause (1), defining second degree manslaughter in terms of culpable negligence.

The requirement of a foreseeable risk of death or harm limits the scope of liability for death resulting from the commission of a misdemeanor. This modification meets to some extent the criticism of the misdemeanor manslaughter doctrine. The American Law Institute advocates complete abandonment of the doctrine. This was the policy pursued in the Wisconsin revision.

It will be noted that the term "crime" is used in Clause (2) of § 609.20 rather than "misdemeanor or gross misdemeanor." The intention is to permit the jury leeway to convict of manslaughter rather than murder in those cases when death is charged to have resulted from the commission of a felony under §§ 609.185 and 609.195.

Clause (3): This proposed clause is identical to Wisconsin St. § 940.05, Clause (3). The notes of the Wisconsin drafters state that it is a statement of common law principles.

Economic necessity is sometimes raised as a defense to a crime but it has not been rcognized as such and is not included in this revision.

In State v. Taran, 1929, 176 Minn. 175, 222 N.W. 906 and State v. Rasmussen, 1954, 241 Minn. 310, 63 N.W.2d 1, the defense of coercion or duress was held not sustained by the evidence.

609.205 Manslaughter in the Second Degree

Whoever causes the death of another by any of the following means is guilty of manslaughter in the second degree and may be sentenced to imprisonment for not more than seven years or to payment of a fine of not more than $7,000, or both:

(1) By his culpable negligence whereby he creates an unreasonable risk, and consciously takes chances of causing death or great bodily harm to another; or

(2) By shooting another with a firearm or other dangerous weapon as a result of negligently believing him to be a deer or other animal; or

(3) By setting a spring gun, pit fall, deadfall, snare, or other like dangerous weapon or device: or

(4) By negligently or intentionally permitting any animal, known by him to have vicious propensities, to go at large, or negligently failing to keep it properly confined, and the victim is not at fault.

COMMENT

Clause (1): The sentence has been reduced from imprisonment for 15 years and fine of not more than $1,000 or both appearing in superseded Minn.St. § 619.26, to that stated in the recommended section.

Wisconsin's maximum sentence is ten years.

The recommended section covers the subject matter of superseded Minn.St. § 619.18, (3), making it second degree manslaughter when death is caused "by any act, procurement or culpable negligence of any person."

The words in Minn.St. § 619.18, (3), "any act, procurement" have not been included. "Any act" is obviously too broad and "procurement" is sufficiently covered by recommended § 609.05 dealing with parties to crimes.

Clause (1) of Minn.St. § 619.18 covering a case where death is caused "by person committing or attempting to commit a trespass or other invasion of a private right either of the person killed or of another, not amounting to a crime" has likewise not been included in this revision; again, because it is deemed much too broad in imposing homicide liability for unintended death resulting from mere civil wrongs. This follows the like policy of the Wisconsin revision.

Clause (2): This incorporates the provisions of Clause (4) of Minn. St. § 619.18. State v. Hoyes, 1955, 244 Minn. 296, 70 N.W.2d 110, held that under this section ordinary negligence is sufficient for criminal liability. The term "dangerous" has been substituted for "deadly." See definition of "dangerous weapon" in § 609.02.

Clause (3): This incorporates and expands the provisions of superseded Minn.St. § 616.44 in which pit falls, deadfalls, and snares are not mentioned. In Clause (3) of Minn.St. § 616.44 the punishment is not less than ten nor more than 15 years.

Clause (4): This incorporates the substance of Minn.St. § 619.21, which will be superseded.

The phrase "the victim is not at fault" was retained in the belief that it serves a desirable purpose. Baiting or abusing an animal or taking chances on being injured is encompassed by the phrase and should absolve the owner from liability.

609.21 Criminal Negligence Resulting in Death

Whoever operates a vehicle as defined in Minnesota Statutes, Section 169.01, Subdivision 2 or an aircraft or watercraft, in a grossly negligent manner and thereby causes the death of a human being not constituting murder or manslaughter is guilty of criminal negligence in the operation of a vehicle resulting in death and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than $5,000, or both.

COMMENT

This incorporates the substance of Minn.St. § 169.11 now appearing in the traffic code but with the following changes:

(1) The section has been expanded to include aircraft and watercraft. Aircraft are presently included under Minn.St. § 360.075. Watercraft are now covered by Minn.St. § 361.06. Both of these sections will also be superseded.

(2) The term "reckless" in the phrase now appearing in Minn.St. § 169.11 and reading "in a reckless or grossly negligent manner" has been deleted. For interpretations of the term "reckless" in Minn.St. § 169.11 see State v. Bolsinger, 1946, 221 Minn. 154, 21 N.W.2d 480, and State v. Anderson, 1956, 247 Minn. 469, 78 N.W.2d 320.

(3) The fine has been increased from $1,000 to $5,000.

(4) The third paragraph of Minn.St. § 169.11 will be transferred to an appropriate chapter. It authorizes revocation of a driver's license.

Other Homicide Sections Recommended For Repeal

The following sections deal with specific acts resulting in death and constituting manslaughter in the second degree. It is recommended that they be repealed and the subject left to the general provisions of recommended § 609.205.

§ 619.20:

This is a confusing statute which appears to impose criminal liability for homicide in the case of "any act of negligence or conduct in the business or employment in which he is engaged or in the use or management of machinery, animals, or property" under his care or control or "any unlawful, negligent, or reckless act" not elsewhere covered. Its contents will be sufficiently covered by recommended § 609.205, (1).

§ 619.22:

This imposes liability when death results from wilfully or negligently overloading a vessel. This is sufficiently covered by recommended § 609.205, (1).

§ 619.23:

This imposes liability for a death caused by excessive boiler steam on a steamboat resulting from "ignorance, recklessness, or gross negligence." This is sufficiently covered by recommended § 609.205, (1).

§ 619.24:

This imposes liability upon a physician for a death resulting from his act while drunk. This will be included with some possible change in consequence by recommended § 609.205, (1). It is believed by the Advisory Committee that no different standards should be applied in this situation than in other cases of negligence. The same disposition was made of an identical statute in the Wisconsin revision.

§ 619.25:

This imposes liability for a death resulting from explosives made or kept contrary to law or city ordinance. This, again, will be covered by recommended § 609.205, (1). Of course, what is culpable negligence depends in part upon the character of the substance

dealt with. A higher degree of care is naturally required in the handling of gunpowder or explosives.

It should be noted also that recommended § 609.66 makes it a misdemeanor if one "recklessly handles or uses a gun or other dangerous weapon or explosives so as to endanger the safety of another." Under recommended § 609.20, Subd. 2 a violation of recommended § 609.66 might result in liability for first degree manslaughter.

It is recommended that the following sections be repealed and their provisions not be reproduced:

§ 619.05:

This classified homicide into murder, manslaughter, excusable homicide or justifiable homicide. The Committee considered that this served no useful purpose and merely added to the problem of whether such classification must be included in instructions to the jury.

§ 619.13:

This makes it manslaughter where there is a homicide not excusable or justifiable and the act is not first, second, or third degree murder. Again, this appears to serve no purpose and adds to the complexity of jury instruction.

§§ 619.17 and 619.26:

These sections state the penalty imposed for manslaughter in the first and second degrees respectively. The sentences to be imposed are now stated in the statement of the crimes themselves.

Section Recommended for Transfer

It is recommended that the following section be transferred to another appropriate chapter:

§ 619.06:

This provides that the death of the person and the act of killing by the defendant must be established as independent facts, the former by direct proof and the latter beyond a reasonable doubt. These are procedural provisions and should be transferred to the Chapter on Criminal Procedure.

609.215 Suicide

Subdivision 1. Aiding Suicide. Whoever intentionally advises, encourages, or assists another in taking his own life may be sentenced to imprisonment for not more than 15 years or to payment of a fine of not more than $15,000, or both.

Subd. 2. Aiding Attempted Suicide. Whoever intentionally advises, encourages, or assists another who attempts but fails to take his own life may be sentenced to imprisonment for not more than seven years or to payment of a fine of not more than $7,000, or both.

COMMENT

Suicide is not now a crime as it was at common law. Neither is an attempt to commit suicide.

Aiding or encouraging either of these acts, however, is a present crime. This is retained in the recommended section.

The two most common types of cases where such liability arises are: (1) Where one who is suffering from an incurable and painful illness asks to be supplied with the means of self-destruction as by a gun or poison; and (2) the mutual suicide pact where one survives.

In (2), it may be murder if the survivor did the act such as injecting the poison or shooting the deceased.

A question of criminal liability arises where an unintended third person's death is caused by the suicidal act. Under present Minnesota law and under the section recommended, the person committing or attempting suicide would be guilty of no crime absent culpable negligence. But the person aiding or advising him is engaged in the commission of a felony which caused the third person's death and thus would be third degree murder.

Subdivision 1: This incorporates the substance of Minn.St. § 619.02. The word "abet" appearing in § 619.02 has not been included since it is not believed to add anything to the meaning of provisions already contained in the recommended section.

Subd. 2: This incorporates the provisions of Minn.St. § 619.03. Again, the word "abet" appearing in § 619.03 has not been included for like reasons.

It is recommended that Minn.St. § 619.04 be repealed without similar provisions in the revision. It provides that incapacity to commit crime of the person attempting to take his own life is not a defense under Minn.St. §§ 619.02 and 619.03.

This was taken from the New York 1881 Penal Code and was intended to avoid a defense by one assisting a person who is insane or otherwise incapacitated from claiming the incapacity as a defense.

Such a provision is deemed unnecessary. Causing a person of unsound mind to take his own life is a case of murder, not one of assisting a suicide and would be dealt with accordingly.

The definitions in Minn.St. § 619.01 of "suicide," "challenge to a duel," "torture," and "cruelty" have not been reproduced, being considered unnecessary.

CRIMES AGAINST THE PERSON

609.22 Assault

Whoever does any of the following commits an assault and may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100:

(1) Does an act with intent to cause fear in another of immediate bodily harm or death; or

(2) Intentionally inflicts or attempts to inflict bodily harm upon another; or

(3) Takes indecent liberties with another without his consent.

COMMENT

The term "assault" is commonly used to designate three distinct types of cases: (1) where a person strikes at another but misses; (2) where one threatens to strike another but does not intend to do so and does not in fact strike at him; and (3) where one in fact strikes another.

In this revision the term "assault" is used to include all three types of cases. The term "battery" has not been used.

In this revision assaults with intent to commit a crime have been eliminated. Every assault with intent to commit a crime is of necessity an attempt to commit that crime. The present statutes which undertake to separate these two crimes have led to confusion and contradiction. For example, State ex rel. Guren v. Grimes, 1955, 245 Minn. 241, 71 N.W.2d 885, held that on a charge of assault with intent to commit rape the defendant could not be sentenced for an attempt to commit rape. An attempt to commit rape carries a maximum sentence of 15 years under present law. An assault with intent to commit rape carries five years. Yet the same act may constitute both offenses.

In State v. Macbeth, 1916, 133 Minn. 425, 158 N.W. 793, under an indictment for an attempt to commit rape, it was held that the defendant could be found guilty of assault with intent to commit rape.

Wisconsin's code and the American Law Institute draft both eliminate the distinction.

Under this revision there will be only assault and aggravated assault.

Mayhem and duels have been eliminated as separate offenses. Every mayhem under present law is of necessity an assault involving particularly serious bodily harm. A duel is a case of mutual assaults with dangerous weapons.

Clause (1) is illustrated by a case where "X" points an empty gun at "Y" or raises a club as if to strike him. He has no intent to harm "Y" but does intend to frighten him.

The word "immediate" would exclude the case where the defendant indicates by his words that he does not now intend to inflict harm but threatens to in the future.

Clause (2) covers two situations. (1) Where injuries not coming within the next section as "great bodily harm" are inflicted. If it is accompanied with an intent to kill, or to rape, or to rob, etc., or to inflict great bodily harm, the act could be prosecuted as an attempt. (2) Where defendant strikes at "X" but misses.

The subject of indecent assault in this revision has been divided into three categories: (1) The relatively innocuous but nevertheless reprehensible conduct which is encompassed in Clause (3). (2) The more serious cases where the indecent conduct toward an adult is accompanied with force or threat of force. This is encompassed in Subd. 3 of recommended § 609.225. (3) The case of indecent liberties with children which is encompassed in recommended § 609.315.

The first category is illustrated by State v. Rolfe, 1922, 151 Minn. 261, 186 N.W. 574, where a conviction was reversed.

Minn.St. § 617.08 encompasses all three categories and imposes a felony consequence without discrimination. It will be superseded by the several recommended sections mentioned.

609.225 Aggravated Assault

Subdivision 1. Whoever intentionally inflicts great bodily harm upon another may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than $10,000, or both.

Subd. 2. Whoever assaults another with a dangerous weapon but without intent to inflict great bodily harm may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than $5,000, or both.

Subd. 3. Whoever takes indecent liberties with another with force or threat of force and without the latter's consent, may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than $1,000, or both.

COMMENT

The terms "great bodily harm," "bodily harm," and "dangerous weapon" are defined in recommended § 609.02.

The following sections will be superseded by the recommended section:

§ 619.37:

This makes it assault in the first degree to assault another with intent to kill a human being or commit a felony upon the person or property and specifying other conditions.

§ 619.38:

This covers other assaults committed under specified conditions and classifies them as assault in the second degree.

§ 619.39:

This defines assault in the third degree as assaults not otherwise covered.

All sections on mayhem will be superseded. These include §§ 619.30 to 619.33.

§ 619.31:

This deals with maiming oneself in order to excite sympathy or obtain charity. This section appears never to have been used either in New York where it originated or in Minnesota. The subject is adequately dealt with by the provisions relating to vagrancy and begging. See recommended § 609.725. There is no similar provision in the recommended revision.

§ 619.38, (5):

This deals with assaults to prevent execution of legal process or order of the court or arrest. The subject is covered by recommended § 609.50, Clause 1, dealing with the same topic but making the offense a gross misdemeanor instead of a felony.

The following Minnesota sections dealing with duels will also be superseded:

Sections 619.46 to 619.50 and that portion of § 619.01 reading:

"Any word spoken or written and any sign uttered or made to any person, expressing or implying, or intended to express or imply, a desire, request, invitation, or demand to fight a duel, or to meet for that purpose, or to engage in any prize fight, shall be deemed a challenge to such duel or prize fight."

These sections were taken from the New York code following the recommendations of the Commissioners issued in 1864. These in turn incorporated the previous statutes appearing in the revised laws of 1829. There are no cases either in New York or Minnesota dealing with the subject.

A duel is nothing more than mutual assault with dangerous weapons. The subject is adequately covered by the above recommended section.

Under Subdivisions 1 and 2 of recommended § 609.225, if the defendant assaults another with intent to inflict great bodily harm but fails to do so he would be guilty of an attempt to violate the section.

Subd. 3 now appears as part of Minn.St. § 617.08, which will be superseded. See comment to §§ 609.22 and 609.315.

609.23 Mistreatment of Persons Confined

Whoever, being in charge of or employed in any institution, whether public or private, intentionally abuses or ill-treats any person confined therein who is mentally or physically disabled or who is involuntarily confined therein by order of court or other duly constituted authority may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than $1,000, or both.

COMMENT

The recommended section is largely new. It is covered in part by Minn.St. § 617.74. This section makes it a misdemeanor to illegally confine "a lunatic, insane, or feebleminded person." It also makes it a misdemeanor to be guilty "of harsh, cruel, or unkind treatment of or neglect of duty toward any feebleminded person, lunatic, or insane person under confinement."

The purpose of § 617.74, it is believed, should be applied to anyone confined and incapable of protecting himself either because he is mentally or physically disabled or whose confinement is involuntary in accordance with law.

This section does not prohibit the use of reasonable force for the purpose of controlling conduct or treatment. See recommended § 609.06, Clauses (8) and (9).

609.235 Using Narcotic, etc., to Injure or Facilitate Crime

Whoever administers to another or causes another to take any poisonous, stupefying, overpowering, narcotic or anaesthetic substance with intent thereby to injure or to facilitate the commis-

sion of a crime may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than $5,000, or both.

COMMENT

This now appears as first degree assault in Minn.St. § 619.37, Clause (2), if the intent is to kill a human being or commit a felony and as second degree assault in Minn.St. § 619.38 where intent to injure is involved.

If in administering the substance the intent is to kill, the act undoubtedly would be an attempt to commit murder.

The recommended section treats these acts as something different from assault. The same approach was adopted in Wisconsin St. § 941.32.

609.24 Simple Robbery

Whoever, knowing he is not entitled thereto, takes personal property from the person or in the presence of another and uses or threatens the imminent use of force against any person to overcome his resistance or powers of resistance to, or to compel acquiescence in, the taking or carrying away of the property is guilty of robbery and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than $10,000, or both.

609.245 Aggravated Robbery

Whoever, while committing a robbery, is armed with a dangerous weapon or inflicts serious personal injury upon another is guilty of aggravated robbery and may be sentenced to imprisonment for not more than 20 years or to payment of a fine of not more than $20,000, or both.

COMMENT

The concept of robbery at common law was a relatively simple one. Perkins on Criminal Law, p. 236, has defined it: "Robbery is larceny from the person by violence or intimidation."

Robbery is thus related to three other crimes: (1) to larceny; (2) to assault, since violence is used against the person; and (3) to extortion insofar as a threat or intimidation is involved.

The recommended sections are taken substantially from the present Minnesota sections on the subject. These include § 619.41, defining robbery; § 619.42, specifying the conditions for first degree robbery; § 619.43, specifying the conditions for second degree robbery; and § 619.44, making other robberies third degree robbery.

Only two degrees have been provided for in the recommended sections—simple robbery and aggravated robbery. Even under present statutes third degree robbery had but limited application.

The penalties for robbery have been reduced in conformity with the general policy of the revision of avoiding extreme and long sentences.

In aggravated robbery, aid by an accomplice has not been included as an aggravating element. The same omission is made in the recommended burglary section. The presence of an accomplice is sufficiently dealt with by the general provision on liability of parties to crimes. See recommended § 609.05.

Explanation of the particular phrases used in the recommended sections follows.

"Knowing he is not entitled thereto": Wisconsin St. § 943.32 uses the words "with intent to steal." These were not used, since the theft statute as recommended is so comprehensive that it was thought the word "steal" as it appertains to intent would not be desirable.

The present Minnesota statute, St. § 619.41, is silent on the point. The word "unlawfully" does not cover the point. In State v. Bruno, 1933, 141 Minn. 56, 169 N.W. 249, the trial court failed to charge an intent to steal was essential. The appellate court said:

"Criminal intent is not necessarily an element of a crime defined by statute. . . . The statute does not in terms make intent a necessary element in the crime of robbery. Whether intent is ever an issue on a trial for robbery we need not determine. If the acts charged by the state were committed there could be no issue of intent in this case. Such acts necessarily constitute robbery."

However, a belief by the defendant that he was taking his own property should be a defense. It was so held in United States v. Nedley, 1958, 255 Fed.2d 350, reviewing New York cases under statutes identical to Minnesota's.

See also 8 Minn.L.Rev. 443, discussing the loser at gambling taking back his money.

"Takes personal property": The Wisconsin act refers to "property" and so would include real property. It is believed no such problem exists as to robbery of real property as to warrant extending the present Minnesota provision.

"From the person": This limitation is essential in the concept of robbery. But it must be more than this. If it is without the use of force or fear, the taking remains larceny. Thus, the defendant snatches a purse from the hand of a lady. This is larceny. But if she hangs on and he uses force to overcome her resistance, it is robbery.

"Or in the presence": This is in the present Minnesota statute. It contemplates a case where the property is not on the person but near him and by the use of force the defendant prevents him from defending against the taking of it. Common law cases had construed taking from the person as encompassing such cases.

"Of another": The Wisconsin act uses the phrase "of the owner" and owner is defined as any person in possession.

This introduces such unnecessary questions as whether property is in the presence but not in the possession of the one from whom it is taken. Taking from the person or presence *of another* should be sufficient to cover all cases while avoiding problems of construction.

"Uses, or threatens the imminent use of force to overcome his resistance or power of resistance": This encompasses two types of cases. (1) Where force is used. The defendant knocks the victim

unconscious and then takes his wallet. His "powers of resistance" were thereby overcome. The defendant pushes the victim against a wall and takes his wallet. In this instance the force was used to overcome the resistance in fact raised. (2) Where threats are used. The defendant points a gun at victim and either demands his wallet or takes it from him. Here not force but a threat is used to compel acquiescence. The second category is a form of extortion.

"Threatens the imminent use of force" makes the recommended section more restrictive than the present statute which refers to threats of future harm. The threat of future harm has usually been thought of as coercion rather than robbery and it has been so treated here. The recommended coercion section would cover such cases. See § 609.27.

"Against any person": The reference in the present Minnesota statutes to relatives and members of the family has not been used. It is unnecessary with the restriction of the threats to present use of force. Under these circumstances it may be any person even under present statutes.

Force against property is not included as this is again an instance of coercion and is covered by the recommended coercion section, § 609.27.

The kind of case covered involving one other than the victim is one in which "X" threatens to kill "Y" if "Z" does not hand over his wallet.

"The taking or carrying away of the property": This is taken from the Wisconsin statute. The provision in the Minnesota statute stating it is not robbery to use force in escaping was not included, being considered unnecessary.

609.25 Kidnapping

Subdivision 1. Acts Constituting. Whoever, for any of the following purposes, confines or removes from one place to another, any person without his consent or, if he is under the age of 16 years, without the consent of his parents or other legal custodian, is guilty of kidnapping and may be sentenced as provided in subdivision 2:

(1) To hold for ransom or reward for release, or as shield or hostage; or

(2) To facilitate commission of any felony or flight thereafter; or

(3) To commit great bodily injury or to terrorize the victim or another; or

(4) To hold in involuntary servitude.

Subd. 2. Sentence. Whoever violates subdivision 1 may be sentenced as follows:

(1) If the victim is released in a safe place without serious bodily harm, to imprisonment for not more than 20 years or to payment of a fine of not more than $20,000, or both; or

(2) Otherwise to imprisonment for not more than 40 years or to payment of a fine of not more than $40,000, or both.

COMMENT

The common law crime of kidnapping was confined to seizing another and taking him out of the country. Statutes have since modified the crime. At first, it was extended to secreting the victim within the state. Prior to the civil war, provisions appeared in some states coving taking for the purpose of selling as a slave or in servitude. Though no longer serving their original purpose, these provisions still appear in some statutes, including those of Minnesota. Another added category dealt with taking of children.

In these developments no clear analysis of the crime was made. The 1881 Code of New York did little to change or improve the law existing prior thereto. See Report of Commissioners of 1864 recommending the Criminal Code, page 93. They merely incorporated existing law going back to at least the revision of 1829.

Minn.St. § 619.34 is a confusing section, clarification of which was undertaken in State v. Croatt, 1948, 227 Minn. 185, 34 N.W.2d 716. It will be superseded by this revision. The court pointed out that the history of the statute shows it was intended to include both false imprisonment and what is generally known as kidnapping.

Kidnapping consists of two basic elements: (1) the confinement or restraint of the person which, standing alone, is a case of false imprisonment and (2) the intent with which the imprisonment is accompanied. It is the intent which makes the imprisonment the serious crime known as kidnapping.

The revision undertakes to separate the two crimes of imprisonment and kidnapping. It undertakes also to recognize that taking one's own child, though contrary to court order, is not of the same gravity as are other cases either of imprisonment or kidnapping. The present Minnesota law treats these several categories without discrimination.

The above recommended section creates the crime of kidnapping. Secrecy has been eliminated since it is believed that the essential elements of the crime are the holding of the person from moment of seizure and the intent accompanying such holding. For this reason, seizure without confinement has not been included. It would, of course, still be an assault under recommended §§ 609.22 or 609.225.

A separate clause relating to children was not believed needed. They are adequately covered by the introductory clause of the recommended section.

The first three recommended clauses of the section follow the American Law Institute Draft, § 212.11. Clause (4) is contained in substance in the present Minn.St. § 619.34 and it will also supersede Minn.St. § 619.35, prohibiting the selling of the services of another who has been forcibly taken or kidnapped.

The phrase "remove from one place to another" would include taking the victim either out of the state or bringing him into the state and thus covers the corresponding provisions of Minn.St. § 619.34 without explicit mention. The phrase is as specific as it is believed possible to achieve. The intent is that the victim be removed from an area which can be regarded as the location of the victim to another area in which he is then located. It was believed preferable to the

American Law Institute phrase "remove another . . . a substantial distance from the vicinity where he is found."

Subd. 2, (1), adds the $40,000 fine to the present 40 year term.

Reduction of the maximum possible sentence contingent on safe return is new but is fairly common in other states. Wisconsin has such a provision which, however, imposes life imprisonment if there is no such return. Its purpose is to offer some inducement for the safe return of the victim.

Section on Kidnapping to be Transferred

§ 619.36:

That portion reading: "Every indictment for kidnapping may be found and tried either in the county where the offense was committed, or in any county through or in which the person kidnapped or confined was taken or kept while under confinement or restraint" should be transferred to the chapter on criminal procedure.

Other Sections on Kidnapping to be Repealed

§ 619.36:

That portion reading: "Upon a trial for violation of sections 619.34 and 619.35, the consent thereto of the person kidnapped or confined shall not be a defense, unless it appears satisfactory to the jury that such person was above the age of 16 years, and that his consent was not extorted by threats or duress" should be repealed. This provision is believed sufficiently covered by the recommended section on kidnapping and false imprisonment. Consent obtained by extortion is invariably held to be no consent without explicit statutory provision. The same is true of consent obtained by misrepresentation or trickery or fraud and so forth which do not happen to be mentioned in Minn.St. § 619.36. See People v. DeLeon, 1888, 109 New York 226, 16 N.E. 46 and People v. Fitzpatrick, 1890, 10 N.Y.S. 620.

609.255 False Imprisonment

Whoever, knowing he has no lawful authority to do so, intentionally confines or restrains a child not his own under the age of 18 years without his parent's or legal custodian's consent, or any other person without his consent, is guilty of false imprisonment and may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than $3,000, or both.

COMMENT

This subject is presently covered under the general kidnapping section, § 619.34.

It will also supersede Minn.St. § 617.31 which forbids holding, detaining or restraining a female person in a house of ill fame or prostitution to compel her by her labor to pay any debt, etc., claimed to have been incurred.

609.26 Confining Own Child

Whoever intentionally takes, confines or restrains his own child under the age of 18 years with intent to prevent another from obtaining or retaining his custody pursuant to an existing court order may be sentenced to imprisonment for not more than two years or to payment of a fine of not more than $2,000, or both.

COMMENT

The subject is presently covered by the general kidnapping statute, Minn.St. § 619.34. The recommended section will substantially reduce the penalty in these cases. It is believed that cases of this kind are not of the same gravity as those set forth in recommended § 609.25 and should be separately treated.

609.265 Abduction

Whoever, for the purpose of marriage, takes a person under the age of 18 years, without the consent of the parents, guardian or other person having legal custody of such person is guilty of abduction and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than $1,000, or both.

COMMENT

Abduction under the present statutes is a hybrid type of crime aimed primarily at the protection of women taken for immoral purposes and minor girls. The principal Minnesota statute is § 617.05 which provides:

"Every person who

"(1) Shall take a female under the age of 18 years, for the purpose of prostitution or sexual intercourse, or, without the consent of her father, mother, guardian, or other person having legal charge of her person, for the purpose of marriage;

"(2) Shall inveigle or entice an unmarried female under the age of 25 years, of previous chaste character, into a house of ill-fame or assignation, or elsewhere for the purpose of prostitution or sexual intercourse;

"(3) Shall take or detain a woman unlawfully against her will, with intent to compel her by force, menace, or duress, to marry him or any other person, or to be defiled; or,

"(4) Being parent, guardian, or other person having legal charge of the person of a female under the age of 18 years, shall consent to her taking or detention by any person for the purpose of prostitution or sexual intercourse—

"Shall be guilty of abduction and punished by imprisonment in the state prison for not more than five years, or by a fine of not more than $1,000, or by both. No conviction shall be had for abduction or compulsory marriage upon the unsupported testimony of the female abducted or compelled."

Clause (1) of § 617.05 contemplates prostitution, sexual intercourse, and marriage as the objectives of the abduction. No appellate court cases appear under this clause.

Clause (2) originated in 1877. As presently worded it would appear to cover a case where a young man induces a girl on the street to enter his car for the purposes of sexual intercourse. Except for taking for marriage, the subject matter of § 617.05 is sufficiently covered by the recommended sections on fornication, § 609.32 and on prostitution, § 609.335.

Clause (3) is a case of kidnapping and would be covered by recommended § 609.25, or of false imprisonment under § 609.255.

Clause (4) insofar as it deals with prostitution is covered by recommended § 609.335, Subd. 2. The provision as to sexual intercourse has not been duplicated. This is believed adequately dealt with by the provisions on neglect in the Juvenile Court Code and by Minn.St., § 260.315, making it a misdemeanor to contribute to the delinquency of a minor.

Minn.St. § 617.06 deals primarily with inducing a girl to come into the state for purposes of prostitution or concubinage or "for any other immoral purpose." A penalty of ten years imprisonment may be imposed.

The substance of Minn.St. § 617.06 is adequately dealt with by § 609.32 relating to fornication and by § 609.335 relating to prostitution. If the bringing into the state is against the consent of the girl or she is under 18 years of age, it would be a case of kidnapping or false imprisonment. See recommended §§ 609.25 and 609.255. It is recommended therefore that Minn.St. § 617.06 be repealed and no separate provision substituted.

In this revision, therefore, it was believed that no more is necessary than the above recommended section which limits the crime of abduction to the taking for the purposes of marriage.

Under this provision the punishment has been reduced from five years imprisonment under Minn.St. § 617.05 to a gross misdemeanor. It is believed that the gravity of the offense as defined does not warrant a greater sentence.

CRIMES OF COMPULSION

609.27 Coercion

Subdivision 1. Acts Constituting. Whoever orally or in writing makes any of the following threats and thereby causes another against his will to do any act or forebear doing a lawful act is guilty of coercion and may be sentenced as provided in subdivision 2:

(1) A threat to unlawfully inflict injury upon, or hold in confinement, the person threatened or another, when robbery or attempt to rob is not committed thereby; or

(2) A threat to unlawfully inflict damage to the property of the person threatened or another; or

(3) A threat to unlawfully injure a trade, business, profession or calling; or

(4) A threat to expose a secret or deformity, publish a defamatory statement or otherwise to expose any person to disgrace or ridicule; or

(5) A threat to make or cause to be made a criminal charge, whether true or false; provided, that a warning of the consequences of a future violation of law given in good faith by a magistrate, peace officer, or prosecuting attorney to any person shall not be deemed a threat for the purposes of this section.

Subd. 2. Sentence. Whoever violates subdivision 1 may be sentenced as follows:

(1) To imprisonment for not more than 90 days or to payment of a fine of not more than $100 if neither the pecuniary gain received by the violator nor the loss suffered by the person threatened or another as a result of the threat exceeds $100, or the benefits received or harm sustained are not susceptible of pecuniary measurement; or

(2) To imprisonment for not more than five years or to payment of a fine of not more than $5,000, or both, if such pecuniary gain or loss is more than $100 but less than $2,500; or

(3) To imprisonment for not more than ten years or to payment of a fine of not more than $10,000, or both, if such pecuniary gain or loss is $2,500 or more.

COMMENT

The crime of extortion has had a rather unusual history. At common law, it was limited to the receipt of fees improperly received under color of public office. It was soon expanded by statute, however, to cover the cases where money or property was obtained from another by means of a threat. These statutes are characterized by the greatest variety. See 44 Mich.L.Rev. 461. Some make the threat alone a crime. Others require the receipt of something of value as a result of the threat. There are variations as to the kinds of threats listed. They differ on whether an oral threat is sufficient and whether the harm may be directed at some third person, such as a friend.

The majority of statutes in other states appear to limit the crime to threats to obtain something of pecuniary value. Thus the threat to strike someone unless the victim marries the defendant's pregnant daughter will not constitute extortion. The Minnesota statutes are not clear on this point. Minn.St. § 621.18 appears to be sufficiently broad to cover non-pecuniary, but "illegal or wrongful" acts. However, in State v. Ullman, 1851, 5 Minn. 1, a statute with broad language was limited to acts having pecuniary value. The court stated:

"The first portion of the section above recited, seems exclusively directed against attempts by threats to extort money or some other thing which would be of pecuniary advantage, and though towards the close, it makes use of the term 'any act against his will,' we are of opinion that the legislature did not intend to include acts indifferent in themselves, and that [sic] do not refer directly or indi-

rectly to the offense defined in the first part of the statute, but only such acts as deprive or tend to deprive the party threatened, of money, property, or some pecuniary advantage, or confer the same on another.

"A person knowing the unwillingness of another to leave a particular town, farm, or habitation, or publicly to retract a particular statement, publication, libel, or slander, may maliciously, and with intent to compel him thus to leave, or retract, threaten to beat or shoot him if he do not, yet we do not think the party thus threatening would be guilty of the offense created by the statute under consideration. The statute must be construed as applying only to acts by which money, property or some pecuniary advantage may be acquired or lost. Otherwise, it might be extended to any act, however insignificant, idle, or sportive, and even to such as the party threatening might have the legal right to insist upon, if the party threatened was unwilling to do as required."

When the crime of extortion is thus limited to obtaining something of pecuniary value, the crime largely overlaps that of larceny. Thus the receipt of money or property as the result of a threat is no different in substance from a receipt stemming from fraud. It is clearly larceny under modern statutes or false pretenses under earlier legislation. The American Law Institute in its proposed model code deals with receipt of money or property by means of threats as a form of larceny. See § 206.3.

But the crime of extortion as conceived in American statute law seems to be broader than this and is not confined to the receipt of money or property. In principle the offense seems to be equally great whenever the victim is forced by means of a threat to do anything against his will. Likewise, the crime is equally reprehensible when the victim suffers loss without gain to the defendant.

There are a number of Minnesota criminal statutes dealing with the crime of extortion or coercion. They are referred to in the comments below and will be superseded by the recommended sections. These statutes overlap. In combination they go beyond the receipt of money or property. This particularly is true of Minn.St. § 621.18.

The proposed section, therefore, has been prepared on the basis that the forceful compulsion by means of a threat of any act or forebearance ought to be recognized as a crime, even though the offense of the defendant cannot be measured by monetary standards. Statutes of some states are broad enough to include this approach.

The problem then arises of how to measure the gravity of the defendant's misconduct. Where property is received this is no different from the problem involved in larceny. The same solution should be followed. Very little different considerations are involved when the loss to the victim is sought to be measured.

In other cases any valid measure seems impossible to prescribe. The acts sought to be compelled may be of slight significance such as threatening to call police unless the victim ceases visiting the defendant's daughter or entering the defendant's theater, etc. Or it may be serious such as attempting to compel the victim to leave town, or marry the defendant's daughter.

In the absence of any such measure, the recommended section has been drawn making such cases misdemeanors. It will at least afford some protection against such threats.

The receipt of improper fees under color of office is now included in some of the present Minnesota extortion statutes. The proposed extortion statute has not included these provisions. They are covered by recommended sections dealing with public officials. See § 609.45.

Subdivision 1: This requires that the victim act or forebear to act as a result of the threat. The threat alone is not sufficient. This appears to be the effect of Minn.St. § 621.14. The act or forebearance is not required under Minn.St. § 621.18, entitled "Blackmail" and Minn.St. § 621.19. This appears true also of Minn.St. § 621.56.

The proposed section extends to securing the performance of any act or forebearance from doing any lawful act. The present provisions vary on this point. Section 621.14 is limited to "obtaining of property." Section 621.18 refers to "extort or gain any money or other property, or to do or abet or procure any illegal or wrongful act,". Section 621.19 requires "intent to extort or gain any money or other property." Section 621.56 applies where there is an "intent to compel another to do or abstain from doing an act which such other person has a legal right to do, or abstain from doing."

The crime is called coercion rather than extortion in view of the variety of acts encompassed.

Subdivision 1, (1): This requirement now appears in §§ 621.14, 621.18, and 621.56 with the following changes made:

(1) "Or hold in confinement" has been added to make clear that physical injury does not exclude a threat to kidnap someone. The American Law Institute suggests this. A similar provision appears in the present New York statute.

(2) The threatened harm can be to anyone, not merely the victim or his relatives. The American Law Institute is in agreement with this.

The word "unlawfully" appears necessary in view of the broad language in the introductory clause: "cause another against his will to do any act . . . ." Otherwise it would cover a case such as the father spanking his child for not going to bed.

Subdivision 1, (2): This requirement now appears in Minn.St. §§ 621.14, 621.18, and 621.56. The word "unlawfully" again appears necessary for reasons similar to those stated in the comment to Clause (1). Thus "B's" house is illegally on "A's" premises. "A" threatens to forcibly remove it, as he has a right to do, unless "B" removes it himself. This should not constitute the crime of coercion.

Subdivision 1, (3): There is no corresponding provision in the present Minnesota statutes. Wisconsin has a similar provision. See Wisconsin St. 943.30. A provision of this kind is not uncommon.

The word "unlawfully" again seems necessary. Otherwise it might be claimed that the statute would make a strike by employees illegal.

Subdivision 1, (4): Similar language appears in part in Minn.St. §§ 621.14 and 621.18. The portion relating to defamatory statements does not appear in Minnesota statutes but is suggested by Wisconsin St. § 943.30.

There is overlapping in the words "expose a secret or deformity" and "expose any person to disgrace or ridicule" but this has been common in statutes of this character and it was thought desirable to retain familiar language.

Minn.St. § 619.58 will be superseded. This relates to extortion by threat to publish a libel.

Subdivision 1, (5): This type of threat appears in §§ 621.14 and 621.18. The truth or falsity of the charge should be immaterial. Thus if "A" claims the cow held by "B" is his and that "B" stole it, "A" should not be permitted to say: "Return my cow or I'll report you to the county attorney." Accord: People v. Fichtner, 1953, 281 A.D. 159, 118 N.Y.S.2d 392.

The cases outside of Minnesota, however, are in conflict in regard to this point. Minnesota appears to take the above view. Thus, in State v. Coleman, 1907, 99 Minn. 487, 493, 110 N.W. 5, 7, the defendant threatened to expose the fact that the victim was caught in a compromising situation with a woman. The court held that the trial court rightly charged that the relationship between the victim and the girl "whether criminal or not, was immaterial." The case may be distinguishable in that the threat of exposure rather than a criminal charge appears to have been made.

The provision protects law enforcement officers and prosecuting attorneys from any possible claim that they might come within the section.

Subd. 2: This subdivision follows the principles pursued in the larceny section of relating the gravity of the offense to the amount received by the extortion.

Transfer Recommended

§ 621.16:

This relates in part to threats to prevent the joining of labor organizations or to contribute in order to secure or retain employment. This is essentially a regulatory statute relating to employer and employee relations.

Sections Outside the Criminal Law Relating to Extortion or Coercion and Not Affected by the Revision

§ 210.06:

This relates to coercion of voters.

§ 211.12:

This relates to threats on behalf of political candidates.

§ 211.24:

This relates to threats by employers made to induce voting for or refraining from voting for political tickets, parties, or candidates.

609.275 Attempt to Coerce

Whoever makes a threat within the meaning of section 609.27, subdivision 1, clauses (1) to (5), but fails to cause the intended act or forebearance, commits an attempt to coerce and may be punished as provided in section 609.17.

COMMENT

This will cover such statutes as Minn.St. §§ 621.18, 621.19 and 621.56. The last two statutes, however, merely provide for punishment as for a misdemeanor.

Many statutes make this the crime of extortion itself without requiring that the threat succeed. See comment under § 609.27. It is believed that treating the unsuccessful threat as an attempt is to be preferred.

The section referred to at the end of the recommended section is that on attempts.

609.28 Interfering with Religious Observance

Whoever, by threats or violence, intentionally prevents another person from performing any lawful act enjoined upon or recommended to him by the religion which he professes may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100.

COMMENT

This will supersede Minn.St. § 614.27 and is identical in its meaning.

The section is unnecessary. The act prohibited is fully covered by the coercion statutes which have been recommended and under which the same penalty would apply. The Advisory Committee believes it might well be deleted but prefers to leave the question to the Legislature for its consideration.

SEX CRIMES

609.285 Definition

For the purposes of sections 609.29, 609.295, 609.30 and 609.305, sexual penetration, however slight, shall be sufficient to constitute sexual intercourse.

COMMENT

The corresponding provision appears in Minn.St. § 617.03.

609.29 Aggravated Rape

Whoever has sexual intercourse with a female person, not his wife, without that person's consent and under any of the following circumstances, commits aggravated rape and may be sentenced to imprisonment for not more than 30 years:

(1) The victim's resistance is overcome by force; or

(2) The victim's resistance is prevented by reasonable fear of immediate and great bodily harm to the victim or another; or

(3) The victim is unconscious, physically powerless to resist, or incapable of giving consent through mental illness or defect

and the condition is known or reasonably should have been known to the actor; or

(4) As an officer of the law he has custody of the victim or the victim is detained in a penal or other public institution of which the actor is an officer or employee.

COMMENT

The recommended sections differentiate between two categories: (1) where the victim does not consent to the act, and (2) where consent has been obtained but through fraud, deception, trickery, and so forth. It is believed that the more severe punishment should be reserved for the first category.

While there have been some modifications from existing law, for the most part the recommended sections cover the same types of cases as those now stated in present statutes. See Minn.St. § 617.01.

In the above recommended section, the phrase "against her will" appearing in the present § 617.01 has not been included in the introductory clause. The phrase "without her consent" is deemed sufficient to include all cases. The sentence permitted is that presently authorized as a maximum. No minimum is specified in keeping with the policy to that effect in this revision. See § 609.11.

The addition of the words "or another" appearing at the end of Clause (2) extends the scope of the crime beyond that in the present § 617.01.

Clause (3): Minn.St. § 617.01, Subd. 4 deals in a measure with this aspect of the subject. But it requires "stupor" or "weakness of mind." Subdivision 1 of § 617.01 also covers "idiocy, imbecility, or any unsoundness of mind."

The intent is to cover the helpless person. Unconsciousness might be the product of any cause, such as drugs, illness, drunkenness, a blow on the head, sleep, etc.

A "physically powerless" person might be one who is paralyzed or, though conscious, has lost control of her muscles as by drugs, liquor, etc.

Whether the condition is caused by the defendant or another should be immaterial so long as he knows of the condition. The latter has therefore been substituted.

These provisions do not apply to a case where the victim's consent is obtained as a result of intoxication or drug. Compare next section.

Clause (4): This is new to Minnesota but is deemed an important and desirable addition. New York added a similar provision to its law in 1892. See New York Penal Code § 278.

The American Law Institute Model Penal Code has recommended a similar provision.

609.295 Rape

Whoever has sexual intercourse with a female person, not his wife, with the female person's consent obtained under any of

the following circumstances commits rape and may be sentenced to imprisonment for not more than ten years:

(1) He induces the victim to believe that he is the victim's husband; or

(2) He misleads the victim as to the nature of the act being committed; or

(3) The victim's will to resist is destroyed by drug or intoxicant administered without her knowledge or consent by the actor or on his behalf.

COMMENT

Recommended Clause (1) is new. In accord is Wisconsin St. 944.02, (3). Cases of this kind are not uncommon.

Clause (2) covers cases such as the doctor pretending to render professional services. This is probably the purport of Minn.St. § 617.01, Clause (5).

Clause (3) is similar to Subd. 4 of Minn.St. § 617.01. It differs from recommended § 609.29, Subd. 3 in that here the victim is conscious but his or her judgment has been lost through the drug or drink. When this occurs is a matter of degree and it is believed little more can be done to make the matter more specific.

If the female takes the drug or drink voluntarily on her own accord, or it is given to her by a third person without participation by the defendant, the clause does not apply.

Of course, intoxication, however induced, reduces the disposition of the female to resist. But to make all intercourse with females under the influence of liquor rape would be difficult to justify. It is believed that the proposed clause represents about as much as should be undertaken. It requires that the defendant drug the female or cause her to become intoxicated without her knowledge or consent.

609.30 Sodomy

Subdivision 1. Definition. "Sodomy" means carnally knowing any person by the anus or by or with the mouth.

Subd. 2. Aggravated Sodomy. Whoever under any of the following circumstances commits an act of sodomy upon another or causes him to carry out an act of sodomy, without the other's consent, commits aggravated sodomy and may be sentenced to imprisonment for not more than 30 years:

(1) The victim's resistance is overcome by force; or

(2) The victim's resistance is prevented by reasonable fear of immediate and great bodily harm to the victim or another; or

(3) The victim is unconscious, physically powerless to resist, or incapable of giving consent through mental illness or defect

and the condition is known or reasonably should have been known to the actor; or

(4) As an officer of the law he has custody of the victim or the victim is detained in a penal or other public institution of which the actor is an officer or employee.

Subd. 3. Sodomy. Whoever commits an act of sodomy upon another or causes him to carry out an act of sodomy, with the other's consent obtained under any of the following circumstances, may be sentenced to imprisonment for not more than ten years:

(1) He misleads the victim as to the nature of the act being committed; or

(2) The victim's will to resist is destroyed by drug or intoxicant administered by the actor or on his behalf, without the victim's knowledge or consent.

Subd. 4. Sodomy Upon or With Child. Whoever commits an act of sodomy upon or with any child under the age of 18 years, whether or not the act is also a violation of subdivisions 2 or 3 and notwithstanding the consent of the child, may be sentenced as follows:

(1) If the child is under the age of ten years, to imprisonment for not more than 30 years; or

(2) If the child is ten years of age but under the age of 14 years, to imprisonment for not more than 20 years; or

(3) If the child is over the age of 14 years, to imprisonment for not more than five years.

Subd. 5. Consensual Acts. Whoever, in cases not coming within the provisions of subdivisions 2 and 3, voluntarily engages in or submits to an act of sodomy with another not his spouse may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than $1,000, or both.

COMMENT

Present Minnesota statutes recognize four types of deviate sexual behavior: an act with an animal; an act with another person by way of the mouth; by way of the anus; and with a dead body. See Minn.St. § 617.14.

No distinction is drawn between an act voluntarily occurring between spouses and where it occurs between others, nor between forcible commission of the act upon another without the latter's consent and an act committed with mutual consent. Likewise no distinction is drawn when the act is committed upon a child.

As in the case of rape, this revision undertakes to draw a distinction between acts imposed upon another without his consent and those in which the act is the product of consent on the part of both parties.

This approach has been adopted by the New York Criminal Code, § 690, and by the American Law Institute Model Penal Code.

Subdivision 1: This limits the section to those acts which are now designated in Minn.St. § 617.14. Other devious sexual acts will be covered as they now are by the indecent assault provisions in recommended § 609.225 insofar as it relates to adult women. Such acts against children are covered by recommended § 609.315.

Subd. 2: The provisions in this subdivision correspond to the provisions of recommended § 609.29 dealing with rape.

Subd. 3: This corresponds to similar provisions in recommended § 609.29 relating to rape.

Subd. 4: The provisions of this subdivision are now dealt with under the carnal knowledge statute, Minn.St. § 617.02. It was believed preferable to deal with sodomy against children by separate express provisions.

Subd. 5: This reduces the punishment now provided for similar acts in Minn.St. § 617.14 from 20 years to one year or $1,000, or both. It also excludes sodomous acts between spouses when the consent of both is present.

As indicated above the present law provides a single penalty without discrimination as to the gravity of the several acts encompassed.

609.305 Bestiality

Whoever carnally knows a dead body or an animal or bird is guilty of bestiality and may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100. If knowingly done in the presence of another he may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than $1,000, or both.

COMMENT

This supersedes Minn.St. § 617.14 insofar as it covers animals and corpses. Unnatural intercourse with a human being is covered by the sodomy provision, § 609.30.

There has been a substantial reduction in the penalty imposed. Minn.St. § 617.14 authorizes imprisonment to a maximum of 20 years. The excessive penalty is believed to be more the product of revulsion to this type of crime than to the social harm in fact committed. The American Law Institute Model Penal Code recommends that the offense be made a misdemeanor. The recent Illinois revision contains no provision on the subject. Wisconsin St. § 944.17, on the other hand, permits imprisonment up to five years. The recommended section increases the penalty where the act occurs in the presence of another. This, it is believed, meets more directly the purpose of the criminal law in penalizing these reprehensible acts.

609.31 Sexual Intercourse with Child

Whoever has sexual intercourse with a female child under the age of 18 years and not his spouse may be sentenced as follows:

(1) If the child is under the age of ten years, to imprisonment for not more than 30 years; or

(2) If the child is ten years of age but under the age of 14 years, to imprisonment for not more than 20 years; or

(3) If the child is 14 years of age but under the age of 16 years, by imprisonment for not more than five years; or

(4) If the child is of the age of 16 years or over, and is not a prostitute, by imprisonment for not more than one year or to payment of a fine of not more than $1,000, or both.

COMMENT

This will supersede Minn.St. § 617.02. A new category has been added; namely, from the age of 16 to 18 years of age. This now becomes a gross misdemeanor rather than a felony carrying seven years imprisonment as is the case under present law.

Also in the first clause maximum imprisonment has been reduced from life imprisonment to 30 years. The prospect of a life sentence in this state would appear to invite murder of the victim since no greater sentence could be imposed. Punishment in Clause (2) has been reduced from 30 years to 20.

It is felt that the current penalties for violation of this statute in the case of the older age group are too severe. Consent of the girl is no defense in these cases. If the act is committed upon the child without her consent it becomes a case of rape under section 609.29. Some states have introduced qualifications such as the immaturity of the boy or the lack of chastity of the girl. These are not recommended in view of the possible difficulties of proof that such questions might introduce. The qualification has been added, however, that the 16 to 18 year old girl must not be a prostitute.

Minn.St. § 617.03 relating to the physical ability of the defendant when under the age of 14 will be superseded and is sufficiently covered by the recommended section. Physical ability goes to the commission of the act and would be relevant in any event for that purpose.

Minn.St. § 617.04 makes it a 30 year felony to compel a woman against her will to marry him or another or to be defiled.

This section will be superseded. Insofar as it relates to "defiling" it is sufficiently covered by the rape and sodomy sections recommended. Insofar as it deals with compelling marriage it is sufficiently covered by the recommended extortion provisions, § 609.27. See also recommended § 609.265 on abduction.

609.315 Indecent Liberties with Child

Whoever takes indecent liberties with any child under the age of 16 or induces such child to perform an indecent act may be sentenced as follows:

(1) If the child is under the age of 14 years, by imprisonment for not more than five years; or

(2) If the child is 14 years or over, to imprisonment for not more than one year.

COMMENT

This offense covers activities falling short of intercourse, normal or abnormal, but which have for their purpose the arousal or gratification of sexual desire. The present Minnesota statute, § 617.08, covers adult women, female children and male children as the objects of protection. Children under the age of 16 are designated. This revision divides the subject up into two categories; namely, (1) those involving adults which is covered by recommended § 609.225; and (2) the recommended section above dealing with children. Minn.St. § 617.08 will be superseded.

The above recommended section follows in general the distinction made in this revision in carnal knowledge cases with respect to age and avoids imposing a felony conviction upon the older age group.

It is at the older age levels that abuse of the law is most likely to occur. State v. Rolfe, 1922, 151 Minn. 261, 186 N.W. 574, is a significant example in which the Supreme Court saved the defendant from a conviction.

It will be noted that in all of the categories consent of the victim is immaterial.

609.32 Fornication

When any man and single woman openly have sexual intercourse with each other, each is guilty of fornication and may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100.

COMMENT

Except for adding the words "openly" this follows Minn.St. § 617.16.

The reasons for the recommendation are well stated by the American Law Institute, Draft 4, page 204, as follows:

"At the present time 11 of the 48 states have no fornication statute, and only 18 punish a single act of intercourse between unmarried persons (four of these by fine alone). The rest of the states require either a continuous or an 'open and notorious' relationship, or both. Fornication is not criminal in England or, generally speaking, in the rest of the world. If a married person is involved, the number of American states punishing a single act of illicit intercourse rises to 30 (four of these by fine alone).

"American penal laws against illicit intercourse are generally unenforced . . . There is some indication that these laws, like

other dead letter statutes, may lend themselves to discriminatory enforcement, e. g., where the parties involved are of different races, or where a political figure is involved. . . .

"Pre-marital intercourse is also very common and widely tolerated, so that prosecution for this offense is rare. Criminal complaints are frequently filed solely as a means of compelling the putative father to provide support for the mother and child. A substantial number of convictions of fornication occur in the course of rape prosecutions, where the possibility of conviction of the lesser offense offers an opportunity for prosecution and defense to bargain for a plea of guilty, or for the jury to reach a compromise verdict when there is reason to believe that the woman may have consented.

"The Code does not attempt to use the power of the state to enforce purely moral or religious standards. We deem it inappropriate for the government to attempt to control behavior that has no substantial significance except as to the morality of the actor. Such matters are best left to religious, educational and other social influences." *

609.325 Seduction

Subdivision 1. Acts Constituting. Whoever under promise of marriage not intended to be performed causes an unmarried female of previous chaste character to yield in reliance thereon to sexual intercourse is guilty of seduction and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than $1,000, or both.

Subd. 2. Testimony Required. No conviction shall be had hereunder upon the uncorroborated testimony of the female seduced.

Subd. 3. When Prosecution Barred. Prosecution under this section is barred by:

(1) The subsequent marriage of the parties to each other; or

(2) The failure to commence prosecution of the offense within two years after the commission of the offense.

COMMENT

This section contains the substance of and will supersede Minn.St. § 617.07 which, however, permits a maximum five year imprisonment sentence.

It is the sense of the Advisory Committee that there is no substantial need for this offense. It is open to use for purposes of extortion and the trend is toward its elimination. It has been retained in this revision because of its long recognized existence and in the belief that its elimination should have independent legislative consideration.

Wisconsin eliminated a similar section. The offense does not appear in the recent Illinois revision.

609.33 Leaving State to Evade Establishment of Paternity

Whoever with intent to evade proceedings to establish his paternity leaves the state knowing that a woman with whom he has had sexual intercourse is pregnant or has given birth within the previous 60 days to a living child may be sentenced to imprisonment for not more than two years or to payment of a fine of not more than $2,000, or both.

COMMENT

This supersedes Minn.St. § 617.17 without change in substance.

609.335 Prostitution

Subdivision 1. Definitions. (1) "Prostitution" means engaging for hire in sexual intercourse, or sodomy as defined in section 609.30 subdivision 1.

(2) A "place of prostitution" is a house or other place where prostitution is practiced or from which prostitution is promoted.

Subd. 2. Acts Prohibited. Whoever intentionally does any of the following may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than $10,000, or both:

(1) Solicits or induces another under the age of 18 years to practice prostitution; or

(2) Being a parent, guardian, or other custodian of the person of a female under the age of 18 years consents to her being taken or detained for the purposes of prostitution.

Subd. 3. Other Acts Prohibited. Whoever intentionally does any of the following may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than $5,000, or both:

(1) Keeps a place of prostitution; or

(2) Leases or otherwise permits premises owned by him or under his control to be used as a place of prostitution; or

(3) Solicits or induces another over the age of 18 years to practice prostitution; or

(4) Solicits another under the age of 18 years to have sexual intercourse or to commit sodomy with a prostitute or admits him to a place of prostitution; or

(5) As a prostitute engages in an act of sexual intercourse or sodomy with another under the age of 18 years; or

(6) Transports a prostitute from one place of prostitution within the state to another such place within or without the state, or brings a prostitute into the state, for the purpose of prostitution.

Subd. 4. Further Acts Prohibited. Whoever intentionally does any of the following may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than $1,000, or both:

(1) Engages in prostitution; or

(2) Is supported in whole or in part by the earnings of a prostitute; or

(3) Solicits, directs, takes, or transports another to a prostitute or place of prostitution, or brings a prostitute to him, for the purpose of sexual intercourse or sodomy with a prostitute.

COMMENT

The present statutes on this subject constitute a maze of confusion and overlapping. The following sections deal with the subject in whole or in part:

§ 617.05:

This deals with abduction. Clauses (1), (2), and (3) deal in part with taking or enticing a female or minor female into houses of prostitution. See section reproduced in Comment to § 609.265.

§ 617.06:

This punishes bringing any female person into the state for like purposes or inducing a female in this state to enter a house of prostitution. The section imposes a maximum of ten years imprisonment.

§ 617.09:

This prohibits soliciting any boy under 18 to visit a house of prostitution or directing him thereto or arranging any meeting for such purpose and makes the crime a felony carrying five years imprisonment.

§ 617.10:

This imposes a seven year felony consequence upon a keeper of any house of prostitution who admits a boy of 18 into the house and upon any female inmate who cohabits with such boy.

§ 617.30:

This makes it a felony to keep a house of prostitution. It also makes it a misdemeanor to keep a disorderly house or to let a building to be used for any purpose specified in the section.

§ 617.31:

This prohibits holding a female to pay any debt incurred in a house of prostitution and provides for two years maximum imprisonment. This is in substance a kidnapping or false imprisonment crime and will be covered by recommended §§ 609.25 or 609.255.

§ 617.32:

This prohibits receiving support or maintenance from the earnings of a prostitute with a maximum punishment of three years imprisonment.

§ 617.325:

This prohibits transporting a person for the purpose of prostitution. It also prohibits the prostitute turning over her earnings to another for her support. The former is made a felony, the latter a gross misdemeanor.

All of these sections will be superseded, but major changes from present law have not been made.

Subdivision 1, (1): There is presently no definition of prostitution. Present law probably does not require that the act be for hire. See State v. Marsh, 1924, 158 Minn. 111, 196 N.W. 930. The requirement has been included since the prevention of commercial vice is the principal objective of the statutes. The term "for hire" was selected as appropriate to cover the kind of case contemplated. It would not include cases where a man bought a fur coat or other article for a woman with whom he had improper relations.

Subd. 1, (2): There is presently no corresponding provision. The term "place" contemplates not merely a building but any location where prostitution is practiced.

Subd. 2, (1): This appears in Minn.St. § 617.05, (1), but with punishment limited to five years or a fine of $1,000, or both.

Subd. 2, (2): This now appears as Clause (4) of Minn.St. § 617.05.

Subd. 3, (1): This will supersede Minn.St. § 617.30. However, the words "or for any other lewd, obscene, or indecent purpose" have not been included. This, it is believed, will be adequately covered by recommended § 609.34 dealing with disorderly houses. Minn.St. § 617.30 now makes the offense a felony with seven years imprisonment and $1,000 penalty.

Subd. 3, (2): The present statute, Minn.St. § 617.30, creates this offense only with respect to disorderly houses. As such, the offense is only a gross misdemeanor.

The American Law Institute Draft makes it only a misdemeanor. The Wisconsin Code follows the above recommendation in § 944.34.

Subd. 3, (3): Equivalent provisions appear in Minn.St. § 617.05. However, the permissible sentence is increased from five to ten years where the person solicited is under 18. This corresponds with Wisconsin St. § 944.32. See also Minn.St. § 617.06, a portion of which deals with this subject and fixes the penalty up to ten years, without regard to age.

Subd. 3, (4) & (5): These clauses incorporate the substance of Minn. St. §§ 617.09 and 617.10.

Subd. 3, (6): This represents some expansion of the corresponding portions of Minn.St. § 617.06 so as to apply to transportation of a prostitute within the state as well as bringing a prostitute into the state. It would appear just as serious to transport a prostitute from Duluth to Minneapolis as from Superior, Wisconsin to Minneapolis or Duluth.

Subd. 4, (1): There appears to be no general provision of this kind in the present statutes. The act of prostitution is only fornication.

Wisconsin St. § 944.30 contains a similar provision with about the same punishment.

The words "engages in prostitution" encompasses the more recent devices of prostitution known as "call girls" or "B-girls." The present language "inmates of any house of ill-fame or assignation," see Minn. St. §§ 617.09 and 617.10, might not cover this type of practice.

Subd. 4, (2): This supersedes Minn.St. § 617.32 but with the penalty reduced from three years to one year. Wisconsin imposes a ten year penalty in § 944.33. The American Law Institute Draft makes it a misdemeanor. Minn.St. § 617.32 contains no monetary penalty.

Subd. 4, (3): This incorporates the first subdivision of Minn.St. § 617.325, but it is somewhat more restrictive. The words "for the purpose of" is substituted for "with knowledge that the purpose of such directing" etc.

The latter phrase would appear to cover the cab driver who is told by the passenger of his intention to engage a prostitute but the cab driver does no more than take him to his destination. The proposed language would require that his purpose in taking him there is to further the act of prostitution.

Minn.St. § 617.325 makes the offense a five year felony. The Wisconsin Code makes it a misdemeanor in § 944.33. So also does the Draft of the American Law Institute, § 207.12, Subd. 2, (f).

No provision has been included in this revision corresponding to Subd. 2 of Minn.St. § 617.325, making it unlawful for a prostitute to turn over her earnings to another "for his or her" support. The section is not clear on whether the support intended is that of the prostitute as well as the receiver. Since the act of prostitution is now sufficiently covered by Clause (1) of this recommended subdivision, it unnecessarily multiplies the crimes to punish also the use of the earnings by the prostitute. Receiving support from the earnings of a prostitute is covered by Clause (2).

609.34 Disorderly House or Place of Public Resort

Whoever does either of the following may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than $1,000, or both:

(1) Keeps a disorderly house, or place of public resort, whereby the peace, comfort, or decency of a neighborhood is habitually disturbed; or

(2) Being the owner or in control of any premises, intentionally leases or otherwise permits them to be so used.

COMMENT

This incorporates the second subdivision of Minn.St. § 617.30 and provides the same penalty.

609.345 Abortion

Subdivision 1. Definition. In this section "unborn child" means embryo or fetus of a human being from the time of conception until it is born alive.

Subd. 2. Acts Constituting. Any person, other than the mother, who intentionally destroys the life of an unborn child other than a quick child is guilty of abortion and may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than $3,000, or both.

Subd. 3. Further Acts Constituting. Any person, other than the mother, who does either of the following may be sentenced to imprisonment for not more than 15 years or to payment of a fine of not more than $15,000, or both:

(1) Intentionally destroys the life of an unborn quick child; or

(2) Causes the death of the mother by an act done with intent to destroy the life of an unborn child.

Subd. 4. Acts Constituting; By Pregnant Woman. Any pregnant woman who intentionally destroys the life of her unborn child or who consents to such destruction by another may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than $1,000, or both.

Subd. 5. Manufacturing or Distributing Means for. Whoever manufactures or distributes any instrument, drug or other substance with intent that it shall be used as a means to destroy an unborn child contrary to the provisions of this section may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than $1,000, or both.

Subd. 6. Therapeutic Abortion; When Justified. A therapeutic abortion is justified if:

(1) It is performed by a licensed physician; and

(2) Unless an emergency prevents, it is performed in a licensed hospital; and

(3) Any of the following conditions exist:

(a) The pregnancy resulted from sexual intercourse in violation of sections 609.29, 609.295, or 609.365 and a complaint has been filed with the appropriate prosecuting authorities charging such violation; or

(b) The abortion is necessary, and two additional licensed physicians so advise, to save the life of the mother, or to avoid

grave impairment of the physical or mental condition of the mother or to prevent the birth of a child with grave physical or mental defect.

COMMENT

This subject has been given extensive consideration by the American Law Institute. They have summarized their findings and views in Draft 9, p. 147 as follows:

"The salient features of American experience under relatively severe repressions of abortion may be summarized as follows:

"(1) Estimates of the yearly number of abortions vary from 333,000 to 2,000,000, of which the proportion of illegal abortions has been put at anywhere from 30% to 70%.

"(2) 8,000 women die annually as a result of abortion, according to one authority, basing his estimate as of 1935 on approximately 700,000 abortions a year and a death rate of 1.2%.

"(3) In contrast to the abortion mortality rate of over 1% in the United States, the Russians are said to have achieved a rate as low as one-hundredth of 1% during the period of liberal abortion, performed by skilled physicians under aseptic hospital conditions.

"(4) 90 to 95% of pre-marital pregnancies are aborted; but the illegal abortion problem is not primarily a problem of the unmarried. The vast majority of all abortions equalling 90% occur among married pregnant women, especially those between 25 and 35 years of age who have had several children.

"(5) Over half the illegal abortions are performed by physicians, one-fifth by midwives, about one-fourth by the mother. Many physicians who, out of moral scruple or caution, do not perform illegal abortions, do not hesitate to refer cases to less inhibited colleagues.

"(6) A majority of hospitals in one state recently surveyed acknowledged that they permit therapeutic abortions in certain situations not recognized as legal justification under the law of the state.

"Abortion is opposed by some on the ground of physical or psychic danger to the woman, or as an inhibitor of population growth. But it is clear that the main factor accounting for laws against abortion is ethical or religious objection. As the fetus develops to the point where it is recognizably human in form (4–6 weeks), or manifests life by movement perceptible to the mother ('quickening:' 14–20 weeks), or becomes 'viable,' i. e., capable of surviving though born prematurely (24–28 weeks), it increasingly evokes in the greater portion of mankind a feeling of sympathy as with a fellow human being, so that its destruction comes to be regarded by many as morally equivalent to murder. Moreover, abortion is opposed by many on moral grounds not directly related to the homicidal aspects. For some it is a violation of the divine command to be fruitful from which has been inferred also the sinfulness of homosexuality, contraception, masturbation, and in general all sexuality which is 'unnatural' in the sense of not being procreative. Furthermore, legalizing abortion would be regarded by some as encouraging or condoning illicit intercourse, although this factor can hardly be a significant influence on the rate of illicit sexuality in a society where contraceptives offer reasonable assurance against need for the unpleasant and expensive prospect of abortion. Finally, discussion of abortion techniques, with its necessary reference to female sex organs, becomes for some a shocking violation of the conventions of communication, to be dealt with as 'obscenity.'" *

A more recent examination of the subject appears in Levy & Kummer, "Criminal Abortion: Human Hardship and Unyielding Laws," 35 So.Cal.L.Rev. 123, 1961. One of the authors is a former deputy district attorney of Los Angeles County; the other a psychiatrist at the University of California at Los Angeles. Some of the observations made by the authors follow: *

"Most people react with amazement and disbelief when confronted with the mounting evidence suggesting that one out of every five pregnancies in this country terminates in illegal abortion. Difficult as it is to accumulate statistics in this area, a surprising similarity has been noted in various studies independently made within the last 30 years. If the general trend observed is accepted, without becoming sidetracked in disputes of exact numbers or methodology, consider the probability that more than one million criminal abortions will have been performed in the United States in 1962, and more than 5,000 women may have died as a direct result. In addition, the amount of human suffering at the hands of unskilled abortionists is inestimable."

The authors also point out that in the Scandinavian countries abortions are permitted to avoid serious danger to the life or health of the mother and in cases of pregnancies resulting from rape, incest, or in the case of young girls or mentally defective women; that even broader authorization is given in the Eastern European countries and that abortion has been used as a means of birth control in Japan since 1948. They conclude: "It appears that cautious relaxation of the restrictive law alone may not substantially reduce the operations of unskilled abortionists, let alone eliminate the problem, for as long as there exists any restrictions at all, there will be women with unwanted pregnancies who cannot qualify for lawful abortion yet are determined not to bear their children. But this is certainly no reason for rejecting an attempt to relieve human hardship in extreme situations, with which most of society and the medical profession are in agreement, nor for abandoning other approaches at preventing widespread suffering at the hands of unskilled persons."

They refer also to a resolution in 1960 of the Los Angeles County Grand Jury urging a liberalization of the California abortion laws along the lines suggested in this revision. They themselves approve of legislation of this character.

The authors support their thesis by extensive citation of legal and medical authorities.

The present Minnesota statutes have been in existence since 1886 and were taken from the New York Penal Code of 1881. There were, of course, statutes prohibiting abortions prior to these dates.

The principal statute, Minn.St. § 617.18, makes the prescription of a drug and so forth or the use of an instrument with intent to produce a miscarriage "unless the same is necessary to preserve her life or that of the child with which she is pregnant," the crime of abortion, with imprisonment up to four years or one year in a county jail.

Minn.St. § 617.19 applies to such acts by the pregnant woman herself with possible imprisonment up to four years.

Minn.St. § 617.20 makes it a felony to make or distribute means for producing an abortion.

Minn.St. § 617.16 makes it a manslaughter in the first degree to "wilfully" kill an unborn quick child or cause the death of the mother

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or the quick child in attempting an abortion. Under Minn.St. § 619.19 similar acts by the mother causing death of a quick child are made manslaughter in the second degree.

Minn.St. § 617.21 provides immunity to witnesses testifying.

These several Minnesota sections will be superseded by the recommended sections.

Subdivision 1: This makes clear that the section applies to all stages of pregnancy.

Subd. 2: This requires destroying the life of an unborn child. Minn.St. § 617.18 makes the use of a drug or instrument alone sufficient. Such acts, however, would constitute attempts to commit abortion and punishable as such under recommended § 609.17. This was the policy pursued in Wisconsin St. 940.04.

Subd. 3: This is in substance the same as Minn.St. § 619.16 but with the penalty changed to 15 years imprisonment or $15,000, or both. Under present statutes the maximum penalty is 20 years imprisonment.

Subd. 4: This will supersede Minn.St. § 617.19 dealing with the mother's attempt to abort and Minn.St. § 619.19 dealing with her causing the death of an unborn quick child. Punishment, however, is reduced from 15 years now specified in § 619.19, and four years in § 617.19. Cases against pregnant women are rarely prosecuted but it is desirable, nevertheless, to make an abortion, self-induced or otherwise, a crime on her part in order to secure her cooperation in cases where prosecution is directed against the abortionist.

Subd. 5: This supersedes Minn.St. § 617.20 with punishment reduced to one year. The American Law Institute recommendation makes the offense a misdemeanor only. This subdivision will also supersede Minn.St. § 617.25 which, in part, deals with the distribution of drugs or instruments or articles to cause unlawful abortions.

Subd. 6: This subdivision extends the situations, under carefully prescribed conditions, in which an abortion is authorized. This follows the recommendations of the American Law Institute Draft, § 207.11, (2). Minn.St. § 617.18 limits the authorization to cases where the abortion "is necessary to preserve her life, or that of the child with which she is pregnant." The reasons for the change are outlined above.

The requirement of the complaint being filed is intended to assure against false charges of rape or incest being made.

609.35 Concealing Birth

Whoever conceals the birth of a child by the disposition of its dead body, whether death occurred before or after its birth, may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100.

COMMENT

This will supersede the first portion of Minn.St. § 617.22 without change in substance. The remainder of § 617.22 deals with increased punishment on later convictions where the child is illegitimate. This subject is left to recommended § 609.155, dealing with habitual offenders.

CRIMES AGAINST THE FAMILY

609.355 Bigamy

Subdivision 1. Definition. In this section "cohabit" means to live together under the representation or appearance of being married.

Subd. 2. Acts Constituting. Whoever does any of the following is guilty of bigamy and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than $5,000, or both:

(1) Contracts a marriage in this state with knowledge that his prior marriage is not dissolved; or

(2) Contracts a marriage in this state with knowledge that the prior marriage of the person he marries is not dissolved; or

(3) Cohabits in this state with a person whom he married outside this state with knowledge that his own prior marriage had not been dissolved or with knowledge that the prior marriage of the person he married had not been dissolved.

COMMENT

This will supersede Minn.St. § 617.11 with the following changes:

(1) The recommended section requires knowledge of the prior marital status. This is in keeping with the general principles of criminal law that a criminal intent should be present. Wisconsin has made a similar change. Divorces are widespread and, particularly when obtained in a foreign state, their validity is frequently uncertain. The present law makes felons out of a large segment of our population who are genuinely trying to obey the law.

(2) Since knowledge of the prior marriage is required, the exceptions in Minn.St. § 617.11 have not been included.

Clause (3) of Subd. 2 clarifies the situation where the second marriage occurs outside the state but cohabitation occurs within the state. Subdivision 1 makes it unnecessary to prove sexual intercourse to establish cohabitation.

Clause (2) supersedes Minn.St. § 617.12 to the same effect.

The period of imprisonment remains the same as under present statutes but the fine has been added.

609.36 Adultery

Subdivision 1. Acts Constituting. When a married woman has sexual intercourse with a man other than her husband,

whether married or not, both are guilty of adultery and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than $1,000, or both.

Subd. 2. Limitations. No prosecution shall be commenced under this section except on complaint of the husband or the wife, except when such husband or wife is insane, nor after one year from the commission of the offense.

Subd. 3. Defense. It is a defense to violation of this section if the marital status of the woman was not known to the defendant at the time of the act of adultery.

COMMENT

Minn.St. § 617.15, which the recommended section supersedes, limits the crime to cases of sexual intercourse with a married woman. The crime does not extend to intercourse where only the man is married.

There was disagreement within the Advisory Committee concerning the extension of the crime to the latter situation. Wisconsin St. § 944.16 extends it to both cases. So does Illinois § 11–7, but it also requires that the adultery be "open and notorious."

While a majority of the Committee felt that the Minnesota law should be similarly extended it was decided not to recommend the change in this revision. The only change in the recommended section is to require knowledge of the marital status.

It is noted that while the offense appears to be comparatively widespread there are few prosecutions. The American Law Institute recommends that adultery not be made a crime other than the crime of fornication.

The penalty has been reduced from two years or $300 to one year or $1,000, or both.

609.365 Incest

Whoever has sexual intercourse with another nearer of kin to him than first cousin, computed by rules of the civil law, whether of the half or the whole blood, with knowledge of the relationship, is guilty of incest and may be sentenced to imprisonment for not more than ten years.

COMMENT

This will supersede Minn.St. § 617.13 without change in substance except to add the requirement of knowledge of the relationship. The portion of Minn.St. § 617.13 granting immunity to persons testifying is covered by the recommended general immunity statute, § 609.09.

609.37 Definition

As used in sections 609.375 and 609.38, "child" means a child under the age of 16 years who is in necessitous circumstances

and includes such child born out of wedlock whose paternity has been duly established.

609.375 Abandonment of Child or Wife

Subdivision 1. Acts Constituting. Whoever does any of the following with intent to continue the same indefinitely is guilty of abandonment of child or wife, as the case may be, and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than $5,000, or both:

(1) Deserts and fails to provide care and support to his child who is in his custody or of whom he is entitled to have custody; or

(2) Fails, when able, to provide care and support to his child pursuant to court order, whether or not the custody of the child has been granted to another; or

(3) Deserts and fails to provide care and support to his pregnant wife who is in necessitous circumstances or fails to provide such care and support when so ordered by a court in an action between them.

Subd. 2. Evidence of. Desertion or failure to provide care and support for a period of three months is sufficient evidence to sustain a finding of intention to continue the same indefinitely.

COMMENT

Minn.St. § 617.55 imposes a felony liability with imprisonment up to five years for desertion of a child or pregnant wife.

This section has been repeatedly amended over the years. Originally in 1886, it was confined to children. Later "wife" was added. In 1915, this was amended to make it "pregnant wife." It may be noted that, in 1921, New York adopted an act limited to "pregnant wives in destitute or necessitous circumstances."

The section was construed in State v. Clark, 1921, 148 Minn. 389, 182 N.W. 452, as it relates to children. The key words were then "who deserts and fails to care for and support such child with intent wholly to abandon him." The court defined the offense as follows:

"The offense consists of three elements: (1) Desertion of the child; (2) the failure to care for and support it; (3) an intent wholly to abandon it. The words 'desert' and 'abandon' are not generally understood to be synonymous. As used in the statute, they evidently do not mean the same thing. There is a desertion when a father quits the society of his children and renounces the duties he owes them. . . .

"We think there is an abandonment when the desertion is accompanied by an intention to entirely forsake the child. There must be an intention to sever the parental relation and wholly throw off all obligations that spring from it. . . . Defendant's long continued absence, his neglect of his children, and especially his bigamous mar-

riage, entitled the jury to find that his desertion was accompanied by an intent wholly to abandon and cast off his children."

The word "desert" was later deleted as it applied to children but has been left in as it applies to pregnant wives.

In State v. Lindskog, 1928, 175 Minn. 533, 221 N.W. 911, the non-support statute was held not to apply to illegitimate children. In consequence, not the non-support statute Minn.St. § 617.56 but Minn.St. § 617.55 was amended to include them. See Reilly v. Shapiro, 1936, 196 Minn. 376, 381, 265 N.W. 284, 287.

In 1953 the word "wholly" was left out in the phrase "intent to wholly abandon."

In State v. Sweet, 1929, 179 Minn. 32, 228 N.W. 337, it was held that the abandonment statute, Minn.St. § 617.55, did not apply if the child had been given by divorce decree to the mother.

In Laws 1931, Minnesota Chapter 94, the words "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" were added.

In Laws 1951, the second "father" was changed to "parent" and the following words were also added: "or in a neglect, delinquency or dependency proceeding for his or her child in juvenile court."

In this statutory development the underlying principles of the offense have become confused.

Originally, as taken from New York, the section was limited to children and what was required was that he "deserts the child in any place." Penal Code § 246. Referring to People v. Joyce, 1906, 112 A.D. 717, 98 N.Y.S. 863, holding it not a crime when children are left with the mother and the father fails to support them, the court in State v. Clark, 1921, 148 Minn. 389, 182 N.W. 452, stated:

"It was thought that these words indicated a legislative intent to punish a parent who left his child in a place where there was no one to care for it as, for example, on a highway or in an unoccupied building, intending to leave it there exposed to physical danger."

The words "in any place" were later removed. The word "deserts" has been retained with respect to wives but not with respect to children.

The court in State v. Clark, 1921, 148 Minn. 389, 182 N.W. 452, as indicated in the quotation above, construed "deserts" as "when a father quits the society of his children and renounces the duties he owes them."

This assumes that he has the society of the children. But under later amendments, cases are now encompassed where he no longer has the custody of the children through court order. How desertion is to be distinguished from "abandonment" which he must intend is also difficult to comprehend. Hence, it is believed that a re-examination of the underlying principles is required and their statement incorporated in the recommended statute.

There are three general categories which the present statute is intended to cover. (1) Cases of the parent who has custody of the children. Here an element of leaving them as well as failing to support them is contemplated. (2) The case of the pregnant wife which involves similar elements. (3) Cases where the parent does not have custody of the child, but is required by court order to support it.

In the first two categories, the requirement of leaving them as well as not supporting them is appropriate. It is not, however, with respect to the third. The element of intent to abandon is believed to involve the element of intention to continue with desertion and non-support indefinitely. The recommended section has accordingly been drawn along these lines.

Subdivision 1, (1) & (2): Imprisonment has been reduced from seven to five years but the fine is increased. The words "when able" were not included in Clause (1) since the concept of "deserts" encompasses this.

Specific reference to divorce or juvenile court proceedings was not made. The general clause at the end of (2) encompasses them as well as others. Thus, it is believed not uncommon, in habeas corpus proceedings between two quarrelling spouses over custody of a child, to adjudicate the custody in the wife and order the husband to make payments. This is not presently covered.

The phrase in present § 617.55 "or other person having legal responsibility for the care or support of a child" was not included since it is believed that abandonment cases other than in the case of parents are rare. Juvenile court proceedings would sufficiently protect the interests of the child in such cases.

Subdivision 1, (3): The portion reading "fails to provide such care and support when so ordered by a court in an action between them" is not presently in the Minnesota statutes. The purpose of the statute is believed to be equally to cases of this kind.

Subd. 2: This is suggested by the last sentence of Minn.St. § 617.55 but the element of presumption has been eliminated in view of State v. Higgin, 1960, 257 Minn. 46, 99 N.W.2d 902, holding that a statute cannot in a criminal case create a presumption of a required criminal intent.

609.38 Non-Support of Child or Wife

Subdivision 1. Acts Constituting. Whoever is legally obligated and able to provide care and support to any of the following persons and intentionally fails to do so is guilty of non-support of a child or wife, as the case may be, and may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100:

(1) His wife who is in necessitous circumstances; or

(2) His child, whether or not its custody has been granted to another.

Subd. 2. Order for Support and Bond. Upon conviction, the court may provide by order for the care and support of such child or wife for a period not to exceed five years, require bond or other security to the state to secure performance thereof, and suspend sentence or execution thereof, conditioned upon compliance with such order.

Subd. 3. Enforcement of Order; Recovery on Bond. If, upon order to show cause duly made, the court finds that an order made pursuant to subdivision 2 has been violated, the suspension may be revoked and sentence imposed or executed, and the obligors of such bond or security shall become liable pursuant to the terms thereof, and, with leave of the court, the wife, or child, or any public agency which furnished care or support to such wife or child while such order for care and support was in force, may recover thereon.

COMMENT

This is primarily a rewording of Minn.St. § 617.56 which will be superseded.

The words "other security" have been added to "bond." The words "necessitous circumstances" have been substituted for the word "destitute." It is believed less rigorous in its requirements and is commonly found in other states.

The requirement of the ability to pay is implicit in Minn.St. § 617.56 under the term "wilful." See State v. Thurmas, 1951, 233 Minn. 153, 46 N.W.2d 258.

Subd. 3 clarifies who may bring suit on the bond. Unlike present § 617.56, suit is limited to the wife, child, or public agency as indicated. The present section authorizes any person furnishing food, shelter, and so forth to sue on the bond and leave is not required.

Repeal Recommended

It is recommended that the following sections be repealed:

§ 617.53:

This provides that in a prosecution for desertion or nonsupport the proof sufficient in a civil action shall prevail. It is believed that no exception should be made in these cases to the rule prevailing in all criminal cases that proof must be beyond a reasonable doubt.

§ 617.57:

This authorizes a justice of the peace or judge of a municipal court, upon complaint being made, to issue a warrant directed to the sheriff or constable to bring the defendant before the court. It is believed that this is but a duplication of the authority now possessed under Minn.St. §§ 629.41 and 629.42, applicable to criminal offenses generally.

CRIMES AGAINST THE GOVERNMENT

609.385 Treason

Subdivision 1. Definition. "Levying war" includes an act of war or an insurrection of several persons with intent to prevent, by force and intimidation, the execution of a statute of the state,

or to force its repeal. It does not include either a conspiracy to commit an act of war or a single instance of resistance for a private purpose to the execution of a law.

Subd. 2. Acts Constituting. Any person owing allegiance to this state who does either of the following is guilty of treason against this state and shall be sentenced to life imprisonment:

(1) Levies war against this state; or

(2) Adheres to the enemies of this state, giving them aid and comfort.

Subd. 3. Testimony Required. No person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on his confession in open court.

COMMENT

This and the following recommended sections on treason incorporate the existing provisions of the Minnesota Constitution, Art. I, § 9 and Minn.St. §§ 612.01, 612.02, and 612.03. The statutory provisions will be superseded.

Subdivision 1: This incorporates the substance of Minn.St. § 612.03. The words "in general" after the word "prevent" were not included since the point is sufficiently covered by the last sentence of recommended Subdivision 1.

Subds. 2 and 3: These incorporate the provisions of Minnesota Constitution, Art. I, § 9. The words "owing allegiance to this state" are new but are obviously implicit in the former provisions.

609.39 Misprision of Treason

Whoever, owing allegiance to this state and having knowledge of the commission of treason against this state, does not, as soon as may be, disclose and make known the same to the governor or a judge of the supreme court or of the district court, is guilty of misprision of treason against this state and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than $5,000, or both.

COMMENT

This follows the wording of Minn.St. § 612.02 except the word "conceals" was not included. It is sufficiently covered by the words "does not disclose."

It will be noted that the section is limited to acts against the state. This will avoid the constitutional problem raised in Penn. v. Nelson, 1956, 76 S.Ct. 477, 350 U.S. 497, 100 L.Ed. 640, holding that the Federal government has taken over the field within its domain and the state cannot therefore legislate on the same subject.

609.395 State Military Forces; Interfering with, Obstructing, etc.

Whoever, when the United States is at war, does either of the following may be sentenced to imprisonment for not more than 20 years or to payment of a fine of not more than $20,000, or both:

(1) Intentionally makes or conveys false reports or statements with intent to interfere with the operation or success of the military or naval forces of this state; or

(2) Intentionally causes or incites insubordination, disloyalty, mutiny, or refusal of duty in the military or naval forces of this state, or obstructs the recruiting or enlistment service of this state.

COMMENT

This will supersede Minn.St. §§ 612.06, 612.07, and 612.09. Section 612.06 makes it unlawful to convey false reports or statements with intent to interfere with the operation of the military forces of the United States or the state or to obstruct the sale of U. S. bonds or other U. S. securities. Section 612.07 makes it unlawful to cause or incite insubordination, disloyalty, mutiny, or refusal of duty in the military or naval forces of the United States or of this state, or wilfully to obstruct or attempt to obstruct the recruiting or enlistment service of the United States or of this state.

These sections were largely copied from the Federal statutes enacted in 1917 and 1918 and extended to the state. These Federal statutes are now incorporated in the Smith Act, U.S. Tit. 18, Sec. 2387(a) and Sec. 2388(a).

In Penn. v. Nelson, 1956, 76 S.Ct. 477, 350 U.S. 497, 100 L.Ed. 640, it was held that the Smith Act superseded the Pennsylvania Act on sedition. To avoid a similar constitutional objection, recommended § 609.395 is limited to state military forces.

Insofar as the present Minnesota sections deal with attempts, the point is covered by the recommended general attempts provision, § 609.17.

No provision has been made with respect to the sale of U. S. bonds since this is fully covered by Federal statutes, 40 U.S.Statutes, Chapter 75.

Repeal Recommended

§ 612.08:

This makes it unlawful to express any disloyal, profane, scurrilous, or abusive language about the form of government or the constitution, or the military or naval forces, or the flag, or the uniform of the army or navy, or any language intending to bring these matters into contempt, scorn, etc., or to incite resistance to the U. S. or the state or to promote the cause of the enemy or to display the flag of an enemy or which will curtail production in this country.

This section is almost a verbatim copy of 40 U.S.Statutes, Chapter 75 extended to the state. It is probably invalid under the Nelson decision, 76 S.Ct. 477, 350 U.S. 497, 100 L.Ed. 640, in which the

statute held invalid applied to acts of disloyalty against the state as well as the United States.

The present Smith Act purports to cover disloyalty to the state as well as to the United States. See U.S. Tit. 18, Sec. 2385.

§§ 612.10, 612.11, & 612.12:

These sections impose restrictions on aliens with respect to firearms or explosives. They were enacted in 1917 and in view of the extensive control of aliens by the Federal government, which probably override these sections, it is recommended that they be repealed.

609.40 Flags

Subdivision 1. Definition. In this section "flag" means anything which is or purports to be the Stars and Stripes, the United States shield, the United States coat of arms, the Minnesota state flag, or a copy, picture, or representation of any of them.

Subd. 2. Acts Prohibited. Whoever does any of the following may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100:

(1) Intentionally and publicly mutilates, defiles, or casts contempt upon the flag; or

(2) Places on or attaches to the flag any word, mark, design, or advertisement not properly a part of such flag or exposes to public view a flag so altered; or

(3) Manufactures or exposes to public view an article of merchandise or a wrapper or receptacle for merchandise upon which the flag is depicted; or

(4) Uses the flag for commercial advertising purposes.

Subd. 3. Exceptions. This section does not apply to flags depicted on written or printed documents or periodicals or on stationery, ornaments, pictures, or jewelry, provided there are not unauthorized words or designs on such flags and provided the flag is not connected with any advertisement.

COMMENT

This will supersede Minn.St. § 614.36. The recommended section follows substantially Wisconsin St. 946.06, which in turn adopted the substance of the uniform act on the subject.

Clause (4) of Subd. 2 does not prevent the giving away of flags to customers of a business enterprise as a patriotic gesture.

Reference to the use by the Red Cross of a flag by placing the names of donors thereon, now appearing in Minn.St. § 614.36, has not been included.

U.S.Code, Tit. 36, §§ 170 and 171 and subsequent sections prescribe the formalities, the use, and displaying of the flag on various occasions.

Minn.St. § 614.34 prohibits the display in the state of a red or black flag. A similar California statute was held unconstitutional in Stromberg v. California, 1931, 51 S.Ct. 532, 283 U.S. 359, 75 L.Ed. 1117, 73 A.L.R. 1484, on the ground that it violated the right of free speech. Its repeal is recommended.

609.405 Criminal Syndicalism

Subdivision 1. Definition. "Criminal syndicalism" is the doctrine which advocates crime, malicious damage or injury to the property of an employer, violence, or other unlawful methods of terrorism as a means of accomplishing industrial or political ends.

Subd. 2. Acts Prohibited. Whoever does any of the following may be sentenced to imprisonment for not more than five years or to the payment of a fine of not more than $5,000, or both:

(1) Orally or by means of writing advocates or promotes the doctrine of criminal syndicalism; or

(2) Intentionally organizes or becomes a member of any assembly, group, or organization which he knows is advocating or promoting the doctrine of criminal syndicalism; or

(3) For or on behalf of another who intends thereby to advocate or promote the doctrine of criminal syndicalism, distributes, sells, publishes, or publicly displays, any writing advocating or advising such doctrine.

Subd. 3. Permitting Assemblage for. Whoever, being the owner or in possession or control of any premises intentionally permits any assemblage of persons to use such premises for the purpose of advocating or promoting the doctrine of criminal syndicalism may be sentenced to imprisonment for not more than one year, or a fine of not more than $1,000, or both.

COMMENT

This states the substance of Minn.St. § 613.68. The recommended section departs from the present act in the following respects:

(1) Repetitious language has been eliminated.

(2) The word "promotes" is used in place of "teaches." This was done to avoid making criminal, courses in public or private schools which deal with the subject in an objective or analytical manner. Such courses would include history and political science courses and courses in philosophy and economics.

(3) The words in the present statute "knowingly circulates, sells, distributes, or publicly displays, any book, paper, document, or written matter in any form" has not been retained. These words would prohibit any public library or publisher from distributing books for educational purposes or even for the purpose of opposing the doctrines.

(4) Subd. 2, (3) is worded so as to cover the holding in State v. Workers' Socialist Pub. Co., 1922, 150 Minn. 406, 185 N.W. 931. In this case the defendant was convicted of publishing an article appealing to workers to overthrow the capitalist class and deprecating the value of trade unions for this purpose. The following paragraphs were set out in the opinion:

"The fact is, however, that the organized capitalist class of America will never submit to the mercy of the workers without the bloodiest battle history has ever known. It will never, although it should see the workers rising as a mighty force against it, yield before it has used all its means to overthrow it. It will fight and shall fight to the last drop of blood for its exploitation privileges when it sees the overwhelming rise of the labor movement aiming at its destruction. It need not be expected that the capitalists in America will yield the power to the workers willingly more than they have done in other countries, but the workers must take it themselves and march to victory over the ruins of the capitalistic system. We can be certain of that."

And this: "The American workers must learn the revolutionary A-B-C's, that is to fight always and unceasingly with all possible and impossible means until the capitalist class is overthrown, until it rests blood-stained at the feet of the labor giant, then only the battle will begin to produce results. Then it need not beg and wait, but can have what it needs."

It was held that lack of knowledge on the part of the publishers of the contents of the article was not a defense under the statute and referred to Commonwealth v. Morgan, 1871, 107 Mass. 199 stating, "in that case it was held not a sufficient defense to show that the editor never saw the article before it was published, was not aware of its publication until it was shown him, and that he then made a retraction."

The justification for this imposition of absolute liability on the publisher's responsibility lies in the difficulty of establishing knowledge and in the social policy of imposing the duty on the publisher to check on what goes into his publications. However, the person for whom the material was published must intend to use it to advocate the doctrine as the recommended section is worded. To forbid all publications might render the section unconstitutional.

While not free from doubt it is believed that with the modification indicated the constitutionality of the proposed section can be sustained.

609.41 False Tax Statement

Whoever, in making any statement, oral or written, which is required or authorized by law to be made as a basis of imposing, reducing, or abating any tax or assessment, intentionally makes any statement as to any material matter which he knows is false may be sentenced, unless otherwise provided by law, to imprisonment for not more than one year or to payment of a fine of not more than $1,000, or both.

COMMENT

This is a rewording of Minn.St. § 620.05. The words "unless otherwise provided by law" have been added to exclude such statutes as Minn.St. § 290.53, Subd. 4, containing special qualifications and imposing punishment for a felony under specified conditions.

CRIMES AFFECTING PUBLIC OFFICER OR EMPLOYEE

609.415 Definitions

Subdivision 1. As used in sections 609.415 to 609.465, and 609.515,

(1) "Public officer" means:

(a) An executive or administrative officer of the state or of a county, municipality or other subdivision or agency of the state.

(b) A member of the legislature or of a governing board of a county, municipality, or other subdivision of the state, or other governmental instrumentality within the state.

(c) A judicial officer.

(d) A hearing officer.

(e) Any other person exercising the functions of a public officer.

(2) A "public employee" is a person employed by or acting for the state or by or for a county, municipality, or other subdivision or governmental instrumentality of the state for the purpose of exercising their respective powers and performing their respective duties, and who is not a "public officer."

(3) A "judicial officer" includes a judge, justice of the peace or other magistrate, juror, court commissioner, referee, or any other person appointed by a judge or court to hear or determine a cause or controversy.

(4) A "hearing officer" includes any person authorized by law or private agreement to hear or determine a cause or controversy and who is not a judicial officer.

Subd. 2. A person who has been elected, appointed, or otherwise designated as a public officer or public employee is deemed such officer or employee although he has not yet qualified therefor or entered upon the duties thereof.

COMMENT

Originally at common law the crime of bribery was limited to judges. Even the giver of the bribe was not criminally liable. By statute and judicial decision the crime now extends in most states to all public officers and employees and the giver. It has also been extended to the area of private action as, for example, in the field of sports.

In some states it has been extended to officers of political parties and of labor organizations. The sections recommended in this report do not go beyond fields dealt with in the present statutes.

The basic concept in all cases is the giving or holding out of benefits or the request or receipt of them, to influence official action favorable to the giver.

The recommended sections are based primarily on existing Minnesota sections. These sections are extremely wordy and repetitive and duplicate each other. The recommended sections, the Advisory Committee believes, substantially clarify and simplify the law on the subject.

Subdivision 1: The present bribery statutes do not contain any definitions. Their use simplifies the drafting and clarifies the meaning of the statutes.

Reference to the political subdivisions of the state does not appear in the present bribery statutes.

Subdivision 1, (1), (b): In State v. Sweeney, 1930, 180 Minn. 450, 231 N.W. 225, 73 A.L.R. 380, the conviction of an alderman under § 613.05 was sustained but under what classification he came was not discussed. There are several specific references in Minnesota statutes to bribery of legislators.

Subdivision 1, (1), (c): A "judicial officer" is defined in Clause (3).

Subdivision 1, (1), (d): "Hearing officer" is defined in Clause (4).

Subdivision 1, (1), (e): This is a catch-all phrase designed to avoid any loopholes. It corresponds with the language in §§ 613.05 and 613.07, reading: "every other person who executes any of the functions of a public office."

Subdivision 1, (2): There is presently no corresponding definition. Minnesota St. §§ 613.05 and 613.07 merely state "every person employed by or acting for the state or for any public officer in the business of the state."

Subdivision 1, (3): Minn.St. § 613.11 contains some of the enumerated officials but not all of those appearing in the recommended clause.

The enumeration is believed necessary since some of the positions listed might not be regarded as otherwise falling within this category.

Subdivision 1, (4): It was felt desirable to differentiate these officers from judges and other court officers hearing cases.

Subd. 2: This point is dealt with specifically in the present statutes only with respect to legislators in Minn.St. §§ 613.03 and 613.06.

609.42 Bribery

Subdivision 1. Acts Constituting. Whoever does any of the following may be sentenced to imprisonment for not more than

five years or to payment of a fine of not more than $5,000, or both:

(1) Offers, gives, or promises to give, directly or indirectly, to any public officer or employee any benefit, reward or consideration to which he is not legally entitled with intent thereby to influence such officer or employee with respect to the performance of his powers or duties as such officer or employee; or

(2) Being a public officer or employee, requests, receives or agrees to receive, directly or indirectly, any such benefit, reward or consideration upon the understanding that he will be so influenced; or

(3) Offers, gives, or promises to give, directly or indirectly any such benefit, reward, or consideration to a witness or one who is about to become a witness in a proceeding before a judicial or hearing officer, with intent that his testimony be influenced thereby, or that he will absent himself from the proceeding; or

(4) By any other means induces a witness or one who is about to become a witness to withhold his true testimony or to absent himself from the proceeding; or

(5) Is, or is about to become such witness and requests, receives, or agrees to receive, directly or indirectly, any such benefit, reward, or consideration upon the understanding that his testimony will be so influenced, or that he will absent himself from the proceeding; or

(6) Accepts directly or indirectly a benefit, reward or consideration upon an agreement or understanding, express or implied, that he will refrain from giving information that may lead to the prosecution of a crime or purported crime or that he will abstain from, discontinue, or delay prosecution therefor, except in a case where a compromise is allowed by law.

Subd. 2. Forfeiture of Office. Any public officer who is convicted of violating or attempting to violate subdivision 1 of this section shall forfeit his office and be forever disqualified from holding public office under the state.

COMMENT

Subdivision 1, Clauses (1) & (2): These clauses together with the definitions will supersede the following Minnesota sections: 613.01, Subd. 2; 613.02; 613.03; 613.04; 613.05; 613.06; 613.07; 613.08; 613.18; 613.19; 613.20, dealing with granting authority to exercise the functions of the bribe receiver's office; and 613.33, dealing with bribes received by law enforcement officers to permit escapes.

The general language of the section avoids the multiplicity of detail and duplicity of language involved in the superseded sections mentioned.

Subdivision 1, Clauses (3), (4), & (5): These clauses taken with the definitions in recommended § 609.415 will supersede Minn.St. § 619.09, bribery of witnesses; Minn.St. § 613.10, accepting bribe by witness; Minn.St. § 613.48, preventing witnesses from attending; and Minn.St. § 613.49, bribery to induce perjury.

Section 613.49 refers to inducing the giving of false testimony. Recommended Clause (4) does not contain this language. It will be covered by the perjury section to which it properly belongs. Inducing a person to commit perjury would make the actor a party to the crime itself and hence need not be covered by the present recommended clause. If the inducement does not succeed, it becomes an attempt.

Subdivision 1, Clause (6): The substance of Clause (6) is now covered by superseded Minn.St. § 613.65 in which it is treated as a crime distinct from bribery and is dealt with as compounding a crime.

There are but few cases on Minn.St. § 613.65. In State v. Ostensoe, 1930, 181 Minn. 106, 231 N.W. 804, the court held the evidence appearing in the case sufficient to sustain a finding that there was an understanding on the part of an attorney, who had collected $500 from two boys involved in a theft, that the case would not be prosecuted. In State v. Quinlan, 1889, 40 Minn. 55, 41 N.W. 299, the court stated that the section contained two crimes, the common law crime of compounding a felony and that of securing the withholding of testimony.

If the element of threat is present, the case becomes one of coercion. Thus, to threaten to prosecute if $500 is not paid would fall within the provisions of the recommended coercion provision, § 609.27.

The following changes from Minn.St. § 613.65 have been made:

(1) The words "that he will refrain from giving information that may lead to the prosecution of a crime" replaces the words in Minn. St. § 613.65 "compound or conceal." The recommended words appear in Wisconsin St. 946.67 and state more precisely the nature of the crime.

(2) "To withhold any evidence thereof" has not been included since this is sufficiently covered by Clause (5).

(3) A five year imprisonment or $5,000 fine, or both, is substituted for the graded penalties in § 613.65 which depend on the gravity of the offense concealed. The change is consistent with the other provisions on bribery involving judicial proceedings.

Subd. 2: Minn.Const., Art. IV, § 15, provides that: "The legislature shall have full power to exclude from the privilege of electing or being elected any person convicted of bribery, perjury, or any other infamous crime."

Article VII, Section 7, provides: "Every person who by the provisions of this article shall be entitled to vote at any election shall be eligible to any office which now is, or hereafter shall be, elective by the people in the district wherein he shall have resided 30 days previous to such election, except as otherwise provided in this constitution, or the constitution and law of the United States."

Section 2 of the same article provides that: "No person who has been convicted of treason or any felony unless restored to civil rights

. . . shall be entitled or permitted to vote at any election in this state."

The present Minn.St. §§ 613.05 and 613.07 provide that a public officer on being convicted of bribery may be sentenced to the punishment provided ". . . and, in addition thereto, he shall forfeit his office and be forever disqualified from holding any public office under the state."

Recommended Subd. 2 will continue the present law as above outlined.

Sections Outside of Criminal Code Relating to Bribery and Not Affected by the Revision

§ 7.20:

This provides that one who gives or promises the state treasurer or any other person having state funds "any credit, service, or benefit" as an inducement to secure the "deposit, loan, or forbearance of state funds" is guilty of bribery.

§ 30.152:

This makes it bribery to pay "any gratuity, commission, or allowance" not legally authorized to potato inspectors.

§ 91.07:

This makes it a felony for designated state officials and employees authorized to estimate or scale state timber to accept any compensation or gratuity from anyone but the state.

§ 197.604:

This makes it a gross misdemeanor for a veterans service officer or employee "to receive any fee directly or indirectly for any service rendered in securing any benefit . . ."

§ 210.04:

This makes it a felony for one to offer stated benefits "or other valuable consideration" to a voter to induce his vote at an election.

§ 210.05:

This prohibits the giving of "any valuable thing or consideration" with intent that it shall be used for bribery at an election.

§ 210.17:

This makes it a misdemeanor to provide "any food, drink or entertainment" to someone "with intent to corruptly influence such person" with respect to his vote.

§ 233.35:

This makes one "who shall improperly influence or attempt to influence" a grain inspector subject to punishment as for a gross misdemeanor.

§ 239.26:

This makes it a gross misdemeanor for any weigher of livestock to "accept money or other consideration directly or indirectly for any neglect or improper performance of duty. . . ."
The section also prohibits one from improperly influencing the weigher.

§ 246.20:

This provides that "no agent or employee of the commissioner of public welfare, and no officer or manager of any institution under his charge, shall directly or indirectly, for himself or another, or for any such institution, receive or accept any gift or gratuity from any dealer in goods, merchandise, or supplies . . ." The offense is made a misdemeanor.

§ 419.13:

This appears in the chapter on Police Civil Service Commissions and prohibits giving or receiving any money, service, or other thing in connection with the civil service examination or appointment. Violation is made a misdemeanor.

§ 419.32:

This is in substance the same as § 419.13.

§ 420.16:

This is in substance the same as § 419.13 but applies to fire departments.

609.425 Corruptly Influencing Legislator

Whoever by menace, deception, concealment of facts, or other corrupt means, attempts to influence the vote or other performance of duty of any member of the legislature or person elected thereto may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than $5,000, or both.

COMMENT

This will supersede Minn.St. § 613.03 to the extent that it deals with the same subject. There is reduction from ten to five years in the imprisonment permitted. The language used is somewhat broader than Minn.St. § 613.03. The balance of § 613.03 is covered by the recommended bribery provisions, §§ 609.415 and 609.42.

609.43 Misconduct of Public Officer or Employee

A public officer or employee who does any of the following, for which no other sentence is specifically provided by law, may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than $1,000, or both:

(1) Intentionally fails or refuses to perform a known mandatory, nondiscretionary, ministerial duty of his office or employment within the time or in the manner required by law; or

(2) In his capacity as such officer or employee, does an act which he knows is in excess of his lawful authority or which he knows he is forbidden by law to do in his official capacity; or

(3) Under pretense or color of official authority intentionally and unlawfully injures another in his person, property, or rights; or

(4) In his capacity as such officer or employee, makes a return, certificate, official report, or other like document which to his knowledge is false in any material respect.

COMMENT

This subject has two aspects: (1) The misconduct of the officials themselves and (2) the acts of others causing misconduct of officials, or interfering with the performance of their duties. The Minnesota statutes cover both; and as to both, there are both general and specific provisions.

In considering revision, the question occurs as to what acts should be dealt with specifically and what should be left to a general provision. The American Law Institute states the question as follows:

"One way of dealing with misfeasance and nonfeasance of officials would be to make all their violations of duty criminal. A few states have followed this course. The Louisiana Code punishes 'malfeasance in office' by imprisonment up to six months, and defines it as intentional refusal or failure to perform any duty, or performing a duty in an unlawful manner, or knowingly permitting a subordinate to commit malfeasance. Such formulations appear to be dangerously broad in application to (i) discretionary functions, (ii) mere failure of a government employee to do a proper day's work for a day's pay, (iii) innumerable petty violations of regulations which can be policed by dismissal, forfeiture of pay, denial of advancement, or other nonpenal sanctions. On the other hand most state codes, relying on a variety of specific prohibitions with irrational treatment variations, provide inadequate coverage.

"Another possible approach to the misfeasance problem in a penal code would be to identify certain broad classes of official misbehavior where penal sanctions seem peculiarly necessary. Thus, preliminary drafts of Article 208 contained sections on misfeasance affecting the election or selection of public servants and party officials. This approach was abandoned because it became apparent that legislatures would always desire to regulate many of these matters in great detail and with particular reference to local administrative structure, beyond the scope of the Model Penal Code.

"Official misbehavior will therefore continue to be punishable under many provisions outside the penal code. Much of this legislation now on the books requires reconsideration from the point of view that serious penalties are too often attached to behavior which, while contrary to regulations, involves no evil design or recklessness with respect to the interests of government. At the most, violation of such regulations should raise only a rebuttable presumption of purposeful harm." *

Among the specific acts dealt with in this recommended revision are bribery, permitting escape of prisoners, accepting unauthorized fees, etc.

In general, in the recommended sections the present division between general and special sections has been followed and no attempt has been made to bring very many special provisions within the compass

of the general or to expand the number of special situations dealt with separately.

Wisconsin St. 946.12 has been the basis of some of the recommendations.

Clauses (1) and (2) of the recommended section will supersede the following Minnesota sections:

§ 613.50:

This refers specifically to officers who violate their duty in neglecting or refusing to receive a person into official custody. Such a special provision is not deemed necessary. The Wisconsin revision eliminated a similar provision. Repeal of Minn.St. § 613.50 is likewise recommended.

§ 613.51:

This is a broad section imposing gross misdemeanor liability on a public officer or a person holding a public trust or employment "who shall wilfully neglect or omit to perform any duty enjoined upon him by law, in case no punishment is specifically provided therefor." In State v. Brattrud, 1941, 210 Minn. 214, 297 N.W. 713, 134 A.L.R. 1248, a mayor was charged with wilfully refusing to sign a warrant and wilfully refusing to sign a contract with certain engineers. Section 613.51 was relied upon in part. The court held the section inapplicable. The court said:

"It seems obvious to us that the provisions making wilful neglect of duty imposed by law upon a public officer a gross misdemeanor were not intended to apply to cases where the duty to be performed is not strictly and purely ministerial but pertains to public affairs necessarily involving questions of the legality of proceedings leading up to the duty imposed upon the public officer . . . if the duty imposed upon him is of such character that as a matter of public interest he must, in the faithful discharge of his duties, scrutinize the preceding proceedings in order to determine whether in fact his duty has arisen, then we think that there was no intent upon the part of the legislature to subject the public officer to a criminal proceeding in case he concludes, perhaps erroneously, that the proceedings are illegal or that the signing of the documents, as here presented, would lead to the payment of an illegal claim against the city or the making of an illegal contract."

The recommended section meets these observations by limiting its application to cases where there is a "known mandatory, nondiscretionary, ministerial duty."

§ 612.04:

This is substantially a duplication of § 613.51, *supra*.

§ 620.02:

This section is a general one applicable to officers listed in § 620.01, "who shall wilfully disobey any provision of law regulating his official conduct in cases other than those specified in" § 620.01.

Clause (3) will supersede Subd. 4 of Minn.St. § 621.17, to the same effect.

The first three clauses of § 621.17 are duplicates of provisions in § 613.53, which is being transferred to another chapter.

Clause (4) will supersede Minn.St. § 613.61 making it a felony for a recording officer to falsely certify an instrument to be recorded. The recommended section makes the same act a gross misde-

meanor. It will then be consistent as to both personal and real property.

Minn.St. § 613.62, also superseded, makes it a gross misdemeanor for a public officer to certify or make a writing which he knows is false and punishment is not otherwise provided for.

The term "writing" was not used in recommended Clause (4) since it was believed too broad. State agencies and officials issue innumerable reports, releases, and so forth, which ought not to be the basis of a criminal offense under the section.

The words "official report" were added to cover such activities as the report of the public examiner, an advisory opinion by the county attorney and attorney general, and the like. The term "official" does not extend to annual reports of the activities of departments and so forth.

Transfer Recommended

§ 613.52:

This makes it a gross misdemeanor for an officer arresting a person to delay taking him before a magistrate. It belongs more appropriately to the chapter on arrests, Chapter 629.

§ 613.53:

This makes it a gross misdemeanor for a public officer to intentionally arrest a person "under the pretense or color of any process" or to levy on property without regular process. This should also be transferred to the chapter on arrests, Chapter 629.

609.435 Officer not Filing Security

Whoever intentionally performs the functions of a public officer without having executed and duly filed the required security may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100.

COMMENT

This incorporates the provisions of Minn.St. § 612.05 but does not include, as that section does, a forfeiture of the right to office. Likewise the crime is reduced from a gross to a simple misdemeanor. It was felt that making the offense a gross misdemeanor was too severe and that forfeiture of office might entail the validity of acts performed, to the harm of innocent persons.

609.44 Public Office; Illegally Assuming; Non-Surrender

Whoever intentionally and without lawful right thereto, exercises a function of a public office or, having held such office and his right thereto having ceased, refuses to surrender the office or its seal, books, papers, or other incidents to his successor or other authority entitled thereto may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than $1,000, or both.

COMMENT

This will supersede Minn.St. § 613.21 without significant change in substance.

609.445 Refusal to Pay over State Funds

Whoever receives money on behalf of or for the account of the state or any of its agencies or subdivisions and intentionally refuses to pay the same to the state or its agency or subdivision entitled thereto, upon demand by an officer or agent authorized to receive the same, may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than $3,000, or both.

COMMENT

This contains the substance of Clause (4) of Minn.St. § 620.01, which makes the wilful omission or refusal to pay over monies received by a public officer or other person receiving public funds to the appropriate authority or officer embezzlement of public funds and authorizes a sentence up to seven years imprisonment or a fine of up to $10,000, or both.

In State v. Thompson, 1954, 241 Minn. 59, 62 N.W.2d 512, Clause (4) of § 620.01 was construed not to be identical with embezzlement and did not require an intent to defraud or appropriate the money involved. It was held that an acquittal under this clause would not bar prosecution for embezzlement.

The court also held that Clause (4) does not encompass the crime specified by Minnesota Constitution, Article IX, Section 12. See § 609.-54 and comment thereto.

Since no criminal intent is required in violating the section it was believed that the possible sentence should be reduced to that specified.

609.45 Public Officer; Unauthorized Compensation

Whoever is a public officer or public employee and under color of his office or employment intentionally asks, receives or agrees to receive a fee or other compensation in excess of that allowed by law or where no such fee or compensation is allowed, may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100.

COMMENT

This will supersede Minn.St. § 621.15 in which the crime is labeled extortion. There is no change in substance. The portion of § 613.19 dealing with the same subject matter and making the crime a gross misdemeanor will also be superseded.

609.455 Permitting False Claims Against Government

A public officer or employee who audits, allows, or pays any claim or demand made upon the state or subdivision thereof or other governmental instrumentality within the state which he knows is false or fraudulent in whole or in part, may be sen-

tenced to imprisonment for not more than five years or to payment of a fine of not more than $5,000, or both.

COMMENT

This states the substance of Minn.St. § 613.63. In State v. Bourne, 1902, 86 Minn. 426, 90 N.W. 1105, a conviction under § 613.63 was sustained as against the contention that the defendant as deputy auditor had made up fictitious tax warrants and then allowed them and therefore being fictitious he had not allowed or audited a genuine certificate.

In People v. Gresser, 1910, 124 N.Y.S. 581, the court stated the essential elements of this crime were (1) that defendant was a public officer; (2) that it was his duty to audit, allow, or pay claims; and (3) that he knowingly did the prohibited act.

Repeal Recommended

§ 613.64:

This combines several wrongful acts "as a public officer or otherwise":

(1) Auditing a false or fraudulent claim;
(2) Paying such a claim;
(3) Consenting to or conniving at (1) and (2);
(4) By any other means obtains, wrongfully receives, converts, or disposes of public money or property;
(5) Aids or abets another in obtaining, etc., such money or property; and
(6) A person not a public officer doing these things.

Items (1) and (2) are covered by recommended § 609.455. Item (3) is a problem of parties to crime which is covered by recommended § 609.05. Item (4) is a case of larceny and is covered by the recommended theft section, § 609.52. Item (5) is again a case of parties to crime. Item (6) is covered by the recommendations made for theft and other sections.

No provision has been included in the proposed section entitling the political subdivision wronged to the fine. This appears in § 613.64. Ordinarily, a bond is required to protect the state. It has also a civil cause of action. The court as a condition of probation can order restitution. It is believed that the right to the fine may result in prosecutions and sentences which have as their aim the recovery of the money rather than strictly criminal purposes.

Section Outside Criminal Law Relating to False Claims Against Government and Not Affected by the Revision

§ 471.41:

This makes it a gross misdemeanor for a member of a local board to "audit and allow any claim required to be itemized, without the same having been first duly itemized and verified."

609.46 Justice of the Peace or Constable Buying Claim or Inducing Suit

Every justice of the peace or constable who shall, directly or indirectly, buy, or be interested in buying, any thing in ac-

tion, for the purpose of commencing a suit thereon before a justice, or who shall give or promise any valuable consideration to any person as an inducement to bring, or in consideration of having brought, a suit thereon before a justice, may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100.

COMMENT

This is identical to Minn.St. § 613.57 except that the permissible sentence is spelled out.

609.465 Presenting False Claims to Public Officer or Body

Whoever, with intent to defraud, presents a claim or demand, which to his knowledge is false in whole or in part, for audit, allowance or payment to a public officer or body authorized to make such audit, allowance or payment is guilty of an attempt to commit theft of public funds and may be sentenced accordingly.

COMMENT

This states the substance of Minn.St. § 614.54, which will be superseded. The principal change is in the sentence authorized. Minn.St. § 614.54 makes the offense a felony without regard to the amount involved. No distinction is drawn when no public moneys are obtained by the fraud. What is involved is essentially an attempt to obtain public funds by fraud. It has accordingly been so dealt with in the recommended section.

Under the recommended theft provision, § 609.52, a sentence of five years imprisonment or $5,000, or both, is authorized when public funds are taken, without regard to the amount. The sentence may be higher if over $2,500 is taken. The recommended attempt provision, § 609.17, authorizes one-half of this sentence.

609.47 Interference with Property in Official Custody

Whoever intentionally takes, damages, or destroys any personal property held in custody by an officer or other person under process of law may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than $1,000, or both.

COMMENT

This is derived from Minn.St. § 613.27. The principal effect of the proposed section will be in cases where the property involved is under $100. Taking, damaging or destroying property of another in any case constitutes theft or criminal damage to property. Under the sections dealing with these crimes, if the property is under $100 or is reduced in value by no more than that amount, the crime is a misdemeanor. See recommended §§ 609.52 and 609.595. Under the above section it would become a gross misdemeanor.

609.475 Impersonating Officer

Whoever falsely impersonates a police or military officer or public official with intent to mislead another into believing that he is actually such officer or official may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100.

COMMENT

This contains the substance of Minn.St. § 620.46 but omits inclusion of wearing any uniform or badge of an officer since this is considered merely evidence of the impersonation.

Sections Outside Criminal Law Relating to Duties of Public Officers and not Affected by the Revision

§ 367.17:

This section makes it a gross misdemeanor accompanied with forfeiture of office for a town treasurer to refuse or neglect to comply with the duties set out rather fully in § 367.16.

§ 372.13:

This appears in a chapter entitled "Changing County Seats" and provides that "any county auditor or other official who shall wilfully neglect or refuse to perform the duties required of him by this chapter shall be guilty of a misdemeanor."

§ 376.523:

This requires a license from the village council before certain designated hospitals may be established by a city or county in any village and prescribes the procedure for securing such license. "Any officer, agent, or employee of any city or county who shall violate any provision of this section shall be deemed guilty of a gross misdemeanor."

§ 382.06:

This makes it a gross misdemeanor for a county official to fail to file a verified statement each year of his fees, gratuities and emoluments, as required by § 382.05.

§ 382.18:

This makes it a gross misdemeanor for a county official or employee to be personally interested in contracts or purchases or sales of property by the county.

§ 383.12:

This makes it a gross misdemeanor for a county commissioner to expend more money from a fund than the amount apportioned to that fund at the beginning of the year.

§ 335.17:

This provides that "every member of the board of auditors or of the county board who shall neglect or omit to discharge any of the duties imposed by law shall be deemed guilty of a gross misdemeanor" with a fine of not less than $100 or more than $500.

§ 386.39:

This makes it a misdemeanor for a registrar of deeds to record an instrument relating to real estate not duly signed, executed and acknowledged.

CRIMES AGAINST THE ADMINISTRATION OF JUSTICE

609.48 Perjury

Subdivision 1. Acts Constituting. Whoever makes a false material statement which he does not believe to be true in any of the following cases is guilty of perjury and may be sentenced as provided in subdivision 4:

(1) In or for an action, hearing or proceeding of any kind in which the statement is required or authorized by law to be made under oath or affirmation; or

(2) In any writing which is required or authorized by law to be under oath or affirmation; or

(3) In any other case in which the penalties for perjury are imposed by law and no specific sentence is otherwise provided.

Subd. 2. Defenses not Available. It is not a defense to a violation of this section that:

(1) The oath or affirmation was taken or administered in an irregular manner; or

(2) The declarant was not competent to give the statement; or

(3) The declarant did not know that his statement was material or believed it to be immaterial; or

(4) The statement was not used or, if used, did not affect the proceeding for which it was made; or

(5) The statement was inadmissible under the law of evidence.

Subd. 3. Inconsistent Statements. When the declarant has made two inconsistent statements under such circumstances that one or the other must be false and not believed by him when made, it shall be sufficient for conviction under this section to charge and the jury to find that, without determining which, one or the other of such statements was false and not believed by the declarant. The period of limitations for prosecution under this subdivision runs from the first such statement.

Subd. 4. Sentence. Whoever violates this section may be sentenced as follows:

(1) If the false statement was made upon the trial of a felony charge, to imprisonment for not more than five years or to payment of a fine of not more than $5,000, or both; or

(2) In all other cases, to imprisonment for not more than three years or to payment of a fine of not more than $3,000, or both.

COMMENT

The crime of perjury is primarily concerned with preventing the giving of false information under oath or affirmation.

The purpose of the oath appears to be twofold: (1) To incline the declarant to give the truth and (2) to put him on notice that he is in a situation in which the law demands the truth under threat of imposing criminal sanctions.

The offense consists in the giving of the false information. The oath or affirmation is merely used to define the occasions on which truth is insisted upon.

The law can and sometimes does impose criminal sanctions for giving false information even though not given under oath. An example is the false income tax return. See Minn.St. § 620.05.

Generally, the provisions of criminal codes dealing with perjury are concerned with imposing sanctions for false testimony given under oath. They do not attempt to define when an oath is required. This is left to other statutes.

A false statement made under oath on an occasion when an oath is not required or authorized by law is not perjury.

There appears to be general agreement that perjury is widespread, notwithstanding it has been made a serious crime, and that very little is being done in the way of criminal prosecution.

A good brief statement of the problem appears in the Preface to the Model Perjury Act promulgated by the National Conference of Commissioners on Uniform State Laws in 1952. This reads as follows:

"In the first place . . . a person may not be convicted of perjury if he makes contradictory statements under oath, unless the indictment charges and the prosecution proves that one of the contradictory statements is false. In the second place, proof of falsity of a statement alleged to be false must be established by two independent witnesses or by one witness and corroborating circumstances. In the third place, a false statement must be proved not only to be false but also to be material to the proceeding for which it was made. This rule has meant immunity for many witnesses who have wilfully given false evidence in court, and much delay and uncertainty have arisen in the course of the interpretation and application of the rule. In the fourth place, a great difficulty in administering the law of perjury has been the severity of the penalties specified by the statutes. In the less aggravated forms of perjury, much could be gained in effectiveness and respect by making penalties less severe in the books and more frequently applied in the court rooms. In some states, an effort was made to classify perjury by degrees. In other states, the attempt has been made to classify it according to the crimes of perjury, false swearing, and false information to authorities. In the fifth place, the attempt to define the crime as 'wilful' or 'voluntary,' rather than 'intentional' or by description of the actual

state of mind of the defendant, has resulted in metaphysical distinctions by the courts, which have not aided prompt and successful prosecution."

The present principal section on perjury, Minn.St. § 613.39, is vague and its provisions are in a measure overlapping.

In State v. Larson, 1927, 171 Minn. 246, 213 N.W. 900, false testimony given under oath was held not perjury where the oath was not required or authorized by law. The false testimony had been given in the course of a sentence hearing in a criminal case.

In State v. M'Carthy, 1889, 41 Minn. 59, 42 N.W. 599, a statement under oath in an application for a loan from a private individual was held not perjury. The requirements were stated by the court as follows:

"It is not enough that the officer has general authority to administer oaths, nor that his administering the particular oath was not unlawful in the sense of incurring a penalty by administering it. The oath must be one which may be 'lawfully administered'—that is, one administered pursuant to, or as required or authorized by, some law. A merely gratuitous oath, which the law does not recognize as of any force, and to which it gives no more effect than if the statement were not sworn to, cannot be said to be lawfully administered, within the meaning of the Penal Code."

The recommended section will be limited to cases where an oath "is required or authorized by law."

The following have been held to be authorized by law:

(1) Affidavit made in support of securing an attachment—State v. Madigan, 1894, 57 Minn. 425, 59 N.W. 490.

(2) Application for liquor license—State v. Scatena, 1901, 84 Minn. 281, 87 N.W. 764.

(3) Application for marriage license—State v. Day, 1909, 108 Minn. 121, 121 N.W. 611, and State v. Randall, 1926, 166 Minn. 381, 208 N.W. 14.

The recommended section relies principally on present law of Minnesota although some modifications, as indicated in specific comments, have been made.

The requirement of falsity of the statement has been retained. To tell the truth believing it to be false is not perjury.

Likewise the requirement of materiality has been retained notwithstanding criticism that has been made of it on the ground that it permits a perjurer who believes a statement to be material to escape by showing that it was not.

However, the requirement has been given a broad interpretation by the courts and includes evidence going to credibility of witnesses as well as that which is directly relevant to the issues being tried.

The express provision in the recommended section that inadmissibility under rules of evidence is not a defense will also reduce the signification of materiality as a defense.

Correction or retraction of perjured testimony is not specifically eliminated as a defense. It was felt that if a witness desires to correct or retract an earlier false statement he should be encouraged to do so.

Subdivision 1, (3): This provision is made necessary by the numerous special statutes making particular statements perjury. The following have been examined but the list is not all inclusive:

§ 50.21:
Savings banks reports.

§ 60.78:
Witnesses before insurance companies.

§ 64.63, (2):
Statements to get money from fraternal benefit associations.

§ 66.39:
False statements by officer of mutual insurance companies.

§ 73.05:
Testimony before State Fire Marshal.

§ 79.05:
Testimony before Industrial Commission.

§ 88.75, (3):
Christmas tree licensing.

§ 97.55, (3), (1):
Game and fish laws.

§ 154.21:
Barbers' code.

§ 168.10:
Registration of motor vehicles.

§ 246.08:
Hearings by Commissioner of Public Welfare.

§ 297.09, (4):
Testimony before a commission relating to sales tax.

§ 297.37:
Hearing on sales tax on tobacco.

§ 298.14:
Mining occupation tax rate.

§ 299.11:
Iron ore royalties rate.

§ 329.12:
Itinerant merchant licensing.

§ 340.36, (2):
Relating to liquor control.

§ 395.22:
False statements relating to feed loans.

§ 629.68:
Statements made in an affidavit made by sureties on bonds, recognizances, and undertakings given to secure the appearance of defendants in criminal cases.

Subd. 2, (5): This is taken from the American Law Institute Draft, § 208.20, (2).

Subd. 3: This is taken from both that Draft and the Wisconsin Draft.

Subd. 4: This retains the distinction now made in Minn.St. § 613.45 but with a lower possible sentence. The Wisconsin maximum sentence is also five years.

The recommended section will supersede the following sections:

§ 613.39:

This is the principal perjury section.

§ 613.40:

This eliminates irregularity in the oath or incompetence of the defendant to testify as defenses.

§ 613.41:

This eliminates ignorance of the materiality of the statement or its failure to affect the proceeding as defenses.

§ 613.42:

This specifies when a deposition or certificate is complete. It is deemed unnecessary.

§ 613.43:

This makes an unqualified statement of something not known to be true subject to perjury. The wording of the recommended section "which he does not believe to be true" covers the point.

§ 613.45:

This provides for the term of punishment for perjury and subornation of perjury.

The maximum sentence has been reduced from ten and five years imprisonment to five and three years in Subd. 4 of the recommended section.

Transfer Recommended

§ 613.44:

This authorizes commitment by the court of a witness suspected of perjury and seizure of documents necessary for prosecution.

Sections Outside Criminal Law Relating to Perjury and Not Affected by the Revision

§ 67.43:

This appears in the chapter on township mutual companies. The section makes it a misdemeanor for one to "make any false or fraudulent statement or representation in reference to any application for membership . . . or any false or fraudulent statement as to the transactions or condition of the company of which he is a member or officer."

§ 159.16:

This appears in the chapter on voluntary nonprofit medical service. It makes it a misdemeanor for a person or officer or agent to "make any false statement with respect to any report or statement required by this chapter. . . ."

§ 168.037:

This makes it a felony for a person in the military forces in filing the required documents permitting him to drive under the license of another state, to file any statement or written instrument knowing that the same is false or fraudulent in whole or in part.

§ 197.96:

This deals with veterans compensation and makes "a false statement, oral or written, relating to a material fact in support of a claim for adjusted compensation" a gross misdemeanor.

§ 215.17:

This makes it a felony with a fine of up to $1,000, or imprisonment up to one year to, among other things, withhold information from the public examiner or swear falsely under oath.

609.485 Escape from Custody

Subdivision 1. Definition. "Escape" includes departure without lawful authority and failure to return to custody following temporary leave granted for a specific purpose or limited period.

Subd. 2. Acts Prohibited. Whoever does any of the following may be sentenced as provided in subdivision 4:

(1) Escapes while held in lawful custody on a charge or conviction of a crime; or

(2) Transfers to another, who is in lawful custody on a charge or conviction of a crime, or introduces into an institution in which the latter is confined, anything useable in making such escape, with intent that it shall be so used; or

(3) Having another in his lawful custody on a charge or conviction of a crime, intentionally permits him to escape.

Subd. 3. Exceptions. This section does not apply to a person who is free on bail or who is on parole or probation, or subject to a stayed sentence or stayed execution of sentence, unless he has been taken into actual custody upon revocation of the parole, probation, or stay of the sentence or execution of sentence.

Subd. 4. Sentence. Whoever violates this section may be sentenced as follows:

(1) If the person who escapes is in lawful custody on a charge or conviction of a felony, to imprisonment for not more than five years or to payment of a fine of not more than $5,000, or both.

(2) If such charge or conviction is for a gross misdemeanor, to imprisonment for not more than one year or to payment of a fine of not more than $1,000, or both.

(3) If such charge or conviction is for a misdemeanor, to imprisonment for not more than 90 days or to payment of a fine of not more than $100.

(4) If the escape was effected by violence or threat of violence against a person, the sentence may be increased to not more than twice those permitted in clauses (1), (2), and (3).

(5) A sentence under this section shall be in addition to any sentence previously imposed or which may be imposed for any crime or offense for which the person was in custody when he escaped.

COMMENT

The common law recognized three crimes in this area: (1) rescues, (2) escapes, and (3) permitting escapes by those having custody of the escapee.

The Minnesota statutes have been taken almost entirely from the New York Penal Code of 1881 and were enacted in 1885.

Rescues would appear to be no more than aid or assistance to the crime of escape. It is believed, therefore, that no separate crime is needed designated as "rescues." This is the approach of the Wisconsin code.

In the recommended section the substance of the Minnesota provisions has been largely retained. Some suggestions were taken from the Wisconsin code and also from the American Law Institute proposals.

The recommended section will supersede Minn.St. §§ 613.26; 613.29; 613.30; 613.31; 613.32; 241.24, dealing with escapes from outside the confines of the state prison or state reformatory; and 641.19, dealing with escapes from jail while under sentence to state prison.

Subdivision 1: This is suggested by both the American Law Institute provision, § 208.33, and Wisconsin St. § 946.42, (5), (b).

Subd. 2, (1): The words "in legal custody on a charge or conviction of a crime" includes everything from arrest, to confinement in a jail pending trial, to confinement in an institution following conviction. The phrase is taken from the American Law Institute draft.

Subd. 2, (2): This incorporates what appears in Minn.St. § 613.31. As in the present Minnesota statutes, the punishment is identical with that of actually escaping. The transfer of "information" now appearing in § 613.31 has not been included. It was believed too indefinite as to meaning to justify retention.

Subd. 2, (3): This supersedes Minn.St. § 613.32 but is confined to intentional conduct. It does not include mere unintentional omission to act which results in an escape. The latter appears to be included in Minn.St. § 613.32.

Subd. 3: This is suggested by both the American Law Institute draft and by Wisconsin St. § 946.42. Suspension of sentence and execution of sentence have been added.

Subd. 4: The grading of punishment follows present Minnesota statutes. See §§ 613.26, 613.29, and 613.31. Such grading is constitutional. See Penn. v. Ashe, 1937, 58 S.Ct. 59, 302 U.S. 51, 82 L.Ed. 43.

Increased punishment for an escape accompanied by violence is recognized only to a limited extent in present Minnesota statutes, but it is believed to be a desirable one.

The American Law Institute Draft increases the penalty in cases where "force, threat of force, firearms, or other dangerous instrumentality" is used.

The rescue under § 613.26 requires "force or fraud." So also does § 613.30, relating to escape from a state prison. Otherwise an escape need not be accompanied by force nor is punishment increased thereby.

The result appears to be that if "X" is charged with rescuing "Y", forcing or fraud must be shown, but if he is charged with assisting "Y" to escape, it need not be shown. The requirement has not been included in the recommended revision.

The proposed act does not include escapes from custody of a person held in a non-criminal proceeding, such as escapes from mental hospitals.

Section Outside Criminal Law Relating to Escapes and Not Affected by the Revision

§ 252.05:

This makes it a felony with a $1,000 fine or up to three years imprisonment or both to "abduct, entice or carry away from a state institution for the feebleminded or colony for epileptics any inmate thereof, who has not been legally discharged therefrom." It makes it a gross misdemeanor to "abduct, entice, or carry away from any place other than a state institution, a person duly committed as feebleminded to the guardianship of the commissioner of public welfare with the intention of wrongfully removing such person from the direct custody of the commissioner of public welfare, such person known by him to be under" his supervision.

§ 242.47:

This deals with causing a boy to leave the State Training School.

Repeal Recommended

§ 613.34:

This deals with the concealing of escaped prisoners. It is sufficiently covered by recommended § 609.05 dealing with liability of parties and by recommended § 609.495 relating to aiding an offender to avoid arrest, punishment, etc.

Transfer Recommended

§ 613.28:

This deals with the recapture of an escaped prisoner and belongs more appropriately to the chapter on arrests.

609.49 Release, Failure to Appear

Whoever, being charged with or convicted of a felony and held in lawful custody therefor, is released from custody, with or without bail or recognizance, on condition that he personally appear when required with respect to such charge or conviction, and intentionally fails, without lawful excuse, to so appear when

required or surrender himself within three days thereafter, may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than $1,000, or both.

COMMENT

This represents some extension of Minn.St. § 613.35 which will be superseded.

Three days was substituted for 30 days in order to avoid enabling the defendant to cause a postponement of a trial for several months in rural districts where the trial term would have ended in less than 30 days. Other modifications are suggested by the American Law Institute Draft. The comment of the Institute is as follows, Draft 8, p. 138:

> "Bail jumping" statutes are common and varied. To some extent they seem to be framed with an eye to protecting the bondsman against loss rather than punishing obstructive non-appearance. This would appear to be the explanation for provisions that make criminal liability contingent on previous 'forfeiture' of bail plus failure to appear within 15 or 30 days thereafter; the bondsman thus gets an opportunity to produce the defendant and petition for remission of forfeiture on the ground that not much has been lost. Furthermore, if criminal provisions in this area have any utility in compelling attendance, they ought not be limited to cases where the device of bail has been employed. Bail is a much overworked and abused means of compelling attendance. In many situations it would be much better to release a poor defendant on his own undertaking to appear, without subjecting him to the expense of bail or jailing him in default of bail which he is unable to secure. This could be done more readily if a moderate penal sanction were provided in case of wilful non-appearance. . . ." *

"Personally" has been added to avoid the claim that appearance by attorney is sufficient. See People v. Pilkington, 1951, 199 Misc. 665, 103 N.Y.S.2d 66.

Wisconsin has no statute on the subject.

Minn.St. § 629.61, authorizing the arrest of a defaulting defendant, will not be affected.

Repeal Recommended

§ 613.34:

This deals with the concealing of escaped prisoners. It is sufficiently covered by recommended § 609.05 dealing with liability of parties and by recommended § 609.495 relating to aiding an offender to avoid arrest, punishment, etc.

Transfer Recommended

§ 613.28:

This deals with the recapture of an escaped prisoner and belongs more appropriately to the chapter on arrests.

609.495 Aiding an Offender to Avoid Arrest, etc.

Subdivision 1. Whoever harbors, conceals or aids another known by him to have committed a felony under the laws of this or another state or of the United States with intent that such offender shall avoid or escape from arrest, trial, conviction, or punishment, may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than $3,000, or both.

Subd. 2. This section does not apply if the actor is related to the offender as husband, wife, parent, or child.

COMMENT

This will supersede Minn.St. §§ 610.13 and 610.14, which deal with what is commonly known as accessories after the fact. This phrase existed at common law where aiding another who had committed a crime was considered making the aider a party to the crime.

Under modern concepts the act is an independent substantive offense in itself. This was the approach adopted in Wisconsin and Illinois and is followed in the recommended section.

The recommended section makes the following changes from present law:

(1) The felon who is being aided may have committed his crime either in this or another state or under the laws of the United States, and

(2) The sentence permitted has been changed from five years or a fine of $500 or both to three years or fine of $3,000 or both.

609.50 Obstructing Legal Process or Arrest

Whoever intentionally obstructs, hinders or prevents the lawful execution of any legal process, civil or criminal, or apprehension of another on a charge or conviction of a criminal offense may be sentenced as follows:

(1) If the act was accompanied by force or violence or the threat thereof, to imprisonment for not more than one year or to payment of a fine of not more than $1,000, or both; or

(2) In other cases to imprisonment for not more than 90 days or to payment of a fine of not more than $100.

COMMENT

There are presently some very general and some more specific sections dealing with interference with the performance of official duty. These will be superseded by the above recommended section.

Minn.St. § 613.17 makes it a gross misdemeanor for a person who by threat or violence attempts to deter or prevent an officer from doing his duty.

Minn.St. § 613.56 makes it a misdemeanor to wilfully resist, delay or obstruct a public officer in the discharge of his duty.

Minn.St. § 613.66 again deals with threats or intimidation to a public officer and contains some specific provisions relating to jurors, referees, and other persons exercising a deciding function. It makes the prohibited acts misdemeanors. This is sufficiently covered by recommended § 609.27 on coercion. The portion dealing with jurors and so forth is also covered in part by recommended § 609.515.

Minn.St. § 616.03 makes it a misdemeanor to "wilfully oppose or obstruct a health officer or physician charged with the enforcement of the health laws. This is recommended to be repealed. It is covered by Minn.St. § 145.24(2).

Minn.St. § 615.03, (1), makes it a felony for a member of an assembly to resist the enforcement of a statute or the execution of any process or court order or the performance of any other duty.

Minn.St. 613.27 makes it a misdemeanor to take, injure, or destroy property in the custody of an officer or other person holding property under process of law.

The sections recommended on this subject are intended to avoid the objectionable features of these several sections. Their excessive generality will be noted. It is believed that the statutes dealing with this subject should be limited to specific acts. This was the policy pursued in the Wisconsin criminal code, § 946.41.

Of course, many acts against public officers, will be covered by other sections of this code, such as theft, criminal damage to property, assault and battery, extortion, bribery, and so forth.

All of the Minnesota and New York cases found dealing with this subject have been confined to interference with the execution of legal process or arrest. The recommended section is limited accordingly. It also becomes thereby more specific in its terms.

A requirement in the recommended section that the execution of legal process or the apprehension which is interfered with must be lawful, incorporates the holdings of New York cases dealing with provisions corresponding to those in Minnesota.

Harboring persons for the purpose of preventing apprehension, while a form of obstructing an officer, is dealt with under the heading of accessories. See § 609.495.

The recommended section introduces a distinction not now present. Acts accompanied by force or violence, it is believed, should carry a greater penalty.

609.505 Falsely Reporting Crime

Whoever informs a law enforcement officer that a crime has been committed, knowing that it is false and intending that the officer shall act in reliance upon it, may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100.

COMMENT

This will supersede Minn.St. § 614.67, the substance of which is incorporated.

609.51 Simulating Legal Process

Subdivision 1. Acts Prohibited. Whoever does any of the following may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100:

(1) Sends or delivers to another any document which simulates a summons, complaint, or court process with intent thereby to induce payment of a claim; or

(2) Prints, distributes, or offers for sale any such document knowing or intending that it shall be so used.

Subd. 2. Exceptions. This section does not prohibit the printing, distribution or sale of blank forms of legal documents for use in judicial proceedings.

COMMENT

This will supersede Minn.St. § 613.79. The recommended section, however, differs in that it prohibits the sending or delivering of the document in Clause (1) whereas § 613.79 prohibits the preparation of such a document for sale or other disposal.

Recommended Clause (2) emphasizes that the printing, distribution, or offer for sale must be with intent that it be improperly used.

A further change consists in broadening Subd. 2 so that it is not confined to attorneys at law as is § 613.79. If an individual wishes to obtain such forms for his own proceedings he should be permitted to do so.

609.515 Misconduct of Judicial or Hearing Officer

Whoever does any of the following, when the act is not in violation of section 609.42, may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100:

(1) Being a judicial or hearing officer, does either of the following:

(a) Agrees with or promises another to determine a cause or controversy or issue pending or to be brought before him for or against any party; or

(b) Intentionally obtains or receives and uses information relating thereto contrary to the regular course of the proceeding.

(2) Induces a judicial or hearing officer to act contrary to the provisions of this section.

COMMENT

This will supersede Minn.St. §§ 613.11 and 613.12. The recommended section will, in consequence of the definition of "judicial" or "hearing officer" in recommended § 609.415 have a wider scope.

Minn.St. § 613.11 prohibits influencing or attempting to influence a juror, arbitrator or referee in any case or matter pending or about to be brought before him. Minn.St. § 613.12 prohibits a juror, arbitrator or referee promising a decision for or against a party or that he "wilfully receive any communication, book, paper, instrument or information" "except according to the regular course of proceeding upon the trial or hearing."

THEFT AND RELATED CRIMES

609.52 Theft

Subdivision 1. Definitions. In this section:

(1) "Property" means all forms of tangible property, whether real or personal, without limitation including documents of value, electricity, gas, water, corpses, domestic animals, dogs, pets, fowl, and heat supplied by pipe or conduit by municipalities or public utility companies.

(2) "Movable property" is property whose physical location can be changed, including without limitation things growing on, affixed to or found in land.

(3) "Value" means the market value at the time of the theft, or if the market value cannot be ascertained, the cost of replacement of the property within a reasonable time after the theft. For a theft committed within the meaning of subdivision 2, (5), (a) and (b), if the property has been restored to the owner, "value" means the value of the use of the property or the damage which it sustained, whichever is greater, while the owner was deprived of its possession, but not exceeding the value otherwise provided herein.

(4) "Property of another" includes property in which the actor is co-owner or has a lien, pledge, bailment, or lease or other subordinate interest, and property of a partnership of which the actor is a member, unless the actor and the victim are husband and wife. It does not include property in which the actor asserts in good faith a claim as a collection fee or commission out of property or funds recovered, or by virtue of a lien, setoff, or counterclaim.

Subd. 2. Acts Constituting Theft. Whoever does any of the following commits theft and may be sentenced as provided in subdivision 3:

(1) Intentionally and without claim of right takes, uses, transfers, conceals or retains possession of movable property of an-

other without his consent and with intent to deprive the owner permanently of possession of the property; or

(2) Having a legal interest in movable property, intentionally and without consent, takes such property out of the possession of a pledgee or other person having a superior right of possession, with intent thereby to deprive the pledgee or other person permanently of the possession of the property; or

(3) Obtains for himself or another the possession, custody, or title to property of a third person by intentionally deceiving him with a false representation which is known to be false, made with intent to defraud, and which does defraud the person to whom it is made. "False representation" includes without limitation:

(a) The issuance of a check, draft, or order for the payment of money or the delivery of property knowing that he is not entitled to draw upon the drawee therefor or to order the payment or delivery thereof; or

(b) A promise made with intent not to perform. Failure to perform is not evidence of intent not to perform unless corroborated by other substantial evidence; or

(c) The unauthorized use of a credit card, credit plate, charge plate, or other identification device issued by an organization to a person for use in purchasing goods on credit; or

(4) By swindling, whether by artifice, trick, device, or any other means, obtains property from another person; or

(5) Intentionally commits any of the acts listed in this subdivision but with intent to exercise temporary control only and:

(a) The control exercised manifests an indifference to the rights of the owner or the restoration of the property to him; or

(b) He pledges or otherwise attempts to subject the property to an adverse claim; or

(c) He intends to restore the property only on condition that the owner pay a reward or buy back or make other compensation; or

(6) Finds lost property and, knowing or having reasonable means of ascertaining the true owner, appropriates it to his own use or to that of another not entitled thereto without first having made reasonable effort to find the owner and offer and surrender the property to him; or

(7) Intentionally obtains property or services, offered upon the deposit of a sum of money or tokens in a coin or token operated machine or other receptacle, without making the required deposit or otherwise obtaining the consent of the owner.

Subd. 3. Sentence. Whoever commits theft may be sentenced as follows:

(1) To imprisonment for not more than ten years or to payment of a fine of not more than $10,000, or both, if the value of the property or services stolen exceeds $2,500; or

(2) To imprisonment for not more than five years or to payment of a fine of not more than $5,000, or both, if the value of the property or services is more than $100 but not more than $2,500; or

(3) To imprisonment for not more than five years or to payment of a fine of not more than $5,000, or both, notwithstanding the value of the property or services is not more than $100, if any of the following circumstances exist:

(a) The property is taken from the person of another or from a corpse, or grave or coffin containing a corpse; or

(b) The property taken is a record of a court or officer, or a writing, instrument or record kept, filed or deposited according to law with or in the keeping of any public officer or office; or

(c) The property is taken from a burning building or upon its removal therefrom, or from an area of destruction caused by civil disaster, riot, bombing, or the proximity of battle; or

(d) The property taken consists of public funds belonging to the state or to any political subdivision or agency thereof; or

(4) In all other cases where the value of the property or services is $100 or less, to imprisonment for not more than 90 days or to payment of a fine of not more than $100.

COMMENT

The general pattern for the theft section is taken from Wisconsin St. § 943.20. The word "theft" has been substituted for the term "larceny." This will aid further in eliminating the historical distinction between larceny, embezzlement, and obtaining property by false pretenses. The present Minnesota sections on the subject found in Chapter 622 attempted to achieve this without too much success.

The law governing theft as it has existed in Minnesota will remain basically the same.

Subdivision 1, (1): The present code does not contain a definition of "property" in the larceny sections. The definition appears as a general one in Minn.St. § 610.02, (9), (12), and (13). These provisions

are applicable to all crimes. It is believed preferable to have a definition applicable to thefts only.

"Documents of value" is a generic term encompassing what is now included in Minn.St. § 610.02, (13). It covers also the substance of Minn.St. § 622.09 which states that the chapter on larceny applies to "an instrument for the payment of money, an evidence of debt, a public security, a passage ticket completed and ready to be issued or delivered by the maker to a purchaser or owner."

"Corpses" is now the subject of an independent statute, Minn.St. § 614.22. "Domestic animals, dogs, pets, fowl" will supersede the existing separate §§ 622.08 and 622.10.

Minn.St. § 621.34 makes appropriation of electricity, gas, water, and heat by various devices such as making connection with pipe, conduit, wire, etc., or preventing meter from operating, etc., a misdemeanor. Under the recommended § 609.52 this becomes larceny and if the amount taken is over $100 it becomes a felony.

Subdivision 1, (2): This is now covered by a portion of Minn.St. § 622.09.

Subdivision 1, (3): The meaning of "value" is not explicitly covered by present provisions. The definition of "property" in § 610.02, (9) includes "both real and personal property, things in action, money, bank bills, and every other thing of value." Clause (13) of the same section defines personal property but says nothing of value.

In addition to these general provisions, Minn.St. § 622.01 refers to "any money, personal property, thing in action, evidence of debt, or contract, or article of value of any kind." It also has in the second paragraph the following: "Any money, property, evidence of debt or contract, article of value of any nature, or thing in action or possession."

The value of written evidences of debt and of tickets for transportation is spelled out in Minn.St. § 622.15.

A provision similar to the recommended clause appears in the Wisconsin Act, § 943.20, (c).

Subdivision 1, (4): The point is now covered by part of Minn.St. § 622.02. The confusing provisions of § 622.02 have been clarified by the second sentence of the recommended clause. The provisions of § 622.02 relating thereto originated in 1876, as a result of the decision in State v. Kent, 1875, 22 Minn. 41, in which a defendant who had made off with some pew rents of a church was held not guilty because of his right to five percent of the rents. See State v. Herzog, 1879, 25 Minn. 490.

The phrase "or has a lien, pledge, bailment, or lease or other subordinate interest" will make the section cover and supersede Minn.St. § 621.22 which makes one guilty of a misdemeanor who "shall sell, pledge, pawn, or otherwise dispose of any property which he has borrowed or hired from the owner."

Subd. 2, (1): This is the general provision which covers most of the wrongful acts of theft. It includes both wrongful taking from another as well as misuse of property already in the defendant's possession. It will replace the present general larceny statute, § 622.01. It will also supersede Minn.St. § 620.72 which imposes a ten year penalty on a director, officer or agent of a corporation or joint stock association "who shall knowingly receive or possesses himself of any

property of such corporation or association otherwise than in payment of a just demand."

"Intentionally" is defined in § 609.02 of the general provisions. The provision "with intent to deprive the owner permanently of possession of such property" makes explicit what is now left to implication.

Subd. 2, (2): This is not now explicitly covered by the Minnesota code. State v. Cohen, 1936, 196 Minn. 39, 263 N.W. 922, is in accord with this clause.

Subd. 2, (3): This covers the common law offense of obtaining money by false pretenses. It is now dealt with by Minn.St. § 622.01, (1), which will be superseded.

Paragraph (a) covers the substance of Minn.St. § 622.03 which will be superseded.

Paragraph (b) makes explicit what decisions leave in doubt, that the making of a promise intending not to perform it and thereby securing the property of another is a theft. The last sentence of the paragraph assures that something more than mere breach of promise is required.

"Trade talk" or "puffing" incident to sales transactions will not be a basis of theft under this paragraph. This is present law. State v. Sack, 1930, 179 Minn. 502, 229 N.W. 801, holding statement of value not a basis for a false pretense charge.

Paragraph (c) states the substance of Minn.St. § 622.28, enacted in 1959. Section 622.28 includes "using a false, counterfeit, cancelled or revoked credit card, credit plate or charge plate." Using a false or "counterfeit" card, etc. will come under the forgery statute as recommended, § 609.63. The "cancelled or revoked" card, etc., is sufficiently covered by the term "unauthorized" in the recommended paragraph.

Subd. 2, (4): This will supersede Minn.St. § 614.11 without change of substance.

The crime is defined in State v. Yurkiewicz, 1940, 208 Minn. 71, 292 N.W. 782, as follows:

"The statute enumerates several means by which the crime of swindling may be perpetrated. Included is the common-law offense of common cheat which was committed by the use of mechanical means such as false tokens, symbols, and devices. Words and conduct as other means are added. The object of our statute was to codify and expand the common law on the subject of cheats so as to reach cheats and swindlers of all kinds. State v. Wilson, 1898, 72 Minn. 522, 525, 75 N.W. 715. The offense may be committed by means of a trick or scheme consisting of mere words and actions without the use of a mechanical device. State v. Brooks, 1922, 151 Minn. 502, 187 N.W. 607 (fake horse-race scheme); State v. Smith, 1901, 82 Minn. 342, 85 N.W. 12 (short-change trick). The gist of the offense is cheating and defrauding another of his property by deliberate artifice. Generally the commission of the offense is accomplished by the practice of imposition upon the victim."

Subd. 2, (5): This will supersede Minn.St. § 622.17, stating intent to restore the property is no defense. The recommended section makes explicit the conditions under which a theft is committed when the intent is for a temporary taking only. If a temporary taking is committed under these conditions the intent is that it shall be followed by

the same consequences as any other theft. Hence, restoration or offer to restore should be immaterial.

No provision has been included corresponding to that appearing in § 622.17 authorizing mitigation of punishment by restoration of the property before a complaint has been issued. This is properly a matter for consideration by the judge upon imposing sentence.

The unauthorized use of a motor vehicle is dealt with separately in recommended § 609.55.

Subd. 2, (6): This clause represents a re-wording of Minn.St. § 622.11 without change in substance. Section 622.11 will be superseded.

Subd. 2, (7): This will supersede Minn.St. § 621.341 which prohibits the operation of "any automatic vending machine, coin-box telephone or other receptacle designed to receive lawful coin" by using instead a slug, false coin or other means, method, trick, or device. It also prohibits the taking or receiving from such machines the product or service without depositing the proper coin.

This will also supersede Minn.St. § 621.342 which prohibits use of paper, cloth, wadding, etc. in the return coin chute or other part of the coin-box telephone and other interferences stated in considerable detail.

The detail of these Minnesota sections is considered undesirable and to a degree too limiting. The recommended clause will cover all coin operated machines and coin operated receptacles such as telephones, vending machines, washing machines and drying machines, gas meters, record players and other entertainment machines, parking lot deposit boxes, newspaper stands, etc.

Subd. 3: This provides a range of possible sentences rather than a range of degrees of the crime of theft itself. This is in accord with the policy underlining this revision of reducing or eliminating the breakdown of crimes into various degrees and substituting in its place a range of authorized sentences in the course of which the judge can take into account the circumstances of the particular case. See §§ 609.095 to 609.165 on sentences.

In theft the gravity of the offense depends primarily upon the value of the property taken. In special situations it may depend upon the character of the property taken.

Hence, the primary emphasis is on value. The number of special aggravating circumstances recognized in Minn.St. § 622.05 and § 622.06 has been greatly reduced. Thus no distinction is drawn based on the fact that the theft may be from a car or building. Since the core of the crime is the taking of the property the special circumstances recognized have been limited to those instances where (1) the temptation to theft is great, or (2) the property taken is from a public record, or (3) instances of special outrage.

The monetary division of $100 and $2,500 are those appearing in Wisconsin St. § 943.20. The jury in its verdict will determine this question as well as the question whether or not the property was taken from a grave or constituted a record of a court and so forth. This is the Wisconsin practice. See Heyroth v. State, 1957, 275 Wis. 104, 81 N.W.2d 56.

Repeal Recommended

§ 622.01:

This is the general larceny statute. Its respective provisions are adequately covered by recommended § 609.52, Subdivisions 1, 2, and 3. Subd. 3 of § 622.01 appears seldom to be resorted to, if at all.

§ 622.02:

See comment to recommended § 609.52, Subdivision 1, (4).

§ 622.03:

This makes a person who, with intent to defraud, draws a check, draft or order for the payment of money or delivery of property, which he is not entitled to draw on the drawee, guilty of stealing." The substance of the section is covered by recommended § 609.52, Subd. 2, (3).

§§ 622.05, 622.06 & 622.07:

These sections provide for degrees of larceny, a policy discontinued and will be superseded by § 609.52, Subd. 3.

§ 622.08:

This punishes stealing of domestic animal or fowl. It is covered by recommended § 609.52, Subdivision 1, (1).

§ 622.09:

This is covered by recommended § 609.52, Subdivision 1, (1) and (2). See comment to this provision.

§ 622.10:

This declares dogs to be personal property. It is covered by recommended § 609.52, Subdivision 1, (1).

§ 622.11:

This specifies when a finder is guilty of theft. It is covered by recommended § 609.52, Subd. 2, (6).

§ 622.13:

This deals with misappropriation by various specified fiduciaries and is covered by recommended § 609.52, Subd. 2, (1).

§ 622.14:

This section relates to false pretenses as to the purchaser's means or ability to pay and requires the pretense to be in writing and signed. No equivalent section is recommended. The Committee considered it preferable to leave the questions to the general provisions of § 609.52, Subd. 2, (3).

§ 622.15:

This prescribes how the value of a written instrument is to be ascertained. It is covered by § 609.52, Subdivision 1, (1), which defines property as including documents of value and Subdivision 1, (3), defining value.

§ 622.16:

This makes it a defense that the property was appropriated "openly and avowedly, under a claim of title preferred in good faith." No equivalent provision has been retained. Claim of title in good faith would nullify the requirement of § 609.52, Subd. 2, (1), that the defendant act "intentionally and without claim of right . . .

and with intent to deprive the owner permanently of possession of such property."

§ 622.19:

is provides for a heavier penalty when property is stolen from a building on fire. This is covered by § 609.52, Subd. 3, (3), (c).

§ 622.21:

This makes it a misdemeanor to take "any grain or flax seed" from a railroad car "or sweeps such car." No equivalent provision has been recommended. It is sufficiently covered by the general provisions of the recommended theft section.

§ 622.22:

This deals with railroad or steamboat tickets, coupons or pass. It makes it a five year imprisonment felony if an employee "fraudulently" neglects to cancel or return them with intent to permit them to be used to defraud the company or if a person steals or fraudulently stamps, prints, signs, sells, or puts in circulation such documents.

The substance of the section is covered by the recommended theft section since tickets, coupons and passes are documents under recommended § 609.52, Subdivision 1, (1). The employee would be aiding their theft and become liable under § 609.05. Fraudulently printing, stamping, or signing would constitute forgery under recommended § 609.625.

§ 620.45:

This deals with obtaining delivery of property by impersonating another. It is covered by § 609.52, Subd. 2, (3).

§ 620.48:

This section relates to fraudulent representation as to ownership of land and is covered by § 609.52, Subd. 2, (3).

§ 620.63:

This covers a variety of acts by a wrongdoer directed at defrauding a livery stable keeper short of stealing, such as obtaining a horse or vehicle, or credit to use them, or causing injury to the property, or using it for purposes not agreed to. The content of the section is covered in substantial part by § 609.52, Subd. 2, (5). It is also dealt with by the section on criminal damage to property, § 609.595. In some instances the sentences imposable under the recommended sections will be greater than those prescribed by § 620.63.

§ 614.11:

This creates the crime of swindling and is covered by § 609.52, Subd. 2, (4).

Statutes Relating to Larceny Not Appearing in The Criminal Code and Not Affected by the Revision.

§ 16.64:

This section deals with liquor and other stamps, tokens, or forms evidencing the payment of taxes or fees of any kind due to the state.

Subdivision 7 of § 16.64 says that such stamp "is deemed to be of the value of the amount of money designated thereon and for which the same is salable, and larceny thereof is punished accordingly."

§ 37.24:

This makes it a misdemeanor to steal or unlawfully obtain or sell a state fairgrounds ticket.

§ 48.39:

This appears in the chapter on banks and trust companies. The relevant portion of the section prohibits any officer, director, or employee from making a loan from such an organization and makes the borrower guilty of larceny of the amount of such loan.

§ 48.75:

This contains a similar provision but extends to any indebtedness to the organization "by means of any over-draft, promissory note, account, endorsement, guarantee, or any other contract."

§ 61.55:

This deals with re-insurance of life insurance and provides "any officer or director of any company which is a party to the agreement of re-insurance herein provided for, who shall receive any compensation or gratuity for aiding or consenting to the contract shall be guilty of larceny."

§ 80.37:

This makes the fraudulent sale of securities a felony punishable the same as "for obtaining money under false pretenses."

§ 90.35:

This deals with timber unlawfully cut or taken from state owned land. "Any person who shall remove, transport, carry away, conceal, or convert to his own use any timber unlawfully cut on state lands, knowing the same to have been so cut, shall be guilty of larceny."

§ 91.18:

This makes placing a marking recorded in the defendant's or another's name upon a log not belonging to him guilty of larceny with a fine of not less than $50 or imprisonment in the county jail for not less than three months.

§ 91.20:

This states that taking, carrying away or converting another's logs or cutting them to destroy or conceal the evidence of another's ownership or placing any mark on the log other than that of the owner "shall be guilty of larceny and liable to the owner for twice the value of the timber in a civil action therefor." Possession is made presumptive evidence of guilt.

§ 91.22:

This makes it a gross misdemeanor to cause any person to part with money or property relying on a false or untrue scale bill of logs or other timber issued by a surveyor general or person under him.

§ 192.36:

This appears in the chapter on the national guard and punishes officers and soldiers who refuse to surrender military property or who make a false payroll or certificate for the payment of money.

§ 192.37:

This makes it a misdemeanor to buy or receive military property and refuse to deliver or pay for it.

§ 233.04:

This appears in the chapter on public terminal warehouses, deals with the manner of delivery of grain stored, provides for a civil remedy for non-delivery and concludes "and such warehousemen shall also be guilty of larceny."

§ 245.34:

This relates to assistance to disabled persons and in Subdivision 1 makes it a gross misdemeanor to obtain such assistance by misrepresentation or other fraud.

§ 256.31:

This appears in the chapter on public welfare and provides that one who "by means of a wilfully false statement or representation, or by impersonation, or other fraudulent device," obtains or assists another in obtaining old age assistance by the different means stated in the section is guilty of a gross misdemeanor.

§ 256.68:

This contains a similar provision with regard to public assistance. This is made a misdemeanor.

§ 256.83:

This deals with the same subject and makes the crime a misdemeanor.

§ 268.18:

This appears as part of the sections dealing with unemployment compensation and in Subd. 3 makes it a misdemeanor to receive any such benefits by misrepresentation or concealment.

§ 327.07:

This section makes it a misdemeanor to obtain food or lodging, etc., from hotels and similar places with intent to defraud the owner. It includes obtaining credit by false pretense or by means of baggage or effects not belonging to him.

§ 348.071, (8):

This makes it a gross misdemeanor to fraudulently obtain a reward for killing a wolf, lynx, bobcat, or fox.

§ 348.073, (4):

This contains a similar provision with respect to bears.

§ 514.02:

This makes a contractor or subcontractor guilty of larceny if he receives payment for an improvement on realty and doesn't pay for labor and materials furnished.

609.525 Bringing Stolen Goods into State

Subdivision 1. Whoever brings property into the state which he has stolen outside the state, or received outside of the state knowing it to have been stolen, may be sentenced in accordance with the provisions of section 609.52, subdivision 3. He may be charged, indicted, and tried in any county, but not more than

one county, into or through which he has brought such property.

Subd. 2. Property is stolen within the meaning of this section if the act by which the owner was deprived of his property was a criminal offense under the laws of the state in which the act was committed and would constitute a theft under this chapter if the act had been committed in this state.

COMMENT

This states the substance of Minn.St. § 622.12 which will be superseded. The provision of § 622.12 making it a new offense in every county in which the property is brought has not been included since it was believed to be too harsh. It is also made clear that the accused may be tried but once for the offense of bringing the property into the state.

609.53 Receiving Stolen Property

Whoever intentionally receives or conceals stolen property may be sentenced in accordance with the provisions in section 609.52, subdivision 3.

COMMENT

This is a simplified statement of the substance of Minn.St. § 622.18 which will be superseded.

"Intentionally" requires something more than awareness of receiving it. He must know that it was stolen property as well. See the definition of "intentional" in recommended § 609.02.

609.535 Issuance of Worthless Check

Subdivision 1. Definition. "Credit" means an arrangement or understanding with the drawee for the payment of the check or other order for the payment of money to which this section applies.

Subd. 2. Acts Constituting. Whoever issues any check or other order for the payment of money which, at the time of issuance, he intends shall not be paid may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100.

Subd. 3. Proof of Intent. Any of the following is evidence sufficient to sustain a finding that the person at the time he issued the check or other order for the payment of money, intended it should not be paid:

(1) Proof that, at the time of issuance, he did not have an account with the drawee; or

(2) Proof that, at the time of issuance, he did not have sufficient funds or credit with the drawee and that he failed within five days after receiving notice of nonpayment or dishonor to pay the check or other order; or

(3) Proof that, when presentment was made within a reasonable time, the issuer did not have sufficient funds or credit with the drawee and that he failed within five days after receiving notice of nonpayment or dishonor to pay the check or other order.

Subd. 4. Proof of Lack of Funds or Credit. If the check or other order for the payment of money has been protested, the notice of protest thereof is admissible as proof of presentation, nonpayment and protest, and is evidence sufficient to sustain a finding that there was a lack of funds or credit with the drawee.

Subd. 5. Exceptions. This section does not apply to a postdated check or to a check given for a past consideration, except a payroll check.

This incorporates with some changes and additions Wisconsin St. § 943.24.

COMMENT

The present Minnesota law is in an unsatisfactory state. There are now two statutes on the subject, §§ 622.04 and 620.41. The latter section was amended in 1955 and makes the offense a misdemeanor "unless within ten days after the issuer shall have received written notice of dishonor, he shall deposit with the bank or other depository, or pay or tender to the party in possession of such check, draft, or order sufficient money to constitute payment in full."

Minn.St. § 622.04 makes the offense a gross misdemeanor and contains no provision for a period of time in which payment may be made to avoid the creation of the crime. The revised section will avoid the loopholes existing in the present law in such instances as (1) the case where the defendant had money in the bank but withdrew it before the check was presented and so intended when the check was issued, and (2) where several checks are issued, for any one of which there are sufficient funds in the bank but there are not sufficient funds to cover all. In each of these instances under the revised draft if the defendant intended the check not to be paid the crime exists.

The offense is made a misdemeanor rather than a gross misdemeanor in the belief that this is the most effective measure for meeting this crime. The more severe penalties discourage prosecution and conviction and make for less effective enforcement.

Subdivisions 3 and 4 replace the provisions in Minn.St. § 622.04.

It is not believed that State v. Higgin, 1960, 257 Minn. 46, 99 N.W. 2d 902, invalidates the evidence provisions of the draft. This decision merely requires that the jury cannot be instructed that they must return a verdict against the defendant in the absence of evidence negativing the prima facie case. The decision permits the judge to instruct the jury that they may infer the existence of the intent from the facts specified in the statutes, but that they are not required to do so. The court stated:

". . . where specific intent is an essential element of the offense charged, it can never be presumed, at least in the sense that it *must* be found from a given state of facts in the absence of countervailing or rebutting evidence. Like every other essential element of the crime, specific intent must be established beyond a reasonable doubt or be reasonably deducible from the evidence. It may not rest on a presumption. As previously mentioned, intent to defraud may be, and normally is, inferred from the established circumstances."

At another point the court stated: "We do not hold that it would necessarily be error for the trial court to mention to the jury, by way of comment on the evidence, the permissible inference upon which a presumption is based."

To eliminate the requirement of intent either to defraud or more specifically that the check shall not be paid would run into serious constitutional objections involving imprisonment for debt.

Minn.St. §§ 620.41 and 622.04 will be superseded by recommended § 609.535.

609.54 Embezzlement of Public Funds

Whoever does an act which constitutes embezzlement under the provisions of Minnesota Constitution, Article IX, Section 12 may be sentenced as follows:

(1) If the value of the funds so embezzled is $2,500 or less, to imprisonment for not more than five years or to payment of a fine of not more than $5,000, or both; or

(2) If such value is more than $2,500, to imprisonment for not more than ten years or to payment of a fine of not more than $10,000, or both.

COMMENT

Minnesota Constitution, Article IX, Section 12 provides:

"Suitable laws shall be passed by the legislature for the safe keeping, transfer and disbursements of the State and school funds; and all officers and other persons charged with the same or any part of the same, or the safe keeping thereof, shall be required to give ample security for all moneys and funds of any kind received by them; to make forthwith and keep an accurate entry of each sum received, and of each payment and transfer; and if any of said officers or other persons shall convert to his own use in any manner or form, or shall loan, with or without interest, or shall deposit in his own name, or otherwise than in the name of the State of Minnesota; or shall deposit in banks or with any person or persons, or exchange for other funds or property, any portion of the funds of the State or the school funds aforesaid, except in the manner prescribed by law, every such act shall be and constitute an embezzlement of so much of the aforesaid State and school funds, or either of the same, as shall thus be taken, or loaned, or deposited or exchanged, and shall be a felony; and any failure to pay over, produce or account for the State school funds, or any part of the same entrusted to such officer or persons as by law required on demand, shall be held and be taken to be *prima facie* evidence of such embezzlement."

Minn.St. § 620.01 appears designed to effectuate this constitutional provision although State v. Munch, 1875, 22 Minn. 67, has held that the constitutional provision is self-executed. However, § 620.01 fails to cover completely the offenses specified in the constitutional provision and includes offenses not within the constitutional provision.

The Advisory Committee concluded that in view of the difficulty of making any statutory provisions identical with those contained in the constitution it was preferable simply to incorporate the constitutional provision by reference and to provide the appropriate sentences for violation thereof. This is what recommended § 609.54 is designed to do. The sentences provided are consistent with those prescribed in the theft section, § 609.52.

609.545 Misusing Credit Card to Secure Services

Whoever obtains the services of another by the intentional unauthorized use of a credit card issued or purporting to be issued by an organization for use as identification in purchasing services may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100.

COMMENT

This reproduces the substance of Minn.St. § 620.501, with the following changes:

(1) An attempt to use the card has not been included since this will be covered by the general attempt provision, § 609.17 under which an attempt to commit a misdemeanor carries the same sentence as the misdemeanor itself.

(2) The use of a "false, counterfeit, or nonexistent" card has not been included since this will be covered by the forgery provision, § 609.63, and by the words in the above section "purporting to be issued."

For the similar provision in the theft section, see § 609.52, Subd. 3, (c).

609.55 Unauthorized Use of Motor Vehicle

Subdivision 1. Definition. For the purposes of this section, "motor vehicle" means any self-propelled device for moving persons or property or pulling implements from one place to another, whether such device is operated on land, rails, water, or in the air.

Subd. 2. Acts Constituting. Whoever intentionally takes and drives a motor vehicle without the consent of the owner or his authorized agent may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than $3,000, or both.

COMMENT

The present sections dealing with this subject are Minn.St. §§ 168.47 and 168.48, both originally enacted in 1911, and Minn.St. § 168.49, originally enacted in 1919.

Section 168.47 makes a variety of offenses misdemeanors. First, it prohibits tampering with a motor vehicle without the permission of the owner. Second, it prohibits climbing onto or into an automobile. Third, it prohibits the hurling of stones or other missiles at an automobile or its occupants. Fourth, it prohibits attempting to manipulate any lever, starting device, and so forth or starting the vehicle in motion or otherwise damaging or interfering with it. Fifth, it prohibits placing on any street, etc., glass, tacks, nails, and so forth, tending to injure automobile tires.

Section 168.48 prohibits the taking and removal from a "warehouse, garage, or building of any kind" any automobile or motor vehicle for his own use without the consent of the owner. This is made a felony.

Section 168.49 makes it a five year felony to "drive, operate or use a motor vehicle without the permission of the owner or his agent in charge and control thereof." Section 168.49 is sufficiently broad to encompass all that is covered by § 168.48.

This revision deals with the content of these sections as follows:

The definition in Subdivision 1 is taken from the Wisconsin code, § 943.23. The term "motor vehicle" is defined in Minn.St. §§ 168.011 and 169.01, Subd. 3.

It is believed that a separate definition adapted to this particular section is desirable. It will include all types of self-propelled devices such as automobiles, trucks, tractors, motorcycles, scooters, motorbikes, boats propelled either by inboard or outboard motors, and airplanes.

Damage to personal property, which includes motor vehicles, is made a criminal offense under recommended § 609.595. It is unnecessary to have a separate section covering the same type of misconduct but specifically relating to motor vehicles.

Tampering with a motor vehicle is a form of criminal trespass and Clause (9) of § 609.605 covers the point specifically. See comment to § 609.605, Clause (9).

Subdivision 2 will supersede both §§ 168.48 and 168.49. There appears to be no reason why a separate section is needed to cover the case of a motor vehicle removed from a building. Under the present Minnesota sections the penalties for both are substantially the same.

Subdivision 2 follows the language of Wisconsin St. § 943.23. It differs from the present Minn.St. § 168.49 in that there must be not only a driving but also a taking before the offense is complete. The distinction will appear in the following cases:

(1) "A" takes a car, picks up his friend "B" who joins him and together they drive around in the car, "B" knowing that "A" has no right to the car. Under present law "B's" liability is not clear. He may be liable as aiding and abetting the use or operation of the car, or possibly as "using" the car. Under the recommended section he would not be since he was not a participant in the taking.

It was believed that a differential in treatment should be made. "B" would still be liable under recommended § 609.605, (9) in the getting into the car without the permission of the owner, or in riding in it after knowing it was being used without the owner's permission.

(2) "A" obtains permission from "B" to use a motor vehicle for an hour. He continues to use it beyond the hour knowing he has no right to do so. Under existing statutes he would be guilty of driving,

operating, or using the car without permission of the owner. Under the recommended section he would not be liable since there was no taking. It is believed that there should not be a criminal liability in such a case.

We are, of course, here dealing only with cases where there is no intention of appropriating the property. Such intention would make the act theft under § 609.52. A temporary taking might qualify also as theft under § 609.52, Subd. 2, (5).

The type of case covered by this section is the typical one of a youngster taking a car on the street, driving it around for awhile and leaving it for the owner to find. If there is an initial permission on the part of the owner, it would seem that the purpose of these statutes does not apply even though the subsequent use was unauthorized.

DAMAGE OR TRESPASS TO PROPERTY

609.555 Definition

"Property of another" as used in sections 609.56 and 609.565 means property in which a person other than the actor has an interest which the actor has no right to defeat or impair.

COMMENT

There is presently no corresponding definition. The definition includes property owned by the defendant but in which another may have an interest such as a security, a joint interest, or a lien.

609.56 Aggravated Arson

Whoever, by means of fire or explosives, intentionally destroys or damages a dwelling house or other property, real or personal, whether his own or that of another, and thereby creates an imminent danger to life or risk of serious bodily harm commits aggravated arson and may be sentenced to imprisonment for not more than 15 years or to payment of a fine of not more than $15,000, or both, if the danger or risk was known to the actor; or to imprisonment for not more than five years or to payment of a fine of not more than $5,000, or both, if the danger or risk was not known but was reasonably foreseeable.

COMMENT

In 1885 Minnesota adopted the New York statute on arson. This was superseded in 1953 by the present statute in response to efforts by the Fire Underwriter Company to obtain some uniformity in legislation on this subject.

The present statute is a complex one, consisting of five degrees and conflicts with the principles which underlie this revision in seek-

ing to arrive at a simple but clear statement of the crime and to avoid the use of extensive classification of crimes into degrees.

While arson consists of no more than a particular form of damage or destruction, special treatment is warranted because of the peculiar nature of fire. The intended consequences of a burning can be delayed while a small fire develops into a large one and thus permits escape without apprehension. Moreover, the destructiveness of fire is limited only by the extent of the property present. Fire also, in many cases, exposes others to risk of death or bodily harm.

In keeping with modern trends, damage or destruction by the use of explosives has been included.

The distinction between dwellings and other buildings and the distinction between buildings and personal property now present in the existing statutes has not been adhered to. The distinction between aggravated and simple arson has been drawn on the basis of danger to life or risk of serious bodily harm. Of course, the nature of the property, such as being a dwelling, will bear on that question.

The distinguishing characteristic of aggravated arson under the above section is the creation of imminent danger to life or risk of serious bodily harm.

609.565 Simple Arson

Whoever, by means of fire or explosives, intentionally damages or destroys any property of another without his consent is guilty of simple arson, if the act does not constitute aggravated arson, and may be sentenced as follows:

(1) To imprisonment for not more than three years or to payment of a fine of not more than $3,000, or both, if:

(a) The property intended by the actor to be damaged or destroyed had a value of $100 or more; or

(b) Property of the value of $100 or more was unintentionally damaged or destroyed but such damage or destruction could reasonably have been foreseen; or

(c) The property specified in clauses (a) and (b) in the aggregate had a value of $100 or more; or

(2) To imprisonment for not more than 90 days or to payment of a fine of not more than $100 in all other cases.

COMMENT

The distinction between the two degrees, turning roughly on the value of $100 or more of the property intended to be damaged or destroyed or in fact damaged or destroyed corresponds with the distinction drawn in the recommended theft section, § 609.52.

Note also that it is sufficient that property of more than $100 in value was in fact destroyed or damaged if such damage or destruction could have been reasonably foreseen.

The following sections constitute the present general arson sections and will be superseded: §§ 621.021, 621.025, 621.031, 621.035, 621.05, 621.06, and 621.065.

Minn.St. § 621.041, which deals with burning of property to obtain insurance, is covered by another recommended section; namely, § 609.61.

Minn.St. § 621.066 will also be superseded. This section, enacted in 1959, makes it a felony with one to three years imprisonment or a fine up to $1,000 or both to "wilfully" burn "pine lands of another." The increased penalties for arson where over $100 damage is caused makes § 620.066 no longer necessary.

Minn.St. § 621.41, for similar reasons, will also be superseded. This imposes up to one year imprisonment upon one who "shall wilfully burn or set fire to any grain, grass, growing crop, standing timber, or to any building, fixture, or appurtenance to real property of another." To the extent of its application it duplicates other existing arson sections imposing greater penalties.

Section Outside Criminal Law Relating to Arson and Not Affected by the Revision

§ 88.19:

This appears in the Chapter on the Division of Forestry. It provides in part for liability as for a misdemeanor for setting fires endangering the property of another and for negligently allowing a fire upon one's own land to extend beyond its limits.

609.57 Attempted Arson

Whoever places any combustible or explosive or other destructive material or device in or near any property with intent to set fire to or blow up or otherwise damage such property so that, if such fire or destruction had occurred, he would have been guilty of violating sections 609.56, 609.565, or 609.61, is guilty of an attempt to violate such sections.

COMMENT

This will supersede the second paragraph of Minn.St. § 621.035 without change in substance, except that the destruction need not be by burning.

This will also supersede Minn.St. § 621.44, making it a felony with up to ten years imprisonment depending on whether life or safety is endangered, to place an explosive near a "building, car, vessel or structure" with intent "to destroy, throw down, or injure the whole or any part thereof."

609.575 Negligent Fires

Whoever is culpably negligent in causing a fire to burn or get out of control and thereby creates an unreasonable risk and high degree of probability of damage or injury to another, and the property or person of another is damaged or injured or en-

dangered thereby, may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100.

COMMENT

This will supersede Minn.St. § 616.25 but substitutes a higher degree of negligence. This is in keeping with the general policy pursued in this revision that ordinary negligence should seldom be the basis of criminal liability.

609.58 Burglary

Subdivision 1. Definitions. For the purposes of this section:

(1) Whoever enters a building while open to the general public does so with consent except when, prior thereto, consent was expressly withdrawn.

(2) "Building" includes a dwelling or other structure suitable for affording shelter for human beings or appurtenant to or connected with a structure so adapted, and includes portions of such structure as are separately occupied.

Subd. 2. Acts Constituting. Whoever enters a building without the consent of the person in lawful possession, with intent to commit a crime therein, commits burglary and may be sentenced as follows:

(1) To imprisonment for not more than 20 years or to payment of a fine of not more than $20,000, or both, if:

(a) When entering or while in the building, he possesses an explosive or tool to gain access to money or property; or

(b) The building entered is a dwelling and he possesses a dangerous weapon when entering or while in the building or he commits a battery upon a person present therein; or

(c) The portion of the building entered contains a banking business or other business of receiving securities or other valuable papers for deposit or safe-keeping, the entry is with force or threat of force, the intent is to commit a felony therein, and another person not an accomplice is present therein.

(2) To imprisonment for not more than ten years or to payment of a fine of not more than $10,000, or both, if the building entered is a dwelling and another person not an accomplice is present therein.

(3) In any other case, to imprisonment for not more than five years or to payment of a fine of not more than $5,000, or both, if the intent is to commit a felony or gross misdemeanor or

to imprisonment for not more than one year or to payment of a fine of not more than $1,000, or both, if the intent is to commit a misdemeanor.

COMMENT

Statutes generally have modified and expanded the common law crime of burglary which was limited to breaking and entering in the night time the dwelling house of another with intent to commit a felony therein. Statutory changes in the several states vary widely.

The crime is one for which prosecutions are common.

An unusual feature of the crime is that the act itself which constitutes the crime is usually a relatively harmless one, that of entering a building. What makes it serious is the intent with which the building is entered.

It is thus similar to the crime of attempt. However, in the case of burglary the punishment authorized may be much greater than that of the crime intended whereas in the case of attempts the punishment is less. Also the crime of burglary is regarded as separate from any crime committed within the building and conviction of one does not bar conviction of the other.

Anglo-American law has thus dealt unusually severely with this offense.

Nevertheless no major changes in the law of the state are undertaken in the recommended revision. There has been some modification of the sentences, particularly for burglary of a bank. Also the requirement of a breaking has been eliminated since judicial interpretation has reduced this to a mere technicality. Also some of the details distinguishing the degrees have not been retained.

Basically, however, the recommended sections reflect the present Minnesota law.

Entering in the night time has been deleted as an aggravating element. It was considered equally serious to enter a building, particularly a dwelling, in the day time, when only the mother and children may be present.

Subdivision 1, (1): This provision is necessary since breaking is no longer made an element in the crime. The Wisconsin code contains a somewhat similar provision.

Subdivision 1, (2): This contains the substance of the definitions appearing in Minn.St. § 621.01, Subds. 3 and 4. Dwelling house, however, is not separately defined in the recommended provisions.

Subd. 2: The introductory clause does not require a breaking such as that contained in Minn.St. § 621.01, Subd. 6. Neither has there been incorporated a definition of the word "enter" corresponding to that appearing in § 621.01, Subd. 7, this being deemed unnecessary in view of the numerous decisions on the question.

Subd. 2, (1), (a) and (b): This reflects the provisions of Minn.St. §§ 621.07 and 621.08 but the maximum is reduced from up to life to 20 years.

Subd. 2, (1), (c): This is based on Minn.St. § 619.45 relating to bank robberies. Again the maximum sentence is reduced from life imprisonment to 20 years.

Since the maximum sentence for murder is life imprisonment it was believed to be an invitation to murder if the crime of burglary carries the same sentence.

Subd. 2, (2): This is based on a part of Minn.St. § 621.09. The latter portion of § 621.09 overlaps and duplicates § 619.45 and is dealt with under Clause (1), supra.

Subd. 2, (3): This covers substantially Minn.St. §§ 621.10 and 621.11. Breaking out of building has not been included since this would introduce the same technicalities associated with breaking in. For example, walking through a revolving door pushed by another would not be breaking out but if the defendant gave any assistance whatever it would constitute a crime. It is not believed that such technicalities should be incorporated.

It will be noted that under the recommended section a burglary with the intent to commit a misdemeanor constitutes a gross misdemeanor. If the crime intended is larceny this will turn on the amount of property intended to be taken. Ordinarily the burglar intends to take whatever he can find. In that event, the intent would be to commit a felony and the heavier penalty would apply.

609.585 Double Jeopardy

A prosecution for or conviction of the crime of burglary is not a bar to conviction of any other crime committed on entering or while in the building entered.

COMMENT

This will supersede Minn.St. § 621.12 to the same effect. The provision is probably unnecessary in view of judicial decisions which reach the same conclusion in the absence of a statutory provision.

609.59 Possession of Burglary Tools

Whoever has in his possession any device, explosive, or other instrumentality with intent to use or permit the use of the same to commit burglary may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than $3,000, or both.

COMMENT

This will supersede Minn.St. § 621.13 to the same effect. The provision that possession is prima facie evidence of intent has been deleted since, under the recent Minnesota decision of State v. Higgin, 1960, 257 Minn. 46, 99 N.W.2d 902, this is probably invalid.

609.595 Damage to Property

Subdivision 1. Aggravated Criminal Damage to Property. Whoever intentionally causes damage to physical property of another without the latter's consent may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than $5,000, or both, if:

(1) The damage to the property caused a reasonably foreseeable risk of injury to person; or

(2) The property damaged belongs to a public utility or a common carrier and the damage impairs the service to the public rendered by them; or

(3) The damage reduces the value of the property by more than $100 measured by the cost of repair or replacement, whichever is less.

Subd. 2. Criminal Damage to Property. Whoever intentionally so causes such damage under any other circumstances may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100.

COMMENT

This section covers destruction of property by means other than by fire or explosives.

There are numerous sections in the present criminal code making damage to property, whether real or personal, a crime. Varying degrees of punishment are imposed without any principle or policy being evident in the distinctions drawn. There is considerable duplication and overlapping among the several sections.

It has been the purpose of the revision to state the crime in a systematic and purposeful manner and without multiplicity of detail.

It is believed that the gravity of the crime should turn upon the extent of the property damaged. This is the policy which underlies the crime of theft. In a sense, the destruction of property from a social point of view is more serious than theft for it terminates the possibility of recovering the property either at all or in its original form.

Accordingly, the crime has been divided into two categories. Severity of punishment depends in part on the extent of the damage caused or on risk of death or bodily injury.

Clause (2) is taken from Wisconsin St. § 943.01, (2), (b). The nearest corresponding provision in present Minnesota law is Minn.St. § 621.29, which, however, is restricted to railroads and does not make liability depend on impairment of service to the public.

The recommended section will supersede the following Minnesota sections:

§ 614.22:

This punishes the opening of a grave with intent to steal the body or coffin.

§ 621.25:

A major portion of this section is superseded. Clauses (1), (2), (3), (4), and (6) are directed at injuries to real estate or appurtenances or crops thereon. Clause (5) is aimed at trespass with intent to injure or destroy items growing on real estate. Clause (7) relates to untieing horses. Clauses (5) and (7) are not included in § 609.595 but are dealt with elsewhere.

§ 621.26:

This covers the destruction or injury of real or personal property not punished elsewhere. The crime is a gross misdemeanor if the property is worth more than $20.

§ 621.27:

This relates to injury to buildings.

§ 621.28:

This relates to a variety of special categories and covers not only damage but displacement and removal. The items specified cover a variety of properties evidently deemed to require special attention. However, the crime is only made a misdemeanor. Some of the provisions of § 621.28 are covered by other recommended sections than the above.

§ 621.29:

This relates to injuries of railroad property, placing obstructions on the track, or shooting at or throwing stones and so forth at a train. A maximum of ten years imprisonment is imposed if the safety of a person is in danger, otherwise the limit is three years.

§ 621.30:

This is directed at damage to railroad property and makes the crime a misdemeanor.

§ 621.32:

This relates to baggage handled by railroads and others. It includes "carelessly" damaging the property. This revision does not include negligent damage since negligence is rarely the basis of a criminal offense.

§ 621.33:

This relates to injury or destruction of property of an electric or telephone line which is made a misdemeanor.

§ 621.40:

This makes it a misdemeanor to injure or destroy crops and other farm produce.

§ 621.46:

This makes it a gross misdemeanor to injure property relating to U. S. lighthouse stations. There are now federal laws fully covering the subject and the section therefore becomes inapplicable by its terms.

§ 621.49:

This relates to injury of piers, booms, and dams. The offense is made a felony. The portion of Minn.St. § 621.49 reading: "hoist any gate in or about such dam" is not included in the recommended section.

§ 621.51:

This relates to damage to houses of worship, their appurtenances and contents. It includes also school houses or other public buildings. A six-month imprisonment is authorized if the damage is more than $100.

§ 621.52:

This makes it a misdemeanor to destroy or damage works of art.

§ 621.53:

This makes it a three-year prison offense to injure or destroy literary or artistic property in a public library, gallery, exhibit, and so forth.

Transfer Recommended

§§ 621.36 and 621.37:

These sections prohibit the cutting, removal, or transporting of coniferous trees without the written consent of the owner. The form of the consent is prescribed and the consent must be carried and exhibited to officers on demand.

Section 621.37 prescribes the penalties and makes the forgery of a written consent forgery in the second degree "and shall be punished accordingly". Under the revision there is no second degree forgery.

It is recommended that the words "in the second degree" be deleted. This will then make the punishment the equivalent of simple forgery under the recommended revision. This will reduce the penalty from ten years imprisonment now attached to second degree forgery to three years imprisonment or $3,000, or both, under the recommended revision. This is in keeping with the policy underlying the recommended provisions.

While these sections relate to destruction of trees and, therefore, are technically within the criminal damage to property concept they also contain many detailed regulations which properly belong in a regulatory chapter rather than in a criminal code.

§ 621.38:

This relates to proof and defenses in prosecutions under Minn.St. §§ 621.36 and 621.37.

§ 621.39:

This states that Minn.St. §§ 621.36, 621.37, and 621.38 are supplemental to any other existing law.

Sections Outside of Criminal Law Relating to Criminal Damage to Property and Not Affected by the Revision

§ 85.20:

This punishes as a misdemeanor the destruction of various state properties, such as trees, guide-boards, furniture, fixtures, etc., located within state parks and other stated public grounds.

§ 91.24:

This makes a felony of "wilfully and maliciously" destroying or injuring any side or other boom of logs.

§ 94.46:

This punishes one who "wilfully defaces, injures, or removes any signal, monument, building, or other property of the United States erected or used in the coast and geodetic survey."

§ 106.641:

This punishes one "wilfully obstructing or in any way injuring any public drainage work" or "who wilfully changes or alters the location or markings of any stakes set by the engineer in any drainage system" or drains into the system without authority.

§ 193.33:

This makes it a misdemeanor, but with maximum punishment limited, to "wilfully injure any armory or arsenal, or any property therein lawfully kept or deposited. . . ."

§ 234.23:

This appears in the chapter on storage of grain on farms and imposes a fine up to $500 or imprisonment up to six months for "unlawfully removing, breaking or in any manner interfering or tampering with any seal, lock or other fastening placed upon" the container of the grain.

§ 307.08:

This makes it a misdemeanor to wilfully destroy, mutilate, injure, or remove tombstones and other specified property in a cemetery.

§ 361.05:

This imposes a fine of not more than $100 or imprisonment for not more than 90 days or both for causing damage to property of another or personal injury by operating watercraft in a reckless or grossly negligent manner.

§ 381.13:

This provides for the establishment of landmarks at the northeast corner of each congressional township. "Any person who shall remove, destroy, or deface any such landmark shall be guilty of a misdemeanor."

§ 442.23:

This makes it a gross misdemeanor to take water from a water main or service pipe or to interfere in specified ways with fire hydrants, etc.

§ 442.24:

This makes it a gross misdemeanor to maliciously or wilfully divert water from water-works or render the water impure, or destroy or injure the various specified properties used or connected with water-works and sewerage systems and lighting plants.

609.60 Dangerous Trespasses and Other Acts

Whoever intentionally does any of the following may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100; except, if to his knowledge a risk of death or bodily injury or serious property damage is thereby created, he may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than $5,000, or both:

(1) Smokes in the presence of explosives or inflammable materials; or

(2) Interferes with or obstructs the prevention or extinguishing of any fire, or disobeys the lawful orders of a law enforcement officer or fireman present at the fire; or

(3) Shows a false light or signal or interferes with any light, signal, or sign controlling or guiding traffic upon a highway, railway track, navigable waters, or in the air; or

(4) Places an obstruction upon a railroad track; or

(5) Exposes another or his property to an obnoxious or harmful gas, fluid or substance, with intent to injure, molest, or coerce.

COMMENT

Clause (1) is new but seems desirable.

Clause (2) will supersede Minn.St. §§ 616.28 and 621.43 which are more specific but in substance are substantially the same.

Clause (3) will supersede Minn.St. § 621.28, Subds. 3 and 5, and Minn.St. § 621.45, which again are more specific in content.

The following sections relating to the same subject do not now appear in the criminal code and will not be affected: Minn.St. §§ 169.08, 169.89, 219.30, and 361.07.

Clause (4) will supersede the corresponding parts of the following:

§ 621.29:

Clause (2) of § 621.29 prohibits placing an obstruction on a railroad track.

§ 621.30:

This prohibits breaking down, leaving open, etc., railroad gates.

§ 621.31:

This prohibits trespassing on railroad tracks or riding bicycles or similar vehicles on the tracks.

§ 616.30:

This makes it a felony with a maximum imprisonment of 20 years for obstructing a railway engine or carriage and endangering others.

Clause (5) of recommended § 609.60 will supersede Minn.St. § 621.54, which is in substance the same but makes the crime a gross misdemeanor.

609.605 Trespasses and Other Acts

Whoever intentionally does any of the following may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100:

(1) Smokes in a building, area, or common carrier in which "no smoking" notices have been prominently posted, or when requested not to by the operator of the common carrier; or

(2) Trespasses or permits animals under his control to trespass upon a railroad track; or

(3) Permits domestic animals or fowls under his control to go upon the lands of another within a city or village; or

(4) Interferes unlawfully with any monument, sign, or pointer erected or marked to designate a point of a boundary, line or a political subdivision, or of a tract of land; or

(5) Trespasses upon the premises of another and, without claim of right, refuses to depart therefrom on demand of the lawful possessor thereof; or

(6) Enters the premises of another with intent to take or injure any fruit, fruit trees, or vegetables growing thereon without the permission of the owner or occupant; or

(7) Refuses the request of the operator of a public conveyance to either pay the required fare or leave the conveyance; or

(8) Takes any animal on a public conveyance without the consent of the operator, or

(9) Without the permission of the owner, tampers with or gets into or upon a motor vehicle as defined in section 609.55, subdivision 1, or rides in or upon such motor vehicle knowing it is being driven by another without the permission of the owner.

COMMENT

This section deals with acts which do not raise questions of risk to person or other property. Compare the preceding section.

Clause (1) will supersede Minn.St. § 621.42, relating to buildings, and § 615.12, relating to common carriers. The portion of § 615.12 relating to profanity and quarreling will be covered by the disorderly conduct provision, § 609.72.

Sections relating to smoking appearing outside of the criminal code and not affected are: Minn.St. § 76.48, Subd. 6, regulating smoking in dry cleaning establishments; Minn.St. § 88.22, authorizing Commissioner of Conservation to prohibit smoking in forests to prevent fires; and Minn.St. § 296.22, Subd. 5, which prohibits smoking while a motor vehicle is being supplied with fuel.

Clause (2) will supersede Minn.St. §§ 621.30 and 621.31 which contain similar provisions.

Clause (3) will supersede Minn.St. §§ 561.05 and 561.06, to similar effect.

Clause (4) will supersede Minn.St. § 621.28, (4), to similar effect.

Clause (5) will supersede Minn.St. §§ 621.57 and 621.35. The phrase "without claim of right" in the recommended clause is intended only to covered bona fide claims of right. A false claim would not be a claim at all.

Hunting statutes involving trespass, such as Minn.St. § 100.273, will not be affected by any of the provisions of the recommended section. Also not affected will be Minn.St. §§ 88.20, relating to the duties of railroads with respect to fires, and 90.07, relating to cutting timber and other trespasses to public lands.

Clause (6) will supersede Minn.St. § 621.25, (5), to the same effect.

Clause (7) will supersede a portion of Minn.St. § 615.12, to the same effect.

Clause (8) will supersede the balance of Minn.St. § 615.12, to the same effect.

Clause (9), the first portion, covers like provisions in Minn.St. § 168.47 of the traffic code. The other provisions of that section are considered in the comment to recommended § 609.55.

The latter portion of Clause (9) beginning "rides in or upon . . ." is new. It is intended to cover the case where "A" using a car without the permission of the owner invites "B" to ride with him. "B" knows that "A" has no authority to use the car. To ride in the car with this knowledge, it is believed, should be made a misdemeanor. There is a question whether a case of this kind would presently come within the provisions of Minn.St. § 168.49. If it does, the act would constitute a felony, a consequence believed too harsh. See comment to § 609.55.

Sections Outside the Criminal Law Relating to Criminal Damage or Trespass to Property and Not Affected by the Revision

§ 160.27:

This relates to obstruction or damage to highways, road equipment, signs, markers, etc., and appears in the general provisions on roads.

§ 235.12:

This relates to breaking and entering of cars loaded with grain, subject to state inspection.

§ 235.13:

This makes violation of any provision of Chapters 216 to 235 a gross misdemeanor. Those provisions cover 130 pages in the General Statutes. There is a question as to the validity of such an all encompassing criminal provision. Since it is not in the criminal code, the Advisory Committee has not given it further consideration.

609.61 Defrauding Insurer

Whoever burns, destroys, or otherwise damages any property with intent to defraud an insurer of that property, when aggravated arson is not committed thereby, may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than $3,000, or both.

COMMENT

This will supersede Minn.St. § 621.041 but is more extensive in that it includes not only destruction by fire but also destruction by any other means.

It will also supersede Minn.St. § 621.23, punishing one who damages or destroys a vessel or its cargo "with intent to prejudice or defraud an insurer or any other person" or loading a vessel for the same purpose.

It will also supersede Minn.St. § 621.24, covering cases of defrauding or prejudicing an insurer by wilfully burning or in any manner injuring or destroying property not specified or included in the chapter.

609.615 Defeating Security on Realty

Whoever removes or damages real property which is subject to a mortgage, mechanic's lien, or contract for deed, with intent to impair the value of the security, without the consent of the security holder, may be sentenced as follows:

(1) If the value of the property is impaired by $100 or less, to imprisonment for not more than 90 days or to payment of a fine of not more than $100; or

(2) If the value of the property is impaired by more than $100, to imprisonment for not more than five years or to payment of a fine of not more than $5,000, or both.

COMMENT

This will supersede Minn.St. § 621.20 but the recommended section includes contracts for deed which § 621.20 does not.

Moreover § 621.20 is limited to removal of a building, fixture, or fence while the recommended section includes damaging the property.

Also a differential is made in punishment depending upon the value of the property. It is a felony under § 621.20.

609.62 Defeating Security on Personalty

Subdivision 1. Definition. In this section "security interest" means an interest in property which secures payment or other performance of an obligation.

Subd. 2. Acts Constituting. Whoever, with intent to defraud, does any of the following may be sentenced to imprisonment for not more than two years or to payment of a fine of not more than $2,000, or both:

(1) Conceals, removes, or transfers any personal property in which he knows that another has a security interest; or

(2) Being an obligor and knowing the location of the property refuses to disclose the same to an obligee entitled to possession thereof.

COMMENT

This supersedes Minn.St. § 621.21. The following changes are made:

(1) "Intent to defraud" is substituted for "intent to place mortgaged personal property beyond the reach of the mortgagee or his assigns."

(2) "A security interest" is substituted for the more confused statement in the present statute which may be limited to chattel mortgages and conditional sales. The attorney general opinion of 1954 so construed it.

(3) Acts defined by the present statute, Subd. 2, (a), cover removal, concealment, selling, conveying or disposing. Acts defined by the

recommended section are concealment, removal and transfer. "Transfer" is sufficient to include the omitted words. Recommended Subd. 2, (2) creates the crime of refusal to disclose by the obligor to the obligee. This is not present in § 621.21.

(4) The penalty is differently stated with the Minnesota statute now drawing a differential at $1,000 in the amount of the debt secured. The maximum imprisonment is reduced from three years to two years.

(5) The following portion of § 621.21 has not been reproduced: "In any prosecution under this section, it shall be a sufficient allegation and description of the mortgage and the mortgaging of personal property to state that such property was duly mortgaged by a certain chattel mortgage, giving the date thereof and the names of the mortgagor and mortgagee."

This is regarded as a procedural provision and should be transferred to the chapter on criminal procedure.

FORGERY AND RELATED CRIMES

609.625 Aggravated Forgery

Subdivision 1. Making or Altering Writing or Object. Whoever, with intent to defraud, falsely makes or alters a writing or object of any of the following kinds so that it purports to have been made by another or by himself under an assumed or fictitious name, or at another time, or with different provisions, or by authority of one who did not give such authority, is guilty of aggravated forgery and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than $10,000, or both:

(1) A writing or object whereby, when genuine, legal rights, privileges, or obligations are created, terminated, transferred, or evidenced, or any writing normally relied upon as evidence of debt or property rights; or

(2) An official seal or the seal of a corporation; or

(3) A public record or an official authentication or certification of a copy thereof; or

(4) An official return or certificate entitled to be received as evidence of its contents; or

(5) A court order, judgment, decree, or process; or

(6) The records or accounts of a public body, office, or officer; or

(7) The records or accounts of a bank or person, with whom funds of the state or any of its agencies or subdivisions are deposited or entrusted, relating to such funds

Subd. 2. Means for False Reproduction. Whoever, with intent to defraud, makes, engraves, possesses or transfers a plate or instrument for the false reproduction of a writing or object mentioned in subdivision 1 may be sentenced as provided in subdivision 1.

Subd. 3. Uttering or Possessing. Whoever, with intent to defraud, utters or possesses with intent to utter any forged writing or object mentioned in subdivision 1, knowing it to have been so forged, may be sentenced as provided in subdivision 1.

COMMENT

The Minnesota statutes on forgery are extremely detailed and discursive in character. The purpose of the present revision is to simplify the statement of the crime to avoid duplication and to state the principles in clearer, although more general, terms.

The present statutes divide the crime into three categories or degrees with penalties of imprisonment ranging from maximums of 5 to 20 years. The statement of the offenses within these degrees exhibits no principle or policy or basis of demarcation.

The recommended draft reduces the degrees to two, called forgery and aggravated forgery.

Forgery of whatever degree is primarily a preventive crime in that the act which is punished need not have caused any specific harm. It is the making or uttering of the forged instrument which constitutes the offense. This frequently means that punishments are more severe than had the prosecution been under the larceny statutes based on the amount of money or property obtained by the forgery. This is difficult to justify.

The maximum penalties have accordingly been somewhat reduced. That provided for aggravated forgery is identical with the Wisconsin provision. For the other category—forgery—a higher maximum sentence than prevails under the Wisconsin revision has been provided.

In general the policy pursued has been to incorporate what is now forgery under the present Minnesota provisions.

The decisions of the Minnesota Supreme Court shed little light on the interpretation or construction of the present statutes.

Subdivision 1: This follows the wording of the Wisconsin criminal code, § 943.38. A definition of forgery corresponding to that in the Minnesota statutes, § 620.06, has not been incorporated since Subdivision 1 states the elements of the crime and further definition is not needed.

Objects as well as writings are included and coins or currency are thus covered. A further counterfeit statute is unnecessary. There is no separate counterfeit statute in Wisconsin. The words "or by himself under an assumed or fictitious name" covers the following cases:

(1) The forger makes a check in a fictitious name claiming he is that person; or

(2) He takes the name of a person actually in existence and states he is that person.

The term "another" includes not only individuals, corporations, and associations but governmental units such as the state and its political subdivisions. See definition of "person" in Minn.St. § 645.44, Subd. 7.

Subdivision 1, (1): This is the general inclusive provision. The term "privileges" covers privileges granted by private individuals as well as licenses granted by the state.

The clause will supersede the following Minnesota statutes:

§ 620.07, (1):

This prohibits the forgery of a will or deed or other instrument by which a right or interest in property is transferred, conveyed "or in any way charged or affected."

§ 620.07, (3):

This prohibits the forgery of a security issued by a governmental unit, or of a receipt of money or evidence of a debt or liability, "issued or purporting to have been issued by lawful authority." The clause appears to be confined to documents issued by a public authority.

§ 620.07, (4):

This prohibits the forgery of a transfer by the holder of the obligations mentioned in Clause (3) of the section.

§ 620.07, (5):

This clause prohibits the forgery of numerous specified obligations issued by banks or "body corporate" "declaring or purporting to declare any right, title or interest" in the capital stock or property "of such body corporate, or promising or purporting to promise or agree to the payment of money or the performance of any act, duty, or obligation."

§ 620.07, (6):

This prohibits the forgery of a transfer of the obligations mentioned in Clause (5) of the section.

§ 620.10:

That portion of Clause (1) reading: ". . . or any gold or silver coin, whether of the United States, or of any foreign state, government, or country;" and that portion of Clause (2) in the fifth paragraph, reading: ". . . or a bond, or recognizance, undertaking, . . . filed or entered in any court of the state; . . . or a license or authority granted pursuant to any statute of the state; . . . ."

§ 620.15:

This prohibits the forgery, counterfeiting or alteration of a postage or revenue stamp, or to sell, offer, or keep it for sale knowing it to be so forged, etc.

§ 620.17:

This section is directed at officers of corporations who fraudulently "sell, pledge, or issue . . . or procure to be signed, with intent to sell, pledge or issue, . . . a false, forged, or fraudulent paper, writing, or instrument, being or purporting to be a script, certificate, or other evidence" of debt or ownership or the transfer thereof.

To the extent that the section involves forgery, it is covered by the recommended subdivision. To the extent that it is based on fraud, it is covered by the recommended theft provision, § 609.52.

§ 620.18:

This appears to state that a forged instrument, containing the name of a person claimed to be the agent of a corporation or other body, "is forgery in the same degree as if that person was in truth such officer or agent."

§ 620.21:

This punishes the possession of counterfeit coin with intent to "sell, utter, use, circulate, or export the same as true or as false."

§ 620.22:

This punishes one who, with intent to defraud, prints, circulates or distributes written material offering to sell, etc., counterfeit coin or paper money or giving information where it can be obtained.

§ 620.68:

The first part of this section makes it a gross misdemeanor to "sign the name of a fictitious person to any subscription for, or agreement to take, stock in any corporation existing or proposed."

§ 620.69:

This forbids the officers and agents of a joint stock company or corporation from fraudulently selling certificates which are not authorized or in excess of the powers of the company.

Subdivision 1, (2): This will replace the corresponding portions of Minn.St. § 620.10, (1).

Subdivision 1, (3): This will supersede that portion of § 620.10, (2), reading: "shall forge a record of a will, conveyance, or instrument of any kind, the record of which is by the law of this state made evidence, ..." The recommended clause is, however, broader than this Minnesota provision.

Subdivision 1, (4): This supersedes that part of § 620.10, (2), reading: "an instrument, document, or writing, being or purporting to be a . . . return of an officer, court, or tribunal, to such a process or mandate . . . or a certificate, . . . by a competent court or officer . . . or a certificate, . . . made evidence by any law."

Subdivision 1, (5): This includes those portions of § 620.10, (2), dealing with the same subject matter.

Subdivision 1, (6): This supersedes the corresponding provisions of § 620.10, (2), the fourth paragraph, but is broader in scope. "Records and accounts" does not include matters of correspondence, office memoranda, receipts, and so forth.

This clause will also supersede Clause (2) of § 620.01 which punishes a public officer or other person receiving public funds who "shall knowingly keep any false account, make any false entry or erasure in any account, of . . . any money so received by him."

Subd. 2: This will supersede § 620.10, (3), relating to the same subject matter but the scope of the recommended clause is broader.

Subd. 3: This will supersede the following sections:

§ 620.12, (3):

This clause prohibits the "uttering" of a defamatory letter, telegram, report or other written communication.

§ 620.15:

This includes in part the keeping of forged postage or revenue stamps for sale, etc.

§ 620.17:

This is superseded to the extent that the section includes the issuance of the documents described in the section.

§ 620.19:

This is the general section on uttering of forged instruments.

§ 620.20:

This prohibits the uttering of an instrument with a fictitious subscription or endorsement.

§ 620.21:

This is superseded to the extent that it relates to uttering of counterfeit coins.

609.63 Forgery

Subdivision 1. Whoever, with intent to injure or defraud, does any of the following is guilty of forgery and may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than $3,000, or both:

(1) Uses a false writing, knowing it to be false, for the purpose of identification or recommendation; or

(2) Without consent, places, or possesses with intent to place, upon any merchandise an identifying label or stamp which is or purports to be that of another craftsman, tradesman, packer, or manufacturer, or disposes or possesses with intent to dispose of any merchandise so labeled or stamped; or

(3) Falsely makes or alters a membership card purporting to be that of a fraternal, business, professional, or other association, or of any labor union, or possesses any such card knowing it to have been thus falsely made or altered; or

(4) Falsely makes or alters a writing, or possesses a falsely made or altered writing, evidencing a right to transportation on a common carrier; or

(5) Destroys, mutilates, or by alteration, false entry or omission, falsifies any record, account, or other document relating to a private business; or

(6) Without authority of law, destroys, mutilates, or by alteration, false entry, or omission, falsifies any record, account, or other document relating to a person, corporation, or business,

or filed in the office of, or deposited with, any public office or officer; or

(7) Destroys a writing or object to prevent it from being produced at a trial, hearing, or other proceeding authorized by law.

Subd. 2. Whoever, with knowledge that it is forged, offers in evidence in any trial, hearing or other proceedings authorized by law, any forged writing or object may be sentenced as follows:

(1) If the writing or object is offered in evidence in the trial of a felony charge, to imprisonment for not more than five years or to payment of a fine of not more than $5,000, or both; or

(2) In all other cases, to imprisonment for not more than three years or to payment of a fine of not more than $3,000, or both.

COMMENT

Clause (1): This covers the subject matter of Minn.St. §§ 620.12, (3) and (5), and Minn.St. § 620.49. Minn.St. § 620.12, (3) and (5) appear in an extended forgery statute which makes all the listed acts felonies. Clause (3) of § 620.12 is broader in its coverage. Section 620.49 makes obtaining employment or appointment by the methods indicated a misdemeanor.

A clause similar but not identical to that recommended appears in Wisconsin St. § 943.38, (3), (b).

The recommended clause is limited to the use of false statements for the purpose of identification or recommendation. It was considered too severe to punish the mere making without use of such a document. Minn.St. § 620.12, (5), appears to contemplate the latter also.

Clause (2): This will supersede the following Minnesota sections:

§ 620.23:

This prohibits the forgery or counterfeiting of a "private stamp, brand, wrapper, label, or trademark usually affixed by any mechanic, manufacturer, druggist, merchant, or tradesman to or upon his goods," etc. with intent to pass off a product as that of the producer imitated.

§ 620.24:

This prohibits possessing with intent to defraud any die, plate, brand, engraving or printed label, stamp, imprint, wrapper, or trademark "usually affixed by a mechanic, manufacturer, druggist, merchant, or tradesman" to his product.

§ 620.25:

This prohibits the sale or keeping for sale of goods with forged or "counterfeit" stamps, brands, etc. on them "knowing the same to be counterfeit."

§ 620.26:

This punishes one who "with intent to defraud," "knowingly" places the stamp, brand, etc., of another on goods made by the defendant, or "who shall knowingly sell or expose, or offer for sale" goods so stamped, branded, etc.

§ 620.27:

This punishes one who "with intent to defraud or enable another to defraud" "shall manufacture or knowingly sell . . ." any article marked, stamped, etc. as the product of another person.

Clause (3): This will supersede Minn.St. § 620.12, (4), but the recommended section will be broader in scope since it is not limited to employee organizations, as is § 620.12, (4). It would include, for example, athletic clubs, automobile associations, and so forth.

Clause (4): This will supersede Minn.St. § 620.14 dealing with the same subject and to substantially the same effect.

Clause (5): This covers the substance of the following Minnesota sections:

§ 620.10:

This is a broad, all inclusive, general section dealing with forgery in the second degree. Included among its provisions are those dealing with the subject matter of the above recommended clause.

§ 620.12, (1):

This clause is part of the general section dealing with forgery in the third degree.

§ 620.13:

This is covered by the above recommended clause except insofar as § 620.13 relates to public officers it is covered by recommended § 609.625, (6).

§ 620.72:

This relates to fraudulent keeping of accounts of a corporation or joint stock association.

Clause (6): The phrase "or filed in the office of, or deposited with, any public office or officer" would include most of the matters now covered by Minn.St. §§ 613.36 and 613.37. These sections prohibit the removal, destruction and so forth of any public document. § 613.37 specifically mentions sheriffs, coroners, clerk of court, constable or other ministerial officer. These sections have created problems for public officials who wish to dispose of useless old documents. The recommended section will require an intent to injure or defraud and thus ameliorate the problem.

Removal or concealment is not specifically mentioned in the recommended section. These words appear in §§ 613.36 and 613.37 (remove is not mentioned). However, removal or concealment would be covered by the recommended larceny provision, § 609.52, Subd. 3, (1), (c). The language of the recommended section does not cover "things filed in a public office" such as does § 613.36. The principles of larceny and criminal damage to property would apply.

The recommended section does not impose criminal liability on a public officer who "permits" another person to do the prohibited acts. If the permission is intentional it would be a case of aiding and abetting and would come under recommended § 609.05. If the permission

was the consequence of negligence merely, criminal liability should not be imposed. Section 613.36 is not clear on the point.

Clause (7): This will supersede Minn.St. § 613.47, the substance being the same. However, the crime is raised from a gross misdemeanor to a felony. This was done because no distinction was observed between destruction of a private record with intent to defraud and destroying evidence to prevent its being used at a trial.

Subd. 2: This will supersede § 613.46 without change except for the differential in sentence which follows the perjury provision § 609.48.

Transfer Recommended

§ 620.243:

This prohibits the manufacture, sale, offering for sale, etc., of "tokens, checks, or slugs similar in size and shape to lawful coin . . . with knowledge or reason to believe" that they will be substituted for real coin.

§ 620.244:

This requires "checks, tokens, or slugs" to be five percent larger or smaller in diameter than any lawful coin.

§ 620.245:

This provides that when notice to a manufacturer or seller is given that tokens manufactured or sold by him are being used in substitution of real coin, "knowledge or reason to believe" within the meaning of §§ 620.243 to 620.246 shall be deemed to exist. Compare State v. Higgin, 1960, 257 Minn. 46, 99 N.W.2d 902.

§ 620.246:

This makes violation of Minn.St. §§ 620.243 to 620.245 a misdemeanor.

§ 620.28:

This defines when a trademark is deemed affixed to the goods.

§ 620.29:

This forbids counterfeiting, imitating, using, etc., the trademark of any person or organization of workmen.

§ 620.30:

This punishes various specified acts involving the unauthorized use of a trademark mentioned in the previous sections.

§ 620.31:

This provides for registration of these trademarks.

§ 620.32:

This punishes the fraudulent filing of a trademark.

§ 620.33:

This provides for a certificate of filing and again punishes the unauthorized use of the trademark.

Section on Forgery Outside of Criminal Code Requiring Modification

The provisions of Minnesota Chapter 340 provide for certification labels to be used on containers of intoxicating liquors in certain instances.

Minn.St. § 340.461, Subd. 5 provides: "Any person who, with intent to defraud, shall forge any such certification label shall be guilty of forgery in the third degree and punished accordingly."

This should be amended by deleting the words "in the third degree."

609.635 Obtaining Signature by False Pretense

Whoever, by false pretense, obtains the signature of another to a writing which is a subject of forgery under Section 609.625, Subdivision 1, may be punished as therein provided.

COMMENT

This will supersede Minn.St. § 620.47 to the same effect but the punishment is increased.

609.64 Recording, Filing, etc., of Forged Instrument

Whoever intentionally presents for filing, registering, or recording, or files, registers, or records a false or forged instrument relating to or affecting real or personal property in a public office entitled to file, register, or record such instrument when genuine may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than $3,000, or both.

COMMENT

This will supersede Minn.St. § 613.38 which prohibits the "procuring" or "offering" a false or forged instrument to be filed, registered, or recorded. The recommended section is in substance the same except that punishment has been reduced from imprisonment for seven years to imprisonment for not more than three years or fine of not more than $3000 or both.

609.645 Fraudulent Statements

Whoever, with intent to injure or defraud, does any of the following may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than $3,000, or both:

(1) Circulates or publishes a false statement, oral or written, relating to a corporation, association, or individual, intending thereby to give a false apparent value to securities issued or to be issued by, or to the property of, such corporation, association, or individual; or

(2) Makes a false ship's or airplane's manifest, invoice, register, or protest.

COMMENT

Clause (1): This will supersede Minn.St. § 620.51, which is to similar effect. The recommended clause makes clear that the statement may be oral as well as written.

Corresponding provisions also appear in Minn.St. § 620.17, which will be superseded.

Minn.St. § 620.71 makes it a misdemeanor on the part of an officer, director, or agent of a corporation or joint stock association to "knowingly concur in making or publishing a written report, exhibit, or statement of its affairs of pecuniary condition" which is false. This is sufficiently covered by the recommended clause.

Clause (2): This states the substance of Minn.St. § 620.62, which will be superseded.

609.65 False Certification by Notary Public

Whoever, when acting or purporting to act as a notary public or other public officer, certifies falsely that an instrument has been acknowledged or that any other act was performed by a party appearing before him or that as such notary public or other public officer he performed any other official act may be sentenced as follows:

(1) If he so certifies with intent to injure or defraud, to imprisonment for not more than three years or to payment of a fine of not more than $3,000, or both; or

(2) In any other case, to imprisonment for not more than 90 days or to payment of a fine of not more than $100.

COMMENT

This will supersede the following sections:

§ 359.08:

The portion superseded is that reading: "any notary . . . who shall append his official signature to acknowledgments or other documents when the parties executing the same have not appeared before him, shall be guilty of a misdemeanor."

§ 620.07, (2):

This applies to certificates of acknowledgment of wills, deeds, and other instruments which may be recorded when acknowledged.

§ 620.08:

This applies to "proof or acknowledgment" of instruments to be recorded. Under this section and Minn.St. § 620.07, (2), the act is made first degree forgery.

The recommended subdivision extends to any instrument whether entitled to be recorded or not and thus goes beyond the present law.

It is also broader in that it applies to certificates of any official act.

The following portion of Minn.St. § 359.08 will be retained: "Any notary who shall exercise the duties of his office after expiration of his term, or when otherwise disqualified . . . shall be guilty of a misdemeanor."

The recommended section makes the crime a felony where there is an intent to defraud. It is considered that misuse of official power with such intent should carry a heavier penalty than that attached to a misdemeanor.

609.655 Alteration or Removal of Identification Number

Whoever, with intent to prevent the identification of property involved, alters or removes any manufacturer's identification number on personal property or possesses any personal property with knowledge that the manufacturer's identification number has been removed or altered may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100.

COMMENT

This section is based on Minn.St. § 620.273. It has been substantially modified to extend to all personal property rather than farm and electrical machinery and devices. Intent to prevent identification has been added in the belief that, absent such intent, an owner should be free to deal with his property as he likes. This qualification makes unnecessary a provision such as Subd. 2 of § 620.273, exempting among others "any bona fide farmer" in possession for six months and using the machinery on his farm.

Sections Outside of Criminal Code Relating to Forgery and Not Affected by the Revision

§ 16.64:

This section deals with liquor, malt beverage and other stamps, tokens, or forms evidencing the payment of taxes or fees of any kind due to the state.

Subdivision 7 of § 16.64 says that "Forging, with intent to defraud, of any stamp, evidencing, or intending to evidence, the payment of any tax or fee due to the state or any plate, die, or other device for the printing or manufacture of any such stamp is forgery in the third degree."

§ 17.211:

This relates to misbranding of commercial fertilizer which is made a misdemeanor by § 17.29.

§ 21.49, Subd. 2:

This appears in the chapter on "Seeds." It is made "unlawful" "to detach, alter, deface, or destroy any label."

Chapter 24:

This relates to insecticides, acids, and paints. It contains several provisions relating to misbranding or false labeling of the items dealt with in the chapter.

§ 29.205:

This relates to wholesale produce dealers. It makes it a misdemeanor to enter or record any "false, untruthful, deceptive, or misleading statement or data in any register required to be kept" or where the defendant "changes, alters, destroys, mutilates, injures, . . .," such registration.

§ 27.19:

This makes it a misdemeanor to, among other things, "make any false statement or report as to the grade, condition, markings, quality, or quantity of produce received or delivered."

Chapter 31:

This relates to foods and frozen foods and contains provisions making it a crime to misbrand the foods therein dealt with.

§ 72.08:

This makes a solicitor or agent or others who make a false statement relative to an application for insurance guilty of a gross misdemeanor.

§ 90.21:

This makes it a gross misdemeanor for a purchaser or holder of a permit to cut and remove timber from state land to make any false return or report.

§ 91.18:

This appears in the chapter on logs and lumber. It is made a larceny to place one's own mark on a log belonging to another. This is called "larceny" but it appears more appropriately as a case of forgery.

§ 151.21:

This appears in the chapter on pharmacy and makes it unlawful and a misdemeanor under § 151.29 to label falsely a package or receptacle of drugs and so forth.

§ 152.03:

This makes it a misdemeanor to manufacture, sell, and so forth, "any drug which is adulterated, mislabeled, or misbranded."

§ 159.16:

This appears in the chapter on non-profit medical service. It is made a misdemeanor to make a "false statement with respect to any report or statement required by this chapter."

§ 168.021:

This makes it a gross misdemeanor to use or appropriate without authority an emblem authorized for physically handicapped persons driving automobiles.

§ 168.034:

This makes it a felony to file a knowingly false or fraudulent statement required of soldiers and sailors operating motor vehicles.

§ 168.36, Subd. 3:

This makes defacing or altering any registration certificate or number plate of motor vehicles a misdemeanor.

§ 183.59:

This appears in the chapter on "Foundaries, Elevators, Boilers" and makes it a felony to file a false certificate regarding a steam boiler.

§ 197.96:

This makes knowingly making a false statement, oral or written, to secure veterans compensation a gross misdemeanor.

§ 207.14:

This appears in the chapter on "Absent and Disabled Voters" and makes it a felony to "wilfully make or sign any false certificate specified herein . . . or wilfully make any false or untrue statement in any 'Application for Ballots.' "

§ 210.14:

This appears under the penal provisions in the election laws and makes it a gross misdemeanor to mark the ballot of any voter.

§ 226.05:

This appears in the chapter on "Packing House Certificates" and makes it a five year felony to "wilfully alter or destroy any register of such certificates" or "knowingly issue any such certificates when the commodities therein described are not in the warehouse. . . ."

§ 227.51:

This appears in the chapter on "Uniform Warehouse Receipts" and makes one guilty of a "crime" with a one year imprisonment or fine of $1,000, or both, if he "fraudulently issues a receipt for goods knowing that it contains any false statement."

§ 228.45:

This appears in the chapter on "Uniform Bills of Lading" and imposes a five year penalty plus a fine not exceeding $5,000, or both on one who fraudulently "issues or aids in issuing a bill knowing that all or any part of the goods for which such bill is issued have not been received. . . ."

§ 228.46:

This appears in the same chapter and imposes a one year imprisonment or a $1,000 fine, or both, if the defendant "issues or aids in issuing a bill for goods knowing that it contains any false statement."

§ 231.36:

This appears in the chapter on "Warehouses" and makes it "a misdemeanor" "subject to imprisonment not exceeding one year or a fine not exceeding $1,000 or both" for a warehouseman to make a false entry or destroy, mutilate or alter or otherwise falsify a record or neglect or fail to make a correct entry or keep accounts with intent to evade the chapter.

§ 234.24:

This appears in the chapter on "Storage of Grain on Farms" and makes specified persons subject to imprisonment for one year or fine of $1,000, or both, if he "fraudulently issues or aids in fraudulently issuing a certificate of grain, knowing that it contains any false statement."

§ 297.11:

This makes it a felony to make, alter, forge, or counterfeit any license or stamp provided in the chapter or to have such stamps in his possession. This relates to taxes on cigarettes.

Subdivision 4 of the same section prohibits the making of false records and makes violation a felony.

§ 300.60:

This deals with diversion of corporate property. The crime is made a felony with imprisonment up to three years or fine of $5,000, or both, for "any intentional deception of the public or individuals in relation to its means or liabilities."

§ 300.61:

This relates to false statements or reports or entries by an officer or agent of a corporation. The penalty is imprisonment for not less than one year nor more than ten.

It will be noted that §§ 300.60 and 300.61 overlap and are to some extent inconsistent with the recommended forgery sections. The Committee felt that §§ 300.60 and 300.61, not being in the criminal code, should not be considered by the Committee. They deal with specific subject matter and any revision should consider them in their total context. The inconsistencies are merely those which are now present in the statutes.

§ 300.65:

The last sentence makes it a felony for an officer of a corporation to fraudulently issue stocks, scrip, or evidence of corporate debt.

§ 326.336:

This makes a false statement by a person employed by a private detective in the document required by the section a gross misdemeanor.

§ 340.53:

Under this section, one who places another's label or a label not registered upon containers of intoxicating liquor or "who falsely or fraudulently makes, forges, alters, or counterfeits any stamp prescribed . . ." is guilty of a gross misdemeanor.

§ 360.67:

This appears in the chapter on "Aeronautics" and provides in Clauses (5) and (6) of Subd. 4 as follows:

"Subd. 4. Any person who:

". . . .

"(5) Uses a false or fictitious name or address or description of the aircraft, engine number, or frame number in any application for registration of an aircraft or knowingly makes a false statement or knowingly conceals a material fact or otherwise commits a fraud in any such application; or

"(6) Defaces or alters any registration certificate or number plates or retains the same in his possession after the same have been defaced or altered; shall be guilty of a misdemeanor."

§ 471.392:

This relates to claims against a political subdivision and makes it a felony on the part of one who "wilfully and falsely makes the declaration provided for in sections 471.38 and 471.391."

§ 508.80:

This makes it a felony with imprisonment not to exceed five years or fine of not more than $5,000, or both, to procure a false certificate of title to real estate or a false entry thereof in registration of title proceedings.

§ 517.14:

This appears in the chapter on "Marriage" and authorizes imprisonment up to one year or fine of not more than $500 for a person, authorized to marry others, "to wilfully make any false certificate of any marriage or pretended marriage."

CRIMES AGAINST PUBLIC SAFETY AND HEALTH

609.66 Dangerous Weapons

Subdivision 1. Acts Prohibited. Whoever does any of the following may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100:

(1) Recklessly handles or uses a gun or other dangerous weapon or explosive so as to endanger the safety of another; or

(2) Intentionally points a gun of any kind, capable of injuring or killing a human being and whether loaded or unloaded, at or toward another; or

(3) Manufactures or sells for any unlawful purpose any weapon known as a slung-shot or sand club; or

(4) Manufactures, transfers, or possesses metal knuckles or a switch blade knife opening automatically; or

(5) Possesses any other dangerous article or substance for the purpose of being used unlawfully as a weapon against another; or

(6) Sells or has in his possession any device designed to silence or muffle the discharge of a firearm; or

(7) Without the parent's or guardian's consent, furnishes a child under 14 years of age, or as a parent or guardian permits such child to handle or use, outside of the parent's or guardian's presence, a firearm or airgun of any kind, or any ammunition or explosive; or

(8) In any municipality of this state, furnishes a minor under 18 years of age with a firearm, airgun, ammunition, or explosive without the written consent of his parent or guardian or of the police department or magistrate of such municipality.

Subd. 2. Exceptions. Nothing in this section prohibits the possession of the articles mentioned by museums or collectors of art or for other lawful purposes of public exhibition.

COMMENT

The present sections on this subject are scattered through Chapters 615 and 616. They tend to specify certain particular dangerous or deadly weapons followed with a general all-inclusive phrase such as "or other dangerous weapons."

In the sections here recommended, enumeration has been reduced in conformity to the general policies of the revision.

The recommended section for the most part re-states the present Minnesota law.

Subdivision 1, (1): There is presently no corresponding provision to the same effect. Minn.St. § 615.09 covers the same subject in part.

It will be noted that this clause does not include injuries intentionally inflicted by dangerous weapons. This is covered by the sections on assault.

The words "or explosives" have been added to cover the provisions of Minn.St. § 616.26 which, however, makes liability depend upon the existence of another prohibition: "by law or by ordinance." Section 616.26 now appears to impose criminal liability for injury caused by negligent use of explosives. This has not been included in the above clause or in any other section of the code. Criminal liability for ordinary negligence is seldom imposed. Under the recommended clause the handling or using must be "reckless." Wisconsin has the same limitation in 941.20, (1), (a).

For the same reason injury to property caused by negligence less than "reckless" will not create liability as it now does under § 616.26.

The recommended clause makes the offense a misdemeanor. Section 616.26 makes the offense a gross misdemeanor in the case of explosives if injury or damage to property has in fact been caused.

Subdivision 1, (2): This will supersede Minn.St. § 615.09. Insofar as § 615.09 deals with discharging a firearm or throwing a deadly missile in a public place or where there is a person to be endangered, it is covered by Clause (1).

Subdivision 1, (3): This incorporates Minn.St. § 616.41 insofar as it deals with the same subject. The presumption arising from possession now appearing in § 616.41 has not been included in view of State v. Higgin, 1960, 257 Minn. 46, 99 N.W.2d 902.

Subdivision 1, (4): This will supersede Minn.St. § 616.415, enacted in 1959, and makes no change in substance.

Subdivision 1, (5): This incorporates further provisions of § 616.41, which will be superseded.

Subdivision 1, (6): This contains the substance of § 615.11 which will be superseded. The presumption from possession has not been included in view of State v. Higgin, 1960, 257 Minn. 46, 99 N.W.2d 902.

Subdivision 1, (7): This contains the substance of Minn.St. § 615.10 which will be superseded.

Subdivision 1, (8): This contains the substance of Minn.St. § 616.42 which will be superseded.

Subd. 2: A similar provision appears in Minn.St. § 615.09 which, however, is limited to firearms.

Repeal Recommended

§ 616.43:

This prohibits the manufacture, use, sale, or keeping for sale of any blank cartridge pistols and so forth, caps containing dynamite and firecrackers exceeding certain sizes. The subject appears fully covered by §§ 616.433 to 616.438 subsequently enacted and being retained and transferred to another chapter.

Transfer Recommended

§§ 612.10 & 612.11:

These prohibit aliens from possessing firearms or explosives during war.

§§ 616.433 to 616.438:

These sections contain regulatory measures limiting the use of fireworks to municipalities.

Related Sections Not Appearing in the Criminal Code and Not Affected by the Revision

§ 97.83:

This requires persons under 16 to have a certificate that a course of instruction has been completed before using firearms to take wild animals.

§ 307.08:

This prohibits discharging firearms on cemetery grounds.

§ 411.63:

This authorizes municipalities to regulate and prevent the use of firearms and fireworks.

§ 243.55

This prohibits the bringing of firearms, weapons, or explosives into penal or other institutions.

609.665 Spring Guns

Whoever sets a spring gun, pit fall, deadfall, snare, or other like dangerous weapon or device, may be sentenced to imprisonment for not more than six months or to payment of a fine of not more than $500, or both.

COMMENT

This contains the substance of Minn.St. § 616.44 which will be superseded but adds devices not now included such as deadfalls, pit falls and snares.

Clause (3) of § 616.44 providing for imprisonment for 15 years if death is caused by these devices has not been included but is left to the provisions on homicide. See § 609.205.

Clause (2) of § 616.44 authorizing five years imprisonment as a result of injuries not fatal has not been included. This was considered too severe for cases where no injury is intended.

Violation of the recommended section is a gross misdemeanor. It does not depend upon intent to injure or harm. If such intent were present and a person were injured the case would fall within the provisions of the sections on aggravated assault. See § 609.225, Subd. (2).

609.67 Machine Guns

Subdivision 1. Definition. "Machine gun" means any firearm designed to discharge, or capable of discharging automatically more than once by a single function of the trigger.

Subd. 2. Acts Prohibited. Except as otherwise provided herein, whoever owns, possesses, or operates a machine gun may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than $5,000, or both.

Subd. 3. Uses Permitted. The following persons may own or possess a machine gun provided the provisions of subdivision 4 are complied with:

(1) Law enforcement officers for use in the course of their duties;

(2) Wardens of penal institutions and other personnel thereof authorized by them and persons in charge of other institutions for the retention of persons convicted or accused of crime, for use in the course of their duties; and

(3) Persons possessing machine guns as war relics, museum pieces, or as objects of curiosity, ornament, or keepsake, and not useable as a weapon.

Subd. 4. Report Required. A person owning or possessing a machine gun as authorized by subdivision 3 shall, within ten days after acquiring such ownership or possession, file a written report with the bureau of criminal apprehension, showing his name and address; his official title and position, if any; a description of the machine gun sufficient to enable identification thereof; the purpose for which it is owned or possessed; and the manner in which rendered unuseable, if the right to possess the machine gun is claimed under clause (3) of subdivision 3 of this section; and such further information as the bureau may reasonably require.

Subd. 5. Exceptions. This section does not apply to members of the armed services of either the United States or the state of Minnesota for use in the course of their duties.

COMMENT

This section will supersede Minn.St. § 616.45. The content is substantially the same.

Subdivision 1: This will replace the definition now appearing in § 616.45 and is more in keeping with the definition appearing in U. S. International Code, § 2733, Subd. B.

Subd. 2: The penalty of § 616.45 is seven years or a fine of $1,000, or both.

Subd. 3: These exceptions now appear in § 616.45 except that Clause (3) adds "war relics" and "museum pieces."

Subd. 4: This adds to the requirements of the report now appearing in § 616.45 the purpose of having the machine gun, the manner in which it is rendered unuseable and the further information the bureau may require.

Subd. 5: This now appears in § 616.45.

609.675 Exposure of Unused Refrigerator or Container to Children

Whoever, being the owner or in possession or control, permits an unused refrigerator or other container, sufficiently large to retain any child and with doors which fasten automatically when closed, to be exposed and accessible to children, without removing the doors, lids, hinges, or latches may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100.

COMMENT

This will supersede Minn.St. § 616.46 with some expansion to include containers other than refrigerators or iceboxes. The expansion is suggested by New York § 1920. Specific cubic size has been replaced by "sufficiently large to retain any child."

609.68 Disposal of Garbage, Litter, etc.

Whoever unlawfully deposits garbage, rubbish, offal, or the body of a dead animal, or other litter in or upon any public highway, public waters, public lands, or, without the consent of the owner, private lands or water, may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100.

COMMENT

This will supersede Minn.St. §§ 616.15, 616.16, and 616.163. Failure, neglect, or refusal to remove these materials has not been included as it now appears in § 616.15. "Unlawfully depositing" sufficiently covers all cases intended to be covered.

Carrying on an activity which is noisome or detrimental to public health appearing in § 616.16 is adequately covered by § 609.74 on nuisances.

The recommended section to some extent is duplicated by Minn.St. § 169.42 appearing in the highway traffic code but this is not deemed objectionable.

Minn.St. § 443.015 conferring powers on municipalities over disposal of garbage and rubbish will not be affected.

609.685 Use of Tobacco by Children

Whoever does any of the following may be sentenced to imprisonment for not more than 30 days or to payment of a fine of not more than $50:

(1) Being under the age of 15 years, uses tobacco in any form; or

(2) Being of the age of 15 years or over, but under the age of 18 years, uses tobacco in any form without the written permission of a parent or other legal custodian; or

(3) Furnishes tobacco in any form to one not entitled thereto under clauses (1) or (2).

COMMENT

The present Minnesota sections dealing with the use of tobacco by minors are repetitive and to some extent inconsistent. In the light of current public attitudes, they reflect an excessive zeal to prevent tobacco from getting into the hands of youths. Minn.St. § 614.62 makes it "unlawful" to provide a minor under 18 years with cigarettes or means of making them, but provides no punishment. Minn.St. § 614.63 makes it a misdemeanor for a person under 18 years to smoke cigarettes with a fine of up to $10 or imprisonment up to five days. Minn.St. § 617.64 punishes anyone under 18, or under 21 if in a school, college, or university, who smokes or uses cigarettes, cigars, or tobacco in any form in any public place. Up to $10 in fine or five days in jail is imposed as punishment. It also prohibits anyone giving such person these items or letting him use them on the defendant's premises. The punishment in this case is increased.

The prohibition against providing such items is repeated in Minn.St. § 617.65. Minn.St. § 617.66 repeats the prohibition in the first portion of § 617.64, but adds details as to the duty to arrest the youth caught smoking and authorizes suspension of sentence if the youth reveals who supplied him with the forbidden product. Minn.St. § 617.67 punishes again those who "harbor" these youths using tobacco or permit the use of premises for the purpose. Minn.St. § 618.68 grants grand juries "inquisitorial powers" over the offenses defined in Minn. St. §§ 617.65 to 617.67.

The widespread disregard of these prohibitions and general lack of prosecution are matters of common knowledge. This does not make for respect for our laws on the part of our youth.

The Advisory Committee has recommended the above section only because the legislation mentioned exists and because the Committee

believed that complete removal of all prohibitions should be left to independent legislative consideration. In the opinion of the Committee, in view of the widespread and accepted use of tobacco, it is unrealistic to impose criminal liability upon youngsters for its use. This should properly be left to parental control.

The recommended section leaves discretion to the parent or other legal custodian of the child between the ages of 15 to 18 years.

The word "furnishes" in Clause (3) is sufficiently broad to cover the vending machine. As the section is worded, lack of intention to furnish is not a defense to violation of the section.

The recommended section will supersede all the above mentioned Minnesota sections.

Special provisions on arrest such as appear in Minn.St. § 617.66 and on the powers of the grand jury in Minn.St. § 617.68 are believed to be unnecessary. The general provisions of law on these subjects are sufficient.

A special provision on harboring children such as appears in Minn. St. § 617.67 is deemed unnecessary. The general provisions on aiding and abetting are sufficient to cover the case.

Pupils in school, college or university up to the age of 21 have not been included as they are in § 617.64. It is believed that college and university students do not fall within the category that need such protection. The age limit of 18 will cover all students in high school or below. There is nothing in the section, of course, which prevents any school from prohibiting the use of tobacco on its premises.

CRIMES AGAINST PUBLIC DECENCY

609.69 Obscenity

Subdivision 1. Definitions. (1) "Obscene" means whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interests.

(2) "Obscene material" means any writing or object including, without limitation, any book, magazine, pamphlet, paper, writing, card, advertisement, circular, print, picture, photograph, motion picture film, play, image, instrument, statue, or drawing which is obscene.

Subd. 2. Acts Prohibited. Whoever does any of the following may be sentenced to payment of a fine of not less than $20 or more than $100:

(1) Intentionally exhibits, sells, prints, offers to sell, give away, circulate, publish, distribute, or attempt to distribute, any obscene material; or

(2) Places in the mail or delivers to a common carrier obscene material with intent that it be delivered to another; or

(3) Requires, as a condition to the purchase or consignment of publications, that a retailer accept obscene material known by the distributor to be obscene.

COMMENT

The recommended section contains the substance of three Minnesota statutes: § 617.241, enacted in Chapter 664, Laws 1961, and which is reproduced in recommended Subd. 2, Clause (1); § 617.243, enacted in 1957 and reproduced in substance in Subd. 2, (3); and § 617.26 which goes back to the 1886 Minnesota Penal Code and which is reproduced in substance in Clause (2) of Subd. 2.

Laws 1961, Chapter 664, repealed the prior § 617.24 which made the offense a gross misdemeanor. The present law imposes only a fine of not less than $20 nor more than $100.

The 1961 law left § 617.243 untouched. This makes the offense a gross misdemeanor. It also left untouched § 617.26 which made the offense a misdemeanor and, therefore, punishable by either a fine not to exceed $100 or imprisonment not to exceed 90 days.

In the interests of consistency the same penalty has been incorporated in the recommended section for all the several offenses. The several Minnesota sections referred to will be superseded.

The word "intentional" has been used in place of "knowingly" which now appears in the 1961 law. The term "intentionally" has been used throughout the revision and is defined in recommended § 609.02 at the beginning of the revision.

It is recommended that Minn.St. § 617.72 be repealed. This prohibits the distribution of literature to minors under 18 years of age which contains "criminal news, police reports, accounts of criminal deeds, or pictures or stories of deeds of bloodshed, lust, or crime."

A similar statute was held unconstitutional in Winters v. New York, 1948, 68 S.Ct. 665, 333 U.S. 507, 92 L.Ed. 840, because the phrase "criminal news, police reports, accounts of criminal deeds, or pictures or stories of deeds of bloodshed, lust, or crime" was too indefinite in meaning to satisfy the constitutional requirements of certainty in a criminal statute. The court distinguished statutes on indecency or obscenity which it felt had more precise common law meanings.

Minn.St. § 617.27 authorizes the issuance of search warrants for obscene materials. It is recommended that this be transferred to the chapter now dealing with search warrants. The reference in that section to §§ 617.24 to 617.26 should be changed so that it refers to the above recommended section on obscenity.

609.695 Indecent Exposure; Lewd Conduct

Whoever intentionally exposes his person in an indecent manner or otherwise conducts himself in a lewd manner may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100.

COMMENT

This will supersede Minn.St. § 617.23, the substance being the same.

Exposure "in an indecent manner" and the phrase "otherwise conducts himself in a lewd manner" imply that it is done in a public place or improperly in the presence of others, as to whom it may reasonably be assumed to be offensive.

It will be noted that the word "intentionally" has been incorporated so that accidental or unintended conduct would not be encompassed. The recommended section, it is believed, does no more than state what is present law on the subject. See State v. Peery, 1947, 224 Minn. 346, 28 N.W.2d 851.

The portion of Minn.St. § 617.23 increasing the penalty for subsequent offenses has been deleted as falling within the general topic of habitual offenders which is considered elsewhere in this revision. See recommended § 609.155.

609.70 Cruelty to Animals

Subdivision 1. Whoever does any of the following may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100:

(1) Intentionally overworks, tortures, or cruelly treats, kills or injures any animal or bird; or

(2) Fails without reasonable excuse to provide necessary water, food, care or shelter for any animal or bird in his custody; or

(3) Intentionally and without the owner's consent poisons any domestic animal or bird of another or places poison in any place with intent that it be taken by a domestic animal or bird of another; or

(4) Intentionally transports or confines any animal in overcrowded conditions or other cruel manner; or

(5) Intentionally baits an animal or bird or causes one animal or bird to fight with another or trains animals or birds for such fighting or permits premises under his control to be used for such purposes; or

(6) Abandons an animal or bird in his possession under circumstances which he knows or reasonably should know will expose it to suffering.

Subd. 2. This section does not prohibit bona fide experiments carried on for scientific research or acts in the course of veterinary practice.

COMMENT

The following Minnesota sections will be superseded by the recommended section. Subd. 2 is new. It is in accord with Wisconsin St. § 947.10, (2).

§ 614.42, as amended in 1959:

The recommended section covers in somewhat different language and more completely items appearing in this section. Subd. 4 of Minn.St. § 614.42 which prohibits feeding cows food producing impure milk was not included since this is sufficiently covered by the regulatory statutes on dairy products. Birds have been included in the recommended section, "bird" being a generic term which would include fowl.

Subdivision 8 of Minn.St. § 614.42 prescribing the requirements of a cage for displaying animals will be transferred to another chapter as a regulatory measure.

§ 614.44:

This relates to cutting of horses' tails. No provision has been included allocating the fines to a society for the prevention of cruelty to animals. Neither has the provision been included relating to prima facie evidence of the crime from finding a horse so cut in the custody of the defendant. Such a provision is probably unconstitutional. See State v. Higgin, 1960, 257 Minn. 46, 99 N.W.2d 902.

§ 614.46:

This prohibits the poisoning of animals.

§ 614.50:

This prohibits cock fighting, dog fighting, bear baiting, and pitting one animal against another. It will be noted that the specific details of § 614.50, as in other sections, have not been included. Neither is included a provision that purchasing a ticket of admission to a place where such fighting, baiting, etc., takes place or being present at such an event, is a criminal offense.

§ 614.45:

This prohibits the leaving of clipped or sheared animals outside during the winter.

Repeal Recommended

§ 614.41:

The definitions appearing in this section are deemed unnecessary and have not been duplicated.

§ 614.47:

This prohibits the sale of or allowing an animal to run at large if it has a disease. This subject is now very fully covered by the agricultural laws insofar as domestic animals and poultry are concerned.

Transfer Recommended

§ 614.43:

This makes carrying of live animals in vehicles a crime unless certain conditions are met.

§ 614.48:

This authorizes the sheriff and other public officials to remove an animal exposed to the weather or not properly fed or watered.

§ 614.49:

This prohibits the killing of designated wild birds or destroying their eggs or nests. This might be transferred to Chapter 100 dealing with similar subject matter.

§ 614.504:

This prescribes "humane methods" of slaughter of livestock. Violation is made a misdemeanor. It is a regulatory measure enacted in 1959 and should be transferred to an appropriate chapter.

PUBLIC MISCONDUCT OR NUISANCE

609.705 Unlawful Assembly

When three or more persons assemble, each participant is guilty of unlawful assembly and may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100 if the assembly is:

(1) With intent to commit any unlawful act by force; or

(2) With intent to carry out any purpose in such manner as will disturb or threaten the public peace; or

(3) Without unlawful purpose, but the participants so conduct themselves in a disorderly manner as to disturb or threaten the public peace.

COMMENT

The common law recognized three crimes: (1) unlawful assembly, (2) rout, and (3) riot.

Unlawful assembly was "an assembly of three or more persons who, with intent to carry out any common purpose, assembled in such a manner, or so conduct themselves when assembled, as to cause persons in the neighborhood of such assembly to fear on reasonable grounds that the persons so assembled would commit a breach of the peace or provoke others to do so." 2 Wharton's Criminal Law S. 853.

Rout was an assembly's act toward putting its unlawful purpose into effect but not yet completing it.

Riot was the "tumultuous disturbance of the peace by three or more persons who assemble together of their own authority, with an intent mutually to assist one another against any who oppose them in the execution of an enterprise of a *private nature, whether lawful or unlawful*, and afterwards actually execute the same in a violent and turbulent manner to the terror of the people." Harris & Wilshere's Criminal Law, p. 163.

All three were misdemeanors.

In 1714, England passed the Riot Act, which provided for the reading of a proclamation to an unlawful assembly, directing it to disband. If they failed to do so within one hour, all participants were guilty of a felony with imprisonment for life. From this came the expression "reading the riot act."

Statutes now generally govern and rout has usually been eliminated as a separate crime. Statutes vary widely although the common law principles form their base.

The present Minnesota statutes were selected from those which appeared in the New York 1881 Criminal Code and first appeared in the 1886 Minnesota Code, though earlier statutes dealt also with the subject.

Emphasis of the common law crimes was on disturbance of the peace. This is also a base of the statutory crimes, but in addition there is recognized the effect of crowd psychology which promotes the commission of crime. The purpose thus is to discourage such assemblies and thus to prevent the commission of such crimes.

Thus viewed, these crimes are closely related to the crime of conspiracy. They are related also to the principles governing liability of parties to crimes. It would seem that any unlawful assembly, having an unlawful purpose, or riot would also involve the crime of conspiracy and liability as parties to the crime. As in the case of conspiracy and liability as a party, important questions frequently come up as to the degree of participation by the defendant and the answers given by courts are not unlike those given in conspiracy and liability as party cases.

Another point to be borne in mind is that charges of unlawful assembly or riot commonly involve meetings of persons sharing a common grievance and seeking a common solution. A sizable number of cases involve labor disputes. Such cases are not to be compared with, for example, mobs bent on lynching some suspected criminal.

Following these thoughts, the recommended section has sought to limit the more severe penalties to cases of actual violence intentionally engaged in.

There is but one Minnesota case on the subject: State v. Winkels, 1939, 204 Minn. 466, 283 N.W. 763, in which a conviction of violating the riot act, § 615.02, was sustained. Referring to this section the court said:

"The essential elements of the crime as defined by the statute are: (a) an assemblage of three or more persons for any purpose; (b) use of force or violence against property or persons, or, in the alternative, an attempt or threat to use force or violence or to do any other unlawful act coupled with the power of immediate execution; and (3) a resulting disturbance of the public peace.

"The public peace means that tranquillity enjoyed by a community when good order reigns amongst its members. (Citing non-Minn. cases.)

"In a prosecution for riot common purpose can be inferred from the circumstances and the acts committed. (Citing non-Minn. cases.)

"A person may be convicted for riot even though not actively engaged therein when such person was present and ready to give support, if necessary." (Citing non-Minn. cases.)

The case involved a strike during which a crowd of which defendant was a member pushed into a building of the employer despite police attempts to keep them out.

Minn.St. § 615.04 will be superseded by the above recommended section.

Clauses (1) & (2): These are taken from Minn.St. § 615.04, (1) and (2).

Clause (3): This covers the case where no criminal activity is intended by the assembly but the assembly gets out of hand. Downtown assemblies and noisy demonstrations, gangs of youths parading down the street and interfering with the public are examples. The clause is broader than Clause (3) of Minn.St. § 615.04.

609.71 Riot

When three or more persons assembled disturb the public peace by an intentional act or threat of unlawful force or violence to person or property, each participant therein is guilty of riot and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than $1,000, or both, or, if the offender, or to his knowledge any other participant, is armed with a dangerous weapon or is disguised, to imprisonment for not more than five years or to payment of a fine of not more than $5,000, or both.

COMMENT

This will supersede Minn.St. §§ 615.02 and 615.03. The principal change from the present law is in not including resistance to enforcement of the duties of a public officer as a basis for the more severe penalty imposed. Such cases are usually concerned with a group expressing some grievance, such as employees or the destitute in periods of economic depression, and who should not be labeled as felons. Moreover, there are specific provisions in recommended § 609.50 dealing with interfering with the duties of an officer. The sections governing conspiracy and the criminal liability of parties to crimes can also effectively deal with this problem.

Also omitted have been the provisions of Clause 2 of Minn.St. § 615.03 making the penalty more severe if the defendant "direct, advise, or solicit other persons present . . . to acts of force or violence." Inherent in the concept of unlawful assembly or riot is the encouragement of and assistance to others. Additional punishment should not, therefore, be imposed on this ground.

Also superseded is Minn.St. § 615.06 imposing from three to seven years imprisonment or a fine if persons unlawfully assembled pull down or destroy a dwelling house or other building, shop, steamboat or vessel. Section 615.06 is also covered by the criminal damage to property provision, § 609.595.

609.715 Presence at Unlawful Assembly

Whoever without lawful purpose is present at the place of an unlawful assembly and refuses to leave when so directed by a law enforcement officer may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100.

COMMENT

This contains the substance of Minn.St. § 615.05 which it will supersede. The term "without lawful purpose" is broader than the specific exceptions contained in § 615.05.

609.72 Disorderly Conduct

Whoever does any of the following in a public or private place, knowing, or having reasonable grounds to know, that it will, or will tend to, alarm, anger or disturb others or provoke an assault or breach of the peace, is guilty of disorderly conduct and may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100:

(1) Engages in brawling or fighting; or

(2) Disturbs an assembly or meeting, not unlawful in its character; or

(3) Engages in offensive, obscene, or abusive language or in boisterous and noisy conduct tending reasonably to arouse alarm, anger or resentment in others.

COMMENT

There appeared to have been no distinct crime known as disorderly conduct at common law. Some of the acts now included by statute in this category fell under the general heading of breaches of the peace such as fighting or causing disturbances which would tend to provoke fighting among those present.

Statutes have developed in the United States which go beyond merely preventing breaches of the peace. Included generally are acts which offend others or annoy them or create resentment without necessarily leading to a breach of the peace.

Examination of the statutes of several states reveal a variety of treatment of the subject ranging from a very broad and inclusive provision to rather complete and detailed particularization. Sometimes they overlap and duplicate provisions found in vagrancy statutes.

Until 1953, Minnesota had no statute specifically designating certain conduct disorderly conduct. Minn.St. § 615.12 was limited to public conveyance. In that year, § 615.17 was enacted, which reads:

> "Every person who engages in brawling or fighting, shall be guilty of disorderly conduct, herein defined to be a misdemeanor, and upon conviction thereof, shall be punished by a fine of not to exceed $100 or by imprisonment in the county jail for not to exceed 90 days."

This statute was upheld against the objection that it was vague and indefinite in State v. Reynolds, 1954, 243 Minn. 196, 66 N.W.2d 886.

The subject has been left almost entirely to municipal ordinance. The only ordinance which has come to the attention of the Supreme

Court is the older Minneapolis ordinance in State v. Korich, 1945, 219 Minn. 268, 17 N.W.2d 497.

In several cases the court has read into the ordinance certain limitations such as that the conduct must tend to disturb the peace.

The present Minneapolis ordinance, enacted in 1958, contains no reference to disorderly conduct but specific acts commonly covered by this crime are prohibited. See Minneapolis Ordinances, Title 37.2.

The crime of disorderly conduct appears to be directed at curtailing that kind of behavior which disrupts and disturbs the peace and quiet of the community by various kinds of annoyances. These acts standing alone may not be criminal under other categories of crime such as theft, or assault and battery, or libel, etc.

The difficulty is in defining the conduct which falls within these objectives, for a given act under some circumstances is not objectionable, while under others it is. Thus sounding a horn at a carnival is not objectionable. But sounding it at midnight in a residential section would be. Swearing at a card game can be ignored, but swearing in a theater or other public place should be curtailed.

One approach is to use general terms and leave the application to the facts of the individual case. This is the approach of the New York statutes.

This approach is believed, however, not to be desired. Like vagrancy, the crime of disorderly conduct is commonly used by the police against those unable to defend themselves.

The above recommended section increases the degree to which the state law will enter the field. It covers the instances which it is believed state law should cover and it states them as specifically as the nature of the subject permits. It does not undertake to be exclusive. Cities and municipalities may still enact ordinances adding other acts of disorderly conduct.

The recommended section extends to conduct occurring in private places. Wisconsin St. § 947.01, (1), so provides also. Behavior in an apartment of an apartment building can be an aggravated disturbance to the residents of other apartments. That in a private house may be as objectionable and disturbing to the surrounding neighbors as if it occurred in the street. Instances such as these are intended to be covered by this provision.

Two important qualifications are specified. The defendant must know or have reasonable grounds to know that his behavior will alarm, anger or disturb others. This is but an application of the principle that criminal liability should be based on fault. The second qualification is that "others" must be affected by the behavior. It is not sufficient that a single person or, depending on circumstances, only a few have grounds to complain. "Others" must be construed in the light of the objectives of the offense. A family quarrel in a private home would not be sufficient although it may be in the presence of the children or of other relatives or of visitors also in the home. But if passersby or neighbors were reasonably alarmed, angered or disturbed, the offense would be committed.

Clause (1): This is taken from Minn.St. § 615.17, which will be superseded.

Clause (2): This is taken from Minn.St. § 615.01, which will be superseded. The clause will also supersede Minn.St. § 614.32, dealing with disturbance of a religious meeting.

Clause (3): This is suggested by Wisconsin St. § 947.01, but with the qualification added that it must reasonably tend to arouse alarm, anger or resentment in others. The notes of the Wisconsin committee indicate that this qualification was intended. Its application will depend on circumstances. Shouting at a football game is not prohibited but similar shouting in church would be. The former is reasonably to be expected, even though some people present may resent it or are angered by it.

Sections Superseded by the Disorderly Conduct Provision Not Previously Referred To

§ 614.53:

This deals with runners for hotels, railroads, and so forth annoying people on the public streets.

§ 615.15:

This deals with abusive language about a member of another's family. The recommended section, however, will apply beyond members of one's family.

Transfer Recommended

§ 615.13:

This deals with the authority of a conductor of a railway train to make an arrest for offenses specified in Minn.St. § 615.12. This should be transferred to Chapter 629, dealing with arrest, with an appropriate change in the reference.

609.725 Vagrancy

Any of the following are vagrants and may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100:

(1) A person, with ability to work, who is without lawful means of support, does not seek employment, and is not under 18 years of age; or

(2) A person found in or loitering near any structure, vehicle, or private grounds who is there without the consent of the owner and is unable to account for his presence; or

(3) A prostitute who loiters on the streets or in a public place or in a place open to the public with intent to solicit for immoral purposes; or

(4) A person who derives his support in whole or in part from begging or as a fortune teller or similar impostor.

COMMENT

Ever since the breakdown of the feudal system, Anglo-American society appears to have had its residue of persons not fitting into the social structure. Though able, they do not work, do not want to work, have no family ties, belong to no neighborhood, live on what is discarded by others or by theft or begging, and often move from one locality to another. They are the inhabitants of skid row.

The laws on vagrancy have been developed to deal with this class of persons. Such laws have existed from about the 14th century and a peculiar characteristic of them has been that they punish being such a person rather than an act committed by him. Hence such phrases as "lives in idleness," "without visible means of support," "unable to give a good account of himself," etc.

This offense has usually been made a misdemeanor. Since these persons seldom can pay fines, punishment has consisted in confinement in the workhouse, frequently suspended on condition of getting out of town.

For the police, such laws have several advantages:

(1) Testimony that the defendant has been observed loitering, gives a confused account of himself, and is not working, is sufficient for conviction.

(2) It permits arrest for this offense when the real objective is to get information about other and more serious crimes.

(3) It permits pressure on this group to keep them from getting too large or too obnoxious without the necessity of waiting until evidence of a specific crime is obtained.

(4) The defendant may be suspected of some offense which cannot be proved; the charge of vagrancy permits punishment nevertheless.

It has been said that without this offense the police would be at a serious handicap in dealing with this class of persons.

See 23 California L.Rev. 616, which is a reply to "Who is a vagrant in California?" by a municipal judge.

Perkins, *The Vagrancy Concept*, 1958, 9 Hastings L.Jr. 237, 252, states:

"In metropolitan centers . . . the vagrancy law is one of the most effective weapons in the arsenal of law enforcement, and if the officer's use of this weapon should be seriously impaired, the security of the citizen would be grievously weakened."

Nevertheless, the use of the vagrancy laws is subject to serious abuse by the police. These laws are usually couched in broad terms and conviction will usually follow on testimony of the police officer stated in equally broad terms. The defendants are usually ignorant, unable effectively to explain their position if they have any, are unable to employ counsel and are, therefore, pretty much at the mercy of the police.

Courts, no doubt, feel under some compulsion to accept the testimony of police or risk permitting these individuals to get out of hand.

This is undoubtedly a crude device for getting at a very deep social problem and consists of little more than attempts at repression rather than solution.

It is believed that a program leading to a more effective solution cannot be undertaken in this revision.

The alternative is, therefore, to state the law on the premises of the present statutes, confining them to specified limits and stating them with as much clarity as the subject permits.

While the statutes of the several states have much in common, in detail they vary greatly. Generally speaking they center about (1) idleness without "visible means of support" or "unable to give a good account of himself;" (2) common prostitutes; (3) beggars; (4) loiter-

ers; and (5) sleeping in buildings or out of doors. Not an isolated instance but the habit of doing these things constitutes the doer a vagrant.

A statute on vagrancy first appeared in Minnesota in 1887. Prior thereto the subject appears to have been left to local municipalities.

In 1909, a new statute was enacted following §§ 887 and 887a of the New York Code of Criminal Procedure with some changes. This is now Minn.St. § 614.57.

In 1911, that part of Subd. 8 reading "engaged in solicitation . . ." and ending with "infirmity" was added.

In 1917, Subds. 9 and 10 were added. These were taken from the New York Code of Criminal Procedure § 887a, dealing with "tramps."

The statute has been subject to little interpretation by the Minnesota Supreme Court.

In State v. Suman, 1944, 216 Minn. 293, 12 N.W.2d 620, Subd. 8 was applied to a case where the defendant was engaged in the practice of making unnecessary repairs to the radios of customers and charging excessive fees. This was held to constitute false pretenses and so within the subdivision. The court observed:

"Ordinarily, a course of conduct or manner of life, rather than a single act is necessary to give rise to this charge. . . .

"The series of transactions presented by the testimony shows that defendant has established a course of conduct, a means whereby he could unlawfully obtain small sums from a great number of people."

Why a charge of larceny would not have sufficed is not apparent.

In State v. Hellen, 1937, 200 Minn. 126, 273 N.W. 363, defendant initiated a chain letter soliciting membership in a corporation he had formed. Each subsequent member was placed on the bottom of a list. When a member's name had been advanced to the tenth multiple of two he was entitled to a prize of 50 cents for each name appearing below his.

Defendant was held not guilty of vagrancy since the chain letter violated no law. This would appear to constitute gambling, at least under the proposed statute on the subject.

Other cases, such as State v. Woods, 1917, 137 Minn. 347, 163 N.W. 518, involve only city ordinances on the subject.

The recent case of Robinson v. California, 1962, 370 U.S. 660, 82 S.Ct. 1417, 8 L.Ed.2d 758, raises a question as to the constitutional limits that may exist in undertaking to make a crime of being a stated kind of person, such as a vagrant, as distinguished from doing an act prohibited by law. In this case a California law making it a crime to "be addicted to the use of narcotics" without proof of the actual use of narcotics, was held invalid as in violation of the 14th Amendment and as cruel and unusual punishment. The decision was based on an interpretation of the California law which would permit punishing such a person even though he had never taken narcotic drugs in the state or may have acquired addiction involuntarily. The court felt it was not unlike punishing having an illness. The decision was by a divided court.

The section recommended above is believed to be distinguishable. It prohibits behavior within the state which the state has power to proscribe, and does not punish having a status or a condition akin to illness. This cannot be said of some of the provisions appearing in Minn.St. § 614.57 which will be superseded.

In the recommended section, a $100 fine has been added to the present 90 days' sentence in the belief that this flexibility is desirable. Whether it can be used effectively by the judge in the particular case will be left to his discretion.

Clause (1): This is suggested by part of Clause (10) of Minn.St. § 614.57. Exclusion of those who have resided in the county for more than six months has not been incorporated. The qualification that the defendant must not have been blind was not included.

Clause (2): This relates to the same subject matter as that dealt with among other things in Clause (7) of § 614.57. Similar provisions appear in Clause (9) of that section.

Clause (3): This deals with subject matter now dealt with in Clauses (4) and (5) of § 614.57. Clause (3) of § 614.57 dealing with living off the earnings of a prostitute is covered by recommended § 609.335 dealing with prostitution.

Clause (4): This deals with subject matter now appearing in Clauses (6) and (10) of § 614.57.

Clause (1) of § 614.57 relating to non-support of family by drunkards has not been included since the abandonment and non-support sections adequately cover this subject.

Clause (8) of § 614.57 relating to obtaining money and so forth by trick is sufficiently covered by the recommended theft statute.

Clause (2) of § 614.57 makes a vagrant of one contracting a disease "in the practice of drunkenness or debauchery, requiring charitable aid to restore him to health." This has not been duplicated in the recommended section. It is probably invalid under the principles applied in the Robinson case.

Voluntary intoxication is made a misdemeanor in Minn.St. § 340.96. Increasing maximum sentences up to six months imprisonment are provided for multiple convictions. This section will not be affected by this revision.

609.73 Sunday Interference

Whoever interferes with the repose and religious liberty of the community during a Sunday may be sentenced to imprisonment for not more than five days or to payment of a fine of not more than $10.

COMMENT

This will supersede Minn.St. §§ 614.28, 614.29, and 614.30. These sections were taken from the New York Penal Code of 1881. There have been numerous amendments of § 614.29 since its adoption. Originally "all shooting, hunting, fishing, playing, horse racing, gaming or other public sports, exercise or shows" were prohibited. Most of this has now been deleted. In Laws 1961, Chapter 732, "football, hockey, basketball, golf, soccer and other contests of athletic skill" were authorized in addition to baseball. In State v. Chamberlain, 1910, 112 Minn. 52, 127 N.W. 144, "shows" was held not to include indoor movies.

Baseball was permitted in 1909 although at first it was limited to the hours between one and six p. m.

Presumably drive-in theaters, since not operated through a public address system, would come under the same reasoning as indoor movies.

Operation of a billiard or pool table is not a "show" or a "game." Atty.Gen.Opin. 384, 1940.

Operation of a miniature golf course next to a church is a violation of the Sunday Law. Atty.Gen.Opin. 384 D, 1930.

Auto racing is included in "horse racing." Atty.Gen.Opin. 384 B, 1927.

A shooting gallery violates the statute if the noises disturb the peace of the day. Atty.Gen.Opin. 510–C-6, 1948.

With respect to labor and work, the provision prohibiting barbering was added in 1887.

The provision that "uncooked meats, fresh or salt, or groceries, dry goods, clothing, boots and shoes" cannot be sold was added in 1903.

Permitting "shoe shining service" was added in 1935.

Wisconsin does not have any provisions in its criminal code on the subject. Neither did the criminal code prior to the 1953 revision. The same is true of Louisiana.

Nothing on the subject appears in the California Penal Code. Nothing appears in the 1961 Illinois revised Criminal Code.

A single broad section on the subject appeared in the Iowa Penal Code prior to 1955. In that year it was repealed.

Michigan has a separate chapter entitled "Sundays and Holidays." This is not part of the Penal Code.

In these several states there are, of course, some provisions dealing with particular topics as, for example, the N.I.L.

The laws of other states than the above have not been examined.

The Advisory Committee is of the opinion that a general provision directed at conduct interfering with the exercise of religious activity and repose of the community on a Sunday should be sufficient and is in line with the general statutory development of the country at least until recent years.

This recommended section will leave municipalities free to make such regulations as they desire. Neither will this supersede or affect legislation dealing with special matters such as the sale of motor vehicles now appearing in Minn.St. § 168.275.

The authorized sentence has been left as under the present provisions.

609.735 Concealing Identity

Whoever conceals his identity in a public place by means of a robe, mask, or other disguise, unless incidental to amusement or entertainment, may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100.

COMMENT

This contains the substance of Minn.St. § 615.16 which will be superseded. The presumption contained in the latter section has not been retained in view of State v. Higgin, 1960, 257 Minn. 46, 99 N.W.2d 902.

609.74 Public Nuisance

Whoever by his act or failure to perform a legal duty intentionally does any of the following is guilty of maintaining a public nuisance and may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100:

(1) Maintains or permits a condition which unreasonably annoys, injures or endangers the safety, health, morals, comfort, or repose of any considerable number of members of the public; or

(2) Interferes with, obstructs, or renders dangerous for passage, any public highway or right of way, or waters used by the public; or

(3) Is guilty of any other act or omission declared by law to be a public nuisance and for which no sentence is specifically provided.

COMMENT

The present Minnesota statute on the subject of public nuisance is § 616.01, which reads:

> "A public nuisance is a crime against the order and economy of the state and consists in unlawfully doing an act or omitting to perform a duty, which act or omission shall:
>
> "(1) Annoy, injure, or endanger the safety, health, comfort, or repose of any considerable number of persons;
>
> "(2) Offend public decency;
>
> "(3) Unlawfully interfere with, obstruct, or tend to obstruct or render dangerous for passage, a lake, navigable river, bay, stream, canal, or basin, or a public park, square, street, alley, or highway; or
>
> "(4) In any way render a considerable number of persons insecure in life or the use of property."

Minn.St. § 616.02 makes violation a misdemeanor and makes persons who permit a building to be used for such nuisance also liable.

The two sections will be superseded by the above recommended section. These sections were adopted in 1886 from the New York Penal Code of 1881. They have been interpreted by the New York courts as merely stating the common law on the subject.

Minnesota cases appearing on these sections are confined almost entirely to civil suits in actions for damages. The New York cases construing these sections attach no material significance to terms used in these sections in reaching decisions on what constitutes a public nuisance. Common-law principles have been on the whole pursued and read into the sections.

The cases tend to involve several classes of cases:

(1) Where gambling or bawdy houses are maintained, and this has been extended to include places where drinking occurs and to which the public may go, and to establishments where abortions are performed.

It was this class of cases to which the second clause of Minn.St. § 616.01 is directed.

(2) Cases where the question is whether a particular industry is, or is conducted in such manner that it is, a public nuisance. This usually involves weighing of relative values.

This class of cases is covered by Clause 1 of § 616.01.

(3) Interference with the public use of highways, waterways, etc.

This is covered by Clause 3 of § 616.01.

No case was found which turned on the provisions of Clause 4 of § 616.01. The cases cited by the New York revision commissioners, relating to noise and offensive odors, can easily be brought under Clause 1.

A number of states do not make the maintenance of a public nuisance a crime. They rely instead on the power of prosecuting officials to bring abatement or injunction proceedings. This includes Wisconsin and Louisiana.

At the present time the power of the state or local authority to bring an injunction proceeding to abate a public nuisance is well recognized. See State ex rel. Goff v. O'Neil, 1939, 205 Minn. 366, 286 N.W. 316.

There is probably still a place for the crime of public nuisance but it is believed it should be restricted to those instances which come within the purposes of the criminal law.

This will require (1) some criminal intent and (2) limitation of the statute to such specific terms as the nature of the problem permits.

Clause (1): Changes from the present statutes made by Clause (1) are:

(1) The word "intentionally" has been added. This will eliminate those cases where there is a good faith claim on the part of the defendant that he has a right to continue with the activity in which he is engaged. This claim he should be entitled to make without the possibility of a criminal penalty hanging over him.

(2) The word "unreasonably" has been added. Reasonable use of one's own property is not a nuisance. This is the present law.

(3) The words "unlawfully doing an act" have been omitted. Many, if not most, nuisance cases involve conduct on one's own premises. It is not illegal unless it is a nuisance.

(4) The word "morals" has been inserted and the present Clause 2 of Minn.St. § 616.01 has been removed.

(5) "Members of the public" has been substituted for "persons." The distinguishing aspect of a public nuisance is that it is the public that is affected. There may be "a considerable number of persons" affected and the public still not be involved as interpreted by judicial decisions.

(6) "Creates a condition" is new. The purpose is to emphasize the characteristic feature of a nuisance; namely, that it is something which is more than a single act but is a state of affairs or situation or condition, harmful to the public. The present statute is deficient in this respect. "A certain degree of permanence . . . is usually a part of the conception of a nuisance." Holmes, in Commonwealth v. Patterson, 1885, 138 Mass. 498.

If single specific acts are sought to be prohibited, they should be the subject of a separate statute defining the act as a crime.

Clause (2): This restates Subd. 3 of § 616.01 with some addition and rewording. This is a well recognized basis for a public nuisance.

It might well be made a specific crime quite aside from the crime of nuisance, but it was believed better to continue to treat it as a nuisance and retain the remedies that go with it, such as the right of public authorities to bring an action for an injunction.

This will duplicate Minn.St. § 160.27 Subd. 5, Clause (1), in a measure but the duplication is not deemed objectionable.

Public parks are not specifically mentioned in this clause since a public nuisance in a public park is deemed sufficiently covered by Clause (1).

Clause (3): This covers the provision in Minn.St. § 616.02 to the same effect.

There are a number of statutes declaring certain acts public nuisances. These include:

§ 18.331:

This makes certain grain-rust producing plants and bushes public nuisances.

§ 37.21:

This makes the sale of intoxicating liquor near the state fair grounds a public nuisance.

§ 169.07:

This makes obstructing the view to highway traffic signs a public nuisance.

§ 360.032:

This makes trees and other obstructions to airport approaches public nuisances.

§ 411.40:

This empowers cities of the first class to declare public nuisances.

§ 411.45:

This preserves legal actions to abate nuisances.

§ 437.09:

This makes itinerant carnivals, street shows, etc., public nuisances.

§ 461.07:

This authorizes ordinances making dense smoke a nuisance. See also Minn.St. § 461.09 giving similar authority to cities of the third class.

§ 462.17:

This makes buildings not conforming to city ordinances public nuisances.

§ 471.92:

This makes open wells, cesspools, cisterns, etc., public nuisances.

§ 614.01:

This section is superseded by recommended §§ 609.75 to 609.76. No provision has been included in this revision making a lottery a public nuisance. However, places where lotteries are conducted

contribute to injury of public morals and would thus fall within the meaning of Clause (1) of the recommended section.

§ 616.39:

This makes itinerant carnivals public nuisances.

§ 617.33:

This makes houses of prostitution public nuisances. Subsequent sections empower the county attorney to bring an action to abate the nuisance.

§ 618.14:

This makes drug addict resorts a common nuisance.

No provision has been included that is equivalent to Clause 4 of § 616.01. This was regarded as too broad and sweeping to include in a criminal statute. It adds nothing to what falls within Clause (1) of the recommended section.

609.745 Permitting Public Nuisance

Whoever permits real property under his control to be used to maintain a public nuisance or lets the same knowing it will be so used may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100.

COMMENT

This incorporates the latter half of Minn.St. § 616.02.

GAMBLING

609.75 Gambling; Definitions

Subdivision 1. Lottery. A lottery is a plan for the distribution of money, property or other reward or benefit to persons selected by chance from among participants some or all of whom have given a consideration for the chance of being selected. Acts in this state in furtherance of a lottery conducted outside of this state are included notwithstanding its validity where conducted.

Subd. 2. Bet. A bet is a bargain whereby the parties mutually agree to a gain or loss by one to the other of specified money, property or benefit dependent upon chance although the chance is accompanied by some element of skill.

Subd. 3. What Are Not Bets. The following are not bets:

(1) A contract to insure, indemnify, guarantee or otherwise compensate another for a harm or loss sustained, even though the loss depends upon chance.

(2) A contract for the purchase or sale at a future date of securities or other commodities.

(3) Offers of purses, prizes or premiums to the actual contestants in any bona fide contest for the determination of skill, speed, strength, endurance, or quality or to the bona fide owners of animals or other property entered in such a contest.

(4) The game of bingo as provided in Minnesota Statutes, Sections 614.053 and 614.054.

Subd. 4. Gambling Device. A gambling device is a contrivance which for a consideration affords the player an opportunity to obtain something of value, other than free plays, automatically from the machine or otherwise, the award of which is determined principally by chance.

Subd. 5. Gambling Place. A gambling place is a location or structure, stationary or movable, or any part thereof, wherein, as one of its uses, betting is permitted or promoted, a lottery is conducted or assisted or a gambling device is operated.

Subd. 6. Bucket Shop. A bucket shop is a place wherein the operator is engaged in making bets in the form of purchases or sales on public exchanges of securities, commodities or other personal property for future delivery to be settled at prices dependent on the chance of those prevailing at the public exchanges without a bona fide purchase or sale being in fact made on a board of trade or exchange.

COMMENT

Gambling falls into three general categories: (1) betting, (2) lotteries, and (3) gambling machines. All have in common the risk of loss or gain depending on an element of chance.

While present statutes distinguish lotteries from the other two forms of gambling, betting and gambling machines are intermixed in the statutes.

With respect to betting, it appears not now to be a crime to bet unless it is associated with a "gambling device." Thus betting on a horse race, or on the outcome of any sporting game since not associated with a device is not a crime.

The present statutes on the subject are in many respects quite unsatisfactory and the recommended revision is believed to represent a substantial improvement. All of the several Minnesota sections discussed in the comments to this and the succeeding sections on gambling will be superseded.

Consideration was given to the possibility of restricting the prohibitions against gambling to instances where a substantial amount is involved. While this may be a desirable objective, it appears impossible to prescribe a line of demarcation which would not be, of

necessity, an arbitrary one and one which would present difficulties of enforcement. No such distinction is therefore drawn.

The application of the definitions in the above section will appear when read together with the next two sections.

Subdivision 1: This is substantially the definition appearing in Minn.St. § 614.01. In the recommended section "plan" is substituted for "scheme." The intent is to require some element of systematic and organized effort characteristic of a lottery. The present statute uses the word "scheme."

"A consideration" is substituted for "paid, or agreed to pay, a valuable consideration." It means the same thing.

"Some or all of whom" has been included in view of State v. Schubert Theatre Players Co., 1938, 203 Minn. 366, 281 N.W. 369, holding that it does not make it less a lottery that some participants get the chance for nothing if others pay for it.

The definition does not rule out the giving of free gifts by stores to customers on opening days, and so forth, who register their names for the purpose. This is not now prohibited. Thus in Albert Lea Amusement Corp. v. Hanson, 1950, 231 Minn. 401, 43 N.W.2d 249, a bank night plan was upheld where no consideration was given for the chance by the participants.

What is a consideration and when it is given will be, as it now is, a question of fact in the individual case.

Thus a "free" ticket to a chance at a prize given with each ticket to a theater show is not in fact free since the purchase price is in fact for both the admission and the chance. See State v. Schubert Theatre Players Co., 1938, 203 Minn. 366, 281 N.W. 369, holding the fact that others could get the tickets to the chance free was immaterial.

Similarly a merchant conducts a lottery if he gives a free ticket to each customer for each dollar of merchandise purchased and prizes are later awarded on the drawing of the ticket. See State v. Powell, 1927, 170 Minn. 239, 212 N.W. 169.

However, the giving of gift stamps dependent on merchandise purchased is not illegal since no element of chance is involved. Legislative attempts to curtail this practice have run into constitutional prohibitions. See State ex rel. Attorney General v. Sperry & Hutchinson Co., 1910, 110 Minn. 378, 126 N.W. 120.

The last sentence of Subdivision (1) supersedes Minn.St. § 614.05, which is to the same effect.

Subd. 2: There is now no statutory definition of a bet. In Gilbert v. Berkheiser, 1924, 157 Minn. 491, 196 N.W. 653, it was defined thus: "A bet is the wager of money or property upon an incident by which one or both parties stand to win or lose by chance."

Under the recommended definition, betting is not confined to "gambling with cards, dice, gaming tables, or any other gambling device" as it is under Minn.St. § 614.06.

The recommended clause would include the following:

(1) Betting on horse racing which now appears not to be covered, since no device is involved. See State v. Shaw, 1888, 39 Minn. 153, 39 N.W. 305.

(2) Private bets such as matching coins to determine who will pay for the cigars.

(3) Pools on football or other games of sport.

(4) Poker and other card games for gain.

(5) Billiard games, the loser to pay the cost of the game.

(6) Roulette wheels.

(7) Throwing dice.

Subd. 3, (1): This is a modified version of a similar provision in Wisconsin St. § 945.01, Subd. (1), (a), (2).

Subd. 3, (2); Wisconsin has an identical provision. Minn.St. § 614.16 making contracts of sale for the future delivery of grain, and so forth, illegal if the commodity is not intended to be delivered will be superseded.

Cases in Minnesota have held contracts for the sale or purchase of commodities for future delivery to be gambling contracts and hence unenforceable where the intent is not to make or receive delivery but to settle on the basis of the difference between the prices prevailing at a future date. This will continue to be the rule. See In re Estate of Peterson, 1938, 203 Minn. 491, 281 N.W. 877, and Becher-Barrett-Lockerby Co. v. Hilbert, 1936, 197 Minn. 541, 267 N.W. 727.

Subd. 3, (3): This is taken from the Wisconsin St. 945.01. There is at present no similar provision in Minnesota.

Subd. 3, (4): This provision is retained but it is recognized that its inclusion is inconsistent with the other provisions recommended. It has been included because of its general acceptance in the state.

The Advisory Committee has doubts also whether the present Minnesota sections are not counter to the constitutional prohibition of Minnesota Constitution, Article IV, Section 31, reading: "The Legislature shall never authorize any lottery or sale of lottery tickets."

Subd. 4: In McNeice v. Minneapolis, 1957, 250 Minn. 142, 84 N.W. 2d 232, it was held that the term "gambling device" appearing in Minn.St. § 614.06 included the items listed in Minn.St. § 325.53, reading:

> "Subd. 2. 'Gambling devices' mean slot machines, roulette wheels, punchboards, number jars and pin ball machines which return coins or slugs, chips, or tokens of any kind, which are redeemable in merchandise or cash."

See also State v. Grimes, 1892, 49 Minn. 443, 52 N.W. 42; Atty.Gen. Opin. No. 35, 1958; and Atty.Gen.Opin. No. 733-d, 1951 for other interpretations of the term "gambling device."

In view of the interpretation that the term "gambling device" has received its use has been continued.

Subd. 5: This is taken from Wisconsin St. § 945.01. The nearest equivalent in Minnesota is § 614.07 which is less inclusive and will be superseded.

Subd. 6: This will supersede Minn.St. §§ 623.21, 623.22, and 623.23, on which it is based.

While Wisconsin does not have a similar provision in its new code, "bucket shops" have such special characteristics that it is believed to warrant a separate provision.

Minn.St. § 623.21 includes also cases where the broker without the consent of the customer fails to execute an order but takes the risk himself. This is a case of fraud and not usually thought of as in the

category of gambling. It is believed more properly a subject for regulation of the industry. Such case of fraud is illustrated in Kaiser v. Butchart, 1937, 200 Minn. 545, 274 N.W. 680, 113 A.L.R. 847.

Such regulation now exists on the Federal level and covers practically all dealings in futures. See U. S. Grain Futures Act, Title 7, Section 6.

Minn.St. § 623.24 should be transferred as a regulatory measure. It requires a written statement to be delivered on the sale of the commodity for immediate or future delivery.

609.755 Acts of or Relating to Gambling

Whoever does any of the following may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100:

(1) Makes a bet; or

(2) Sells or transfers a chance to participate in a lottery; or

(3) Disseminates information about a lottery with intent to encourage participation therein; or

(4) Permits a structure or location owned or occupied by him or under his control to be used as a gambling place.

COMMENT

Clause (1): There is at present no corresponding provision.

Clause (2): This will supersede Minn.St. § 614.02 upon which the clause is based.

Clause (3): This supersedes the corresponding provision in Minn. St. § 614.02.

Clause (4): The nearest corresponding provision appears in Minn. St. § 614.07.

The term "permits" requires knowledge on the part of the defendant that his structure or location is being used as a gambling place.

609.76 Other Acts Relating to Gambling

Whoever does any of the following may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than $1,000, or both:

(1) Maintains or operates a gambling place or operates a bucket shop; or

(2) Intentionally participates in the income of a gambling place or bucket shop; or

(3) Conducts a lottery, or, with intent to conduct a lottery, possesses facilities for doing so; or

(4) Sets up for use for the purpose of gambling, or collects the proceeds of, any gambling device or bucket shop; or

(5) With intent that it shall be so used, manufactures, sells, or offers for sale, in whole or any part thereof, any gambling device including any facility for conducting a lottery as defined in Minnesota Statutes Section 325.53, Subdivision 2; or

(6) Receives, records, or forwards bets or offers to bet or, with intent to receive, record, or forward bets or offers to bet, possesses facilities to do so.

COMMENT

Clause (1): See comments to § 609.75, Subdivisions 5 and 6.

Clause (2): See comments to § 609.75, Subdivisions 5 and 6. There is at present no equivalent in Minnesota statutes unless possibly a participant in the income might be regarded as an aider and abetter of the gambling. The clause is aimed at the behind the scenes person whose direct participation in the gambling may be difficult to prove.

Clause (3): See comments to § 609.75, Subdivision 1.

Clause (4): See comments to § 609.75, Subdivisions 4 and 6.

Clause (5): There appears to be no corresponding Minnesota section at present.

Clause (6): This will supersede Minn.St. § 623.20 which undertakes to spell out in detail the prohibited practices.

Sections Superseded and Not Referred to Previously

§ 614.03:

This prohibits the sale or distribution of property by lottery. It also prohibits a so-called place for registering lottery tickets or advertising the same or prohibiting buildings or portions thereof to be used for the purpose.

§ 614.04:

This prohibits the insuring of lottery tickets. The regulatory measures on insurance sufficiently cover the question. See § 72.10.

§ 623.23:

This prohibits display of quotation of prices by bucket shop operators and makes the violators accessories to the bucket shop operation.

Transfer Recommended

§§ 614.053 and 614.054:

These authorize bingo under certain limitations.

§ 614.09:

This permits recovery of money lost in certain forms of gambling.

§ 614.10:

This invalidates obligations given in payment of a gambling debt.

§ 614.12:

This authorizes arrest of persons engaged in gambling.

§ 614.15:

This provides that "any person may be convicted of sections 614.06 to 614.14 on his own confession out of court, or upon the testimony of an accomplice."

This should be transferred to an appropriate chapter on criminal procedure, with changes in the reference to sections. The sections referred to relate to gambling.

Repeal Recommended

§ 437.03:

This authorizes villages and cities to enact ordinances prohibiting bucket shops and to impose a penalty of imprisonment not to exceed 90 days or a fine not to exceed $100. Recommended § 609.76 will make this a gross misdemeanor and hence beyond the jurisdiction of villages and cities.

§ 614.13:

This authorizes the ejection from public conveyances, hotels, fairgrounds, and the like, of persons believed to be "three-card monte men" or other gamblers. This is believed to be an impractical and obsolete method of dealing with the problem.

§ 614.14:

This makes the person failing to eject as required in Minn.St. § 614.13 criminally liable. The same objections apply.

§ 623.25:

This relates to gifts, premiums, and prizes by way of stamps and makes their use criminal under certain conditions. This section was held unconstitutional in State ex rel. Attorney General v. Sperry & Hutchinson Co., 1910, 110 Minn. 378, 126 N.W. 120, to the extent that it imposed conditions on the issuance of stamps not related to the element of chance. Insofar as it is valid as prohibiting such stamps if dependent on chance, it is covered by the recommended provisions on lotteries.

§ 623.26:

This prohibits offering premiums, gifts, etc., to secure the sale of subscriptions to a newspaper, magazine or periodical unless the items offered are absolute and not dependent on chance. This is sufficiently covered by the provisions on lotteries.

Sections Outside the Criminal Law Related to Gambling and not Affected by the Revision

§ 211.13:

This prohibits a political candidate from making bets or wagers on the result of a primary or election in an electoral district.

§ 211.28:

This provides a penalty of five years imprisonment or $5,000 fine, or both, for violation of any provision of Chapter 211.

§ 340.14, Subd. 2:

This appears in a chapter dealing with regulation of intoxicating liquor and prohibits gambling in an adjoining room.

CRIMES AGAINST REPUTATION

609.765 Criminal Defamation

Subdivision 1. Definition. Defamatory matter is anything which exposes a person or a group, class or association to hatred, contempt, ridicule, degradation or disgrace in society, or injury to his or its business or occupation.

Subd. 2. Acts Constituting. Whoever with knowledge of its defamatory character orally, in writing or by any other means, communicates any defamatory matter to a third person without the consent of the person defamed is guilty of criminal defamation and may be sentenced to imprisonment for not more than one year or a fine of not more than $1,000, or both.

Subd. 3. Justification. Violation of subdivision 2 is justified if:

(1) The defamatory matter is true and is communicated with good motives and for justifiable ends; or

(2) The communication is absolutely privileged; or

(3) The communication consists of fair comment made in good faith with respect to persons participating in matters of public concern; or

(4) The communication consists of a fair and true report or a fair summary of any judicial, legislative or other public or official proceedings; or

(5) The communication is between persons each having an interest or duty with respect to the subject matter of the communication and is made with intent to further such interest or duty.

Subd. 4. Testimony Required. No person shall be convicted on the basis of an oral communication of defamatory matter except upon the testimony of at least two other persons that they heard and understood the oral statement as defamatory or upon a plea of guilty.

COMMENT

Due partly to its history, the crime of defamation had several peculiar characteristics at common law.

(1) Truth was not a defense as it was in civil cases. One explanation was that the purpose of the crime is to prevent statements that

will lead to breaches of the peace. A truthful defamatory statement, it was said, is equally likely to cause such a breach.

Another explanation given was that the crime was developed at common law at a time when the ruling classes sought to suppress criticism whether true or not. See Lefiar, Social Utility of Criminal Law of Defamation, 34 Tex.L.Rev. 984, stating:

"The law of libel largely came into being as criminal law, in the Star Chamber, and was formulated more in terms of libels on 'great men' (i.e., men with political power and influence) than on ordinary men. These privileged and protected personages were not much interested in preserving free speech for the mass of the population. They were concerned primarily with protecting their own interests, including their reputations." *

(2) The publication need not be to a third person. Again, to prevent a breach of the peace.

(3) The publication may concern a deceased person—for the same reason.

(4) The crime was probably limited to statements defamatory on their face.

(5) Liability for slanders, that is, oral defamatory statements, was substantially more limited than for libels.

These limitations have been reflected in statutes on the subject and to a considerable extent have been modified by them. Absence of intent to defame has not been a defense except in certain cases. See Minn.St. § 619.52.

In more recent years defamation of a group or class of persons has been recognized. Illinois and other states have enacted statutes to this effect. The Illinois statute was sustained as constitutional in Beauharnais v. Illinois, 1951, 72 S.Ct. 725, 343 U.S. 250, 96 L.Ed. 919.

The Wisconsin statute, § 942.01, has been to some extent adopted in the recommended section above.

Subdivision 1: There is no separate definition in the present Minnesota statutes, but § 619.51 contains a similar clause. The definition is taken from the Wisconsin statutes, § 942.01, (2), with the words "or a group, class or association" added to include group defamation.

Criminal liability for defamation of a group is particularly important since the group as such has no civil remedy.

Subd. 2: This will supersede Minn.St. § 619.51 with the following changes introduced:

(1) The words "with knowledge of its defamatory character" are substituted for the word "malicious" as specifying more clearly the intent requirement. The words "with intent to defame" are considered less desirable. Thus a news medium may publish an item to promote circulation or increase its listening or viewing audience but with no desire or "intent" to defame beyond knowing that it will have that effect.

An unintentional and innocent publication does not come within the recommended subdivision. This, of course, would not affect the right to a civil action of the party defamed.

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(2) The communication must be to a third person. It is not enough that only the defamed person saw, read, or heard it. The purpose of this crime is protection of reputation rather than prevention of breach of peace. Minn.St. § 619.53 to the contrary will be repealed. The new Wisconsin revision takes the same position.

(3) The "memory of one deceased" has not been included. Prosecutions in such cases are rare. Professor Leflar in 34 Tex.L.Rev. 984 reports that no cases have been found in the appellate reports since 1920.

(4) Subject to Subd. 4, slander is included on the same basis as written defamation. The present distinction appears to be largely the product of historical accident and has no other justification.

(5) Imposing a duty on the county attorney to prosecute has been deleted as unnecessary.

Minn.St. § 619.54 provides that every editor or proprietor of a book, newspaper, or serial and every manager of a co-partnership or corporation issuing them is chargeable with knowledge of what is contained in them but that the defendant may show that it was published without his knowledge or fault or against his wishes by one who had no authority.

This section has not been reproduced in this revision and its repeal is recommended. It is believed unnecessary since the law is the same without it. See State v. Workers' Socialist Pub. Co., 1922, 150 Minn. 406, 185 N.W. 931.

Minn.St. § 619.59 will also be superseded. This makes it a misdemeanor to slander a woman. This section is no longer necessary since recommended Subd. 2 encompasses all slanders.

Minn.St. § 619.62 makes it a misdemeanor to slander any person with respect to his virtue or chastity. It overlaps § 619.59 and in view of recommended Subd. 2 is equally unnecessary. Its repeal is recommended.

Minn.St. § 619.63 punishes as a gross misdemeanor defamatory statements about financial institutions. It is believed unnecessary since it is adequately covered by the recommended section, Subd. 2. Its repeal is recommended.

Subd. 3, (1): Similar provisions appear in Minn.St. §§ 619.59, 619.-62, and 634.05, all of which will be superseded.

Minn.St. § 634.05 also includes the provision "that the jury shall have the right to determine the law and the fact." It also contains a provision that truth may be given in evidence and if the jury finds the statement to be true as well as published with good motives and justifiable ends the party shall be acquitted. It is recommended that the whole of this section be repealed. It is reproduced by Clause (1), except the portion relating to jury's right to determine the law and the act. No reason could be discovered why defamation cases should not be governed by legal principle as other cases are and the jury instructed accordingly.

Subd. 3, (2): This is new, but is undoubtedly implicit in present law. Thus the statements of a legislator or a judge are absolutely privileged.

Subd. 3, (3): This covers the third sentence of Minn.St. § 619.52. The words "honestly made, in belief of its truth, and upon reasonable grounds for such belief" appearing in § 619.52 have been omitted

as raising serious questions whether they do not unconstitutionally restrict free speech and free press.

As drawn, all that is necessary is that it be "fair" comment and "in good faith." It is believed that caution should be exercised in placing criminal liability on comment on matters of public concern.

Subd. 3, (4): This will supersede Minn.St. § 619.55 which, however, is directed toward newspapers and seems to imply liability in the case of a true and fair report if actual malice is present. Under the recommended section, if the report is fair and true, malice is immaterial and no criminal liability arises. The public interest in publication of the proceedings referred to would seem to call for this position.

It was not intended to change the holding in Nixon v. Dispatch Printing Co., 1907, 101 Minn. 309, 112 N.W. 258, to the effect that Minn.St. § 619.55 did not warrant a newspaper copying portions of a complaint on file with the clerk of court. The court said:

". . . if the filing of such a complaint must be construed as a judicial proceeding within the rule stated, then any one who happens to read the complaint after it is filed is privileged to publish it, and send it into the houses and offices of thousands of the citizens of the state, and thereby brand the person against whom the complaint is filed with infamy. . . .

"The distinction between a complaint and judicial proceedings proper is clear. The first is ex parte, not subject to the control of the court in the first instance, the clerk must file it, and its publication can in no manner serve the administration of justice, or any other legitimate object of public interest. The last are had in court, under the control of the judge, where both sides may be heard. A fair report of such a proceeding would include the claims of all parties as made in court. It is the publication of such a report only that is privileged."

Subd. 3, (5): This subject presently is covered in different form by Minn.St. § 619.57. The rule is the same independent of statute. See Marks v. Baker, 1881, 28 Minn. 162, 9 N.W. 678; and Brown v. Radebaugh, 1901, 84 Minn. 347, 87 N.W. 937.

The words "made with intent to further such interest or duty" appearing in the recommended clause is intended as a clarification of the confused language of Minn.St. § 619.57.

Subd. 4: This is identical with Wisconsin St. § 942.01, (4) and will supersede Minn.St. § 619.60 which is limited to women slandered.

Minn.St. § 619.60 also adds the words "or by the admission of the defendant." If this means admission in court, it is unnecessary. It was equally unnecessary if what is intended is an admission outside of court. As such it is admissible as an exception to the hearsay rule.

Transfer Recommended

§ 619.56:

This provides for venue in a libel indictment against a newspaper. It should be transferred to the chapter on criminal procedure.

§ 613.69:

This makes it a criminal contempt to publish "a false or grossly inaccurate report of its (the court's) proceedings." It should be transferred to the chapter on contempt.

Minnesota Statutes on Defamation Outside the Criminal Code and not Affected by Revision

§ 72.23, (3):

This deals with defamation as an unfair method of competition in the business of insurance.

§ 210.11:

This appears in the election laws and relates to defamation of candidates.

§ 544.043:

This exempts radio stations from liability.

§ 628.22:

This simplifies the requirements for an indictment for libel.

609.77 False Information to News Media

Whoever, with intent that it be published or disseminated and that it defame another person, communicates to any newspaper, magazine or other news media, any statement, knowing it to be false, may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100.

COMMENT

This adopts the substance of Minn.St. § 619.61 but broadens it to include any "news media."

CRIMES RELATING TO COMMUNICATIONS

609.775 Divulging Telephone or Telegraph Message; Non-Delivery

Whoever does any of the following may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100:

(1) Being entrusted as an employee of a telephone or telegraph company with the transmission or delivery of a telephonic or telegraphic message, intentionally or through culpable negligence discloses the contents or meaning thereof to a person other than the intended receiver; or

(2) Knowing he is not the intended receiver, obtains such disclosure from such employee; or

(3) Being such employee, intentionally or negligently fails duly to deliver such message.

COMMENT

This will supersede Minn.St. § 620.65. This adds liability not now existing under § 620.65 on the part of an employee for disclosure through culpable negligence. The present statute is limited to "wilfully divulge."

The Committee concluded not to recommend a provision dealing with interception of messages by wiretapping. It was considered that this required more extensive legislative consideration than would be available in the enactment of this revision.

609.78 Emergency Telephone Calls

Whoever does any of the following may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100:

(1) Refuses to relinquish immediately a telephone line consisting of two or more stations when informed that the line is needed at another station to make an emergency call for medical or ambulance service or for assistance from a police or fire department or for other service needed in an emergency to avoid serious harm to person or property, and an emergency therefor in fact exists; or

(2) Secures a relinquishment of such telephone line by falsely stating that the line is needed for an emergency; or

(3) Publishes telephone directories to be used for such lines which do not contain a copy of this section.

COMMENT

This states in more condensed form the substance of Minn.St. §§ 614.71 to 614.74.

The penalty, however, has been reduced from a gross misdemeanor to that of a misdemeanor in the belief that this will make enforcement easier.

609.785 Fraudulent Long Distance Telephone Calls

Whoever obtains long distance telephone service by intentionally requesting of the operator that the cost thereof be charged to a false or non-existent telephone number or to the telephone number of another without his authority may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100.

COMMENT

This will supersede Minn.St. § 620.502, enacted in 1959, the substance being the same, except that attempt to obtain such telephone

service has not been included. The attempt will be covered by the general provision on attempt, § 609.17, under which an attempt to commit a misdemeanor carries the same punishment as the misdemeanor itself.

609.79 Making Anonymous Telephone Call

Subdivision 1. Whoever, without disclosing his identity and with intent to alarm or annoy another, makes a telephone call, whether or not conversation ensues, may be sentenced to imprisonment for not more than 90 days or a fine of not more than $100.

Subd. 2. The offense may be prosecuted either at the place where the call is made or where it is received.

COMMENT

This section will replace Minn.St. § 614.75, adopted in 1961 and reading:

> "Whoever telephones another person and addresses to such other person any lewd, lascivious or threatening words or language, or whoever anonymously telephones another person for the purpose of annoying, molesting, or harassing such other person, or his or her family, shall be guilty of a misdemeanor.
>
> "Any offense committed by the use of a telephone as herein set out may be deemed to have been committed either at the place from which the telephone call or calls were made or at the place where the telephone call or calls were received."

The phrase "lewd, lascivious or threatening words or language" is sufficiently covered by the words "alarm or annoy" in the recommended section above.

The recommended section makes actual conversation unnecessary. Calling and hanging up the receiver is sufficient. This is not clear under the present section. The provision appears in Wisconsin St. § 947.01, (2).

The words "without disclosing his identity" is believed to convey the intended meaning more clearly than the word "anonymously." The Wisconsin section does not contain the requirement. Neither does Illinois § 26–2 (2), which adopted the Wisconsin section.

Though probably not intended, "lewd or lascivious" language not objected to by the receiver appears to be prohibited in Minn.St. § 614.75. It would not be under the recommended section. This is consistent with the fact that in other instances such language in private conversation not objectionable to the other party is not a crime.

609.795 Opening Sealed Letter, Telegram, or Package

Whoever does either of the following may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100:

(1) Knowing that he does not have the consent of either the sender or the addressee, intentionally opens any sealed letter, telegram, or package addressed to another; or

(2) Knowing that a sealed letter, telegram, or package has been opened without the consent of either the sender or addressee, intentionally publishes any of the contents thereof.

COMMENT

This is taken from Wisconsin St. § 942.05. It supersedes Minn.St. § 621.55 which makes it a misdemeanor to "wilfully and without authority open or read, or cause to be opened or read, a sealed letter or telegram, or shall publish the whole or any portion of such letter or telegram, knowing it to have been opened or read without authority."

Other than those of wording, the following changes have been made from present law:

(1) Packages have been added. As the Wisconsin Committee stated, "highly confidential papers often may be sent by sealed packages as well as sealed letters."

(2) One who reads a sealed letter which he did not open is not covered as he is under Minn.St. § 621.55. The Wisconsin Committee stated, "such conduct is too trivial to be of concern to the criminal law."

(3) Want of consent of the sender or addressee is substituted for the less definite words "without authority."

Telegrams are not included in the Wisconsin section. It was retained in the above recommended section since telegrams are frequently delivered by messenger in a sealed envelope which may not qualify as a "sealed letter." The policy of the section is equally applicable in such a situation.

The new Illinois Criminal Code does not contain a section on the subject.

CRIMES RELATING TO A BUSINESS

609.80 False Advertising

Whoever disseminates false information to the public knowing it to be false and intending thereby to promote the sale or distribution of property or services may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100.

COMMENT

This will supersede Minn. St. § 620.52. The provision of § 620.52 placing the duty of enforcement upon the Commissioner of Business Research and Development and the County Attorney was not included; neither was the provision declaring the act a public nuisance which might be enjoined. These provisions are not appropriate to a substantive law section.

The Advisory Committee is of the opinion that an appropriate statute dealing with the civil remedies and authorizing the use of an in-

junction might well be enacted as part of the chapter on business research and development.

If a provision making it the duty of the county attorney to prosecute is to be continued it should appear in an appropriate chapter dealing with his duties.

609.805 Ticket Scalping

Subdivision 1. Definition. "Event" means a theater performance or show, circus, athletic contest or other entertainment or amusement to which the general public is admitted.

Subd. 2. Acts Constituting. Whoever intentionally does any of the following may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100:

(1) Issues or sells tickets to an event without printing thereon in a conspicuous place the price of the ticket and the seat number, if any; or

(2) Charges for admission to an event a price greater than that advertised or stated on tickets issued for the event; or

(3) Sells or offers to sell a ticket to an event at a price greater than that charged at the place of admission or printed on the ticket; or

(4) Having received a ticket to an event under conditions restricting its transfer, sells it in violation of such conditions; or

(5) Being in control of premises on or in which an event is conducted, permits the sale or exhibition for sale on or in such premises of a ticket to the event at a price greater than printed thereon.

COMMENT

There are now two sections, Minn.St. §§ 620.74 and 620.76, which deal with this subject. Section 620.76 was enacted later and duplicates the more limited provisions of § 620.74.

Subdivision 1: Section 620.76 does not now contain a definition. Its use simplifies the drafting of the section.

The following words do not appear in § 620.76: "performance or show," and "to which the general public is admitted."

The words "theater performance" are used instead of the word "theater" alone in order to make clear that it was the performance which might be in the theater building. The use of the word "theater" alone might suggest the use of the building without performance therein.

Subd. 2, Clause (1): This covers the requirement of Subdivision 1 of § 620.76.

Subd. 2, Clause (2): Part of Subd. 2 of § 620.76 covers this point.

Subd. 2, Clause (3): This point now appears in substance in part of Subd. 2 of § 620.76. It is believed that this clause will sufficiently cover the case of establishing an agency or sub-office for the purpose of selling tickets at a higher price. This is now separately dealt with in Subd. 3 of § 620.76. Subdivision 3 has not been duplicated in this proposed section. Clause (3) as recommended will also cover the provisions of § 620.74.

Subd. 2, Clause (4): This is a generalized statement of what is deemed to be overly detailed in Subd. 5 of § 620.76.

Subd. 2, Clause (5): This is a rewording of the substance of Subd. 4 of § 620.76.

609.81 Misconduct of Pawnbrokers

Whoever in his business as a pawnbroker does any of the following may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100:

(1) Lends money on a pledge at a rate of interest above that allowed by law; or

(2) Has stolen goods in his possession and refuses to permit a public officer to examine them during usual business hours; or

(3) Sells pledged goods before the time to redeem has expired; or

(4) Having sold pledged goods, refuses to disclose to the pledgor the name of the purchaser or the price for which sold; or

(5) Makes a loan on a pledge to a person under lawful age, without the written consent of his parent or guardian.

COMMENT

This is essentially the same as Minn.St. § 614.17, and Subdivision 1 of Minn.St. § 614.18, which will be superseded. The changes are:

(1) The provision prohibiting refusal to permit the owner to examine stolen goods has been deleted. It is believed that the examination of goods claimed to have been stolen should be a matter confined to a public officer.

(2) Clause (5) now appears as Subdivision 1 of Minn.St. § 614.18. The recommended clause, however, has the qualification not now present legalizing a loan on a pledge by a minor with the written consent of the parent or guardian.

Separate sections were deemed desirable for dealing separately with pawnbrokers and second-hand dealers. They are now intermixed with confusing results in §§ 614.17 and 614.18.

609.815 Misconduct of Junk or Second-hand Dealer

Whoever is a junk dealer or second-hand dealer and does any of the following may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100:

(1) Has stolen goods in his possession and refuses to permit a public officer to examine them during usual business hours; or

(2) Purchases property from a person under lawful age, without the written consent of his parent or guardian.

COMMENT

This will supersede Minn.St. § 614.18, Subdivision 1, which, however, under Minn.St. § 614.19 is made a gross misdemeanor.

Subdivision 2 of § 614.18 will be transferred as a regulatory measure.

609.82 Fraud in Obtaining Credit

Whoever, with intent to defraud, obtains credit for himself or another from a bank, trust company, savings or building and loan association, or credit union, by means of a present or past false representation as to his or another's financial ability may be sentenced as follows:

(1) If no money or property is obtained by the defendant by means of such credit, to imprisonment for not more than 90 days or to payment of a fine of not more than $100; or

(2) If money or property is so obtained, the value thereof shall be determined as provided in section 609.52, subdivision 1, clause (3) and he may be sentenced as provided in section 609.52, subdivision 3.

COMMENT

This will supersede Minn.St. § 620.50. Some changes have been made in substance.

The subject is not covered by the recommended theft statutes since under the recommended section the obtaining of credit alone will constitute a crime. The theft statute requires the obtaining of money or property.

In the above recommended section if no money or property is obtained but credit only, the act is made a misdemeanor. If money or property is obtained through the credit secured, punishment is imposed in the same manner as under the theft statute.

The recommended section is not limited to banks and trust companies as is the present statute, § 620.50, but extends also to savings and building and loan associations and credit unions.

A third person receiving money or property in consequence of the credit would not be liable under the section unless a participant in the defendant's conduct.

Unlike Minn.St. § 620.50, the recommended section does not make a false statement not resulting in the securing of credit a crime but such conduct would constitute an attempt to violate the section.

MISCELLANEOUS CRIMES

609.825 Bribery of Participant or Official in Contest

Subdivision 1. Definition. As used in this section, "official" means one who umpires, referees, judges, officiates or is otherwise designated to render decisions concerning the conduct or outcome of any contest included herein.

Subd. 2. Acts Prohibited. Whoever does any of the following may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than $5,000, or both:

(1) Offers, gives, or agrees to give, directly or indirectly, any benefit, reward or consideration to a participant, manager, director, or other official, or to one who intends to become such participant or official, in any sporting event, race or other contest of any kind whatsoever with intent thereby to influence such participant not to use his best effort to win or enable his team to win or to attain a maximum score or margin of victory, or to influence such official in his decisions with respect to such contest; or

(2) Requests, receives, or agrees to receive, directly or indirectly, any benefit, reward or consideration upon the understanding that he will be so influenced as such participant or official.

Subd. 3. Duty to Report. Whoever is offered or promised such benefit, reward or consideration upon the understanding that he will be so influenced as such participant or official and fails promptly to report the same to his employer, manager, coach, or director, or to a county attorney may be punished by imprisonment for not more than one year or to payment of a fine of not more than $1,000, or both.

COMMENT

This is substantially a rewording of present Minn.St. § 613.251.

There are difficulties inherent in Subd. 3. Under present law and under the recommended section failure to report a known crime generally is not a criminal offense. Difficulties of proof arise as to how reliable and specific the offer or promise must be before the duty is imposed to report the same. Questions arise as to the civil liability of a person who believes erroneously but in good faith that he was promised a benefit, reward or consideration.

The Advisory Committee decided to retain Subd. 3 notwithstanding these difficulties since it was thought more appropriately to be a matter for independent legislative consideration.

609.83 Falsely Impersonating Another

Whoever does either of the following may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than $5,000, or both:

(1) Assumes to enter into a marriage relationship with another by falsely impersonating a third person; or

(2) By falsely impersonating another with intent to defraud him or a third person, appears, participates, or executes an instrument to be used in a judicial proceeding.

COMMENT

Clause (1) is a rewording of Clause (1) of Minn.St. § 620.44, except that under § 620.44 prosecution is limited to cases where the complaint is by the person injured within one year after the commission of the offense.

Clause (2) combines into a single general statement what now appears as separate Clauses (2), (3), (4), and (5) of § 620.44. Clauses (2), (3), and (4) of § 620.44 specify particular acts such as becoming bail or surety, confessing judgment, subscribing, verifying, etc., a written instrument which may be recorded.

Clause (5) of § 620.44 encompasses "any other act in the course of any action or proceeding" by which another may become liable or by which the offender or another might benefit.

There is no Wisconsin equivalent to either recommended Clauses (1) or (2).

There are other sections dealing with false impersonation outside the criminal code. These will not be affected. Of these, the following are noted:

§ 37.25:
Impersonating another to obtain admission to fairgrounds.

§ 90.05, Subd. 3:
Impersonating state appraiser.

§ 210.02:
Impersonating another in voting or registering to vote.

§ 233.35, Subd. 1:
Assuming to act as state inspector or deputy inspector of grain.

§ 256.31:
Impersonating another to get old age assistance.

§ 256.68:
Impersonating another to get public assistance.

APPENDICES

APPENDIX A

RECOMMENDED AMENDMENT OF MINN. ST., § 566.01

566.01 Forcible Entry and Unlawful Detainer

(1) No person shall make entry into lands or tenements except in cases where his entry is allowed by law, and in such cases he shall not enter by force, but only in a peaceable manner.

(2) When any person has made unlawful or forcible entry into lands or tenements, and detains the same, he may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100.

(3) If he has been removed therefrom in proceedings under Minnesota Statutes, Chapter 566, or by other legal proceedings, and thereafter, contrary thereto, re-enters, he may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than $1,000, or both.

COMMENT

Minn.St. § 615.08 in the criminal code now deals with this subject. This subject is duplicated in part and to some extent is inconsistent with Minn.St. §§ 566.01 and 566.02. The recommended section will eliminate the duplication and inconsistencies. No change in substance has been undertaken.

APPENDIX B

OTHER CRIMINAL CODE SECTIONS TO BE TRANSFERRED

The following are sections appearing within the criminal code which should be transferred to other chapters, have not been given previous consideration and are not particularly related to any topic appearing within the criminal code.

§ 610.40:

This subjects unauthorized injuries to imprisoned convicts to the general provisions of law and abolishes forfeitures for conviction.

§ 610.49:

This provides that a convicted person may testify but his conviction may be shown as affecting the weight of his testimony. It is recommended this be transferred to Chapter 634 dealing with evidence, witnesses, and other like matters.

§§ 610.52 and 610.53:

These provide for notification of the federal immigration officer of a conviction of a felony or adjudication of insanity and commitment. No criminal offense is involved. It is recommended that these sections be transferred to another appropriate chapter.

§ 610.54:

This section relates to transfer by state officials to federal officials of a prisoner for purposes of trial in federal court. It is recommended that this be transferred to another appropriate chapter. It involves no substantive criminal offense.

§ 610.55:

This provides that female prisoners, when transferred, shall be accompanied by a female person. This involves no substantive criminal offense and transfer to an appropriate chapter is recommended.

Chapter 611:

Chapter 611 now appears as part of the present criminal code and is entitled "Rights of the Accused." Sections 611.09 and 611.10 have been dealt with under the provisions of § 609.04 on convictions of a lesser offense. None of the remaining sections contained in the chapter deal with substantive crimes. The one possible exception is § 611.01 which punishes the failure of an

officer upon making an arrest to inform the person arrested of the grounds of the arrest and to exhibit the authority by virtue of which the arrest is made. Notwithstanding the presence of this offense, it is believed essentially to be a section dealing with criminal procedure, namely, the manner of arrest, and should, therefore, not be included within the criminal code. Hence it is recommended that the several sections in Chapter 611 indicated below be transferred to an appropriate chapter.

§ 611.01:

See comment on Chapter 611.

§ 611.02:

This creates a presumption of innocence.

§ 611.03:

This provides that conviction must be by way of admission, pleas, confession in open court, or by verdict.

§ 611.033:

This requires that defendant be furnished with a copy of his confession.

§ 611.04:

This provides for dismissal if the indictment is not tried within the next term of court unless cause to the contrary is shown.

§ 611.05:

This provides for continuances of criminal cases.

§ 611.06:

This entitles the defendant to subpoenas upon his application.

§ 611.07:

This deals with the appointment of counsel in cases of indigent defendants.

§ 611.08:

This permits depositions to be taken on behalf of the defendant.

§ 611.11:

This provides that defendant's failure to testify creates no presumption against him and shall not be alluded to by the prosecuting attorney or the court.

§ 611.12:

This provides for a public defender in Hennepin County.

SECTIONS TO BE TRANSFERRED

§ 611.13:

This provides for a public defender in Ramsey County.

§§ 613.13, 613.14, and 613.15:

These deal with misconduct by an officer in selecting a jury. This would appear more appropriate in the chapter dealing with selection of jurors.

§ 613.22:

This prohibits disturbing the legislature while in session. This is believed more appropriate for the chapter on the legislature.

§ 613.23:

This deals with altering the draft of a legislative bill or resolution.

§ 613.24:

This deals with altering an engrossed copy or enrollment of a bill.

§ 613.25:

This makes it a gross misdemeanor not to heed a legislative summons.

§ 613.54:

This makes it a misdemeanor to "maliciously and without probable cause" obtain or execute a search warrant or for an officer to exceed his authority or to use unnecessary severity in executing it. This should be transferred to the chapter dealing with arrests, warrants, etc., Chapter 629.

§ 613.55:

This makes it a misdemeanor for an officer, commanded by a magistrate to make an arrest, to refuse to do so, or for anyone to refuse to help an officer in executing an arrest or legal process, or retaking a person. This should be transferred to Chapter 629.

§ 613.59:

This deals with fraud by an attorney. This belongs more appropriately to the chapter on attorneys at law, Chapter 481.

§ 613.60:

This prohibits jurors and officials from disclosing matters occurring before the grand jury. This should be transferred to Chapter 628.

§ 613.67:

This imposes civil liability on a county to a party who is lynched and requires removal of an officer not doing his duty to protect a person against a mob. It is not a criminal statute.

§ 613.69:

This makes certain kinds of contempts of court misdemeanors. This should be transferred to Chapter 588 on contempts.

§ 613.77:

This prohibits an unauthorized communication with a convict in a prison or taking in or out articles therefrom. This should be transferred to Chapter 243 on the state prison and reformatories.

§ 614.20:

This limits the cases where the right to dissect the dead body of a human being exists and makes the dissection which is not authorized a gross misdemeanor. This is considered a regulatory measure, not belonging to the criminal code.

§ 614.21:

This requires the dead body of a human being within this state to be "decently buried, or cremated, within a reasonable time after death." No punishment is specified nor is violation made a crime. This is also a regulatory measure.

§ 614.23:

This prohibits an arrest or attachment or claim to detain for any debt or lien upon a dead body. It also prohibits the obstruction or detention of a person carrying or accompanying a dead body to place of burial or cremation. Violation of the section is made a misdemeanor. This, likewise, is considered a part of the regulatory measures on the subject of disposition of a dead body.

§ 614.25:

This prohibits the existence of a cemetery or burial ground within three-fourths mile of the University of Minnesota or the Minnesota Soldiers' Home. This again is a regulatory measure.

§ 614.26:

This makes violation of Minn.St. § 614.25 a gross misdemeanor.

§ 614.31:

This forbids service of legal process on Sunday. It should be transferred to an appropriate chapter on procedure.

SECTIONS TO BE TRANSFERRED

§ 614.35:

This relates to the improper wearing of insignia and so forth of military or veteran organizations or of such organizations as Masons and Odd Fellows and other secret orders.

§ 614.58:

This forbids compensation for giving or securing employment.

§ 614.59:

This deals with associations as military companies with arms.

§ 614.61:

This prohibits circuses in time of and prior to the Minnesota State Fair.

§ 614.66:

This forbids anyone except blind persons to carry white painted canes and deals with right of way of blind persons on highways, streets, and so forth.

§ 614.69:

This specifies the conditions under which goods may be sold as the product of blind persons. Violation is made a misdemeanor.

§ 616.06:

This relates to sale at retail of poultry or game without entrails, etc., being removed. It might be transferred to Chapter 31 entitled "Foods."

§ 616.09:

This imposes a felony liability on the operator, manager, and so forth, of any public works furnishing water to the public or for private use for permitting such works to become filthy or impure.

§ 616.10:

This prohibits use of common drinking cups in public places.

§ 616.11:

This prohibits distribution of samples of medicines or drugs except to adult persons. Chapter 151 would appear to be an appropriate chapter for this section.

§ 616.12:

This prohibits the use, and so forth, of peyote. Chapter 151 appears to be an appropriate chapter for this section.

§ 616.14:

This regulates bathing beaches in Hennepin County.

§ 616.17:

This deals with the disposal of carcasses of dead domestic animals. Chapter 35 appears to be an appropriate chapter for this section.

§ 616.20:

This forbids a person with contagious disease to appear in a public place.

§ 616.22:

This requires fences around holes caused by cutting ice.

§ 616.23:

This requires doors of public buildings to swing outward.

§ 616.253:

This makes it a misdemeanor to set fire to hotel property by careless smoking. It was enacted in 1951.

§ 616.29.

This forbids getting on or off or swinging from or hanging on railroad cars and streetcars.

§ 616.32:

This deals with railroad engineers who can't read.

§ 616.33:

This forbids intoxication of railroad employees.

§ 616.34:

This deals with failure of a railroad engineer to ring a bell or sound a whistle.

§ 616.35:

This punishes any violation of duty by a railroad employee.

§ 616.36:

This prohibits certain acts by persons in charge of steamboats and steamboilers, and makes violation a gross misdemeanor.

§ 616.37:

This forbids premises to be used for exhibitions where sharp instruments are thrown or firearms shot at a human being. It is considered a regulatory measure.

SECTIONS TO BE TRANSFERRED

§ 616.38:

This prohibits acrobatic exhibitions without appropriate networks. It is considered a regulatory measure.

§ 616.39:

This prohibits itinerant carnivals at which obscene, gambling, or immoral activities are involved. It is considered a regulatory measure.

§ 616.40:

This limits the conditions under which endurance contests can be conducted. It is considered a regulatory measure.

§ 616.47:

This prohibits manufacture of products for use in cement which may be injurious to the user. It would appear more appropriate in Chapter 145.

§§ 617.28 and 617.29:

These relate to advertisement of treatments and curing of venereal disease, the restoration of lost manhood, etc. and belong more appropriately to Chapter 145 entitled "Provisions Relating to Public Health." Similar action was taken in Wisconsin on an almost identical statute.

§§ 617.33 to 617.41:

These sections dealing with prostitution are essentially regulatory and their transfer to another chapter is recommended. They relate to actions to enjoin houses or places of prostitution.

§§ 617.42 to 617.54:

These sections regulate the conditions of operations of dance halls, including the issuance of permits and supervision of dance halls. It is recommended that they be transferred to an appropriate regulatory chapter.

§ 617.69:

This punishes bringing liquor onto school grounds and should be transferred probably to Chapter 340 which already contains a number of penal provisions on similar topics. See § 340.72, etc.

§ 617.70:

This prohibits the sale of liquor or maintenance of a drinking place within a mile of the University. This likewise should be transferred as a regulatory measure, probably to Chapter 340.

§ 617.71:

This prohibits the sale of liquor and cigarettes within 1,000 feet of designated institutions. The disposition recommended for § 617.70 applies.

§ 617.715:

This prohibits the sale of various designated material upon any public school ground or building. This should probably be transferred to Chapter 126. See related statute, § 126.15.

Chapter 618:

Chapter 618 contains the Uniform Narcotic Drug Act. The Advisory Committee is of the opinion that no revision should be undertaken of this Act since it would destroy its objective of uniformity with like laws of other states. It is essentially a regulatory act and should, therefore, be treated as such and transferred to a part of the general statutes outside of the criminal code. This is what was done in the Wisconsin revision.

The only change recommended in this revision deals with § 618.21 which contains a habitual offender provision. It is recommended that Subd. 2 of that section be revised by deleting that portion relating to subsequent convictions. See the discussion in the comment to recommended § 609.155.

§§ 620.243 to 620.246:

These sections relate to the manufacture and use of tokens, checks, and slugs used as substitutes for coins.

§§ 620.35 to 620.40:

These sections contain regulations concerning the standards to be pursued in the manufacture of articles made of gold or silver and the stamping thereof as to the content of gold or silver.

§ 620.42:

This relates to the certificate of registration of animals with respect to their breed.

§ 620.43:

This relates to false branding of livestock.

§§ 620.53 and 620.54:

These sections deal with false statements causing a laborer to change his employment.

§ 620.55:

This deals with the use of false weights and measures and is directed primarily at the business of selling.

§§ 620.56, 620.57, and 620.58:

These sections control the size of the containers in which berries or small fruits are distributed.

§ 620.73:

This imposes a ten year penalty or up to $10,000 fine on an officer, stockholder, cashier, and so forth, of banking organizations who receive deposits knowing the bank is unsafe or insolvent.

§ 620.75:

This relates to the identification of wearing apparel made of fur. It requires an identification tag and makes violation a gross misdemeanor.

§ 621.16:

This prohibits a combination of employers to prevent an employee from obtaining employment or to secure his discharge by threats, promises, blacklists, and so forth.

§ 621.50:

This prohibits the mooring of boats at public levees, and on notice by a law enforcement officer that a boat is obstructing a levee or otherwise interfering with water traffic, the section requires the removal of the boat by the owner.

§ 622.20:

This provides the manner in which stolen property recovered by an officer shall be dealt with by him. It might be transferred to the chapter dealing with arrests.

§§ 622.26 and 622.27:

These provide that a merchant may detain one believed to have stolen goods from his store for the purpose of delivery to a peace officer. They should be transferred to the chapter dealing with arrests.

§§ 623.01 to 623.07:

These sections prohibit a pool, trust company, combination or understanding to limit, fix, and so forth, prices. They impose a felony penalty of up to five years imprisonment. They also provide for forfeiture of corporate franchises and further reinstatement. These regulatory measures should be transferred to an appropriate chapter.

§§ 623.08 to 623.15:

These sections pertain to and make it a gross misdemeanor to sell petroleum products at a lower rate in one section of the

state than in another. It also provides that contracts are void if made in violation of the provisions and for the revocation of permits. They are regulatory in nature and should be transferred to an appropriate chapter.

§ 623.19:

This section makes it a criminal conspiracy and a misdemeanor to combine to monopolize markets for food products. This is a regulatory measure that should be transferred to an appropriate chapter.

APPENDIX C

OTHER CRIMINAL CODE SECTIONS TO BE REPEALED

The following sections are recommended for repeal and have not been elsewhere considered or were considered only to a limited extent. Generally there will be no equivalent provision in the revision.

§ 610.06:

This provides that "it is no defense for a married woman charged with crime that the alleged act was committed by her in the presence of her husband."

No Minnesota or New York cases were found construing the section.

The section is premised on the assumption that in its absence the courts would hold that a crime committed in the presence of her husband would be a defense. It is believed that no court in the United States would presently so hold in the absence of statute. It is but a relic of the old common law concept of the status of married women.

It is, accordingly, recommended that § 610.06 be repealed without any equivalent provision in the revised code.

§ 610.24:

This section duplicates the provisions of Minn.St. § 588.13, hence repeal is recommended.

§ 610.26:

This provides that "no person shall be punished for omission to perform an act where it has been performed by another acting in his behalf and competent by law to perform it."

This section originated in the New York 1881 Penal Code. There are no Minnesota or New York cases construing the section. There is no note accompanying its recommendation by the Commissioners of the New York Penal Code. No similar provision exists in Wisconsin or Illinois. Its intended meaning is obscure.

§ 610.50:

This provides that an intent to defraud may be established by proof of intent to defraud "any person, association, or body politic or corporate." The point is sufficiently covered by the definition of "person" appearing in Minn.St. § 645.44, Subd. 7. Repeal of § 610.50 is, therefore, recommended.

§ 610.51:

This provides for venue of crimes committed on a public conveyance. It is duplicated by Minn.St. § 627.06. Hence, repeal is recommended.

§ 613.58:

This deals with participation by a challenged grand juror. It is duplicated by Minn.St. §§ 628.55 and 628.56.

§ 613.72:

This prohibits giving a parent a child in substitution for his own. It is sufficiently covered by recommended § 609.255.

§ 613.73:

This prohibits falsely producing a child as having been born of a parent in order to secure an inheritance. It is sufficiently covered by the recommended theft section.

§ 613.74:

This prohibits prosecuting an action in the name of another without his consent. It appears not to be used and its purpose is not clear. Wisconsin has no similar section.

§ 613.75:

This prohibits prosecution of groundless suits and is known as common barratry. A corresponding section in Wisconsin was repealed. Minn.St. § 613.75 appears not to be used. To the extent that it is directed at solicitation it is covered by Minn.St. §§ 481.03 and 481.05.

§ 613.76:

This prohibits frauds or threats to prevent another from bringing an action or producing certain evidence or witness. This is adequately covered by recommended § 609.63, Subd. 1, (7), dealing with the destruction of writings or objects to prevent their use in a trial; by § 609.42 appearing in the bribery sections; and by § 609.27 relating to extortion.

§ 614.24:

This prohibits roads, railroads, etc., through a cemetery without the consent of the owner or authority of law. This is sufficiently covered by Minn.St. §§ 306.14 and 307.09.

§ 614.33:

This prohibits a shop, tent, etc., for sale of goods within two miles of a religious meeting. It is believed this is sufficiently covered by present day licensing and zoning statutes. Wisconsin

does not have a similar section. It is the product of conditions no longer existing or is otherwise controlled.

§§ 614.37 and 614.38:

These sections prohibit certain activities on Memorial Day. This subject is now adequately dealt with by Minn.St. § 645.44 which makes Memorial Day a holiday. The sale of liquor on Memorial Day is specifically prohibited in Minn.St. § 340.14.

§ 614.39:

This relates to the manner of playing or singing the Star Spangled Banner in a public place and prohibits its playing for dancing or as an exit march at the designated places. It was believed this is not an appropriate matter for legislation by the state.

§ 614.40:

This prohibits requiring an employee to surrender any natural right or any right or privilege of citizenship. It is believed this is too vague and lacking in meaning to be sustained as a criminal statute. There is no similar Wisconsin or New York statute.

§ 614.51:

This prohibits excessive tolls by a mill for grinding grist. It is regarded as obsolete.

§ 614.52:

This prohibits picking cranberries between designated dates on other people's lands. The subject is adequately covered by the recommended theft provision, § 609.52 and by recommended § 609.605.

§ 614.53:

This prohibits annoying others by runners for hotels and railroads and so forth. To the extent it is now needed it is adequately covered by the recommended disorderly conduct section, § 609.72.

§ 614.55:

This prohibits naming of peace officers from those who are not legal voters but authorizes qualified women voters to be named. It is believed this should be left to the statutes dealing with the qualifications of police officers.

§ 614.56:

This requires streetcars to be so constructed as to protect the operators from the elements. It is no longer needed.

§ 614.575:

This prohibits peddling or begging while simulating deafness. The subject is sufficiently covered by the general larceny section and local ordinances.

§ 614.60:

This prohibits running past toll gates on bridges or ferries without paying the toll. It is no longer needed.

§ 614.65:

This prohibits the making or distribution of any cigarette containing any substance foreign to tobacco. The section probably prohibits filter cigarettes. It is obviously unrealistic.

§ 616.04:

This prohibits the wilful violation of "any provision of the health laws" not otherwise provided for and makes violation a gross misdemeanor. It is regarded as too vague for a criminal statute and is probably void for indefiniteness.

§ 616.05:

This deals with the adulteration or dilution of liquors, drugs, medicines, food, or drink for man or beast. It prohibits also the sale of imitation foods or drinks without appropriate labeling or the sale of spoiled or otherwise unfit food, drink, or medicine.

This statute was enacted in territorial days. The subjects with which it deals have since been extensively covered by regulatory measures.

As to intoxicating liquors, see Minn.St. §§ 340.141, 340.142, 340.143, 340.70, and 340.71.

As to drugs and medicines see, generally, Chapter 152 and, particularly, §§ 152.03, 152.05, and 152.06.

Section 151.22 deals with liability of a pharmacist for drugs, medicines and so forth, sold.

As to food and drink, see §§ 31.02, 31.01 Subd. 19, 31.393, 31.91, and 32.655.

The production of butter, cheese, cream, and milk is covered in Chapter 32. See particularly § 32.21.

The marketing of eggs is dealt with in § 29.27.

Cold storage of food is covered by § 28.06.

The marketing of food for animals is covered by Chapter 25.

Insecticides, acids, paints and canning compounds are covered by Chapter 31 and see particularly §§ 31.402 and 31.403.

SECTIONS TO BE REPEALED

§ 616.18:

This prohibits letting glandered horses run at large and forbids a public barn owner from keeping such animal stabled. The subject of diseased animals is now fully covered by the powers conferred on the livestock sanitary board.

§ 616.19:

This deals with permitting diseased sheep to run at large and so forth. Again, this is sufficiently covered by the powers of the livestock sanitary board.

§ 616.21:

This makes it a felony to wilfully poison food, drink, or medicine. This deals essentially with an attempt to kill and should be dealt with under that heading. It was so dealt with in Wisconsin.

§ 616.24:

This forbids riding or driving on a bridge at faster than a walk if a sign so provides. This subject is adequately covered by § 169.16 of the traffic code.

§ 617.25:

This prohibits the distribution or display or having in possession with intent to distribute any article, drug or medicine for the prevention of conception or giving information in any manner stating where such material can be obtained or who manufactures it and makes the crime a gross misdemeanor. It will be observed that the statute does not make the use of contraceptives illegal.

The section was adopted in 1886 from the New York Criminal Code. Wisconsin has no corresponding provision. Neither was a similar provision incorporated in the new revision in Illinois. There are no Minnesota cases dealing with the section.

This section is universally disregarded and flagrantly violated with no prosecutions resulting. To permit such continued and open violation of an offense of the gravity of a gross misdemeanor tends to inspire disrespect for law generally. Moreover in the recent case of Poe v. Ullman, 1961, 81 S.Ct. 1752, 367 U.S. 522, 6 L.Ed.2d 989, the probability is indicated that a provision of this character will be held unconstitutional. Three of the four dissenting Justices were of that opinion concerning a Connecticut law. The point was not decided since the case was dismissed for want of a justifiable controversy between the parties before the court.

For these reasons, it is the recommendation of the Advisory Committee that the present revision contain no provision on

the subject. This would legalize the use and distribution of contraceptive materials.

This would not permit the distribution of such material to minors since this would constitute contributing to the delinquency of a minor in violation of § 260.315.

§ 617.59:

This penalizes permitting a minor's life to be endangered, his health to be injured or his morals to be depraved or causing him to be placed in a situation or engaging in an occupation which will be likely to endanger his life, injure his health or impair his morals.

This section is duplicated by § 260.315 relating to causing, encouraging or contributing to the neglect or delinquency of a child.

Moreover, § 617.59 is extremely indefinite and broad and may be subject to constitutional objection on that ground. It is inconsistent with the policy of this revision which is to specify the character of the crimes as concretely as the nature of the offense permits.

§ 617.60:

This prohibits permitting any minor in a dance house, concert saloon, place where intoxicating liquors are sold or place where entertainment injurious to morals is held. This is adequately covered with respect to saloons by §§ 340.80 and 340.81. The balance of § 617.60 is sufficiently covered by § 260.315 on contributing to the delinquency of a minor and other sections of the statutes relating to dance halls. The phrase "place of entertainment injurious to the morals" is objectionable for vagueness.

§ 617.61:

This prohibits minors from playing pool, billiards, or cards in a saloon or restaurant or public place of amusement where tobacco, confectionary or drinks of any kind except water are disposed of. This section was enacted in 1901 and is patently out of touch with current activity. Insofar as saloons are concerned the point is sufficiently covered by §§ 340.80 and 340.81.

§ 617.62:

This prohibits any person under 18 years or any minor in a school, college, or university from playing pool or billiards in any public pool or billiard room or public place of business unless accompanied by parent or guardian. This likewise is considered obsolete.

SECTIONS TO BE REPEALED

§ 617.63:

This prohibits an operator of a pool or billiard establishment from letting those designated in § 617.62 play unless with their parent or guardian.

§ 614.64:

This prohibits the distribution of cigarettes containing any substance deleterious to health other than tobacco. This subject is sufficiently covered by our health regulations and other sections relating to tobacco.

§ 617.73:

This prohibits torturing, tormenting, or cruelly or unlawfully punishing any child under the age of 18 or committing any act of cruelty towards such child. The observations made above with respect to § 617.59 are equally applicable. This section originally appeared in 1893 as part of a chapter on child labor. Its appearance presently in the criminal code is out of its original context.

§ 620.59:

This prohibits issuance of a bill of lading purporting to cover goods not in fact shipped. The section is sufficiently covered by §§ 228.45 and 228.46 appearing in the uniform bill of lading act enacted subsequent to § 620.59. The Wisconsin criminal code does not contain a like provision.

§ 620.60:

This provides that "every person carrying on the business of a warehouseman, wharfinger, or other depository of property" who issues a receipt, bill of lading or other voucher for grain or other goods not in fact received may be imprisoned up to one year or subject to fine up to $1,000, or both.

This duplicates the provisions of the Uniform Warehouse Receipts Act, § 227.50, which imposes a penalty of imprisonment up to five years or a fine up to $5,000, or both. The uniform act is applicable to "a person lawfully engaged in the business of storing goods for profit." Minn.St. § 227.58.

Section 620.60 also duplicates Minn.St. § 232.06, Subd. 6, applicable to public local grain warehouses, which, however, makes the offense a misdemeanor only.

Since the subject of warehouses is so fully covered in other chapters it is believed this particular section, which antedates them, should be repealed.

§ 620.61:

This punishes by imprisonment up to one year or a fine up to $1,000, or both, the issuance of duplicate receipts by a person described in § 620.60 without designating it "duplicate."

Minn.St. § 227.52 of the Uniform Warehouse Receipts Act covers the same point but imposes a penalty of up to five years imprisonment or a fine up to $5,000, or both. See also comments to § 620.60.

§ 620.63:

This relates to obtaining a horse or other draft animal or any vehicle or obtaining their use or possession by false representation, or credit for such use, or by gross negligence damaging the same or driving it a longer distance than authorized. The crime is made a misdemeanor.

A substantial portion of this statute will be covered by the recommended theft statute. To the extent that it is not, § 620.63 is considered obsolete.

§ 620.64:

This punishes an employee who, having received transportation from an employer, neglects or refuses to work or pay for the transportation. The section is considered unconstitutional under Pollock v. Williams, 1944, 64 S.Ct. 792, 322 U.S. 4, 88 L.Ed. 1095.

§ 620.66:

This prohibits the unauthorized use of unpublished dramatic or musical compositions.

The subject of copyright is completely covered by federal law. Moreover the section is incomplete since it applies only to dramatic or musical compositions. Many other states do not have such statutes on the subject.

§ 620.68:

This section reads:

"Every person who shall sign the name of a fictitious person to any subscription for, or agreement to take, stock in any corporation existing or proposed, and every person who shall sign to any subscription or agreement the name of any person, knowing that such person does not intend in good faith to comply with the terms thereof, or under any understanding or agreement that the terms of such subscription or agreement are not to be complied with or enforced, shall be guilty of a gross misdemeanor."

The first portion is covered by the sections on forgery. The latter portion is confused. Such practices as appear to be in-

cluded are adequately covered by the securities law, Chapter 80, providing for licensing and close administrative supervision of brokers, dealers, and agents selling securities. Criminal penalties are provided in § 80.37. There are no similar statutes in Wisconsin or a number of other states.

§ 620.70:

The statute defining the term "director" has no meaning. It originated in the New York Penal Code of 1881, many of the sections of which dealt with directors only.

§ 621.48:

This relates to draining of meandered lakes. The subject is now fully covered by Chapter 106.

APPENDIX D

DISPOSITION TABLE

The following table indicates the disposition made in the recommended revised criminal code of each of the sections in the present code. A section listed as superseded by a section in the revised code does not necessarily mean that changes have not been made. "Repeal" indicates that there is no section in the recommended code dealing with the subject matter of the repealed section. "Transferred" means that the section referred to is recommended for transfer to another chapter of the general statutes and, unless otherwise indicated, no change in content has been made.

Minn.St.1961 Section	Superseded by Section Indicated or Other Disposition
168.47	609.595
	609.605
168.48	609.55
168.49	609.55
	609.605
169.11	609.21
241.24	609.485
243.01	609.12
243.11	Repealed
243.18, last sentence	609.165
243.60	Repealed
243.70	609.105
243.76	609.11
243.77	609.105
359.08, in part	609.65
340.461	Amended
340 69	609.195
360.075, Subd. 3	609.21
361.06	609.21
437.03	Repealed
561.05	609.605
561.06	609.605
610.01	609.02
610.02	609.02
610.03	609.01
610.04	609.025
610.05	609.06
610.06	Repealed
610.07	609.08
610.10	609.07 and Transferred in part
610.11	609.04
610.12	609.05
610.13	609.495
610.14	609.495
610.15	609.04
610.16	609.03
610.17	609.11
610.18	Repealed
610.19	609.03
610.20	609.03
610.21	609.035
610.22	609.025
610.23	609.045
610.24	Repealed
610.25	609.085
610.26	Repealed
610.27	609.17
610.28	609.155
610.29	609.155
610.30	609.16
610.31	609.16
610.32	Repealed
610.33	609.15
610.34	Repealed
610.35	Amended and Transferred
610.36	609.03
610.37	609.115 609.135
610.38	609.135
610.39	609.14
610.40	Transferred
610.41	609.165
610.42	609.165
610.43	609.165
610.44	609.165
610.45	609.165
610.46	609.165
610.47	609.09
610.49	Transferred

DISPOSITION TABLE

Minn.St.1961 Section	Superseded by Section Indicated or Other Disposition
610.50	Repealed
610.51	Repealed
610.52	Transferred
610.53	Transferred
610.54	Transferred
610.55	Transferred
611.01	Transferred
611.02	Transferred
611.03	Transferred
611.033	Transferred
611.04	Transferred
611.05	Transferred
611.06	Transferred
611.07	Transferred
611.08	Transferred
611.09	609.04
611.10	609.04
611.11	Transferred
611.12	Transferred
611.13	Transferred
612.01	609.385
612.02	609.385
	609.39
612.03	609.385
612.04	609.43
612.05	609.435
612.06	609.395
612.07	609.395
612.08	Repealed
612.09	609.395
612.10	Repealed
612.11	Repealed
612.12	Repealed
613.01	Repealed
613.02	609.42
613.03	609.42
	609.425
613.04	609.09
	609.42
613.05	609.42
613.06	609.42
613.07	609.09
	609.42
613.08	609.42
613.09	609.42
613.10	609.42
613.11	609.515
613.12	609.515
613.13	Transferred
613.14	Transferred
613.15	Transferred
613.16	609.09
613.17	609.50
613.18	609.42
613.19	609.42
	609.45
613.20	609.42
613.21	609.44
613.22	Transferred
613.23	Transferred
613.24	Transferred
613.25	Transferred
613.251	609.825
613.26	609.485
613.27	609.47
	609.50
613.28	Transferred
613.29	609.485
613.30	609.485
613.31	609.485
613.32	609.485
613.33	609.42
613.34	609.05
	609.495
613.35	609.42
	609.49
613.36	609.63
613.37	609.63
613.38	609.64
613.39	609.48
613.40	609.48
613.41	609.48
613.42	609.48
613.43	609.48
613.44	Transferred
613.45	609.48
613.46	609.63
613.47	609.63
613.48	609.42
613.49	609.42
613.50	609.43
613.51	609.43
613.52	Transferred
613.53	Transferred
613.54	Transferred
613.55	Transferred
613.56	609.50
613.57	609.46
613.58	Repealed
613.59	Transferred
613.60	Transferred
613.61	609.43
613.62	609.43
613.63	609.455
613.64	609.455
	609.52
613.65	609.42
613.66	609.27
	609.515
613.67	Transferred
613.68	609.405
613.69	Transferred

Minn.St.1961 Section	Superseded by Section Indicated or Other Disposition
613.70	609.175
613.71	609.175
613.72	Repealed
613.73	Repealed
613.74	Repealed
613.75	Repealed
613.76	Repealed
613.77	Transferred
613.78	Repealed
613.79	609.51
614.01	609.75 609.755 609.76
614.02	609.75 609.755 609.76
614.03	609.75 609.755 609.76
614.04	Repealed
614.05	609.75
614.053	Transferred
614.054	Amended and Transferred
614.06	609.75 609.755 609.76
614.07	609.75 609.755
614.08	609.09
614.09	Transferred
614.10	Transferred
614.11	609.52
614.12	Transferred
614.13	Repealed
614.14	Repealed
614.15	Transferred
614.16	609.75
614.17	609.81
614.18	609.81 and Transferred in part
614.19	Transferred
614.20	Transferred
614.21	Transferred
614.22	609.52 609.595
614.23	Transferred
614.24	Repealed
614.25	Transferred
614.26	Transferred
614.27	609.28
614.28	609.73
614.29	609.73
614.30	609.73
614.31	Transferred
614.32	609.72
614.33	Repealed
614.34	Repealed
614.35	Transferred
614.36	609.40
614.37	Repealed
614.38	Repealed
614.39	Repealed
614.40	Repealed
614.41	Repealed
614.42	609.70
614.43	Transferred
614.44	609.70
614.45	609.70
614.46	609.70
614.47	Repealed
614.48	Transferred
614.49	Transferred
614.50	609.70
614.504	Transferred
614.505	Transferred
614.506	Transferred
614.51	Repealed
614.52	Repealed
614.53	Repealed
614.54	609.465
614.55	Repealed
614.56	Repealed
614.57	609.335 609.725
614.575	609.52
614.58	Transferred
614.59	Transferred
614.60	Repealed
614.61	Transferred
614.62	609.685
614.63	609.685
614.64	Repealed
614.65	Repealed
614.66	Transferred
614.67	609.505
614.69	Transferred
614.71	609.78
614.72	609.78
614.73	609.78
614.74	609.78
614.75	609.72 609.79
615.01	609.72
615.02	609.71
615.03	609.50 609.71
615.04	609.705
615.05	609.715
615.06	609.595 609.71

DISPOSITION TABLE

Minn.St.1961 Section	Superseded by Section Indicated or Other Disposition
615.07	609.175
615.08	566.01, as amended
615.09	609.66
615.10	609.66
615.11	609.66
615.12	609.605
	609.72
615.13	Transferred
615.14	609.09
615.15	609.72
615.16	609.735
615.17	609.72
616.01	609.74
616.02	609.74
	609.745
616.03	Repealed
616.04	Repealed
616.05	Repealed
616.06	Transferred
616.09	Transferred
616.10	Transferred
616.11	Transferred
616.12	Transferred
616.14	Transferred
616.15	609.68
616.16	609.68
	609.74
616.163	609.68
616.17	Transferred
616.18	Repealed
616.19	Repealed
616.20	Transferred
616.21	Repealed
616.22	Transferred
616.23	Transferred
616.24	Repealed
616.25	609.575
616.253	Transferred
616.26	609.66
616.28	609.60
616.29	Transferred
616.30	609.60
616.32	Transferred
616.33	Transferred
616.34	Transferred
616.35	Transferred
616.36	Transferred
616.37	Transferred
616.38	Transferred
616.39	Transferred
616.40	Transferred
616.41	609.66
616.415	609.66
616.42	609.66
616.43	Repealed
616.433	Transferred
616.434	Transferred
616.435	Transferred
616.436	Transferred
616.437	Transferred
616.438	Transferred
616.44	609.205
	609.665
616.45	609.67
616.46	609.675
616.47	Transferred
617.01	609.29
	609.295
617.02	609.30, Subd. 4
	609.31
617.03, 1st sentence	Repealed
617.03, 2nd sentence	609.285
617.04	609.265
	609.27
	609.295
	609.30
617.05	609.25
	609.255
	609.265
	609.32
	609.335
617.06	609.25
	609.255
	609.32
	609.335
617.07	609.325
617.08	609.22
	609.225
	609.315
617.09	609.335
617.10	609.335
617.11	609.355
617.12	609.355
617.13	609.09
	609.365
617.14	609.30
	609.305
617.15	609.36
617.16	609.32
617.17	609.33
617.18	609.345
617.19	609.345
617.20	609.345
617.21	609.09
617.22	609.155
	609.35
617.23	609.695
617.241	609.69
617.243	609.69
617.25	Repealed
617.26	609.69

APPENDIX D

Minn.St.1961 Section	Superseded by Section Indicated or Other Disposition
617.27	Transferred
617.28	Transferred
617.29	Transferred
617.30	609.335
	609.34
617.31	609.255
617.32	609.335
617.325	609.06
	609.335
617.33	Transferred
617.34	Transferred
617.35	Transferred
617.36	Transferred
617.37	Transferred
617.38	Transferred
617.39	Transferred
617.40	Transferred
617.41	Transferred
617.42	Transferred
617.43	Transferred
617.44	Transferred
617.45	Transferred
617.46	Transferred
617.47	Transferred
617.48	Transferred
617.49	Transferred
617.50	Transferred
617.51	Transferred
617.52	Transferred
617.53	Transferred
617.54	Transferred
617.55	609.375
617.56	609.38
617.57	Repealed
617.58	Repealed
617.59	Repealed
617.60	Repealed
617.61	Repealed
617.62	Repealed
617.63	Repealed
617.64	609.685
617.65	609.685
617.66	609.685
617.67	609.685
617.68	609.685
617.69	Transferred
617.70	Transferred
617.71	Transferred
617.715	Transferred
617.72	Repealed
617.73	Repealed
617.74	609.23
617.75	609.155
Chapter 618	Transferred

Minn.St.1961 Section	Superseded by Section Indicated or Other Disposition
619.01	609.225 and Repealed in part
619.02	609.215
619.03	609.215
619.04	Repealed
619.05	Repealed
619.06	Transferred
619.07	609.185
619.08	609.185
	609.19
619.09	609.025
619.10	609.195
619.13	Repealed
619.15	609.20
619.16	609.345
619.17	609.20
619.18	609.205
619.19	609.345
619.20	609.205
619.21	609.205
619.22	609.205
619.23	609.205
619.24	609.205
619.25	609.205
619.26	609.205
619.27	Repealed
619.28	609.06
	609.065
619.29	609.06
	609.065
619.30	609.225
619.31	Repealed
619.32	609.225
619.33	609.225
619.34	609.25
	609.255
	609.26
619.35	609.25
619.36	Amended and Transferred
619.37	609.225
	609.235
619.38	609.225
	609.235
	609.50
619.39	609.22
619.40	609.06
619.41	609.24
	609.245
619.42	609.245
619.43	609.24
619.44	609.24
619.45	609.58
619.46	609.225
619.47	609.225

DISPOSITION TABLE

Minn.St.1961 Section	Superseded by Section Indicated or Other Disposition
619.48	609.225
619.49	609.225
619.50	609.09
619.51	609.765
619.52	609.765
619.53	609.765
619.54	Repealed
619.55	609.765
619.56	Transferred
619.57	609.765
619.58	609.27
619.59	609.765
619.60	609.765
619.61	609.77
619.62	609.765
619.63	609.765
620.01	609.445
	609.54
	609.625
620.02	609.43
620.05	609.41
620.06	609.625
620.07	609.625
	609.65
620.08	609.65
620.09	609.625
620.10	609.625
	609.63
620.11	609.625
	609.63
620.12	609.625
	609.63
	609.645
620.13	609.625
	609.63
620.14	609.63
620.15	609.625
620.16	609.625
620.17	609.625
	609.645
620.18	609.625
620.19	609.625
620.20	609.625
620.21	609.625
620.22	609.625
620.23	609.625
620.24	609.625
620.243	Transferred
620.244	Transferred
620.245	Transferred
620.246	Transferred
620.25	609.63
620.26	609.63
620.27	609.63
620.273	609.655
620.28	Transferred

Minn.St.1961 Section	Superseded by Section Indicated or Other Disposition
620.29	Transferred
620.30	Transferred
620.31	Transferred
620.32	Transferred
620.33	Transferred
620.34	609.09
620.35	Transferred
620.36	Transferred
620.37	Transferred
620.38	Transferred
620.39	Transferred
620.40	Transferred
620.41	609.535
620.42	Transferred
620.43	Transferred
620.44	609.83
620.45	609.52
620.46	609.475
620.47	609.635
620.48	609.52
620.49	609.63
	609.645
620.50	609.82
620.501	609.545
	609.63
620.502	609.785
620.51	609.645
620.52	609.80
620.53	Transferred
620.54	Transferred
620.55	Transferred
620.56	Transferred
620.57	Transferred
620.58	Transferred
620.59	Repealed
620.60	Repealed
620.61	Repealed
620.62	609.645
620.63	609.52
	609.595
	and Repealed in part
620.64	Repealed
620.65	609.775
620.66	Repealed
620.68	609.625
	and Repealed in part
620.69	609.625
620.70	Repealed
620.71	609.645
620.72	609.52
	609.63
620.73	Transferred
620.74	609.805
620.75	Transferred

APPENDIX D

Minn.St.1961 Section	Superseded by Section Indicated or Other Disposition
620.76	609.805
621.01	609.58
621.021	609.56
	609.565
621.025	609.56
	609.565
621.031	609.56
	609.565
621.035	609.56
	609.565
	609.57
621.041	609.61
621.05	609.56
	609.565
621.06	609.56
	609.565
621.065	Repealed
621.066	609.56
	609.565
621.07	609.58
621.08	609.58
621.09	609.58
621.10	609.58
621.11	609.58
621.12	609.585
621.13	609.59
621.14	609.27
621.15	609.45
621.16	Transferred
621.17, Subds. 1, 2, and 3	Repealed
621.17, Subd. 4	609.43
621.18	609.27
	609.275
621.19	609.27
	609.275
621.20	609.615
621.21	609.62
621.22	609.52
621.23	609.61
621.24	609.61
621.25	609.595
	609.605
621.26	609.595
621.27	609.595
621.28	609.595
	609.605
621.29	609.595
	609.60
621.30	609.595
	609.60
	609.605
621.31	609.60
	609.605
621.32	609.595
621.33	609.595
621.34	609.52
621.341	609.52
621.342	609.52
621.35	609.605
621.36	Transferred
621.37	Transferred
621.38	Transferred
621.39	Transferred
621.40	609.595
621.41	609.56
	609.565
621.42	609.605
621.43	609.60
621.44	609.57
621.45	609.60
621.46	609.595
621.48	Repealed
621.49	609.595
621.50	Transferred
621.51	609.595
621.52	609.595
621.53	609.595
621.54	609.60
621.55	609.795
621.56	609.27
	609.275
621.57	609.605
622.01	609.52
622.02	609.52
622.03	609.52
622.04	609.535
622.05	609.52
622.06	609.52
622.07	609.52
622.08	609.52
622.09	609.52
622.10	609.52
622.11	609.52
622.12	609.525
622.13	609.52
622.14	609.52
622.15	609.52
622.16	609.52
622.17	609.52
622.18	609.52
622.19	609.52
622.20	Transferred
622.21	609.52
622.22	609.52
	609.625
622.26	Transferred
622.27	Transferred
622.28	609.52
623.01	Transferred
623.02	Transferred
623.03	Transferred
623.04	Transferred

DISPOSITION TABLE

Minn.St.1961 Section	Superseded by Section Indicated or Other Disposition
623.05	Transferred
623.06	Transferred
623.07	Transferred
623.08	Transferred
623.09	Transferred
623.10	Transferred
623.11	Transferred
623.12	Transferred
623.13	Transferred
623.14	Transferred
623.15	Transferred
623.19	Transferred
623.20	609.75
	609.76
623.21	609.75
623.22	609.75
623.23	609.75
	609.755
	609.76
623.24	Transferred
623.25	Repealed
623.26	609.75
	609.755
	609.76
631.42	Repealed
631.47	Repealed
631.49	609.145
634.05	609.765
636.02	609.135
637.11	Repealed
641.19	609.485
643.18	Repealed

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