

CHAPTER 351.

OFFENSES AGAINST CHASTITY, MORALITY AND DECENCY.

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351.01 Adultery. Any person who shall commit the crime of adultery shall be punished by imprisonment in the state prison not more than three years nor less than one year, or by fine not exceeding one thousand dollars nor less than two hundred dollars; and when the crime is committed between a married woman and a man who is unmarried both shall be deemed guilty of adultery and each shall be punished therefor. No prosecution shall be had unless commenced within three years from the date of the alleged offense. Any period of time during which any person charged with such offense was absent from the state shall not be computed as any part of the time of limitation mentioned in this section.

351.02 Polygamy. Any person having a husband or wife living who shall marry another person shall be deemed guilty of polygamy, and shall be punished therefor by imprisonment in the state prison not more than five years nor less than one year, or by fine not exceeding one thousand dollars nor less than two hundred dollars.

351.03 Limitation on section 351.02. The provisions of section 351.02 shall not extend to any person whose husband or wife shall have been continually remaining beyond sea, or shall have voluntarily withdrawn from the other and remained absent for the space of seven years together, the party marrying again not knowing the other to be living within that time; nor to any person who has been divorced from the bonds of matrimony.

351.04 Lewd and lascivious behavior. Any man and woman, not being married to each other, who shall lewdly and lasciviously cohabit and associate together, or any man or woman, married or unmarried, who shall be guilty of open and gross lewdness and lascivious behavior, every such person shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding five hundred dollars nor less than one hundred dollars.

Note: A married man living with a woman guilty of adultery under 351.01. State v. Brooks, 215 W 134, 254 NW 374. in violation of this section is guilty of lewd and lascivious behavior, and he may also be

351.05 Sane single females; intercourse; ruin. Any man who commits fornication with a sane single female over the age of sixteen years, each of them shall be punished by imprisonment in the county jail not more than six months or by fine not exceeding one hundred dollars, or by both such fine and imprisonment. Any man who commits fornication with a sane female of previous chaste character under the age of twenty-one years

shall be punished by imprisonment in the state prison not more than four years or by fine not exceeding two hundred dollars, or by both fine and imprisonment.

351.06 Insane females; intercourse. Any man who commits fornication, adultery, or incest with any female who is idiotic, feeble-minded, insane or imbecile shall be punished by imprisonment in the state prison not more than fifteen years nor less than five years. If the female is a ward of the state at the time the offense is committed, the punishment shall be not more than twenty-five years in state prison and not less than ten years.

351.07 Seduction. Any unmarried man who, under promise of marriage, or any married man who shall seduce and have illicit connection with any unmarried female of previous chaste character shall be punished by imprisonment in the state prison not more than five years nor less than one year or by imprisonment in the county jail not more than one year; but no conviction shall be had for such offense on the testimony of the female seduced, unsupported by other evidence, nor unless the indictment or information for the same shall be found or presented within two years after the commission of the offense; provided, that the subsequent intermarriage of the parties may be pleaded in bar of a conviction.

351.08 Soliciting female for purpose of prostitution, etc. Any person who, by force, threats, promises or any other means or inducements, shall entice, inveigle, solicit, induce or take any unmarried female of previous chaste character of the age of eighteen years or under from her father, mother, guardian or other person having the legal care or custody of any such female, or from her home or other place of abode, wherever she may be, for the purpose of seduction, prostitution, or with intent to seduce, defile, deflower, or for the purpose of entering, causing, inducing or procuring her to enter any house of ill fame, assignation or other place of prostitution for the purpose of prostitution, either temporarily or as an inmate of any such house or place, and any person who shall directly or indirectly cause, procure or knowingly permit the same to be done, or who shall in any way aid, abet or assist, directly or indirectly, in doing such thing for any of the purposes aforesaid, or who shall cause, procure, aid, assist, knowingly permit or abet in any manner the seduction, defilement, deflowering or the having of illicit intercourse with any such female by any person, either at her home or other place of abode or elsewhere, shall be punished by imprisonment in the state prison not more than ten years nor less than one year or by fine not exceeding two hundred dollars.

351.09 Same subject. Any person who shall fraudulently, deceitfully or by any false representations entice, abduct, induce, decoy, hire, engage, employ or take any woman over eighteen years of age and of previous chaste character from her father's house or from any other place where she may be for the purpose of prostitution or for unlawful sexual intercourse, and any person who shall knowingly or intentionally aid, abet, assist, advise or encourage any such act for the purpose aforesaid shall be punished by imprisonment in the state prison not less than one year nor more than ten years, or by fine not exceeding two hundred dollars.

351.10 Same subject. Any person who shall, by any such means as are mentioned in section 351.09, entice, abduct, induce, decoy, hire, engage, employ or take in any manner any female from her home or from any other place where she may be, for the purpose of prostitution or for unlawful sexual intercourse, and any person who shall knowingly or intentionally aid, abet, assist, advise or encourage the doing of any such act for the purpose aforesaid shall be punished by imprisonment in the state prison not more than five years nor less than one year.

351.11 Detention in house of ill fame. Any person who shall detain any woman against her will by force, threats, putting in bodily fear or by any other means at a house of ill fame or any other place of any name or description whatever, for the purpose of prostitution or for unlawful sexual intercourse, and any person who shall aid, abet, advise, assist or encourage in such detention shall be punished by imprisonment in the state prison not more than fifteen years nor less than five years.

351.12 Keeping premises for unlawful purposes. Any person, being the owner, lessee or occupant of any premises, or having, in whole or in part, the management or control thereof, who induces or knowingly permits any female under twenty-one years of age to resort to or be in or upon such premises for the purpose of prostitution or unlawful sexual intercourse shall be punished by imprisonment in the state prison not more than five years nor less than one year.

351.13 Soliciting for the purpose of prostitution. Any person who shall solicit, induce, encourage or entice, by fraudulent or deceitful representations intended or naturally tending to induce, entice or encourage, an unmarried woman of previous chaste character to leave her father's house or any other place where she may be found for the purpose of prostitution or for the purpose of unlawful sexual intercourse at a house of ill fame or assignation, and any person who shall in any manner aid, abet or assist in any such solici-

tation for such purpose shall be punished by imprisonment in the county jail for not less than six months or by imprisonment in the state prison not to exceed one year.

351.14 Evidence as to house of ill fame, etc. In all prosecutions under these statutes or any other laws for the suppression of houses of ill fame, assignation or places of similar character, or for keeping any such place or for being an inmate or frequenter thereof it shall be competent for the prosecution to establish the character of any such house or place by showing that the same has a common or general reputation as a house of ill fame, brothel, bawdyhouse or house of assignation, or that such house, while in the possession of the inmates occupying it at or about the time alleged in the information, indictment or other pleading was promiscuously visited at unseasonable hours by divers and sundry persons not then residents therein; and such showing shall be prima facie evidence that such house or place is a house of ill fame, brothel, bawdyhouse or house of assignation as alleged in the information, indictment or other pleading.

351.15 Witness not privileged. No person shall be excused or privileged from testifying fully under oath in any prosecution brought under the provisions of either of the preceding seven sections or for any of the causes mentioned in section 351.14; but no testimony so given by any person shall be used against him in any civil or criminal action to which he is a party, except a prosecution for perjury committed in giving such testimony.

351.16 Pandering. (1) Any person who shall knowingly accept, receive, levy or appropriate any money or other valuable thing, without consideration, from the proceeds of the earnings of any woman engaged in prostitution, shall be deemed guilty of a felony, and on conviction thereof shall be punished by imprisonment for a period not less than two nor more than twenty years. Any such acceptance, receipt, levy or appropriation of such money or valuable thing, shall upon any proceeding or trial for violation of this section be presumptive evidence of lack of consideration.

(2) Any person who shall furnish to any other person the name or address of a girl or woman or house, apartment, or room, or any place whatsoever, and at the same time represent that such girl or woman is a prostitute, or such house, apartment, room or place is a house of prostitution or assignation, with intent that such person to whom the information is given shall or may go to such girl or woman, house, apartment, room, or place for immoral purposes or practices, shall be punished by imprisonment in the county jail for not less than thirty days nor more than six months, or by fine of not less than twenty-five dollars nor more than one hundred dollars.

(3) In prosecutions under this section it shall be competent for the prosecution to show other similar acts for the purpose of showing the intent and disposition of the accused. The immunity provisions of section 351.15 shall apply to this section.

351.17 Prostitution; situs of crime. It shall not be a defense to a prosecution for any of the acts prohibited by sections 351.08 to 351.14 that any part of such act or acts shall have been committed outside this state, and the offense shall in such case be deemed and alleged to have been committed, and the offender tried and punished in any county in which the prostitution was intended to be practiced or in which the offense was consummated, or any overt act in furtherance of the offense shall have been committed.

351.18 Prostitute competent witness, whether married or single. Any such female person referred to in sections 351.08 to 351.14 shall be a competent witness in any prosecution under sections 351.16, 351.17 and 351.18 to testify for or against the accused as to any transaction or as to any conversation with the accused or by him with another person or persons in her presence, notwithstanding her having married the accused before or after the violation of any of the provisions of this act, whether called as a witness during the existence of the marriage or after its dissolution.

351.19 Transporting, soliciting, engaging for prostitution. (1) It shall be unlawful to direct, take or transport or to offer or agree to take or transport any person to any place, structure or building or to any other person with knowledge that the purpose of such directing, taking or transporting is prostitution, lewdness or assignation.

(2) It shall be unlawful to procure or to solicit or to offer to procure or solicit for purposes of prostitution, lewdness or assignation.

(3) It shall be unlawful to reside in, enter or remain in any place, structure or building or to enter or remain in any place, structure or building or conveyance for purposes of prostitution, lewdness or assignation.

(4) It shall be unlawful to engage in prostitution, lewdness or assignation, or to aid or abet prostitution, lewdness or assignation by any means whatsoever.

(5) The term "assignation" shall be construed to include the making of any appointment or engagement for prostitution or lewdness or any act in furtherance of such appointment or engagement.

(6) Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished for each such offense

by imprisonment in the county jail for not less than thirty days nor more than one year, or by a fine of not less than fifty dollars nor more than five hundred dollars, or by both such fine and imprisonment.

(7) The immunity provisions of section 351.15 shall apply to the provisions of this section.

(8) At the trial of any person charged with violating any of the provisions of this section, the reputation of any place, structure or building shall be admissible in evidence in support of the charge.

351.20 Persons responsible for delinquency, how punished. (1) In all cases where any child shall be a dependent, neglected or delinquent child, as defined by the statutes of this state, the parent or parents, legal guardian, or person having the custody of such child, or any other person, responsible for such child being dependent, neglected or delinquent, through wilful neglect or by any wilful act encouraging, causing or contributing to the dependency, neglect or delinquency of such child, whether said child has or has not previously been dependent, neglected or delinquent, shall be guilty of a misdemeanor, and upon trial and conviction thereof shall be fined in a sum not to exceed five hundred dollars, or imprisonment in the county jail for a period not exceeding one year, or punished by both such fine and imprisonment.

(2) The court may impose conditions upon any person found guilty under this act, and so long as such person shall comply therewith to the satisfaction of the court, the sentence imposed may be suspended; provided, however, that no such sentence or the execution thereof shall be stayed to exceed a period of two years, and if at the expiration of the stay of such sentence, or at such time prior thereto as the court may deem proper, it shall appear to the satisfaction of the court that such person has complied faithfully with the conditions of such suspended sentence, the court may suspend such sentence absolutely, in which case such person shall be relieved therefrom.

Note: In prosecution under separate count upon which to proceed held not to counts charging misdemeanors of contributing to delinquency of minor and under separate counts charging felonies of sodomy, refusal to compel state to elect one warrant reversal of conviction upon count charging misdemeanor and upon count charging felony. *Gutenkunst v. State*, 218 W 96, 259 NW 610.

351.21 Incest. Any person being within the degree of consanguinity within which marriages are prohibited or declared by law to be incestuous and void, who shall intermarry with each other or who shall commit adultery or fornication with each other shall be punished by imprisonment in the state prison not more than ten years nor less than two years.

351.22 Producing miscarriage. Any person who shall administer to any pregnant woman, or prescribe for such woman, or advise or procure any such woman to take any medicine, drug or substance or thing whatever, or shall use or employ any instrument or other means whatever, or advise or procure the same to be used, with intent thereby to procure the miscarriage of any such woman shall be punished by imprisonment in the county jail not more than one year nor less than six months or by fine not exceeding five hundred dollars nor less than two hundred and fifty dollars, or by both such fine and imprisonment in the discretion of the court.

Note: The evidence in this case was held to support a conviction of a physician for procuring a miscarriage. *State v. Henderson*, 226 W 154, 274 NW 266.

351.23 Attempting miscarriage. Any woman who shall take any medicine, drug, substance or thing whatever, or who shall use or employ any instrument or other means whatever, or who shall submit to any operation or treatment with intent to procure from herself any miscarriage shall be punished by imprisonment in the county jail not more than six months nor less than one month, or by fine not exceeding one hundred dollars.

351.235 Advertising or display of indecent articles, sale in certain cases prohibited.

(1) As used in this chapter, the term "indecent articles" means any drug, medicine, mixture, preparation, instrument, article or device of whatsoever nature used or intended or represented to be used to procure a miscarriage or prevent pregnancy.

(2) No person, firm or corporation shall publish, distribute or circulate any circular, card, advertisement or notice of any kind offering or advertising any indecent article for sale, nor shall exhibit or display any indecent article to the public.

(3) No person, firm or corporation shall manufacture, purchase, or rent, or have in his or its possession or under his or its control, any slot machine, or other mechanism or means so designed and constructed as to contain and hold indecent articles and to release the same upon the deposit therein of a coin or other thing of value.

(4) No person, firm or corporation shall sell or dispose of or attempt or offer to sell or dispose of any indecent articles to or for any unmarried person; and no sale in any case of any indecent articles shall be made except by a pharmacist registered under

the provisions of chapter 151 or a physician or surgeon duly licensed under the laws of this state.

(5) Any person, firm or corporation violating any provision of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$100 nor more than \$500 or by imprisonment in the county jail for not to exceed 6 months, or by both such fine and imprisonment. [1933 c. 420; 1941 c. 161]

Note: Statute regulating the sale of indecent articles prohibits the advertising, display, and sale by mechanical means of articles whose sole purpose, or whose intended purpose or represented function is to produce an abortion or prevent pregnancy and not of legitimate articles of trade which are capable of producing those results and hence statute is not an unreasonable, arbitrary, and unwarranted exercise of police power. State v. Arnold, 217 W 340, 258 NW 843.

351.24 Concealing death of illegitimate child. Any woman who shall conceal the death of any issue of her body which, if born alive, would be an illegitimate child, so that it may not be known whether such issue was born alive or not or whether it was not murdered, shall be punished by imprisonment in the county jail not more than one year nor less than six months, or by a fine not exceeding three hundred dollars nor less than one hundred dollars.

351.25 Joinder of offenses in indictment. Any woman who shall be indicted or informed against for the murder of her illegitimate child may also be charged in the same indictment or information with the offense described in section 351.24, and if on the trial the jury shall acquit her of the charge of murder and find her guilty of the other offense judgment and sentence may be awarded against her for the same.

351.26 [Repealed by 1929 c. 439 s. 1]

351.27 Abandonment of young child. Any person having the custody of any child under the age of six years who shall expose such child in any highway or in any other place, with intent to abandon it, shall be punished by imprisonment in the state prison not more than three years nor less than one year, or by imprisonment in the county jail not more than one year.

351.28 [Repealed by 1929 c. 439 s. 1]

351.29 Interference with child. Any person who shall entice or seek to entice any child away from the person or place to which it has been committed for safe-keeping pursuant to law, or who shall interfere in any manner with the care, custody, control, personal liberty or education of any such child, except pursuant to law, shall be punished by fine not exceeding one hundred dollars or by imprisonment in the county jail not more than six months.

351.30 Abandonment of child or wife. (1) **PENALTY.** Any person who shall, without just cause, desert or wilfully neglect or refuse to provide for the support and maintenance of his wife in destitute or necessitous circumstances; or any person who shall, without lawful excuse, desert or wilfully neglect or refuse to provide for the support and maintenance of his or her legitimate or illegitimate minor child or children under the age of eighteen years in destitute or necessitous circumstances, shall be guilty of a crime, and, on conviction thereof, shall be punished by fine not exceeding five hundred dollars, or imprisonment in the state prison, county jail or in the county workhouse not exceeding two years, or both, in the discretion of the court. And it is hereby made the duty of the parent of any illegitimate child or children, under the age of eighteen years, to provide for the support and maintenance of such illegitimate child or children. Provided, that the parent of any illegitimate child who shall have made provision for the support of such child by giving bond, or by settlement with the proper officers in accordance with the provisions of chapter 166, shall not be subject to the provisions of this section.

(2) **ANY PERSON MAY MAKE COMPLAINT.** Proceedings under this section may be instituted upon complaint made under oath or affirmation by the wife or child or children, or either of them, or by any other person or persons, or organization, against any person guilty of either of the above-named offenses.

(3) **ORDER FOR SUPPORT PENDENTE LITE.** At any time before trial, upon petition of the complainant and upon notice to the defendant, the court, or a judge thereof in vacation, may enter such temporary order as may seem just, providing for support of the deserted wife or children, or both, pendente lite, and may punish for violation of such order as for contempt.

(4) **ORDER FOR SUPPORT IN LIEU OF PENALTY; RECOGNIZANCE.** Before the trial, with the consent of the defendant, or at the trial, on entry of a plea of guilty, or after conviction, instead of imposing the penalty hereinbefore provided or in addition thereto, the court in its discretion, having regard to the circumstances, and to the financial ability or earning capacity of the defendant, shall have the power to make an order, which shall be subject to change by the court from time to time, as circumstances may require, directing the defendant to pay a certain sum weekly, semimonthly, monthly, or as the circumstances may permit, for a period not exceeding 2 years, to the wife or to the guardian,

curator or custodian of the said minor child or children, or to an organization or individual approved by the court as trustee; and shall also have the power to release the defendant from custody on probation for the period so fixed, upon his or her entering into a recognizance, with or without surety, in such sum as the court or a judge thereof in vacation, may order and approve. The condition of the recognizance shall be such that if the defendant shall make his or her personal appearance in court whenever ordered to do so, and shall further comply with the terms of such order of support, or of any subsequent modification thereof, then such recognizance shall be void, otherwise of full force and effect.

(5) SENTENCE. If the court be satisfied by information and due proof under oath, that at any time during said period of two years the defendant has violated the term of such order, it may forthwith proceed with the trial of the defendant under the original charge, or sentence him or her under the original conviction, or enforce the suspended sentence, as the case may be. In case of forfeiture of recognizance, and enforcement thereof by execution, the sum recovered may, in the discretion of the court, be paid, in whole or in part, to the wife, or to the guardian, curator, custodian or trustee of the said minor child or children.

(6) RULES OF EVIDENCE. No other or greater evidence shall be required to prove the marriage of such husband and wife, or that the defendant is the father or mother of such child or children, whether legitimate or illegitimate, than is or shall be required to prove such facts in a civil action. In no prosecution under this section shall any existing statute or rule of law prohibiting the disclosure of confidential communications between husband and wife apply, and both husband and wife shall be competent and compellable witnesses to testify against each other to any and all relevant matters, including the fact of such marriage and the parentage of such child or children; provided, that neither shall be compelled to give evidence incriminating himself or herself, proof of the desertion of such wife, child or children in destitute or necessitous circumstances or of neglect or refusal to provide for the support and maintenance of such wife, child or children shall be prima facie evidence that such desertion, neglect or refusal is wilful. [1939 c. 524; 1945 c. 265]

Note: This section, penalizing wilful neglect or refusal to support one's wife or children without just cause, applies to one whose only asset is a capacity to work. *Zitlow v. State*, 213 W 493, 252 NW 358.

Sentence of four years on four counts predicated on violation of this section is in compliance with statutory provisions. 19 Atty. Gen. 129.

Provisions outlined in last sentence of 166.14 do not nullify provisions contained in

the last sentence of (1). 19 Atty. Gen. 152.

Extradition may be had for alleged father of unborn illegitimate child if he has abandoned same. 19 Atty. Gen. 539.

A tribal Indian who is a ward of the government and who contracts marriage pursuant to Wisconsin law may not be criminally prosecuted in state courts for subsequent nonsupport or abandonment of his family. 28 Atty. Gen. 603.

See note to 57.04, citing 33 Atty. Gen. 201.

351.31 Jurisdiction and procedure. (1) The several county and municipal courts shall have concurrent jurisdiction with the circuit courts of offenses arising under section 351.30, and every such court shall be at all times open to hear, try and determine all cases arising thereunder. Process may issue and proceedings be had for the arrest and examination of offenders under the provisions of chapter 361. If, upon examination, the accused shall be bound over or held for trial the court or officer who conducts the examination shall forthwith transmit the record thereof to the circuit, county or municipal court of the county in which the examination was held, and shall order the accused forthwith to appear before the court to which it has been held, there to stand trial.

(2) The district attorney shall file an information against him as soon thereafter as practicable, and the defendant shall be arraigned upon the same. If he pleads guilty sentence shall be immediately awarded; if a plea of not guilty be interposed a jury shall forthwith be impaneled and the defendant put upon trial, unless a continuance be granted for cause. If at the time a plea of not guilty is made there shall not be a regular panel of jurors in attendance upon such court the court shall order a special venire, commanding the sheriff to summon the number of jurors therein named from the residents of the county qualified to serve as jurors in courts of record. Except as otherwise provided in this section the trial and all proceedings therein and subsequent thereto shall be, as near as may be, in conformity with the practice in the circuit courts in criminal cases, and the clerk of the circuit court of the county in which the trial is had shall act as clerk of the county court in all such cases tried therein, and shall receive the same fees as are allowed for like services in the circuit court. [1933 c. 159 s. 33]

351.32 Children; cruel treatment; penalty. Every person who shall torture, torment, or cruelly maltreat any child under the age of sixteen years, shall be punished by a fine of not more than five hundred dollars or by imprisonment in the county jail not more than six months, or by both fine and imprisonment.

351.33 Indecent exposure. Any person who shall publicly expose his or her person, in an obscene or indecent manner shall be guilty of a misdemeanor, and upon conviction

thereof shall be punished by imprisonment in the county jail, not more than six months nor less than ten days, or by a fine not exceeding one hundred dollars, nor less than one dollar, or both such fine and imprisonment in the discretion of the court; provided, however, nothing herein contained shall be held to remit any penalty for offenses heretofore committed.

Note: See note to 360.01, citing *Miller v. State*, 226 W 149, 275 NW 894.

351.34 Liberties with female child. Any male person over the age of eighteen years who shall take indecent or improper liberties with the person of a female under the age of sixteen years, with or without her consent, without intending to commit rape on such female, shall be punished by imprisonment in the state prison not more than two years nor less than one year or by imprisonment in the county jail not more than six months, or by fine not exceeding two hundred dollars.

Note: Whether the conduct complained of amounts to the taking of "indecent liberties" within the meaning of that term as used without definition in this section, is largely a question for the jury. *State v. Hoffman*, 240 W 142, 2 NW (2d) 707.

351.35 Keeping house of ill fame, etc. (1) Any person who shall keep a house of ill fame, resorted to for the purpose of prostitution or lewdness, or who shall set up or keep a common bawdyhouse or brothel, or who shall set up, maintain or operate any place, structure, building or conveyance for the purpose of prostitution, lewdness or assignation, or who shall knowingly lease or let to another any place, conveyance, structure, house or other building or any room in any house or building for the purpose of being used as a house of ill fame, bawdyhouse or brothel or for purposes of prostitution, lewdness or assignation or knowing that it will be so used, or who shall receive, or offer or agree to receive any person into any place, structure, building or conveyance for the purpose of prostitution, lewdness or assignation, or shall permit any person to remain there for such purpose, shall be punished by imprisonment in the state prison not more than three years nor less than one year, or by imprisonment in the county jail not more than one year nor less than six months, and when imprisoned in the county jail by a fine not exceeding five hundred dollars nor less than two hundred dollars; and, in either case, if the lessee of any such premises shall have been convicted under this section such lease shall be void, and thereupon the lessor shall have the like remedy to recover possession of such premises as against a tenant holding over his term.

(2) Any person who shall resort to, frequent or become an inmate of any house of ill fame, common bawdyhouse, brothel, or other place, building, structure or conveyance used for purposes of prostitution, lewdness or assignation, shall be punished by imprisonment in the county jail not exceeding ninety days or by fine of not more than one hundred dollars nor less than ten dollars, or by both fine and imprisonment.

Note: The part prohibiting keeping a house of ill fame, etc., is construed as contemplating the proprietor of the premises or the business, and guilt under that part of the statute prohibiting the leasing of a building for prostitution requires that the premises be leased for that express purpose. That part of the statute penalizing the receiving or agreeing to receive any person for the purpose of prostitution contemplates legal possession and authority to receive or refuse to receive, and that part prohibiting any person to remain in a building for such purpose implies authority to grant permission to remain or to exclude. An instruction that guilt of defendant owners depended on their guilty knowledge was prejudicially erroneous because ignoring the question of their relationship to the premises. *State v. Larson*, 206 W 154, 233 NW 837.

351.36 Proceedings on complaint. If any person shall make oath before any officer authorized by law to issue a criminal warrant that he has good reason to, and does, believe that any house or other building is wilfully used as and for a house of ill fame for the purpose of prostitution and that persons resort to the same for that purpose, such officer, whether the names of such persons are known to the complainant or not, shall issue a warrant commanding the sheriff, his deputy or any constable to enter such house or building and arrest all persons who shall there be found under circumstances which indicate that they have resorted thereto for the purpose of prostitution, and also the keeper of the same, and take into custody and keep the said persons and bring them before the said officer to be dealt with according to law; and any officer who may have such warrant shall have power, if necessary, to break open doors for the purpose of executing the same, and may summon to his aid the power of the county.

Note: For essentials of a valid warrant under this section, see note to 363.01, citing *Bach v. State*, 206 W 143, 233 NW 816.

351.37 Use of animals for procreation. Any person who shall have charge or control of any bovine, bull, jack or stallion and who shall negligently or wilfully allow the same to be used for the purpose of procreating in front, or in unobstructed view, of any dwelling house, street or public highway shall be punished by fine of not more than twenty dollars nor less than ten dollars for each offense.

351.38 Circulation of obscene books, etc.; search warrant. (1) Any person who shall import, print, publish, exhibit, sell or distribute, have in his possession or give away any book or pamphlet, ballad, printed paper, moving picture or film, or other

thing containing obscene language, prints, pictures, figures or descriptions tending to the corruption of morals, or shall introduce into any family, school or place of education, or shall buy, procure, receive or have in his possession any such book, pamphlet, ballad, printed paper, moving picture or film, or other thing, either for the purpose of loan, sale, exhibition or circulation or giving away, or with intent to introduce the same into any family, school or place of education shall be punished by imprisonment in the county jail not less than 3 months or not more than one year or by imprisonment in the state prison not less than one year or not more than 5 years or by fine not less than \$100 or more than \$5,000; and a search warrant may be issued by any justice of the peace, as in case of stolen or embezzled property, for search for any such obscene literature, matter or thing, and when found may be used in evidence and then destroyed by order of the court in which any case arising under this section shall be tried.

(2) Any person who shall, in a public place, or on any fence or wall, or other surface, contiguous to the public street or highway, or on the floor, or ceiling, or on the inner or outer wall, closet, room, passage, hall, or any part of any hotel, inn, tavern, courthouse, church, school, station house, depot for freight or passengers, capitol or other buildings devoted or open to other or like public uses, or on the walls of any out-buildings, or other structure pertaining thereto, make or cause to be made any obscene drawing, or picture, or obscene or indecent writing, or print, liable to be seen by others passing, or coming near the same, such person so offending, shall in every such case, be guilty of a felony, and, on conviction thereof, shall be punished by imprisonment in the county jail not less than 3 months or not more than one year or by imprisonment in the state prison not less than one year or not more than 5 years or by fine not less than \$100 or more than \$5,000.

(3) Any person or persons, who shall put up, in any public place, any indecent, lewd or obscene picture, moving picture or film, or character, representing the human form in a nude or seminude condition, or shall advertise by circulars or posters any indecent, lewd or immoral show, moving picture or film, play or representation, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by imprisonment in the county jail not less than 3 months or not more than one year or by imprisonment in the state prison not less than one year or not more than 5 years or by fine not less than \$100 nor more than \$5,000; provided that nothing in this act shall be construed as to interfere with purely scientific works, written on the subject of sexual physiology.

(4) Any person who shall sell, lend, give away, or show, or shall have in his possession with intent to sell, give away, or show, or shall advertise or otherwise offer for loan, gift or distribution, any moving picture or film, book, pamphlet, magazine, newspaper, or other printed paper devoted principally to the publication of criminal news, police reports, or accounts of criminal deeds, or pictures and stories of deeds of bloodshed, lust or crime, shall be guilty of a felony, and upon conviction thereof, shall be punished by imprisonment in the county jail not less than 3 months or not more than one year or by imprisonment in the state prison not less than one year or not more than 5 years or by fine of not less than \$100 nor more than \$5,000.

(5) The publisher of any magazine, pamphlet, book or other publication published within this state or imported into this state which is the basis for a conviction of any person under this chapter in any court within this state, shall be barred from distributing any subsequent issues of the prohibited publication within this state for a period of at least 2 years. [1941 c. 322]

Note: Common carrier is not person who imports within meaning of (1). 22 Atty. Gen. 667.

351.39 Sexual and venereal diseases; advertising; treatment of; penalty. Any person who shall advertise in any manner, either in his own name or under the name of another person, firm or pretended firm, association, corporation or pretended corporation, in any newspaper, pamphlet, circular or other written or printed paper, the treatment and curing of venereal diseases, the restoration of "lost manhood" or who shall advertise in any manner that he is a specialist in diseases of the sexual organs or diseases caused by sexual weakness, self-abuse, or excessive sexual indulgence or in any diseases of a like nature or produced by like causes, or who shall advertise in any manner any medicine, drug, compound or any means whatever whereby sexual and venereal diseases of men and women may be cured or relieved or abortion or miscarriage produced, and the owner, publisher or manager of any newspaper who shall publish any such advertisement or permit or allow any such advertisement to be inserted and published in any newspaper owned or controlled by him or in which he has an interest, and any person, firm or corporation who shall sell, offer for sale, keep for sale, give away or otherwise dispose of any newspaper, pamphlet, circular, or other written or printed paper containing any such advertisement, shall be

guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five nor more than one hundred dollars.

351.40 Sodomy. Any person who shall commit sodomy, or the crime against nature, with mankind or beast shall be punished by imprisonment in the state prison not more than five years nor less than one year. Said crime may be committed by the penetration of the mouth of any human being by the organ of any male person as well as by the penetration of the rectum; proof of emission shall not be required.

351.41 Improper liberties. Any person who shall indecently assault and take improper liberties with the privates of any minor by the use of the hand, or who shall voluntarily permit the use of his own privates in such manner by any minor, shall be punished by imprisonment in the county jail not less than thirty days nor more than six months, or by imprisonment in the state prison not exceeding two years.

351.42 Disinterment of dead. Any person, not lawfully authorized, who shall dig up, disinter, remove or convey away any human body or the remains thereof, or shall knowingly aid in such disinterment, removal or conveying away, or any accessory thereto, either before or after the fact, shall be punished by imprisonment in the state prison not more than three years nor less than one year or in the county jail not more than one year, or by fine not exceeding five hundred dollars.

Note: Proper authority to move human consent of next of kin, and permit from bodies from old cemetery to new consists of proper health officer. 23 Atty. Gen. 753.

351.43 Public easement in cemetery. Any person who shall open or make any highway, town way or private way or shall construct any railroad, turnpike or canal or anything in the nature of a public easement over, through, in or upon such part of any inclosure, being the property of any town, city, village or religious society or of private proprietors, as may be used for the burial of the dead, unless an authority for that purpose shall be specially granted by law or unless the consent of such town, city, village, religious society or private proprietors, respectively, shall be first obtained, shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding three hundred dollars.

351.44 and 351.45 [Repealed by 1927 c. 473 s. 42b]

351.46 to 351.49 [Repealed by 1933 c. 74]

351.50 One day of rest in seven. (1) Every employer of labor, whether a person, partnership or corporation, who owns or operates any factory or mercantile establishment in this state, shall allow every person, except those specified in subsection (2), employed in such factory or mercantile establishment, at least twenty-four consecutive hours of rest in every seven consecutive days and shall not permit any such person to work for such employer during such twenty-four consecutive hour period, except in case of breakdown of machinery or equipment, or other emergency, requiring the immediate services of experienced and competent labor to prevent serious injury to person, damage to property, or suspension of necessary operations, when such experienced and competent labor is not otherwise immediately available. This shall not authorize any work on Sunday not now authorized by law.

(2) This section does not apply to: (1) Janitors; (2) watchmen; (3) persons employed in the manufacture of butter, cheese or other dairy products or in the distribution of milk or cream, or in canneries; (4) persons employed in bakeries, flour and feed mills, hotels, and restaurants; (5) employes whose duties include no work on Sunday other than (a) caring for live animals, (b) maintaining fires; (6) any labor called for by an emergency that could not reasonably have been anticipated.

(3) Every employer shall keep a time book showing the names and addresses of all employes and the hours worked by each of them in each day, and such time book shall be open to inspection by the industrial commission.

(3m) If upon investigation, the industrial commission shall ascertain and determine that there be practical difficulties or unnecessary hardships in carrying out the provisions of this section, the commission may by general or special order make reasonable exceptions therefrom or modifications thereof provided that the life, health, safety and welfare of employes shall not be sacrificed or endangered thereby. Such investigation and orders shall be made pursuant to the proceedings in sections 101.01 to 101.28; and every order of the commission under this section shall have the same force and effect as the orders issued pursuant to said sections. Such orders shall be subject to review in the manner provided in chapter 227.

(4) Every employer who violates any of the provisions of this section shall be punished as provided in section 101.28. [1937 c. 21; 1943 c. 375 s. 95]

Note: This section applies to gasoline filling stations. 19 Atty. Gen. 360. Employees in stone quarry and those in shipyard come within scope of this section,

and are entitled to twenty-four consecutive hours of rest in every seven consecutive days. 19 Atty. Gen. 501.

Plant or establishment used for artificial production of electricity for sale is not "fac-

tory" within meaning of this section. Power plant maintained as part of factory where goods are manufactured is included in terms of statute. 27 Atty. Gen. 493.

351.51 Sunday publications lawful. (1) In any action to recover compensation for newspaper advertising, it shall be no defense that such advertising was published or printed in a newspaper, dated, printed or issued on the first day of the week.

(2) In any action to recover compensation for labor performed on any newspaper, dated, published or issued on the first day of the week, it shall be no defense that such labor was performed on the first day of the week.

351.52 Observers of other days. Any person who conscientiously believes that the seventh, or any other, day of the week ought to be observed as the Sabbath and who actually refrains from secular business and labor on that day may perform secular labor and business on the first day of the week unless he shall wilfully disturb thereby some other person or some religious assembly on said day.

351.53 Disturbing meeting. Any person who shall at any time wilfully interrupt or molest any assembly or meeting of people for religious worship or for other purposes, lawfully and peaceably assembled, shall be punished by fine not exceeding fifty dollars nor less than five dollars.

351.54 Traffic near religious meeting. Any person who shall sell any intoxicating liquor or other article of traffic within two miles of any camp meeting or other religious assembly, except at a regularly established store, tavern, grocery or other place of business which may have been licensed or established previously to such meeting or assembly, and not with intent to evade the provisions of this section, or by permission of the person or persons in charge of such meeting shall be punished by fine not exceeding fifty dollars nor less than five dollars; and any intoxicating liquor or other article of traffic offered for sale in violation of this section shall be forfeited to the state to the amount of the fine and costs imposed for such violation, which shall be seized by the officer making the arrest of the offender and returned to the justice of the peace, who shall order the sale thereof for such purpose and a return of the residue to the owner.

351.55 Misconduct on trains. (1) Any person who shall, in any street or railroad car, use or utter indecent, obscene or profane language in the hearing of passengers or riotously or boisterously conduct himself to their annoyance, or who shall obtain any money or property from any person in such car by means of any game or device, or attempt so to do, shall be punished by fine not exceeding one hundred dollars or by imprisonment in the county jail not exceeding ninety days, or by both fine and imprisonment.

(2) Railroad conductors are hereby invested with the powers of sheriffs or constables in regard to offenses under this section occurring upon trains or cars in their charge, and may arrest summarily and without process and detain any person violating any of its provisions until the car or train shall arrive at some usual stopping place, where an officer authorized to make arrests may be, to whose custody he may deliver such offender, with a written statement, specifying generally in what respect he has misbehaved; or if there be no such officer present to receive the offender the conductor may deliver him to the ticket or freight agent at such place, with such statement, who shall detain the offender in his custody, and may exercise the power of a sheriff or constable in regard to persons charged with crime in doing so until such officer may be obtained to take charge of the offender, to whom he shall be delivered, with such statement made by the conductor, and such officer shall take the person so offending into custody and forthwith institute a complaint against him for such offense before a justice of the peace in his county, and such justice shall have jurisdiction to try such offender and impose the punishment authorized by this section.

351.56 Disorderly road houses. (1) In addition to all the offenses defined and described by this chapter, and to the penalties therein provided, it shall be unlawful for any person to own, keep, maintain, operate, conduct, establish, or attend or be present at any disorderly road house or resort in this state.

(2) A disorderly road house or resort, within the purview of this section, is any building, room, or place whatsoever, outside the limits of any incorporated city or village, which is designed, kept or used for the indiscriminate frequenting and commingling of the sexes for immoral purposes, or which is habitually used or resorted to by persons for immoral purposes. This section does not apply to any bona fide hotel or inn.

(3) The provisions of section 351.14 relative to evidence, procedure and prosecution are hereby made applicable to the offense hereby created as are also the provisions of sections 351.15 and 351.36, and any such disorderly road house or resort as is herein defined and described may be shut up and abated as provided by law for the abatement of nuisances and houses of ill fame.

(4) Any person who violates any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

351.57 Amusement places, license, regulation. (1) No person shall conduct any dance to which the public is admitted, or conduct, establish or manage any public dance hall or pavilion, amusement park, carnival, street fair, bathing beach or other like place of amusement in any county in which the board of supervisors has adopted an ordinance or resolution or enacted by-laws in accordance with the provisions of subsection (9) of section 59.08 without first securing a license as provided therein. No person required to have such a license shall conduct a dance to which the public is admitted except in the presence and under the supervision of a county dance supervisor.

(2) No person who is the proprietor of any dance hall or who conducts, manages or is in charge of any dance hall or pavilion in this state, whether such dance hall or pavilion be licensed or not under the provisions of any local or county regulation, shall permit during any public dance held in such hall or pavilion the presence of intoxicated persons in such dance hall or on the premises on which such dance hall is situated, or the presence of any child of seventeen years of age or less who is not accompanied by his parent or lawful guardian.

(3) Any person who shall violate any of the provisions of this section shall be punished by a fine of not less than twenty-five dollars and not more than one thousand dollars, or by imprisonment for not less than thirty days in the county jail and not more than one year in the state prison, or by both such fine and imprisonment, and as an additional penalty thereto the court may revoke the license or licenses of the person or persons convicted. [Spl. S. 1933 c. 4; 1939 c. 107]

Note: See notes to 59.08, citing State ex rel. Pumpkin v. Hohle, 203 W 626, 234 NW 735, and Stetzer v. Chippewa County, 225 W 125, 273 NW 525.

Public dance within meaning of this section is one to which public generally is admitted without discrimination and admission to which is not based upon personal selection or invitation. Rural tavern having small room where music is played for entertainment of tavern patrons and some dancing is occasionally permitted does not constitute public dance requiring license so long as dancing is mere incident of general tavern business. 23 Atty. Gen. 478.

State law does not prohibit issuance of fermented malt beverage or intoxicating liquor license for dance hall premises. 23 Atty. Gen. 536.

Lake resort hotel consisting of tavern, rooms, cabins, boats, etc., that permits dancing, three nights a week furnishes orchestra to play for entertainment of guests and all others who wish to appear and makes no charges for attending such dances is not required to have license under county ordinance which defines "public dance" as one where dancing is "principal entertainment" and some charge is made or ticket received for attendance or in payment for food or other service. 27 Atty. Gen. 434.

Tavern furnishing orchestra music and permitting thirty to forty couples to dance therein in space provided for that purpose is conducting public dance within 351.57 and 59.08, (9). 27 Atty. Gen. 439.

See note to 59.08, citing 28 Atty. Gen. 392.

351.58 Public dances, minors. Any child of the age of sixteen years or less, who is not accompanied by his parent or lawful guardian, who shall frequent, attend or be present at any public dance, or shall wrongfully misrepresent his or her age, shall be guilty of a misdemeanor, and shall be punished according to the provisions of chapter 48, regarding delinquent children.

351.59 Drunkenness in public place. Any person found in any public place in such a state of intoxication as to disturb others, or unable, by reason of his condition, to care for his own safety or the safety of others, shall, upon conviction thereof, be punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail for not more than sixty days, or by both such fine and imprisonment; but this chapter shall not abridge the powers of towns, cities or villages to enact ordinances for punishment of such offenses, nor be applicable to any city or village which has enacted an ordinance for the punishment of such offense.

351.60 Intoxication and drinking in common carriers prohibited. (1) No person while intoxicated, shall enter or be on or remain upon, as a passenger, a train of a steam railroad, interurban railroad or a car of a street railway connecting any two or more cities in this state or any city in this state with a city or cities in any other state or any interurban motor bus.

(2) No person shall publicly drink any intoxicating liquor as a beverage in any smoking car, parlor car or day coach of a steam railroad or interurban railroad, or car of a street railway or interurban motor bus included within the provisions of subsection (1), or give, or cause to be given, to any other person therein, intoxicating liquor as a beverage.

351.61 Conductor, police power to enforce section 351.60. The conductor or operator of a railway train or car on any railroad or street railway or interurban motor bus included within the provisions of section 351.60 shall summarily arrest, with or without warrant, any person violating any of the provisions of section 351.60, and for such purpose

shall have the same power and authority as any peace officer, including the power to summon assistance, and such conductor shall further have power to deliver any such person to any policeman, constable or other public officer of the county in which such offense was committed, and it shall be the duty of such officer to bring the person charged with such offense before the nearest justice of the peace or municipal court of the county where said offense was committed, and to make a complaint against such person. Provided, that if the car or bus on which such arrest is made does not stop within the county within which such offense was committed, then such conductor shall deliver the person so arrested to some sheriff, constable or police officer of the county wherein such car shall first stop after such arrest, who shall deliver the person so arrested to some judge or justice of the peace of the county in which the offense was committed, for trial.

351.62 Conductor, police power to enforce section 351.60. The conductor or operator of any railway train or interurban motor bus may take from any person found violating any of the provisions of section 351.60 any intoxicating liquor then in the possession of such person, and deliver the same to the nearest station agent, giving the person from whom it is taken a receipt therefor. Upon the presentation and surrender of such receipt, within ten days thereafter, such liquor shall be delivered to the person presenting same, and if not so delivered within such time, shall be destroyed by such agent.

351.63 Common carriers must enforce sections 351.60 to 351.62. Persons and corporations engaged wholly, or in part, in the business of carrying passengers for hire, their agents, servants or employes, who shall knowingly permit any person to drink any intoxicating liquor as a beverage in any train of a steam railroad or interurban railroad or coach, or in any car of any street railway or interurban motor bus included in the provisions of section 351.60, and any person violating any other provisions of sections 351.60 to 351.63, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail for not less than thirty days, nor more than ninety days.

351.64 Disorderly conduct at dances. Any person who shall use or utter indecent, obscene or profane language in the hearing of others in any hall in which a public dance is being held, or on the premises on which such dance hall is situated, or riotously or boisterously conduct himself to the annoyance of others in such hall or on such premises, or be guilty of any other disorderly conduct which shall disturb or tend to disturb those present at such dance shall be punished by fine not less than ten dollars nor exceeding one hundred dollars or by imprisonment in the county jail not exceeding ninety days, or by both such fine and imprisonment.

351.66 [Repealed by 1943 c. 179]