

CHAPTER 944.

CRIMES AGAINST SEXUAL MORALITY.

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SEXUAL CRIMES WITHOUT CONSENT.

944.01 Rape. (1) Any male who has sexual intercourse with a female he knows is not his wife, by force and against her will, may be imprisoned not more than 30 years.

(2) In this section the phrase "by force and against her will" means either that her utmost resistance is overcome or prevented by physical violence or that her will to resist is overcome by threats of imminent physical violence likely to cause great bodily harm.

The term "by force and against her will" evidence of a woman's will, the law does not employed in defining the crime of rape is a require the useless or the impossible. State codification of the prior existing law. While v. Schmeier, 28 W (2d) 126, 135 NW (2d) 842. the law requires the utmost resistance as

944.02 Sexual intercourse without consent. Any male who has sexual intercourse under any of the following circumstances with a female he knows is not his wife may be imprisoned not more than 15 years:

(1) If she is incapable of resisting or consenting because of stupor or abnormal condition of the mind and he knows of her incapacity; or

(2) If she is mentally ill, mentally infirm or mentally deficient and he knows of her incapacity; or

(3) If she submits because she is deceived as to the nature of the act or because she believes that the intercourse is marital and this deception or belief is intentionally induced by him.

SEXUAL CRIMES WHICH AFFECT THE FAMILY.

944.05 Bigamy. (1) Whoever does any of the following may be fined not more than \$1,000 or imprisoned not more than 5 years or both:

(a) Contracts a marriage in this state with knowledge that his prior marriage is not dissolved; or

(b) Contracts a marriage in this state with knowledge that the prior marriage of the person he marries is not dissolved; or

(c) 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.

(2) In this section "cohabit" means to live together under the representation or appearance of being married.

944.06 Incest. Whoever marries or has nonmarital sexual intercourse with a person he knows is a blood relative and such relative is in fact related in a degree within which the marriage of the parties is prohibited by the law of this state may be imprisoned not more than 10 years.

SEXUAL CRIMES WHICH INVOLVE CHILDREN.

944.10 Sexual intercourse with a child. Any male who has sexual intercourse with a female he knows is not his wife may be penalized as follows:

(1) If the female is under the age of 18, fined not more than \$1,000 or imprisoned not more than 5 years or both; or

(2) If the female is under the age of 16, and the male is 18 years of age or over, imprisoned not more than 15 years; or

(3) If the female is under the age of 12, and the male is 18 years of age or over, imprisoned not more than 30 years.

In prosecutions for statutory rape, evidence of prior intercourse of the complainant with men other than the accused, or that her reputation for chastity is bad, is immaterial and inadmissible when offered as an excuse or justification. *State v. Sabala*, 32 W (2d) 95, 145 NW (2d) 95.

944.11 Indecent behavior with a child. Any of the following may be imprisoned not more than 10 years:

(1) Any male who takes indecent liberties with a female under the age of 16; or

(2) Whoever takes indecent liberties with the privates of any person under the age of 18; or

(3) Whoever consents to the indecent use of his own privates by any person under the age of 18.

944.12 Enticing a child for immoral purposes. Any person 18 years of age or over, who, with intent to commit a crime against sexual morality, persuades or entices any child under 18 years of age into any vehicle, building, room or secluded place may be imprisoned not more than 10 years.

This section defines a completed crime and a defendant can be convicted of an attempt to commit it. The information may use the words "for immoral purposes" rather than "against sexual morality". *Huebner v. State*, 33 W (2d) 505, 147 NW (2d) 646.

SEXUAL CRIMES BETWEEN ADULTS WITH CONSENT.

944.15 Fornication. Whoever has sexual intercourse with a person not his spouse may be fined not more than \$200 or imprisoned not more than 6 months or both.

944.16 Adultery. Either of the following may be fined not more than \$1,000 or imprisoned not more than 3 years or both:

(1) A married person who has sexual intercourse with a person not his spouse; or

(2) A person who has sexual intercourse with a person who is married to another.

944.17 Sexual perversion. Whoever does either of the following may be fined not more than \$500 or imprisoned not more than 5 years or both:

(1) Commits an abnormal act of sexual gratification involving the sex organ of one person and the mouth or anus of another; or

(2) Commits an act of sexual gratification involving his sex organ and the sex organ, mouth or anus of an animal.

OBSCENITY.

944.20 Lewd and lascivious behavior. Whoever does any of the following may be fined not more than \$500 or imprisoned not more than one year in county jail or both:

(1) Commits an indecent act of sexual gratification with another with knowledge that they are in the presence of others; or

(2) Publicly and indecently exposes a sex organ; or

(3) Openly cohabits and associates with a person he knows is not his spouse under circumstances that imply sexual intercourse.

944.21 Lewd, obscene or indecent matter, pictures and performances. (1) Whoever intentionally does any of the following may be fined not more than \$5,000 or imprisoned not more than 5 years or both:

(a) Imports, prints, advertises, sells, has in his possession for sale, or publishes, exhibits, or transfers commercially any lewd, obscene or indecent written matter, picture, sound recording, or film; or

(b) Has in his possession any lewd, obscene or indecent sound recording or motion picture film; or

(c) Has in his possession, with intent to transfer or exhibit to a person under the age of 18 years, any matter prohibited by this section; or

(d) Advertises, produces or performs in any lewd, obscene or indecent performance.

(2) Whoever requires, as a condition to the purchase of periodicals, that a retailer accept material known by the distributor to be lewd, obscene or indecent may be fined not more than \$5,000 or imprisoned not more than 5 years or both.

The test of obscenity is whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest. (See note to Art. I, Sec. 3, citing this case.) State v. Chobot, 12 W (2d) 110, 106 NW (2d) 286.

It may be a defense against a charge of possession of obscene literature that the possessor did not have knowledge of the

contents, but not so where the defendant testified that he had looked at the covers and paged through the magazines in his possession, looking at the pictures, but not reading the text or stories, and even the most-cursory examination thereof would make him aware of their appeal to the prurient interest. State v. Chobot, 12 W (2d) 110, 106 NW (2d) 286.

944.22 Possession of lewd, obscene or indecent matter. Whoever knowingly has in his possession any lewd, obscene or indecent written matter or a lewd, obscene or indecent picture may be fined not more than \$1,000 or imprisoned in the county jail not more than one year or both.

944.23 Making lewd, obscene or indecent drawings. Whoever makes any lewd, obscene or indecent drawing or writing in any public place may be fined not more than \$100 or imprisoned not more than 60 days or both.

PROSTITUTION.

944.30 Prostitution. Any female who intentionally does any of the following may be fined not more than \$500 or imprisoned not more than one year or both:

- (1) Has or offers to have nonmarital sexual intercourse for money; or
- (2) Commits or offers to commit an act of sexual perversion for money; or
- (3) Is an inmate of a place of prostitution.

944.31 Patronizing prostitutes. Any male who enters or remains in any place of prostitution with intent to have nonmarital sexual intercourse or to commit an act of sexual perversion may be fined not more than \$100 or imprisoned not more than 3 months or both.

944.32 Soliciting prostitutes. Whoever intentionally solicits or causes any female to practice prostitution or establishes any female in a place of prostitution may be fined not more than \$1,000 or imprisoned not more than 5 years or both. If the female is under the age of 18, the defendant may be fined not more than \$2,000 or imprisoned not more than 10 years or both.

944.33 Pandering. (1) Whoever does any of the following may be fined not more than \$200 or imprisoned not more than 6 months or both:

- (a) Solicits another to have nonmarital sexual intercourse or to commit an act of sexual perversion with a female he knows is a prostitute; or
- (b) With intent to facilitate another in having nonmarital intercourse or committing an act of sexual perversion with a prostitute, directs or transports him to a prostitute or directs or transports a prostitute to him.

(2) If the accused received compensation from the earnings of the prostitute, he may be fined not more than \$5,000 or imprisoned not more than 10 years or both.

(3) In a prosecution under this section, it is competent for the state to prove other similar acts by the accused for the purpose of showing his intent and disposition.

944.34 Keeping place of prostitution. Whoever intentionally does any of the following may be fined not more than \$5,000 or imprisoned not more than 5 years or both:

- (1) Keeps a place of prostitution; or
- (2) Grants the use or allows the continued use of a place as a place of prostitution.

944.35 Evidence of place of prostitution. Evidence that a place has a general reputation as a place of prostitution or that, at or about the time in question, it was frequently visited at unseasonable hours by a number of men not residents therein is admissible on the issue of whether it is a place of prostitution.