

STATE OF MINNESOTA
HOUSE OF REPRESENTATIVES

PRESENT ABORTION LAW

House Research Department
April 15, 1969

The present abortion law in Minnesota can be traced from common law through the Wisconsin laws, which were binding before Minnesota became a state through the territorial laws, and finally through Minnesota Statutes.

In common law abortion was considered a misdemeanor, but has always been a felony in Minnesota law. The present Minnesota law is derived almost verbatim from the Penal Code of 1886. The following traces the evolution of the present law beginning with the Territorial Laws of 1849.

Territorial Laws of 1849, Chap. 94, Sec. 10, 11.

Section 11

"Every person who shall administer to any woman pregnant with a quick child, any medicine, drug, or substance whatever, or shall use or employ any instrument or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, or shall have been advised by two physicians to be necessary for such purpose, shall in case the death of such child or if such mother be thereby produced, be deemed guilty of manslaughter in the second degree."

Section 10

"The willful killing of an unborn infant child, by any injury to the mother of such child, which would be murder if it resulted in the death of such mother, shall be deemed manslaughter in the first degree."

These sections assume that the fetus is a human child in their reference to "an unborn infant child." Both sections carry manslaughter charges; the wilful killing of an unborn infant child is manslaughter in the first degree; the killing of either the child or the mother by administering any means with intent to kill the child, is manslaughter in the second degree. Section 11 stipulates that two physicians are necessary to determine whether an abortion would preserve the life of the mother.

Laws of Minnesota 1873, Chap. 9, Sec. 1,2,3.

In 1873 a new law was passed repealing Section 11 of Chapter 94 of the General Statutes. The expanded law of 1873 provided penalties for causing an abortion upon a woman when death resulted, for seeking or submitting to have an abortion and for advertising medicines or other means of causing abortions.

Chap. 9, Sec. 1, provided that "any person who shall administer to any woman with child or prescribe for any such woman, or suggest to, or advise, or procure her to take any medicine, drug substance or thing whatever, or shall use or employ, or advise or suggest the use or employment of any instrument or other means or force whatever, with intent thereby to cause or procure the miscarriage or abortion or premature labor of any such woman, unless the same shall have been necessary to preserve her life, or the life of such child, shall, in case the death of such child or of such woman results in whole or in part therefrom, be deemed guilty of a felony, and upon conviction thereof, shall be punished by imprisonment in the state prison for a term not more than ten (10)

years nor less than three (3) years.

Sec. 2 provided that "any person who shall administer to any woman with child or prescribe, or procure, or provide for any such woman, or suggest to, or advise, or procure any such woman to take any medicine, drug, substance or thing whatever, or shall use or employ, or suggest, or advise the use or employment of any instrument or other means or force whatever, with intent thereby to cause or procure the miscarriage or abortion or premature labor of any such woman, shall upon conviction thereof be punished by imprisonment in the state prison for a term not more than two years nor less than one year, or by fine not more than five thousand dollars nor less than five hundred dollars, or by such fine and imprisonment both, at the discretion of the court."

Sec. 3 provided that "any woman with child who shall apply to or solicit from any physician, druggist, or other person whomsoever, any medicine, drug, substance or thing whatever, or shall take or administer the same, or shall submit to or perform upon herself any operation of any sort of character whatever, with intent thereby to cause or produce a miscarriage or abortion, or premature labor unless the same shall have been necessary to preserve her life, or the life of such child, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail for a term not more than two years nor less than three months, or by fine not exceeding one thousand dollars nor less than three hundred dollars, or by such fine and imprisonment both at the discretion of the court.

A later section provided a punishment of imprisonment for not more than two years in the state prison, or in the county jail for not less than three months, or a fine of \$100 - \$5,000 or both for advertising names of persons or places where abortions might be obtained, or providing any information for self-abortion.

This law differs from the previous law in that it deals with persons attempting to cause an abortion, miscarriage, or premature labor rather than attempting to "destroy . . . a child." There is provision in the new law to preserve the life of the child as well as the life of the mother. The new law also prescribes explicit penalties not only for one who aids in the abortion, but for the woman herself. The emphasis shifts from the death of the mother to the attempt to abort or cause miscarriage which might result in death. Sec. 7 provided for the repeal of Sec. 11 of the old law, which had called for the two physicians to determine necessity of an abortion to preserve the mother's life.

These provisions were recoded in 1878 and became Sections 16, 17, 18 of Chapter 94 of the General Statutes of 1878.

The present abortion law is derived from the penal code of 1886.

Penal Code 1886

Sec. 251 - Abortion Defined

A person, who, with intent thereby to produce the miscarriage of a woman, unless the same is necessary to preserve the life of the woman, or of the child with which she is pregnant, either:

1. Prescribes, supplies or administers to a woman whether pregnant or not, or advises or causes a woman to take any medicine, drug, or substance; or
2. Uses or causes to be used, any instrument or other means,

Is guilty of abortion, and is punishable by imprisonment in the state prison for not more than four (4) years, or in a county jail for not more than one (1) year.

Sec. 252 - Pregnant Woman Attempting Abortion

A pregnant woman who takes any medicine, drug or substance, or uses or submits to the use of any instrument or other means, with intent thereby to produce her own miscarriage, unless the same is necessary to preserve her life, or that of the child whereof she is pregnant, is punishable by imprisonment in the state prison for not less than one (1) year, nor more than four (4) years.

Sec. 255 - Selling drugs, etc.

A person who manufactures, gives or sells an instrument, a medicine or drug, or any other substance, with intent that the same may be unlawfully used in procuring the miscarriage of a woman, is guilty of a felony.

The penal code differs from the prior abortion laws in that it specifies penalties for attempting an abortion whether the woman is pregnant or not. A pregnant woman attempting an abortion is guilty under the penal code of a felony rather than a misdemeanor under the old law. The penal code also makes it a felony for a person to manufacture, give, or sell an instrument or drug with the intent that it might be unlawfully used to produce a miscarriage. This provision is

new to the Minnesota abortion laws.

The same provisions are found in the General Statutes 1894, Sec. 6545; the Revised Laws, 1905, Sec. 4942; the General Statutes, 1913, Sec. 8693; General Statutes, 1923, Sec. 10175; and the Statutes 1927, Sec. 10175.

Summary

The present law can be traced then through four phases:

1. English Common Law: abortion was a misdemeanor.
2. 1849 Territorial Laws: abortion was permitted only to save the life of the mother. Two physicians were necessary to determine whether the mother's life was in danger. The emphasis of the laws was on killing of the unborn child and/or the mother.
3. 1873 General Laws: abortion was permitted to save the life of the mother or the child. The provision necessitating the physicians was repealed. The emphasis of the laws shifted from the penalty for the death of the unborn child and/or mother to the penalty for the attempted abortion. Penalty is now provided for the woman as well as one who aids in abortion.
4. 1886 Penal Code: abortion is defined. Penalties apply whether the woman is pregnant or not. The woman is guilty of a felony instead of a misdemeanor. Any person who sells anything to a woman with the intent that it could be used unlawfully to produce an abortion is guilty of a felony.

MD/jd