

THE ANNOTATED CODE
of the
Public General Laws
OF MARYLAND.

Edited by
GEORGE P. BAGBY
of the Baltimore Bar.

Comprising all the Public General Statutes of the State, down to and inclusive of the Acts of Assembly of 1914, and the Constitution of Maryland, annotated with decisions of the Court of Appeals of Maryland, the Supreme Court of the United States and the Circuit Courts of Appeals and District and Circuit Courts of the United States, inclusive of 121 Maryland, 230 United States and 206 Federal Reports.

Prefaced by the Constitution of the United States.

In Three Volumes.

Volume 3,

Containing the Constitution of Maryland, Article 27 "Crimes and Punishments," the Public General Acts of 1912 and 1914, all Annotated, and Annotations of all the Public General Statutes of Maryland from 115 Maryland, 219 United States and 185 Federal (where Volumes 1 and 2 of the Annotated Code discontinue) to 121 Maryland, 230 United States and 206 Federal, inclusive.

BALTIMORE:
KING BROS., PRINTERS AND PUBLISHERS,
1914

Copyright, 1914, by GEORGE P. BAGBY

1904, art. 27, sec. 336. 1888, art. 27, sec. 217. 1860, art. 30, sec. 145.
1809, ch. 138, sec. 4.

369. Every person convicted of the crime of murder in the second degree, or as accessory thereto, shall be sentenced to the penitentiary for not less than five nor more than eighteen years.

See notes to section 362.

Negroes—Fornication With.

Ibid. sec. 337. 1888, art. 27, sec. 218. 1860, art. 30, sec. 151.
1715, ch. 44, sec. 25.

370. Any white woman who shall suffer or permit herself to be got with child by a negro or mulatto, upon conviction thereof in the court having criminal jurisdiction, either in the city or county where such child was begotten or where the same was born, shall be sentenced to the penitentiary for not less than eighteen months nor more than five years.

This section referred to in a slander suit. *Hemming v. Elliott*, 66 Md. 200.

Obscene Publications.

Ibid. sec. 338. 1888, art. 27, sec. 219. 1860, art. 30, sec. 78. 1853, ch. 183.

371. Whenever any newspaper or other periodical publication, printed, issued or published in this State shall contain any obscene or licentious matter, whether the same be contained in any professional or other advertisements or in any other article, whether original, communicated or copied from any other publication, every proprietor and publisher shall be held to be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not less than twenty nor more than two hundred dollars and imprisoned for not less than ten days nor more than one year, in the discretion of the court in which the conviction shall be had; and each successive number of any newspaper or periodical containing any such obscene or licentious matter shall be deemed a new publication thereof and shall subject every proprietor and publisher to indictment and punishment as for a distinct offense.

In an indictment under this section where the character of the publication is only disclosed by explanatory words and innuendoes, it is necessary to aver that it was so known and understood by the publisher. Extrinsic facts and circumstances must be set out in the indictment where the true character and meaning of the publication is gathered from them. *Nicholson v. State*, 36 Md. x.

Ibid. sec. 339. 1888, art. 27, sec. 220. 1886, ch. 490. 1894, ch. 271.

372. If any person shall bring or cause to be brought into this State for sale or exhibition, or shall sell, lend, give away or offer to give away, or show or have in his or her possession with intent to sell or give away, or to exhibit, show, advertise or otherwise offer for loan, gift, sale or distribution any lewd, obscene or indecent book, magazine, pamphlet, newspaper, story paper, writing paper, picture, card, drawing or photograph, or any article or instrument of indecent or immoral

use, or shall design, copy, draw, photograph, print, utter, publish or prepare such book, picture, card, drawing, paper or other article, or shall write or print or cause to be written or printed any circular, advertisement or notice of any kind, or giving information orally, stating when, where, how or of whom or by what means such a lewd, indecent or obscene article or thing can be purchased, seen or obtained, shall in every such case be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding two hundred dollars or shall be imprisoned not exceeding one year, or be both fined and imprisoned in the discretion of the court; provided, that this section shall not apply to any person committing the acts thereby prohibited with intent to prevent violations of this sub-title or to procure the punishment of offenses against the same.

1904, art. 27, sec. 340. 1894, ch. 271, sec. 220A.

373. Any person who shall sell, lend, give away or show, or have in his possession with intent to sell or give away or show, or shall advertise or otherwise offer for loan, gift or distribution to any minor any book, pamphlet, magazine, newspaper or other printed paper devoted to the publication, or principally made up of criminal news, police reports or accounts of criminal deeds, or pictures and stories of deeds of bloodshed, lust or crime, or shall exhibit on any street or highway, or in any other place within the view of any minor any such book, magazine, pamphlet, newspaper, writing, paper, picture, drawing, photograph or other article coming within the description of articles mentioned in this section, or in the preceding section shall in every case be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding two hundred dollars, or shall be imprisoned not exceeding one year, or be both fined and imprisoned in the discretion of the court.

Opium Joints.

Ibid. sec. 341. 1888, art. 27, sec. 221. 1886, ch. 127, sec. 1.

374. If any person shall set up or establish, or cause to be set up or established in any building, house, room, outhouse, tent, booth, arbor, shed, vessel or other place whatsoever any apparatus or device or instrument whereby opium may be smoked or used in any manner whatsoever by other persons; or if any person shall procure, permit, suffer or allow persons to collect and assemble in his house, building, room, outhouse, tent, booth, arbor, shed or vessel, or other place whatsoever under his control, for the purpose of smoking opium, or of using opium in any manner; or if the owner, tenant, lessee or occupant of any house, room, outhouse, tent, booth, arbor or other place whatever shall lease, hire, rent or permit the same, or any part thereof, to be used and occupied or employed for the purpose of smoking opium, or of using opium in any way or manner by other persons, the persons so offending in either of the enumerated cases shall be guilty of a misdemeanor, and on conviction be sentenced to pay a fine not exceeding five hundred dollars and

THE ANNOTATED CODE
of the
Public General Laws
OF MARYLAND

Edited by
GEORGE P. BAGBY
of the Baltimore Bar

Comprising all the Public General Laws of the State in force to and
inclusive of the Acts of Assembly of 1924, annotated with
decisions of the Court of Appeals of Maryland, the Supreme
Court of the United States and the Circuit Courts of
Appeals and District and Circuit Courts of the
United States, inclusive of 143 Maryland,
262 United States, 67 Law Edition
and 296 Federal Reports

51436

Containing also (1) the Constitution of the United States,
and (2) the Constitution of Maryland, annotated

In Two Volumes
Volume I,

Containing the Constitutions of the United States and of
Maryland, and Article 1, "Rules of Interpretation,"
to Article 49A, "Investments," of the
Public General Laws

Baltimore, 1924

Copyright, 1925, by **GEORGE P. BAGBY**

1922, ch. 465, sec. 9.

413. The Warden aforesaid must prepare and sign a certificate, setting forth the time and place of execution, and that the execution was conducted in conformity to the sentence of the Court, and the provisions of this sub-title, and must request all the persons present and witnessing the execution to sign said certificate. He must cause such certificate to be filed, within ten days after the execution, in the office of the Clerk of the Court in which the felon was indicted.

1922, ch. 465, sec. 10.

414. Nothing contained in any provision of this sub-title applies to a crime committed at any time before the day when this Act takes effect. Such crime must be punished according to the provisions of law existing when it is committed, in the same manner as if the Act of 1922, ch. 465, had not been passed, and the provisions of law, for the infliction of the penalty of death upon convicted criminals in existence on the day prior to January 1, 1923, are continued in existence and applicable to all crimes punishable by death, which have been or may be committed before January 1, 1923. A crime punishable by death committed after the beginning of January 1, 1923, must be punished according to the provisions of this sub-title, and not otherwise. The intention of this entire sub-title being to centralize the hanging of convicted felons wherein sentence of death is imposed, at the Maryland Penitentiary and to remove the same from the county or city jail as the law now provides, and to relieve the counties of this State from the curious mobs that frequent hangings taking place in the counties of this State, and who attempt to make public affairs of the same.¹

Negroes—Fornication With.

An. Code, sec. 370. 1904, sec. 337. 1888, sec. 218. 1715, ch. 44, sec. 25.

415. Any white woman who shall suffer or permit herself to be got with child by a negro or mulatto, upon conviction thereof in the court having criminal jurisdiction, either in the city or county where such child was begotten or where the same was born, shall be sentenced to the penitentiary for not less than eighteen months nor more than five years.

This section referred to in slander suit. *Hemming v. Elliott*, 66 Md. 200.

Obscene Publications.

An. Code, sec. 371. 1904, sec. 338. 1888, sec. 219. 1853, ch. 183.

416. Whenever any newspaper or other periodical publication, printed, issued or published in this State shall contain any obscene or licentious matter, whether the same be contained in any professional or other advertisements or in any other article, whether original, communicated or copied from any other publication, every proprietor and publisher shall be held to be guilty of a misdemeanor and on conviction thereof shall be punished

¹ Sec. 11 of ch. 465 of the acts of 1922 repealed all acts or parts of acts inconsistent with said act.

by a fine of not less than twenty nor more than two hundred dollars and imprisoned for not less than ten days nor more than one year, in the discretion of the court in which the conviction shall be had; and each successive number of any newspaper or periodical containing any such obscene or licentious matter shall be deemed a new publication thereof and shall subject every proprietor and publisher to indictment and punishment as for a distinct offense.

In an indictment under this section where the character of the publication is only disclosed by explanatory words and inuendoes, it is necessary to aver that it was so known and understood by the publisher. Extrinsic facts and circumstances must be set out in indictment where true character and meaning of publication is gathered from them. *Nicholson v. State*, 36 Md. x.

An. Code, sec. 372. 1904, sec. 339. 1888, sec. 220. 1886, ch. 490. 1894, ch. 271.

417. If any person shall bring or cause to be brought into this State for sale or exhibition, or shall sell, lend, give away or offer to give away or show or have in his or her possession with intent to sell or give away or to exhibit, show, advertise or otherwise offer for loan, gift, sale or distribution any lewd, obscene or indecent book, magazine, pamphlet, newspaper, story paper, writing paper, picture, card, drawing or photograph, or any article or instrument of indecent or immoral use, or shall design, copy, draw, photograph, print, utter, publish or prepare such book, picture, card, drawing, paper or other article, or shall write or print or cause to be written or printed any circular, advertisement or notice of any kind, or giving information orally, stating when, where, how or of whom or by what means such a lewd, indecent or obscene article or thing can be purchased, seen or obtained, shall in every such case be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding two hundred dollars or shall be imprisoned not exceeding one year, or be both fined and imprisoned in the discretion of the court; provided, that this section shall not apply to any person committing the acts thereby prohibited with intent to prevent violations of this sub-title or to procure the punishment of offenses against the same.

An. Code, sec. 373. 1904, sec. 340. 1894, ch. 271, sec. 220A.

418. Any person who shall sell, lend, give away or show, or have in his possession with intent to sell or give away or show, or shall advertise or otherwise offer for loan, gift or distribution to any minor any book, pamphlet, magazine, newspaper or other printed paper devoted to the publication, or principally made up of criminal news, police reports or accounts of criminal deeds, or pictures and stories of deeds of bloodshed, lust or crime, or shall exhibit on any street or highway, or in any other place within the view of any minor any such book, magazine, pamphlet, newspaper, writing paper, picture, drawing, photograph or other article coming within the description of articles mentioned in this section, or in the preceding section shall in every case be guilty of a misdemeanor; and upon conviction thereof shall be punished by a fine not exceeding two hundred dollars, or shall be imprisoned not exceeding one year, or be both fined and imprisoned in the discretion of the court.

As
419. In established vessel or o whereby o other persons to col booth, arbo for the pu if the owne booth, arbu same, or a purpose of other pers shall be g a fine not jail not ex house, ten have recei practised i cause com set up or have know purposes.

A
420. instrument manner b such pers shall be s a fine not

421. persuade preceding opium in meanor, ; ing five l one year.

422. or deput having a

Maryland. Laws, statutes, etc

**THE ANNOTATED CODE
OF THE PUBLIC GENERAL LAWS
OF MARYLAND
1957**

And Cited
Laws?

Prepared by the Editorial Staff of the Publishers
Under the Supervision of
D. P. HARRIMAN, A. D. KOWALSKY, M. K. SKARVELIS,
AND A. E. ESTES
Consultant
F. CARVEL PAYNE
Director, State Department of Legislative Reference

VOLUME 3A

1982 Replacement Volume

(Including Acts of the 1981 Session and annotations taken from Maryland Reports through Volume 289 (p. 602) and Maryland Appellate Reports through Volume 48 (p. 248))

THE MICHIE COMPANY
Law Publishers
CHARLOTTESVILLE, VIRGINIA
1982

inform the defendants that they were charged with a conspiracy to do unlawful acts through unlawful means, even though the means were not spelled out. This was all that is required by this section, which prescribes the statutory form for such an indictment. *Pearlman v. State*, 232 Md. 251, 192 A.2d 767 (1963), cert. denied, 376 U.S. 943, 84 S. Ct. 797, 11 L. Ed. 2d 767 (1964).

Object of conspiracy need not be set out with great particularity. — It is not required that the object of the unexecuted conspiracy should be set out with great particularity and certainty in the indictment, because only such facts need be stated as shall fairly and reasonably inform the accused of the offense with which he is charged. *Quaglione v. State*, 15 Md. App. 571, 292 A.2d 785 (1972).

Naming conspirators. — It is preferable that an indictment for conspiracy should state the names of the coconspirators. But the indictment may refer to a conspiracy with persons unknown. *Adams v. State*, 202 Md. 455, 97 A.2d 281 (1953), rev'd on other grounds, 347 U.S. 173, 74 S. Ct. 442, 98 L. Ed. 608 (1954).

Naming victims. — It is not necessary to allege the known victims of the conspiracy, and their designation as a class is sufficient. *Pearlman v. State*, 232 Md. 251, 192 A.2d 767 (1963), cert. denied, 376 U.S. 943, 84 S. Ct. 797, 11 L. Ed. 2d 767 (1964).

Indictment charging conspiracy "to violate the lottery laws of the State" was held sufficient, the court stating that the

holding should not be construed as approving the form as a general formula. *Hurwitz v. State*, 200 Md. 578, 92 A.2d 575 (1952); *McGuire v. State*, 200 Md. 601, 92 A.2d 582 (1952), cert. denied, 344 U.S. 928, 73 S. Ct. 497, 97 L. Ed. 714 (1953).

An indictment charging conspiracy "to violate the lottery laws of the State" sufficiently charges the crime of conspiracy to participate in a lottery. *Scarlett v. State*, 201 Md. 310, 93 A.2d 753, cert. denied, 345 U.S. 955, 73 S. Ct. 937, 97 L. Ed. 1377 (1953).

The wording of an indictment charging the appellant and other named persons with having "unlawfully conspired to violate the lottery laws of the State" was legally sufficient to charge the offense of conspiracy without particularizing what part of the lottery laws were intended to be violated as the object of the conspiracy. *Quaglione v. State*, 15 Md. App. 571, 292 A.2d 785 (1972).

Variance not found. — There was no variance between the conspiracy charged in the indictment and the conspiracy found by the court. *Pearlman v. State*, 232 Md. 251, 192 A.2d 767 (1963), cert. denied, 376 U.S. 943, 84 S. Ct. 797, 11 L. Ed. 2d 767 (1964).

Applied in *Haina v. State*, 30 Md. App. 295, 352 A.2d 874 (1976), cert. denied, 430 U.S. 906, 97 S. Ct. 1175, 51 L. Ed. 2d 582 (1977).

Cited in *Jones v. State*, 8 Md. App. 370, 259 A.2d 807 (1969); *Ayre v. State*, 21 Md. App. 61, 318 A.2d 828 (1974).

CONTRACEPTIVES — SALE BY VENDING MACHINES

§ 41. Prohibited; exception.

It shall be unlawful for any person, firm or corporation to sell or offer for sale any contraceptive or contraceptive device by means of a vending machine or other automatic device whether or not such contraceptive or contraceptive device is advertised as such or as a prophylactic, except in places where alcoholic beverages are sold for consumption on the premises. This exception not to include railroad stations, air and bus terminals. Nor shall it include places where alcoholic beverages are sold for consumption on the premises in Howard County.

Any person violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not more than \$1,000 for each such violation, and the use of each vending machine, or other automatic device in violation of this section shall constitute a separate offense. (An. Code, 1951, § 49; 1950, ch. 82, § 43B; 1951, ch. 295.)

THE
GENERAL LAWS

OF

The Commonwealth of Massachusetts

ENACTED DECEMBER 22, 1920

TO TAKE EFFECT JANUARY 1, 1921

WITH THE

CONSTITUTION OF THE UNITED STATES, THE CONSTITUTION OF THE
COMMONWEALTH AND THE REARRANGEMENT THEREOF
AND TABLES SHOWING THE DISPOSITION OF THE
REVISED LAWS AND OF OTHER STATUTES
OF GENERAL APPLICATION

VOL. II

CHAPTERS 128-282



BOSTON
WRIGHT & POTTER PRINTING CO., STATE PRINTERS
32 DERNE STREET
1921

UNIV. OF MICH. LAW LIBRARY

Incest. 1895-6, 2, § 2. R. S. 130, § 13. G. S. 165, § 7. P. S. 207, § 7. R. L. 212, § 13. 1918, 257, § 464. 1919, 5.

SECTION 17. Persons within the degrees of consanguinity within which marriages are prohibited or declared by law to be incestuous and void, who intermarry or have sexual intercourse with each other, shall be punished by imprisonment in the state prison for not more than twenty years or in jail for not more than two and one half years. 1920, 2. 10 Met. 451.

1
2
3
4
5
1
2
3
4
5

Fornication. C. L. 54. § 4, 5. 1892-3, 18, § 5. 1785, 66, § 1.

SECTION 18. Whoever commits fornication shall be punished by imprisonment for not more than three months or by a fine of not more than thirty dollars. R. S. 130, § 5. G. S. 165, § 8. P. S. 207, § 8. R. L. 212, § 14.

1
2
3
4
5

Unlawful attempt, etc., to procure miscarriage. 1845, 27. G. S. 165, § 9. P. S. 207, § 9. R. L. 212, § 15. 11 Gray, 85. 419, 187. 16 Gray, 224. 13 Allen, 554. 108 Mass. 451. 116 Mass. 47. 243. 121 Mass. 69. 132 Mass. 281.

SECTION 19. Whoever, with intent to procure the miscarriage of a woman, unlawfully administers to her, or advises or prescribes for her, or causes any poison, drug, medicine or other noxious thing to be taken by her or, with the like intent, unlawfully uses any instrument or other means whatever, or, with like intent, aids or assists therein, shall, if she dies in consequence thereof, be punished by imprisonment in the state prison for not less than five nor more than twenty years; and, if she does not die in consequence thereof, by imprisonment in the state prison for not more than seven years and by a fine of not more than two thousand dollars. 136 Mass. 429. 155 Mass. 274. 156 Mass. 99. 157 Mass. 519. 159 Mass. 56. 165 Mass. 13, 59. 195 Mass. 100. 213 Mass. 563. 231 Mass. 265.

1
2
3
4
5
6
7
8
9
10
1
2
3
4
5
6
7
8
9
10
11

Penalty for advertising, etc., notice, etc., of means to procure abortion. 1847, 83. G. S. 165, § 10. P. S. 207, § 10. R. L. 212, § 18. 1905, 316. 1918, 257, § 464. 1919, 5. 1920, 2.

SECTION 20. Whoever knowingly advertises, prints, publishes, distributes or circulates, or knowingly causes to be advertised, printed, published, distributed or circulated, any pamphlet, printed paper, book, newspaper, notice, advertisement or reference, containing words or language giving or conveying any notice, hint or reference to any person, or to the name of any person, real or fictitious, from whom, or to any place, house, shop or office where, any poison, drug, mixture, preparation, medicine or noxious thing, or any instrument or means whatever, or any advice, direction, information or knowledge, may be obtained for the purpose of causing or procuring the miscarriage of a woman pregnant with child or of preventing, or which is represented as intended to prevent, pregnancy, shall be punished by imprisonment in the state prison for not more than three years or in jail for not more than two and one half years or by a fine of not more than one thousand dollars.

1
2
3
4
5
6
7
8
9
10
11
1
2
3
4
5
6
7
8
9

Other offences against decency. 1879, 159, § 1. P. S. 207, § 17. R. L. 212, § 26. 1918, 257, § 464. 1919, 5. 1920, 2. 227 Mass. 57.

SECTION 21. Whoever sells, lends, gives away, exhibits, or offers to sell, lend or give away an instrument or other article intended to be used for self-abuse, or any drug, medicine, instrument or article whatever for the prevention of conception or for causing unlawful abortion, or advertises the same, or writes, prints or causes to be written or printed a card, circular, book, pamphlet, advertisement or notice of any kind stating when, where, how, of whom or by what means such article can be purchased or obtained, or manufactures or makes any such article, shall be punished by imprisonment in the state prison for not more than five years or in jail or the house of correction for not more than two and one half years or by a fine of not less than one hundred nor more than one thousand dollars.

1
2
3
4
5
6
7
8
9
10
11
1
2
3
4
5
6
7
8
9

Concealment by mother of death of bastard.

SECTION 22. A woman who conceals the death of issue of her body which if born alive would be a bastard, so that it cannot be ascertained

1
2
3
4
5
6
7
8



ANNOTATED LAWS OF MASSACHUSETTS

with pocket upkeep service

Containing all the Laws of Massachusetts of
a general and permanent nature
completely annotated

VOLUME 9-A

Revised

By

GABRIEL V. MOTTLA

of the

Massachusetts and Boston Bars

And the Editorial Staff
of the Publishers

THE MICHIE COMPANY

CHARLOTTESVILLE, VA.

THE LAWYERS CO-OPERATIVE PUBLISHING COMPANY

ROCHESTER, N. Y.

1968

Statutes:

Full text of Chapters 267-
embodied in the Tercentena
ing and related General St
the 1967 Sessions of the Gene

Annotations:

The sources of the anno
volume are:

- Massachusetts Reports
- 1967 Advance Sheets th
- Massachusetts Appellat
- Northeastern Reporter
- Federal Reporter down
- Federal Supplement vo
- United States Reports
- United States Reports
- United States Reports
- Massachusetts Law Qu
- Opinions of the Attorney
reports.
- American Law Reports
- American Jurisprudence
- American Jurisprudence

For later amendments and
by the Courts consult the lat
cover of this volume.

COPYRIGHT © 1933, 1956
BY
THE MICHIE COMPANY
THE LAWYERS CO-OPERATIVE PUBLISHING COMPANY

COPYRIGHT © 1968
BY
THE MICHIE COMPANY
THE LAWYERS CO-OPERATIVE PUBLISHING COMPANY

CRIMES AGAINST CHASTITY, MORALITY, ETC. C. 272, § 20

Sufficient evidence of procuring another to perform abortion.—On trial of an indictment for procuring, counseling, and commanding another person to cause a miscarriage, evidence that the defendant wrote to that person that he wanted to put a female friend under her treatment, that he took a woman, who was pregnant by him, to that person's house and left her, that the latter caused the woman to miscarry, that afterwards the defendant told the abortionist to get help and take care of the woman if she needed it, and that defendant subsequently took the woman away and paid the abortionist \$50 is sufficient to warrant a conviction. *Com. v Thompson*, 108 Mass 461.

Raising question of sufficiency of evidence to sustain indictment.—The statement in *Com. v Dawn*, 302 Mass 255, 19 NE2d 315, to the effect that the question of the sufficiency of the evidence to sustain an indictment should be by a motion for the "finding" of not guilty, is applicable to jury trials but not to trials without jury, as clearly appears from the case of *Com. v Polian*, 288 Mass 494, 193 NE 68, 96 ALR 615, which is cited in the *Dawn* case. *Com. v Carter*, 306 Mass 141, 27 NE2d 696.

Guilt of accused held for jury. *Com. v Polian*, 288 Mass 494, 193 NE 68, 96 ALR 615.

When motion for directed verdict of

not guilty properly refused.—A motion for a direct verdict of not guilty was denied rightly where there was evidence that by the defendant's acts a miscarriage had been purposely caused. *Com. v Leger*, 264 Mass 217, 162 NE 337.

Motion in arrest of judgment overruled if variance is not matter of law.—On the trial of an indictment for an attempt to procure the miscarriage of a certain woman, whereof she died, a motion to dismiss the indictment for the reason that there was a variance between an allegation therein and the proof is rightly overruled, if it cannot be held that there was a variance as matter of law, and the question of fact as to whether there was one was submitted to the jury under instructions to which no exception was taken. *Com. v Noble*, 165 Mass 13, 42 NE 328.

Instruction as to noxious thing.—Where, upon the trial of an indictment under the instant section, the trial judge instructed the jury that the word "noxious" meant "hurtful, harmful, injurious, destructive, unwholesome; and if a thing used has any of those characteristics, then it is contrary to the law as set out in § 19," it was held that there was no error in the further instruction that "it is not necessary to prove the names of medicines used or that such is noxious in the sense that it is used in the statute." *Com. v Goldenberg*, 338 Mass 377, 155 NE2d 187, 70 ALR2d 814.

§ 20. Penalty for Advertising, etc., Notice, etc., of Means to Procure Abortion.

Except as provided in section twenty-one A, whoever knowingly advertises, prints, publishes, distributes or circulates, or knowingly causes to be advertised, printed, published, distributed or circulated, any pamphlet, printed paper, book, newspaper, notice, advertisement or reference containing words or language giving or conveying any notice, hint or reference to any person, or to the name of any person, real or fictitious, from whom, or to any place, house, shop or office where any poison, drug, mixture, preparation, medicine or noxious thing, or any instrument or means whatever, or any advice, direction, information or knowledge may be obtained for the purpose of causing or procuring the miscarriage of a woman pregnant with child or of preventing, or which is represented as intended to prevent, pregnancy shall be punished by imprisonment in the state prison for not more than three years or in jail for not more

than two and one half years or by a fine of not more than one thousand dollars. (1847, 83; GS 165, § 10; PS 207, § 10; RL 212, § 16; 1905, 326; 1918, 257, § 464; 1919, 5; 1920, 2; 1966, 265, § 2, approved May 10, 1967, effective 90 days thereafter.)

Editorial Note—

The 1966 amendment inserted at the beginning of this section the words "E" as provided in section twenty-one A".

References—

Criminal liability for advising or advertising as to means of procuring abortion. 1 Am Jur 2d, ABORTION § 12.

CASE NOTES

Section is constitutional.—The statutes under this and §§ 21 and 28, contravene no provision of the constitution and each of them is a proper exercise of one of the most obvious and necessary branches of the police power. *Com. v Allison*, 227 Mass 57, 116 NE 265.

The advertising of contraceptive devices or drugs meant for the prevention of pregnancy is prohibited by this section. 1965 Ops Atty Gen 61.

An indictment charging an offense in the language of this section is sufficient. *Com. v Allison*, 227 Mass 57, 116 NE 265.

Allegation of offense in words of statute sufficient.—An indictment under this section, charging the defendant with knowingly distributing and circulating a printed paper conveying notice of a place where directions, information and knowledge might be obtained for the purpose of causing and procuring the miscarriage of women pregnant with child, is sufficient under §§ 17 and 29 of c 277, if the crime is set forth in the words used in the statutes with a general

avertment that the defendant committed the act, and no further averment of guilty knowledge of the contents of the paper is necessary. *Com. v Hartford*, 193 Mass 464, 79 NE 784.

Question whether card containing criminal information was delivered with intent is for jury.—At the trial of an indictment under this section, for knowingly distributing and circulating a card conveying notice of a place where directions and information might be obtained for the purpose of causing or procuring the miscarriage of a woman pregnant with child, where it appears that the card described in the indictment was given by the defendant to a witness for the commonwealth, who was a police officer in disguise, in response to an inquiry by him as to treatment for a proposed patient, the evidence of the delivery of the card is none the less admissible because it was procured by lying and deceit on the part of the witness, and it is a question for the jury whether the card was delivered voluntarily with a criminal purpose. *Com. v Hartford*, 193 Mass 464, 79 NE 784.

§ 21. Other Offences against Decency.

Except as provided in section twenty-one A, whoever sells, lends, gives away, exhibits, or offers to sell, lend or give away an instrument or other article intended to be used for self-abuse, or any drug, medicine, instrument or article whatever for the prevention of conception or for causing unlawful abortion, or advertises the same, or writes, prints, or causes to be written or printed a card, circular, book, pamphlet, advertisement or notice of any kind stating when, where, how, of whom or by what means such article can be purchased or obtained, or manufactures or makes any such article shall be punished by imprisonment

in the state prison or of correction for no not less than one (1879, 159, § 1; PS 207, § 2; 1966, 265, § 3, app

Editorial Note—

The 1966 amendment as provided in section tw

References—

State and municipal reg §§ 4-6.

Section constitutional. is not violative of the con within the most obvious branches of the police p. *Allison*, 227 Mass 57, 116

Section directed against conception.—The terms c are plain, unequivocal an They contain no exceptio sweeping, absolute, and c dignity. They are directe violating explicitness agains tion of conception by any specified. It would be diff appropriate legislative wor the thought with great *Com. v Gardner*, 300 Mass 2d 222.

The inference seems ne the moral and social wr from the prevention of co appeared to the general court ing in 1879, when this sectio nally enacted, that absolute ditional prohibition agains out, or loan of contracep medicines, or articles for th necessary to meet the condit *v Gardner*, 300 Mass 372, 15

The advertising of contra vices or drugs meant for the of pregnancy is prohibited by t 1965 Ops Atty Gen 61

Article for illegal use.—"or" refers to the intende in the mind of the seller, an articles themselves, being ca lawul use as well as an unl cannot be declared articles "fo tiful use without proof that i

SETTS

ore than one thousand
L 212, § 16; 1905, 316;
approved May 10, 1966.

ection the words "Except

ns of procuring abortion.

the defendant committed
no further averment of a
dge of the contents of the
ssary. *Com. v Hartford*,
79 NE 784.

whether card containing
mation was delivered with
jury.—At the trial of an
der this section, for know-
ing and circulating a card
lice of a place where in-
formation might be ob-
e purpose of causing or
miscarriage of a woman
1 child, where it appears
described in the indictment
the defendant to a witness
monwealth, who was a
in disguise, in response to
him as to treatment for
atient, the evidence of the
e card is none the less ad-
se it was procured by
on the part of the witness.
estion for the jury whether
delivered voluntarily with-
rpose. *Com. v Hartford*,
79 NE 784.

, whoever sells, lends,
ve away an instrument
or any drug, medicine,
n of conception or for
le, or writes, prints, or
book, pamphlet, adver-
ere, how, of whom or
or obtained, or manu-
ished by imprisonment

in the state prison for not more than five years or in jail or the house
of correction for not more than two and one half years or by a fine of
not less than one hundred nor more than one thousand dollars.
(1879, 159, § 1; PS 207, § 17; RL 212, § 26; 1918, 257, § 464; 1919, 5; 1920,
2; 1966, 265, § 3, approved May 10, 1966, effective 90 days thereafter.)

Editorial Note—

The 1966 amendment inserted at the beginning of this section the words "Except
as provided in section twenty-one A".

References—

State and municipal regulations as to birth control. 12 Am Jur 2d, BIRTH CONTROL
§§ 4-6.

CASE NOTES

Section constitutional.—This section
is not violative of the constitution and is
within the most obvious and necessary
branches of the police power. *Com. v*
Alison, 227 Mass 57, 116 NE 265.

**Section directed against prevention of
conception.**—The terms of this section
are plain, unequivocal and peremptory.
They contain no exceptions. They are
sweeping, absolute, and devoid of am-
biguity. They are directed with unde-
niable explicitness against the preven-
tion of conception by any of the means
specified. It would be difficult to select
appropriate legislative words to express
the thought with greater emphasis.
Com. v Gardner, 300 Mass 372, 15 NE
2d 222.

The inference seems necessary that
the moral and social wrongs arising
from the prevention of conception ap-
peared to the general court so threaten-
ing in 1879, when this section was origi-
nally enacted, that absolute and uncondi-
tional prohibition against the sale,
gift, or loan of contraceptive drugs,
medicines, or articles for that end was
necessary to meet the conditions. *Com.*
v Gardner, 300 Mass 372, 15 NE2d 222.

The advertising of contraceptive de-
vices or drugs meant for the prevention
of pregnancy is prohibited by this section.
195 Ops Atty Gen 61.

Article for illegal use.—The word
"for" refers to the intended purpose
in the mind of the seller, and that the
articles themselves, being capable of a
use as well as an unlawful one,
cannot be declared articles "for" the un-
lawful use without proof that in the par-

ticular instance they were sold with a
view to unlawful use, or at least that
the seller knew that an unlawful use was
intended by the buyer. *Com. v Corbett*,
307 Mass 7, 29 NE2d 151.

A conviction under this section was
denied where articles sold by registered
pharmacist were not exclusively either
"for" the prevention of conception or
"for" the prevention of disease. The
package sold was marked "Sold for
prevention of disease." The buyer was
a police officer, who bought the articles
to hold as evidence, and not to use for
any other purpose. The pharmacist did
not know to what use the buyer in-
tended to put them and there was no
evidence that the sale was made with a
view to use for any unlawful purpose.
Com. v Corbett, 307 Mass 7, 29 NE2d
151.

Preservation of life or health.—In
Com. v Gardner, 300 Mass 372, 15 NE2d
222, the contention that this section
does not apply to drugs, medicines, in-
struments, or articles for the prevention
of conception when they are intended
for such use only upon prescription by a
duly qualified physician for the preser-
vation of life or health according to
sound and generally accepted medical
practices, and that, otherwise, the sec-
tion is unconstitutional under both the
state and the federal constitutions, was
not sustained.

Sufficiency of evidence.—In *Com. v*
Goldberg, 316 Mass 563, 55 NE2d 951,
it was held that the evidence warranted
a finding that the defendant advertised
condoms for the prevention of concep-
tion, in violation of this section.

§ 21A. Prescription and Furnishing of Contraceptives to Married Women.

A registered physician may administer to or prescribe for any married person drugs or articles intended for the prevention of pregnancy or conception. A registered pharmacist actually engaged in the business of pharmacy may furnish such drugs or articles to any married person presenting a prescription from a registered physician.

A public health agency, a registered nurse, or a maternity health clinic operated by or in an accredited hospital may furnish information to any married person as to where professional advice regarding such drugs or articles may be lawfully obtained.

This section shall not be construed as affecting the provisions of sections twenty and twenty-one relative to prohibition of advertising of drugs or articles intended for the prevention of pregnancy or conception; nor shall this section be construed so as to permit the sale or dispensing of such drugs or articles by means of any vending machine or similar device. (1966, 265, § 1, approved May 10, 1966, effective 90 days thereafter.)

§ 22. Concealment by Mother of Death of Illegitimate Child.

A woman who conceals the death of issue of her body, which if born alive would be illegitimate, so that it cannot be ascertained whether it was born alive or, if born alive, whether it was murdered, shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than one year. (1696, 11; 1784, 42, § 2; RS 130, § 6; GS 165, § 11; PS 207, § 11; RL 212, § 17; 1931, 256, § 2.)

§ 23. Joinder of Murder and Concealment.

A woman indicted for the murder of her infant illegitimate child may also be charged in the same indictment with the crime described in the preceding section; and if she is acquitted of murder, she may be convicted of the concealment. (1784, 42, § 3; RS 130, § 7; GS 165, § 12; PS 207, § 12; RL 212, § 18; 1931, 256, § 3.)

§ 24. Keeping House of Ill Fame.

Whoever keeps a house of ill fame which is resorted to for prostitution or lewdness shall be punished by imprisonment for not more than two years. (CL 208, § 2; 1720-1, 7, § 3; 1793, 59, § 8; RS 130, § 8; 1849, 84; 1855, 405; GS 165, § 13; PS 207, § 13; RL 212, § 19.)

References—

As to buildings or parts of buildings being used for prostitution constituting a nuisance, see GL c 139 § 4, and case notes thereto.

CASE NOTES

1. In general.
2. Pleading and proof.

1. In general

Common law crime of disorderly house.—The commission of keeping a disorderly house, not been in any part repealed by § 4 of c 139, or by any other act, and a conviction may be had at the trial of a complaint for the same, the evidence shows that the house is not disorderly otherwise than by the fact that it is resorted to for immorality. *Com. v Goodall*, 165 Mass 320.

Letting a house to a woman of ill fame, knowing her to be such, with intent that it shall be used for the purpose of prostitution, is an indictable offense at common law. *Com. v 120 Mass (3 Pick) 26.*

A married woman, who leaves her house to her husband, may be punished, for keeping a house of ill fame. *Com. v Lewis*, 4 Met) 151.

Aiding and assisting others in keeping a house of ill fame sufficient to support an indictment for the same, if the defendant only aided and assisted others in the same. *Com. v Gannett* (1 Allen) 7.

2. Pleading and proof

Unlawful or criminal intent may be alleged.—A complaint on which an indictment is returned, alleging that the defendant kept a house of ill fame on certain day and on other days at B., "did keep a certain house of ill fame, there situate, then and on other days and times there resorted to for the purpose of prostitution."

§ 25. Use of Certain Enclosures.

Any person owning, managing, or occupying any other place in any town, which is resorted to for prostitution or lewdness, and which is consumed upon the premises, shall be punished by imprisonment for not more than one hundred and thirty days, unless he provides, maintains, uses or occupies any other place of any description whatever, or any other devices that, the person is seen by other persons in such place, or any division thereof, unless he can show to the satisfaction of the authorities, and any person

ANNOTATED LAWS OF MASSACHUSETTS

with pocket upkeep service

Containing all the Laws of Massachusetts of
a general and permanent nature
completely annotated

Chapters 272-282

By the Editorial Staff of the Publishers

1980



THE LAWYERS CO-OPERATIVE PUBLISHING CO.
Rochester, New York 14694

16-V-1874

COPYRIGHT © 1933, 1956, 1968

BY

THE LAWYERS CO-OPERATIVE PUBLISHING COMPANY

COPYRIGHT © 1980

BY

THE LAWYERS CO-OPERATIVE PUBLISHING COMPANY

Library of Congress Catalog Card Number 33-1118

woman, that his treatments were intended to procure a miscarriage, that he administered a drug, and that he used a vibrator, steam baths, a water belt and a sun lamp, there was no error in the denial of the defendant's motion for directed verdict, since the prosecution was only required to prove one of the methods prohibited by the instant section, and since it was immaterial whether the methods employed were likely to accomplish the intended result. *Com. v Goldenberg*, 338 Mass 377, 155 NE2d 187, 70 ALR2d 814.

Sufficiency of evidence to prove unlawful abortion. See *Com. v Wheeler*, 315 Mass 394, 53 NE2d 4.

Sufficient evidence to sustain conviction. See *Com. v Dawn*, 302 Mass 255, 19 NE2d 315; *Com. v Carter*, 306 Mass 141, 27 NE2d 690.

Sufficient evidence of procuring another to perform abortion.—On trial of an indictment for procuring, counseling, and commanding another person to cause a miscarriage, evidence that the defendant wrote to that person that he wanted to put a female friend under her treatment, that he took a woman, who was pregnant by him, to that person's house and left her, that the latter caused the woman to miscarry, that afterwards the defendant told the abortionist to get help and take care of the woman if she needed it, and that defendant subsequently took the woman away and paid the abortionist \$50 is sufficient to warrant a conviction. *Com. v Thompson*, 108 Mass 461.

Raising question of sufficiency of evidence to sustain indictment.—The statement in *Com. v Dawn*, 302 Mass 255, 19 NE2d 315, to the effect that the question of the sufficiency of the evidence to sustain an indictment should be raised by a motion for the "finding" of not guilty, is

applicable to jury trials but not to trials without jury, as clearly appears from the case of *Com. v Polian*, 288 Mass 494, 193 NE 68, 96 ALR 615, which is cited in the *Dawn* case. *Com. v Carter*, 306 Mass 141, 27 NE2d 696.

Guilt of accused held for jury. *Com. v Polian*, 288 Mass 494, 193 NE 68, 96 ALR 615.

When motion for directed verdict of not guilty properly refused.—A motion for a direct verdict of not guilty was denied rightly where there was evidence that by the defendant's acts a miscarriage had been purposely caused. *Com. v Leger*, 264 Mass 217, 162 NE 337.

Motion in arrest of judgment overruled if variance is not matter of law.—On the trial of an indictment for an attempt to procure the miscarriage of a certain woman, whereof she died, a motion to dismiss the indictment for the reason that there was a variance between an allegation therein and the proof is rightly overruled, if it cannot be held that there was a variance as matter of law, and the question of fact as to whether there was one was submitted to the jury under instructions to which no exception was taken. *Com. v Noble*, 165 Mass 13, 42 NE 328.

Instruction as to noxious thing.—Where, upon the trial of an indictment under the instant section, the trial judge instructed the jury that the word "noxious" meant "hurtful, harmful, injurious, destructive, unwholesome; and if a thing used has any of those characteristics, then it is contrary to the law as set out in § 19," it was held that there was no error in the further instruction that "it is not necessary to prove the names of medicines used or that such is noxious in the sense that it is used in the statute." *Com. v Goldenberg*, 338 Mass 377, 155 NE2d 187, 70 ALR2d 814.

§ 20. Penalty for Advertising, etc., Notice, etc., of Means to Procure Abortion.

Except as provided in section twenty-one A, whoever knowingly advertises, prints, publishes, distributes or circulates, or knowingly causes to be advertised, printed, published, distributed or circulated,

any pamphlet, printed paper, book, newspaper, notice, advertisement or reference containing words or language giving or conveying any notice, hint or reference to any person, or to the name of any person, real or fictitious, from whom, or to any place, house, shop or office where any poison, drug, mixture, preparation, medicine or noxious thing, or any instrument or means whatever, or any advice, direction, information or knowledge may be obtained for the purpose of causing or procuring the miscarriage of a woman pregnant with child or of preventing, or which is represented as intended to prevent, pregnancy shall be punished by imprisonment in the state prison for not more than three years or in jail for not more than two and one half years or by a fine of not more than one thousand dollars. (1847, 83; GS 165, § 10; PS 207, § 10; RL 212, § 16; 1905, 316; 1918, 257, § 464; 1919, 5; 1920, 2; 1966, 265, § 2.)

Editorial Note—

The 1966 amendment inserted at the beginning of this section the words "Except as provided in section twenty-one A".

Total Client-Service Library® References—

1 Am Jur 2d, Abortion § 12.

Law Review References—

Note, Prohibition of sterilization: hospital prerogative or negative pregnant? 54 Boston U L Rev 828, July, 1974.

CASE NOTES

Section is constitutional.—The statutes under this and §§ 21 and 28, contravene no provision of the constitution and each of them is a proper exercise of one of the most obvious and necessary branches of the police power. *Com. v Allison*, 227 Mass 57, 116 NE 265.

The advertising of contraceptive devices or drugs meant for the prevention of pregnancy is prohibited by this section. 1965 Ops Atty Gen 61.

An indictment charging an offense in the language of this section is sufficient. *Com. v Allison*, 227 Mass 57, 116 NE 265.

Allegation of offense in words of statute sufficient.—An indictment under this section, charging the defendant with knowingly distributing and circulating a printed paper conveying notice of a place where directions, information and knowledge might be obtained for the purpose

of causing and procuring the miscarriage of women pregnant with child, is sufficient under §§ 17 and 29 of c 277, if the crime is set forth in the words used in the statutes with a general averment that the defendant committed the act, and no further averment of a guilty knowledge of the contents of the paper is necessary. *Com. v Hartford*, 193 Mass 464, 79 NE 784.

Question whether card containing criminal information was delivered with intent is for jury.—At the trial of an indictment under this section, for knowingly distributing and circulating a card conveying notice of a place where directions and information might be obtained for the purpose of causing or procuring the miscarriage of a woman pregnant with child, where it appears that the card described in the indictment was given by the defendant to a witness for the commonwealth, who was a police officer in

disguise, in response to an as to treatment for a pro the evidence of the delivery none the less admissible l procured by lying and dec of the witness, and it is a q jury whether the card was untarily with a criminal pi Hartford, 193 Mass 464, 79

Sections 20, 21 and 21A insofar as applied to unmm —§§ 20, 21 and 21A are insofar as they prohibit a sician from administering to or prescribing them persons and as they prohibit pharmacist from filling pi contraceptives for unmarr cause the regulation of the lives of single persons in or

§ 21. Other Offen

Except as provided gives away, exhibits, ment or other article medicine, instrument ception or for causin writes, prints, or ca book, pamphlet, adv where, how, of who chased or obtained, u be punished by impr five years or in jail c and one half years of than one thousand § 26; 1918, 257, § 46

Editorial Note—

The 1966 amendment as provided in section twe

Total Client-Service Lit

12 Am Jur 2d, Birth C 50 Am Jur 2d, Lewdne

Law Review References

Note, Parental consent controversy. 88 Harvard

§ 20

disguise, in response to an inquiry by him as to treatment for a proposed patient, the evidence of the delivery of the card is none the less admissible because it was procured by lying and deceit on the part of the witness, and it is a question for the jury whether the card was delivered voluntarily with a criminal purpose. *Com. v Hartford*, 193 Mass 464, 79 NE 784.

Sections 20, 21 and 21A constitutional insofar as applied to unmarried persons. — §§ 20, 21 and 21A are constitutional insofar as they prohibit a registered physician from administering contraceptives to or prescribing them for unmarried persons and as they prohibit a registered pharmacist from filling prescriptions for contraceptives for unmarried persons because the regulation of the private sexual lives of single persons in order to discour-

age extramarital relationships and to protect marital fidelity is a legitimate subject of State concern, and such regulation does not infringe upon constitutionally protected individual rights. *Sturgis v Atty. Gen.* (1970) 358 Mass 37, 260 NE2d 687.

A state statute making it a misdemeanor, by sale or circulation of any publication, to encourage or prompt the procuring of an abortion, unconstitutionally infringes upon the First Amendment rights of free speech and press of a newspaper editor who is prosecuted under that statute for publishing an advertisement of an out-of-state organization which offers services relating to obtaining legal abortions in the state where the organization is located. *Bigelow v Virginia* (1975) 421 US 809, 44 L Ed 2d 600, 95 S Ct 2222.

§ 21. Other Offenses against Decency.

Except as provided in section twenty-one A, whoever sells, lends, gives away, exhibits, or offers to sell, lend or give away an instrument or other article intended to be used for self-abuse, or any drug, medicine, instrument or article whatever for the prevention of conception or for causing unlawful abortion, or advertises the same, or writes, prints, or causes to be written or printed a card, circular, book, pamphlet, advertisement or notice of any kind stating when, where, how, of whom or by what means such article can be purchased or obtained, or manufactures or makes any such article shall be punished by imprisonment in the state prison for not more than five years or in jail or the house of correction for not more than two and one half years or by a fine of not less than one hundred nor more than one thousand dollars. (1879, 159, § 1; PS 207, § 17; RL 212, § 26; 1918, 257, § 464; 1919, 5; 1920, 2; 1966, 265, § 3.)

Editorial Note—

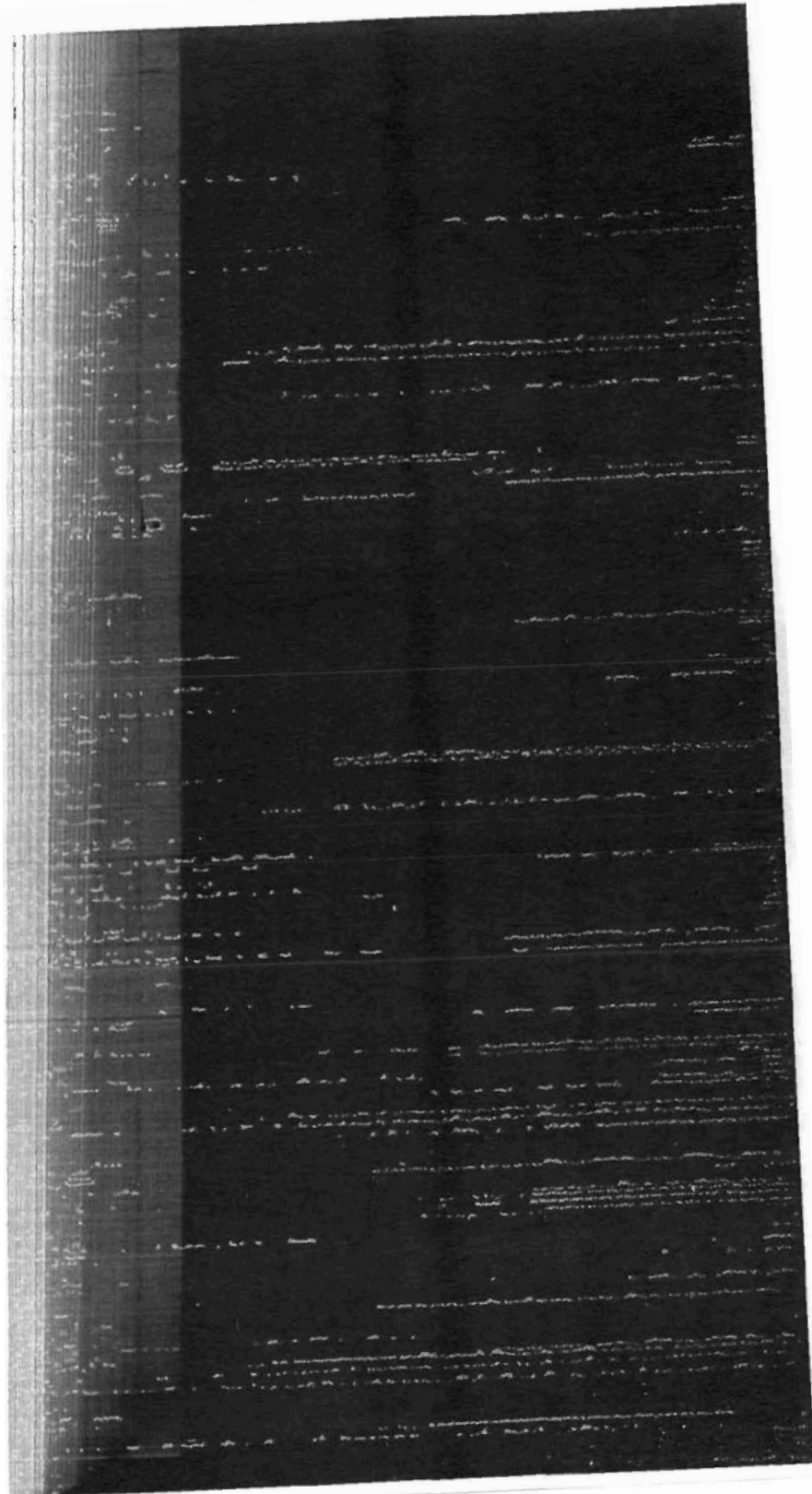
The 1966 amendment inserted at the beginning of this section the words "Except as provided in section twenty-one A".

Total Client-Service Library® References—

- 12 Am Jur 2d, Birth Control §§ 4-6.
- 50 Am Jur 2d, Lewdness, Indecency, and Obscenity §§ 1-3.

Law Review References—

Note, Parental consent requirements and privacy rights of minors: the contraceptive controversy. 88 Harvard L Rev 1001, March, 1975.



CASE NOTES

1. In general
2. Constitutionality.
3. Elements of crime.
4. Evidence; sufficiency.

1. In general

The inference seems necessary that the moral and social wrongs arising from the prevention of conception appeared to the general court so threatening in 1879, when this section was originally enacted, that absolute and unconditional prohibition against the sale, gift, or loan of contraceptive drugs, medicines, or articles for that end was necessary to meet the conditions. *Commonwealth v Gardner* (1938) 300 Mass 372, 15 NE2d 222, app dismd 305 US 559, 83 L Ed 353, 59 S Ct 90 and (ovrld on other grounds *Commonwealth v Baird* 355 Mass 746, 247 NE2d 574, cert den 396 US 1029, 24 L Ed 2d 524, 90 S Ct 580).

The advertising of contraceptive devices or drugs meant for the prevention of pregnancy is prohibited by this section. 1965 Ops Atty Gen 61.

Preservation of life or health.—In *Commonwealth v Gardner* (1938) 300 Mass 372, 15 NE2d 222, app dismd 305 US 559, 83 L Ed 353, 59 S Ct 90 and (ovrld *Commonwealth v Baird* 355 Mass 746, 247 NE2d 574, cert den 396 US 1029, 24 L Ed 2d 524, 90 S Ct 580), the contention that this section does not apply to drugs, medicines, instruments, or articles for the prevention of conception when they are intended for such use only upon prescription by a duly qualified physician for the preservation of life or health according to sound and generally accepted medical practices, and that, otherwise, the section is unconstitutional under both the state and the federal constitutions, was not sustained.

The section does not purport to prohibit the giving of advice, discussing or lecturing on the subject of contraceptives. *Commonwealth v Baird* (1969) 355 Mass 746, 247 NE2d 574, cert den 396 US 1029, 24 L Ed 2d 524, 90 S Ct 580. To same effect, see *Baird v Eisenstadt* (1970)

(CA1 Mass) 429 F2d 1398, affd 405 US 438, 31 L Ed 2d 349, 92 S Ct 1029.

The purpose of state legislation restricting the distribution of contraceptives is not to promote marital fidelity, nor is it to deter extramarital sexual relations, where the legislation permits contraceptives to be made available to married persons without regard to whether they are living with their spouses or the uses to which the contraceptives are to be put. *Eisenstadt v Baird* (1972) 405 US 438, 31 L Ed 2d 349, 92 S Ct 1029.

The exception in § 21 referring to § 21A created by the 1966 amendment which also inserted § 21A was brought about by the decision in *Griswold v Connecticut* (1965) 381 US 479, 14 L Ed 2d 510, 85 S Ct 1678, which held unconstitutional a statute prohibiting the use of contraceptives and the giving of advice on the subject insofar as the statute applied to married persons. *Commonwealth v Baird* (1969) 355 Mass 746, 247 NE2d 574, cert den 396 US 1029, 24 L Ed 2d 524, 90 S Ct 580. To same effect, see *Baird v Eisenstadt* (1970) (CA1 Mass) 429 F2d 1398, affd 405 US 438, 31 L Ed 2d 349, 92 S Ct 1029.

2. Constitutionality

Section constitutional.—This section is not violative of the constitution and is within the most obvious and necessary branches of the police power. *Commonwealth v Allison* (1917) 227 Mass 57, 116 NE 265.

Sections 20, 21 and 21A constitutional insofar as applied to unmarried persons. —§§ 20, 21 and 21A are constitutional insofar as they prohibit a registered physician from administering contraceptives to or prescribing them for unmarried persons and as they prohibit a registered pharmacist from filling prescriptions for contraceptives for unmarried persons because the regulation of the private sexual lives of single persons in order to discourage extramarital relationships and to protect marital fidelity is a legitimate subject of State concern, and such regulation does not infringe upon constitutionally

protected individual rights. *Sturgis v Atty. Gen.* (1970) 358 Mass 37, 260 NE2d 687.

Prohibition against distribution of contraceptives void.—The provisions of this section forbidding the distribution of contraceptives to unmarried persons bears no real and substantial relation to the public health, safety, morals, or some other phase of the general welfare, does not bear a reasonable relationship to a proper legislative purpose, and is void. *Baird v Eisenstadt* (1970) (CA1 Mass) 429 F2d 1398, affd 405 US 438, 31 L Ed 2d 349, 92 S Ct 1029.

Section constitutional insofar as it prohibits giving away article.—The instant section, insofar as it prohibits the giving away of contraceptive devices, is constitutional as applied to one who gives a lecture concerning contraceptive devices and gives away a contraceptive substance or article at the conclusion of the lecture because the Commonwealth has a legitimate interest in preventing the distribution of contraceptive articles which may have undesirable, if not dangerous, physical consequences and because the giving away of such an article does not come within the free speech protection afforded by the Federal First Amendment to the delivery of the lecture itself. *Commonwealth v Baird* (1969) 355 Mass 746, 247 NE2d 574, cert den 396 US 1029, 24 L Ed 2d 524, 90 S Ct 580.

Partial unconstitutionality of section relative to exhibition of articles.—The instant section insofar as it prohibits the exhibiting of contraceptive devices is unconstitutional as applied to one who gives a lecture concerning contraceptive devices and exhibits contraceptive devices as incidental to, and as part of, the lecture because the delivery of the lecture would be an exercise of free speech within the protection of the Federal First Amendment and because the display of the devices was essential to a graphic representation of the subject of the lecture. *Commonwealth v Baird* (1969) 355 Mass 746, 247 NE2d 574, cert den 396 US 1029, 24 L Ed 2d 524, 90 S Ct 580. To same effect, see *Baird v Eisenstadt* (1970) (CA1 Mass) 429 F2d 1398, affd 405 US 438, 31 L Ed 2d 349, 92 S Ct 1029.

Fact that instant section is in part unconstitutional does not require that remainder of section be declared unconstitutional.—See *Commonwealth v Baird* (1969) 355 Mass 746, 247 NE2d 574, cert den 396 US 1029, 24 L Ed 2d 524, 90 S Ct 580. To same effect, see *Baird v Eisenstadt* (1970, CA1 Mass) 429 F2d 1398, affd 405 US 438, 31 L Ed 2d 349, 92 S Ct 1029.

GL c. 272, § 21, by providing dissimilar treatment for married and unmarried persons who are similarly situated violates the equal protection clause of the Fourteenth Amendment, since there is no ground of difference which rationally explains the different treatment accorded married and unmarried persons. *Eisenstadt v Baird* (1972) 405 US 438, 31 L Ed 2d 349, 92 S Ct 1029.

If GL c. 272, § 21 is intended as a health measure, it is overbroad with respect to married persons, since not all contraceptives are potentially dangerous. *Eisenstadt v Baird* (1972) 405 US 438, 31 L Ed 2d 349, 92 S Ct 1029.

GL c. 272, § 21, cannot be sustained simply as a prohibition on contraception, since, whatever may be the rights of the individual to access to contraceptives, the rights must be the same for married persons and unmarried persons, and if the distribution of contraceptives to married persons cannot constitutionally be prohibited, a ban on distribution to unmarried persons would be equally impermissible, and, if there is no bar to a prohibition on the distribution of contraceptives, the state may not, consistently with the equal protection clause, outlaw distribution to unmarried but not to married persons, since in each case the evil as perceived by the state would be identical. *Eisenstadt v Baird* (1972) 405 US 438, 31 L Ed 2d 349, 92 S Ct 1029.

Constitutionality with respect to dissimilar treatment for married and unmarried persons.—The Massachusetts statutory provisions making it a felony for anyone to give away a drug, medicine, instrument, or article for the prevention of conception except in the case of a registered physician administering or prescribing it for a married person or an

active registered pharmacist furnishing it to a married person upon presentation of a registered physician's prescription, by providing dissimilar treatment for married and unmarried persons similarly situated violate the equal protection clause of the Fourteenth Amendment; such provisions cannot be upheld as a deterrent to fornication, or as a health measure, or as simply a prohibition on contraception. *Eisenstadt v Baird*, 405 US 438, 31 L. Ed. 2d 349, 92 S. Ct 1029.

3. Elements of crime

Article for illegal use.—The word "for" refers to the intended purpose in the mind of the seller, and that the articles themselves, being capable of a lawful use as well as an unlawful one, cannot be declared articles "for" the unlawful use without proof that in the particular instance they were sold with a view to unlawful use, or at least that the seller knew that an unlawful use was intended by the buyer. *Commonwealth v Corbett* (1940) 307 Mass 7, 29 NE2d 151.

A conviction under this section was denied where articles sold by registered pharmacist were not exclusively either "for" the prevention of conception or "for" the prevention of disease. The package sold was marked "Sold for prevention of disease." The buyer was a police officer, who bought the articles to hold as evidence, and not to use for any other purpose. The pharmacist did not know to what use the buyer intended to put them and there was no evidence that the sale was made with a view to use for any unlawful purpose. *Commonwealth v Corbett* (1940) 307 Mass 7, 29 NE2d 151.

4. Evidence; sufficiency

Sufficiency of evidence.—In *Commonwealth v Goldberg* (1944) 316 Mass 563, 55 NE2d 951, it was held that the evidence warranted a finding that the defendant advertised condoms for the prevention of conception, in violation of this section.

§ 21A. Prescription and Furnishing of Contraceptives to Married Women.

A registered physician may administer to or prescribe for any married person drugs or articles intended for the prevention of pregnancy or conception. A registered pharmacist actually engaged in the business of pharmacy may furnish such drugs or articles to any married person presenting a prescription from a registered physician.

A public health agency, a registered nurse, or a maternity health clinic operated by or in an accredited hospital may furnish information to any married person as to where professional advice regarding such drugs or articles may be lawfully obtained.

This section shall not be construed as affecting the provisions of sections twenty and twenty-one relative to prohibition of advertising of drugs or articles intended for the prevention of pregnancy or conception; nor shall this section be construed so as to permit the sale or dispensing of such drugs or articles by means of any vending machine or similar device. (1966, 265, § 1.)

ALR Annotations—

Legality of voluntary nontherapeutic sterilization. 35 ALR3d 1444.

Law Re
Note,
controv
Note,
Boston

The
§ 21A
which
about b
necticut
510, 85
tional
contrac
on the
plied to
v Baird
574, ce
524, 90
Baird v
F2d 13
349, 92

Sectio
insofar
§§ 20, 2
far as t
from a
prescrib
and as
cist fro
ceptives
the reg

§ 21.
Patien

No
requir
aborti
ceptiv

No
facilit
or an
health
such
requir

Law Review References—

Note, Parental consent requirements and privacy rights of minors: the contraceptive controversy. 88 Harvard L Rev 1001, March, 1975.

Note, Prohibition of sterilization: hospital prerogative or negative pregnant? 54 Boston U L Rev 828, July, 1974.

CASE NOTES

The exception in § 21 referring to § 21A created by the 1966 amendment which also inserted § 21A was brought about by the decision in *Griswold v Connecticut* (1965) 381 US 479, 14 L Ed 2d 510, 85 S Ct 1678, which held unconstitutional a statute prohibiting the use of contraceptives and the giving of advice on the subject insofar as the statute applied to married persons. *Commonwealth v Baird* (1969) 355 Mass 746, 247 NE2d 574, cert den 396 US 1029, 24 L Ed 2d 524, 90 S Ct 580. To same effect, see *Baird v Eisenstadt* (1970, CA1 Mass) 429 F2d 1398, affd 405 US 438, 31 L Ed 2d 349, 92 S Ct 1029.

Sections 20, 21 and 21A constitutional insofar as applied to unmarried persons— §§ 20, 21 and 21A are constitutional insofar as they prohibit a registered physician from administering contraceptives to or prescribing them for unmarried persons and as they prohibit a registered pharmacist from filling prescriptions for contraceptives for unmarried persons because the regulation of the private sexual lives

of single persons in order to discourage extramarital relationships and to protect marital fidelity is a legitimate subject of State concern, and such regulation does not infringe upon constitutionally protected individual rights. *Sturgis v Atty. Gen.* (1970) 358 Mass 37, 260 NE2d 687.

Constitutionality The Massachusetts statutory provisions making it a felony for anyone to give away a drug, medicine, instrument, or article for the prevention of conception except in the case of a registered physician administering or prescribing it for a married person or an active registered pharmacist furnishing it to a married person presenting a registered physician's prescription, by providing dissimilar treatment for married and unmarried persons similarly situated violate the equal protection clause of the Fourteenth Amendment; such provisions cannot be upheld as a deterrent to fornication, or as a health measure, or as simply a prohibition on contraception. *Eisenstadt v Baird* (1972) 405 US 438, 31 L Ed 2d 349, 92 S Ct 1029.

§ 21B. Privately Controlled Hospitals, etc.; Nonadmission of Patient for Abortion or Sterilization Procedures; Effect.

No privately controlled hospital or other health facility shall be required to admit any patient for the purpose of performing an abortion, performing any sterilization procedure, or receiving contraceptive devices or information.

No privately controlled hospital or other privately controlled health facility shall be required to permit any patient to have an abortion, or any sterilization procedure performed in said hospital or other health facility, or to furnish contraceptive devices or information to such patient, nor shall such a hospital or other health facility be required to furnish any family planning services within or through

LAW LIBRARY OF
UNIVERSITY OF
MICHIGAN
1897

THE
COMPILED LAWS
OF THE
STATE OF MICHIGAN

8105

1897

COMPILED AND ARRANGED, WITH A DIGEST OF SUPREME COURT DECISIONS
AND OTHER ANNOTATIONS, AND PUBLISHED UNDER
AUTHORITY OF ACTS 268 OF 1895
AND 26 OF 1897

BY LEWIS M. MILLER



VOL. III

LANSING, MICH.:
ROBERT SMITH PRINTING CO., STATE PRINTERS AND BINDERS
1899

17
98

NAME Vandenbroek

CARREL 2-65

DUE DATE 05/05/07

OFFENSES AGAINST CHASTITY, ETC

3479

This statute is designed to prohibit the keeping and maintaining of a house in which persons are permitted to frequent for the purpose of unlawful sexual intercourse and to prevent the existence of such places of resort. But a single act of lewdness or prostitution will not constitute the offense prohibited.—People v. Castro, 75 / 133-4. This statute is not aimed merely at unchastity. It is intended to reach only such houses as are sufficiently notorious to have acquired the specific reputation of houses of ill-fame so that they are offensive as nuisances.—People v. Pinkerton, 79 / 112. It is necessary under the statute to show a reputation in the vicinity. The house must be shown to be "resorted to," which means something of common occurrence.—Id., 114-5. The keeping of a

disorderly house is a continuing offense, House of ill-fame and a conviction therefor bars another prosecution for such keeping anterior to the date laid in the first indictment.—People v. Cox, 107 / 435. In a prosecution for keeping a house of ill-fame, the indictment may fix a different date from that in the complaint; and it may charge the offense on a particular day and divers days between that and another day previous.—People v. Russell, 67 N. W. 1093.

SOLICITING: Soliciting a female who is already a prostitute and in a house of ill-fame, is not an offense under this statute—the gravamen of the offense being in soliciting females to enter such a house for the purpose of becoming prostitutes.—People v. Cook, 96 / 253.

(11698) SEC. 11. Whenever the lessee of any dwelling-house shall be convicted, or shall be guilty of the offense mentioned in the preceding section, or of keeping a common gaming house for the purpose of gaming for money or other property, the lease or contract for letting such house, shall, at the option of the lessor, become void, and such lessor shall thereupon have the like remedy to recover the possession, as against a tenant holding over after the expiration of his term.

Lease of house so kept void at option of lessor

C. L. '71, 5366.—Am. 1865, p. 486; App. 7701.—How. 9287. Mar. 8; Eff. June 22; Act 226.—C. L. '71,

(11699) SEC. 12. If any person shall let any dwelling-house, knowing that the lessee intends to use it as a house of ill-fame or place of resort for the purpose of prostitution and lewdness, or for the purpose of gambling for money or other property, or shall knowingly permit such lessee to use the same for such purpose, or shall receive any rent for any dwelling, house, room or apartment which is used as a house of ill-fame or place of resort for prostitutes, or for the purpose of prostitution and lewdness, or for the purpose of gambling for money or other property, having reasonable cause to believe such house, room, or apartment is used for any such purpose, he shall be punished by fine not exceeding three hundred dollars, or imprisonment in the county jail not more than six months: Provided, That no person shall be liable for receiving rent as aforesaid for any period prior to the time when he shall have reasonable cause to believe that such house, room, or apartment is used for any such purpose.

Penalty for letting house, knowing that it is to be used for purposes of prostitution, etc

C. L. '71, 5367.—Am. 1865, p. 486; App. C. L. '71, 7702.—How. 9288. Mar. 8; Eff. June 22; Act 226.—Am. 1873. People v. Saunders, 29 / 289. C. S. App. Apr. 4; Eff. July 31; Act 77.—

(11700) SEC. 13. If any person shall import, print, publish, sell or distribute any book, pamphlet, ballad, printed paper, or other thing, containing obscene language, or obscene prints, pictures, figures or descriptions, manifestly tending to the corruption of the morals of the youth, 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 or other thing, either for the purpose of sale, exhibition, loan or circulation, 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 more than one year, or by fine not exceeding one thousand dollars.

Obscene books or prints 17 Mass., 335

C. L. '71, 5368.—C. L. '71, 7703.—How. 9289. An indictment for publishing a lewd and obscene paper, it is not necessary to set forth the obscene matter relied upon for conviction.—People v. Girardin, 1 / 90. A negative is a picture, within the meaning of this section.—People v. Ketchum, 103 / 443.

7 575

Search warrant may issue for same; de-

(11701) SEC. 14. Any justice of the peace may issue a search warrant, for the purpose of searching for any such obscene books, pamphlets, ballads, printed papers or other things mentioned in the preceding section, in the manner provided by law in cases of property stolen or embezzled; and all such things, which shall be found by any officer, in executing a search warrant, or which shall be produced or brought into court, shall be safely kept so long as shall be necessary for the purpose of being used as evidence in any case, and as soon as may be afterwards, shall be destroyed by order of the court before whom the same shall be brought.

C. L. '57, 5869.—C. L. '71, 7704.—How, 9290.

Act 138, 1895, p. 153; App. June 5; Eff. Sept. 19

An Act to prevent the sale or otherwise DISPOSING OF OBSCENE, IMMORAL, AND INDECENT BOOKS, PAMPHLETS, PAPERS, PRINTS, PICTURES, WRITINGS, and other objectionable news.

What to constitute a misdemeanor under this act

(11702) SECTION 1. The People of the State of Michigan enact, that any person who sells, lends, gives away, or offers to sell, lend, or give away, or shows, or has in [his] possession with intent to sell, lend, or give away, or to show or advertise, or who offers to loan, give, sell, or distribute any obscene, immoral, lewd, lascivious, or indecent book, magazine, pamphlet, newspaper, writing, paper, print picture, drawing, publication, or photograph, or any article or instrument of indecent or immoral use, or who designs, copies, draws, photographs, prints, utters, publishes, or otherwise prepares such a book, picture, drawing, paper, or other article or thing, or writes or prints, or causes to be written or printed, a circular, advertisement, or notice of any kind, or gives information orally, stating when, where, how, or of whom, or by what process such obscene article or thing can be purchased or obtained: or second, any person who sells, lends, gives away, or shows, or has in his possession with intent to sell, or give away, or to show, advertise, or otherwise offers for loan, gift, or distribution, any book, pamphlet, magazine, newspaper, or other printed paper, devoted to the publication or principally made up of criminal news, police reports, or accounts of criminal deeds, or pictures and stories of deeds of bloodshed, lust, or crime; or third, any person who in any manner hires, uses, or employs any minor child to sell, or give away, or in any manner to distribute, or who having the care, custody, or control of any minor child, permits such child to sell, give away, or in any other manner to distribute any book, magazine, pamphlet, newspaper, story paper, writing, paper, picture, drawing, photograph, or other article or matter coming within the descriptions of articles and matter mentioned in the first and second subdivisions of this section or any of them, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by imprisonment in the county jail not more than three months, or by fine not exceeding one hundred dollars, or by both such fine and imprisonment in the discretion of the court.

How. 9290a.

Duty of municipal courts and justices as to warrants for seizure

(11703) SEC. 2. All municipal courts and justices of the peace, on complaint supported by oath or affirmation, that any person has in his possession or control any indecent books, papers, articles, and things described in this act, shall issue a warrant directed to the sheriff of the county, within which such complaint shall be made,

to any const...
arresting him, t...
possession of, su...
things, and said...
of the person or...
sions of this...
upon whose com...
er shall, after...
be destroyed...
shall cause to b...
destruction...
How. 9290b.

(11704) SEC. 1...
guilty within w...
be incestuous...
shall con...
punished by...
fteen years, or...
C. L. '57, 5870.—C. L...
INCEST: This cri...
People v. Bur...
means, in all...
between pers...
of consanguin...
People, 6 / 288...
the statute are in...
yet one part...
the relationship...
all knowledge of it...
presume that the...
make the offense...
that one could n...
without the other.—I...
incest can be...
concurrent act of...
acts; and the...
of the one is...
completion of the...
People v. Je...
People, 39 /...
135 / 29. If con

(11705) SEC. 16...
red detestable cr...
y beast, shall b...
ore than fifteen

C. L. '57, 5871.—C. L...
People v. Graney, 9.

(11706) SEC. 17...
name of God, by...
shall be punished...
months, or by

C. L. '57, 5872.—C. L.

(11707) SEC. 18...
tion, shall pro...
ed, Jesus Christ...
before any justice...
dollars, nor l...
436

NAME VandenBroek

CARREL 2-65

DUE DATE 05/05/07

OFFENSES AGAINST CHASTITY, ETC

3481

to any constable, marshal, or police officer within said county directing him, them, or any of them to search for, seize, and take possession of, such obscene and indecent books, papers, articles, and things, and said court or justice of the peace shall, upon conviction of the person or persons offending, under the law, any of the provisions of this act, forthwith in the presence of the person or persons whose complaint the said seizure or arrest is made, if he or they shall, after notice thereof elect to be present, destroy, or cause to be destroyed, the aforesaid books, papers, articles or things, and shall cause to be entered upon the records of his court the fact of such destruction.

Confiscation of property seized

How. 9290b.

INCEST

R. S. '46, ch. 155

(11704) SEC. 15. All persons 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 fifteen years, or in the county jail not more than one year.

Incest

C. L. '37, 5370.—C. L. '71, 7705.—How. 9291. INCEST: This crime is purely statutory.—People v. Burwell, 106 / 31. Incest means, in all cases, illicit intercourse between persons within the degrees of consanguinity within which marriages are forbidden by law.—Danahy v. People, 6 / 395. Though the words of the statute are in the form of a joint offense, yet one part might be ignorant of the relationship, while the other had knowledge of it. Hence it is not fair to presume that the legislature intended to make the offense necessarily joint, so that one could not be legally guilty of the other.—Delany v. People, 10 / 318. Incest can be committed only by a concurrent act of two persons of opposite sexes; and the assent or concurrence of the one is as essential to the commission of the offense as that of the other.—People v. Jenness, 5 / 321; DeWalt v. People, 39 / 125; People v. Burwell, 106 / 31. If committed by force or

upon a child under the age of consent, it is rape.—DeGroat v. People, 39 / 125. Sexual intercourse within the prohibited degrees of consanguinity is equally incestuous, whether the parties or their parents are legitimate or illegitimate, or of the whole or the half blood.—People v. Jenness, 5 / 318. INFORMATION: The information need not aver the defendants to be "within the degrees," etc., when such actual relationship is averred.—People v. Hicks, 10 / 325. An information for incest, which charges the respondent, a married man, with sexual intercourse with his daughter, need not allege that he committed the crime of adultery; nor is it defective for charging him with the crime of fornication in so doing.—People v. Cease, 50 / 576. EVIDENCE: Defendant's admission of the relationship is sufficient.—People v. Jenness, 5 / 305. Proof of other acts of intercourse.—People v. Jenness, 5 / 305; People v. Cease, 50 / 576.

(11705) SEC. 16. Every person who shall commit the abominable and detestable crime against nature, either with mankind or with any beast, shall be punished by imprisonment in the state prison not more than fifteen years.

Crime against nature

C. L. '37, 5371.—C. L. '71, 7706.—How. 9292. necessary to the consummation of this offense.—People v. Hodgkin, 94 / 27. People v. Graney, 91 / 646. Emission is

(11706) SEC. 17. If any person shall willfully blaspheme the holy name of God, by cursing, or contumeliously reproaching God, he shall be punished by imprisonment in the county jail not more than six months, or by fine not exceeding fifty dollars.

Blasphemy 20 Pick., 209 Thatcher's C. C., 315

C. L. '37, 5372.—C. L. '71, 7707.—How. 9293.

(11707) SEC. 18. If any person who has arrived at the age of discretion, shall profanely curse or damn, or swear by the name of God, Jesus Christ, or the Holy Ghost, he shall, on conviction thereof before any justice of the peace, be punished by fine not exceeding five dollars, nor less than one dollar; but no such prosecution shall

Cursing and swearing

or in any street, road, or other public place, any sign, picture, writing, or other representation of murder, assassination, stabbing, fighting or of any personal violence, or of the commission of any crime, or any representation of the human form in an attitude or dress which would be indecent in the case of a living person, if such person so appeared in any public street, square or highway.

How. 9314f.—Am. 1889, p. 169; App. June 15; Eff. Oct. 2; Act 18.

Unlawful to convey to, employ in, etc., house of ill-fame, etc., female of seventeen or under

(11725) SEC. 2. That it shall be unlawful for any person or persons, for any purpose whatever, to take or convey to, or to employ, receive, detain or suffer to remain in any house of prostitution, house of ill-fame, bawdy-house, house of assignation, or in any house or place for the resort of prostitutes or other disorderly persons, any female of the age of seventeen years or under.

How. 9314g.

Penalty for violation

(11726) SEC. 3. Any person who shall violate any of the provisions of this act shall upon conviction thereof be punished by a fine of not more than one hundred dollars or by imprisonment in the county jail not exceeding ninety days, and in case of the non-payment of such fine when imposed, the court may make a further sentence that the offender be imprisoned in the county jail for a definite period of time not exceeding ninety days, unless said fine shall be sooner paid.

How. 9314h.

Act 104, 1889, p. 176; App. Apr. 3; July 5

An Act to prohibit the PUBLICATION OF THE VIRTUES OF PATENT, and other simple and compound MEDICINES in the State of Michigan, IN LANGUAGE OF IMMORAL TENDENCY, or of ambiguous character.

Prohibiting the printing, etc., of virtues of medicine in immoral language

(11727) SECTION 1. The People of the State of Michigan enact, That no person or persons, their agents or clerks, shall print, stamp, or engrave on any cards, bills, or posters for public display or advertisement, or publish in any newspaper in the state of Michigan, the virtues or applications and its or their effects of any such patent and other simple or compound medicine, in language of immoral tendency or of ambiguous character. Any person or persons, their agents or clerks, who shall fail to comply with the requirements herein expressed, shall be deemed guilty of a misdemeanor, and shall be liable to a fine not less than fifty nor more than one hundred dollars, or to imprisonment in the county jail not exceeding three months, or both, for each and every offense. Any proprietor or proprietress of any newspaper published in the state of Michigan, who shall permit any such publications to appear in consecutive issues, each and every day shall be deemed a new and separate offense, and shall be liable to a penalty as herein expressed.

C. L. T. 774.—How. 9310

Each appearance of such publication a new offense

Penalty for publishing, etc., circulars, etc

(11728) SEC. 2. The publication or sale in this state of any circular, pamphlet, or book containing recipes or prescriptions in indecent or obscene language for the cure of chronic female complaints or private diseases, or recipes or prescriptions for drops, pills, tinctures, or other compounds designed to prevent conception, or tending to produce miscarriage or abortion is hereby prohibited; and for each copy thereof, so published and sold, containing such recipes or prescriptions, the publisher and seller shall

be deemed guilty penalties provided in section 7725.—How. 9310

Act to prevent the DESIGNING

(11729) SECTION 1. Any person shall in any newspaper, advertise, publish, sell, or combine for the purpose of the purchase of

How. 9311

(11730) SEC. 2. A person expressly prepared for the written plan of the city, or for the druggist or for that purpose, the kind and residence of the person

(11731) SEC. 3. Any person shall upon conviction be punished by a fine not exceeding twenty-five dollars or by imprisonment in the county jail not exceeding thirty days, unless said fine shall be sooner paid.

How. 9314

Act to prohibit, etc.

(11732) SECTION 1. Any person who shall print, stamp, or engrave on any cards, bills, or posters for public display or advertisement, or publish in any newspaper in the state of Michigan, the virtues or applications and its or their effects of any such patent and other simple or compound medicine, in language of immoral tendency or of ambiguous character, shall be deemed guilty of a misdemeanor, and shall be liable to a fine not less than fifty nor more than one hundred dollars, or to imprisonment in the county jail not exceeding three months, or both, for each and every offense.

C. L. T. 774.—How. 9310

PRIZE FIGHT: What is a question in common use of the word "prize." To constitute a prize fight there must be a contest of reward to be given or competition, either between the contestant or to be given; and there must be a contestant.—People v. ...

(11733) SEC. 2. Any person who shall carry any person or persons to a prize fight, or who shall aid or abet in the same, shall be deemed an aider and abettor.

C. L. T. 774.—How. 9310

OFFENSES AGAINST CHASTITY, ETC

3487

ASTITY, ETC

place, any sign, picture, print, assassination, stabbing, fight, the commission of any crime, form in an attitude or dress, a living person, if such person square or highway.

Act 148, 1873, p. 185; App. Apr. 22; Eff. July 5

ful for any person or persons, convey to, or to employ, room, house of prostitution, house of prostitution, or in any house of other disorderly persons, any under.

all violate any of the provisions thereof be punished by a fine or by imprisonment in the county jail for a definite term, and in case of the non-payment may make a further term in the county jail for a definite term, unless said fine shall be

be deemed guilty of a misdemeanor, and shall be liable to the penalties provided for a violation of the preceding section.

Act 148, 1873, p. 185; App. Apr. 22; Eff. July 5

Act to prevent the advertisement and sale of DRUGS OR MEDICINES DESIGNED TO PRODUCE CRIMINAL ABORTION.

Act 138, 1873, p. 185; App. Apr. 22; Eff. July 5

(1720) SECTION 1. The People of the State of Michigan enact, That any person shall in any manner, except as hereinafter provided, advertise, publish, sell, or publicly expose for sale any pills, powders, drugs, or combination of drugs, designed expressly for the use of females for the purpose of procuring an abortion.

Sale of drugs for purpose of procuring abortions prohibited

(1730) SEC. 2. Any drug or medicine known to be designed and expressly prepared for producing an abortion, shall only be sold upon a written prescription of an established practicing physician of the city, village, or township in which the sale is made; and the druggist or dealer selling the same shall, in a book provided for that purpose, register the name of the purchaser, the date of sale, the kind and quantity of the medicine sold, and the name and residence of the physician prescribing the same.

When drug designed for procuring abortions may be sold

Person selling to keep record of sales, etc

(1731) SEC. 3. Any person violating any of the provisions of this act shall upon conviction thereof, be punished by a fine of not less than twenty-five nor more than one hundred dollars, in the discretion of the court.

Penalty

THE VIRTUES OF PATENT MEDICINES in the State of Michigan IN any or of ambiguous character.

State of Michigan enact, That any person who shall hereafter be a party to, or engage in a prize fight, or any other fight in the nature of a prize fight, in this state, who shall aid or abet therein, shall, on conviction thereof, be punished by imprisonment in the state prison for a term not exceeding five years, nor less than one year, or by a fine not exceeding five hundred dollars, nor less than two hundred dollars, or by both fine and imprisonment, at the discretion of the court.

any person who shall hereafter be a party to, or engage in a prize fight, or any other fight in the nature of a prize fight, in this state, who shall aid or abet therein, shall, on conviction thereof, be punished by imprisonment in the state prison for a term not exceeding five years, nor less than one year, or by a fine not exceeding five hundred dollars, nor less than two hundred dollars, or by both fine and imprisonment, at the discretion of the court.

Act to prohibit, discourage, and punish PRIZE FIGHTING within the State of Michigan.

Act 46, 1869, p. 95; App. Mar. 22; Eff. July 5

(1732) SECTION 1. The People of the State of Michigan enact, That any person who shall hereafter be a party to, or engage in a prize fight, or any other fight in the nature of a prize fight, in this state, who shall aid or abet therein, shall, on conviction thereof, be punished by imprisonment in the state prison for a term not exceeding five years, nor less than one year, or by a fine not exceeding five hundred dollars, nor less than two hundred dollars, or by both fine and imprisonment, at the discretion of the court.

Penalty for engaging in

PRIZE FIGHT: What constitutes a prize fight is a question of law; but it is a term in common use and the very employment of the word indicates what is meant. To constitute prize fighting under this statute there must be an expectation of reward to be gained by the contest or competition, either to be won by the contestant or to be otherwise secured; and there must be an intent to inflict some degree of bodily harm upon the contestant.—People v. Taylor, 96 / 578-80.

other fight in the nature of a prize fight," cannot be treated as defining any offense other than a prize fight. The elements which go to constitute such a fight are not defined in the statute and there is no source to which we can go to ascertain the legislative intent. But one offense, therefore, is defined in the statute.—People v. Taylor, 96 / 578-9.

INFORMATION: It is sufficient, in an information for "being a party to or engaging in a prize fight," to follow the language of the statute in charging the offense.—People v. Taylor, 96 / 576.

OTHER FIGHT: The words, "or any

(1733) SEC. 2. All persons who shall engage in the training of any party to a prize fight, or shall assist therein, or who shall knowingly carry any person or persons to or from a prize fight, shall be deemed aiders and abettors, within the meaning of the preceding section.

For training parties, or carrying to or from prize fight

Act 148, 1873, p. 185; App. Apr. 22; Eff. July 5

Michigan Laws

THE

COMPILED LAWS

of the

STATE OF MICHIGAN

1929

COMPILED, ARRANGED AND ANNOTATED UNDER ACT 389 OF 1927
AS AMENDED BY ACT 63 OF 1929

WILBER M. BRUCKER, Attorney General,
OSCAR A. RIOPELLE, Detroit, Michigan,
JOHN KAMINSKI, Detroit, Michigan,
Commissioners.



VOLUME III

1930

LANSING
FRANKLIN DEKLEINE COMPANY
PRINTERS AND BINDERS
1930

NAME VCARREL

5877 DEATH OF BASTARD; HOUSE OF ILL-FAME; OBSCENE PRINTS § 16826

Proof of character of the house from reputation and fact that prostitutes and lewd persons resorted there. O'Brien v. People, 23 Mich. 213; People v. Saunders, 29 Mich. 263. This statute is designed to prohibit the keeping and maintaining of a house which persons are permitted to frequent for purpose of unlawful sexual intercourse and to prevent the existence of such places of resort. But a single act of lewdness or prostitution will not constitute the offense prohibited. People v. Gastro, 75 Mich. 127, 133, N. W. 937. This statute is not aimed at unchastity. It is intended to reach only such houses as are sufficiently notorious to have acquired the specific reputation of houses of ill-fame, so that they are offensive as nuisances. People v. Pinkerton, 78 Mich. 110, 112, 44 N. W. 150. It is necessary under the statute to show ill repute in the vicinity. The house must be shown to be resorted to, which means something of common occurrence. People v. Pinkerton, supra. The keeping of a disorderly house is a continuing offense, and a

conviction therefor bars another prosecution for such keeping anterior to date laid in the first indictment. People v. Cox, 107 Mich. 435, 65 N. W. 283. In a prosecution for keeping a house of ill-fame, the indictment may fix a different date from that in the complaint; and it may charge the offense on a particular day and divers days between that and another day previous. People v. Russell, 119 Mich. 46, 67 N. W. 1099.

SOLICITING: Soliciting a female who is already a prostitute and in a house of ill-fame, is not an offense under this statute—the gravamen of the offense being in soliciting females to enter such a house for the purpose of becoming prostitutes. People v. Cook, 96 Mich. 368, 55 N. W. 980.

As to pandering as a criminal offense, see Compilers' § 16862 et seq.

EMPLOYMENT AGENCY: Not to send woman to house of prostitution, see Compilers' § 8002.

16827 House of ill-fame or gaming house; conviction of lessee; effect on lease.

SEC. 11. Whenever the lessee of any dwelling-house shall be convicted, or shall be guilty of the offense mentioned in the preceding section, or of keeping a common gaming house for the purpose of gaming for money or other property, the lease or contract for letting such house, shall, at the option of the lessor, become void, and such lessor shall thereupon have the like remedy to recover the possession, as against a tenant holding over after the expiration of his term.

HISTORY: C. L. '57, 5866;—Am. 1865, p. 496, § 9257;—C. L. '87, 11698;—C. L. '15, 15472. Act 226, Eff. June 22;—C. L. '71, 7701;—How.

16828 Same; leasing with knowledge of use; penalty. **SEC. 12.** If any person shall let any dwelling house, knowing that the lessee intends to use it as a house of ill-fame or place of resort for the purpose of prostitution and lewdness, or for the purpose of gambling for money or other property, or shall knowingly permit such lessee to use the same for such purpose, or shall receive any rent for any dwelling, house, room or apartment which is used as a house of ill-fame or place of resort for prostitutes, or for the purpose of prostitution and lewdness, or for the purpose of gambling for money or other property, having reasonable cause to believe such house, room, or apartment is used for any such purpose, he shall be punished by fine not exceeding three hundred [300] dollars, or imprisonment in the county jail not more than six [6] months: *Provided*, That no person shall be liable for receiving rent as aforesaid for any period prior to the time when he shall have reasonable cause to believe that such house, room, or apartment is used for any such purpose.

HISTORY: C. L. '57, 5867;—Am. 1865, p. 496, Act 226, Eff. June 22;—Am. 1873, p. 89, Act 77, Eff. July 31;—C. L. '71, 7702;—How. 9288;—C. L. '87, 11699;—C. L. '15, 15473.

CONSTRUED: People v. Hoek, 169 Mich. 87, 134 N. W. 1081; People v. Saunders, 29 Mich. 269.

16829 Obscene publication; printing, selling, buying, possessing, circulating; penalty. **SEC. 13.** If any person shall import, print, publish, sell or distribute any book, pamphlet, ballad, printed paper, or other thing, containing obscene language, or obscene prints, pictures, figures or descriptions, manifestly tending to the corruption of the morals of youth, 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 or other thing, either for the purpose of sale, exhibition, loan or circulation, 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 more than one [1] year, or by fine not exceeding one thousand [1,000] dollars.

HISTORY: C. L. '57, 5868;—C. L. '71, 7703;—How. 9289;—C. L. '87, 11700;—C. L. '15, 15474.

See *Commonwealth v. Holmes*, 17 Mass. 330.

OBSCENE PUBLICATIONS: See also Compilers' § 16814.

PICTURES: A negative is a picture within the meaning of this section. People v. Ketchum,

103 Mich. 443, 61 N. W. 776.

INDICTMENT: In an indictment for publishing a bawdy and obscene paper, it is not necessary to set forth the obscene matter relied upon for conviction. People v. Girardin, 1 Mich. 90.

INSTRUCTION: When it was not disputed

that paper was mailed to at least one family; see *People v. Lathers*, 223 Mich. 92, 193 N. W. 903. It is duty of court to construe writings put in evidence, and the general rules relating to giving instructions thereon are applicable to

prosecutions for obscenity; proper for court to instruct jury as to indecent and vulgar meaning of language employed. *People v. Lathers*, supra.

16830 Same; search warrant, seizure, destruction. Sec. 14. Any justice of the peace may issue a search warrant, for the purpose of searching for any such obscene books, pamphlets, ballads, printed papers or other things mentioned in the preceding section, in the manner provided by law in cases of property stolen or embezzled; and all such things, which shall be found by any officer, in executing a search warrant, or which shall be produced or brought into court, shall be safely kept so long as shall be necessary for the purpose of being used as evidence in any case, and as soon as may be afterwards, shall be destroyed by order of the court before whom the same shall be brought.

HISTORY: C. L. '57, 5869;—C. L. '71, 7704;—How. 9290;—C. L. '97, 11701;—C. L. '15, 15475. CITED: *Newberry v. Carpenter*, 107 Mich. 567, 375, 65 N. W. 530.

SEC. 15.

HISTORY: C. L. '57, 5870;—C. L. '71, 7705;—How. 9291;—C. L. '97, 11704;—C. L. '15, 15478;—Rep. 1927, p. 48, Act 30, Imd. Eff. April 13, being Compilers' § 16859, which however contained a saving clause applicable to "proceed-

ings pending". This section dealt with the penalty for incest, and is superseded by Act 36 of 1927, being Compilers' § 16857 to 16859. The old annotations have been used under the present law.

16831 Crime against nature; penalty, proof. Sec. 16. Every person who shall commit the abominable and detestable crime against nature either with mankind or with any animal shall be punished by imprisonment in the state prison not more than fifteen [15] years. In any prosecution under the provisions of this section, it shall not be necessary to prove emission.

HISTORY: C. L. '57, 5871;—C. L. '71, 7706;—How. 9292;—C. L. '97, 11705;—C. L. '15, 15479;—Am. 1923, p. 80, Act 57, Eff. Aug. 30. CONSUMMATION: Emission was necessary to the consummation of this offense before the amendment. *People v. Hodgkin*, 84 Mich. 27, 53 N. W. 794. See *People v. Graney*, 91 Mich. 646, 52 N. W. 66.

16832 Blasphemy; penalty. Sec. 17. If any person shall wilfully blaspheme the holy name of God, by cursing or contumeliously reproaching God, he shall be punished by imprisonment in the county jail not more than six [6] months, or by fine not exceeding fifty [50] dollars.

HISTORY: C. L. '57, 5872;—C. L. '71, 7707;—How. 9293;—C. L. '97, 11706;—C. L. '15, 15480. See *Commonwealth v. Kneeland, Thacher's* Criminal Cases (Mass.) 346; 20 Pick. (37 Mass.) 206.

16833 Cursing and swearing; penalty. Sec. 18. If any person who has arrived at the age of discretion, shall profanely curse or damn, or swear by the name of God, Jesus Christ, or the Holy Ghost, he shall, on conviction thereof before any justice of the peace, be punished by fine not exceeding five [5] dollars, nor less than one [1] dollar; but no such prosecution shall be sustained unless it shall be commenced within five [5] days after the commission of such offence.

HISTORY: C. L. '57, 5873;—C. L. '71, 7708;—How. 9294;—C. L. '97, 11707;—C. L. '15, 15481.

16834 Public disturbance; religious worship; penalty. Sec. 19. Every person who, on the first [1st] day of the week, or at any other time, shall wilfully interrupt or disturb any assembly of people met for the worship of God, within the place of such meeting or out of it, shall, on conviction thereof before any justice of the peace, be punished by imprisonment in the county jail not more than thirty [30] days, or by fine not exceeding fifty [50] dollars.

HISTORY: C. L. '57, 5874;—C. L. '71, 7709;—How. 9295;—C. L. '97, 11708;—C. L. '15, 15482. See *Commonwealth v. Symonds*, 2 Mass. 163. DISTURBING RELIGIOUS WORSHIP: See also Compilers' § 19062 and 16839 et seq. CITED: *Ware v. Branch Cir. Judge*, 75 Mich. 488, 495, 42 N. W. 397.

16835 Same; certain places; penalty. Sec. 20. If any person shall make or excite any disturbance or contention in any tavern, store or grocery, manufacturing establishment, or any other business place or in any street, lane,

alley, highway, pu public meeting wh be deemed guilty (the peace or police dollars and costs more than ninety [cretion of the com HISTORY: C. L. '75 —How. 9296;—Am. 188 Sept. 23;—C. L. '97, 1 Act 211, Eff. Sept. 1; DISTURBANCE UP there was no contenti

16836 Dead bo reward to informa so to do, shall wil body, or the remai or deposited, or sh ing away, or shall dead body of any whenever such mu sary in any proper post-mortem exam thereto, either bef the state prison n thousand [5,000] c to prohibit the dig tific purposes of th itants of this coun institutions or soc land from which s Any person or per: detection and conv entitled to receive : county treasury o certificate of the j and conviction had paid therefor.

HISTORY: C. L. '57 —Am. 1879, p. 151, Ac —How. 9297;—C. L. '97, —Am. 1919, p. 445, Ac Am. 1929, p. 617, Act 25

16837 Tomb, gr removal; penalty. S face, injure or remu thing placed or de curb or other thing tomb, monument, g enclosure for the b cut, break or injure enclosure, the pers five hundred [500] in the county jail)

HISTORY: C. L. '57, —How. 9298;—C. L. '97, DESTRUCTION OF will be against defend portion of fence between etery. *People v. Allen*, W. 468.

5888

PROSTITUTION; SALE OF OBSCENE MATTER

§ 16870

HISTORY: Rep. 1027, p. 50, Act 37, Imd. Eff. April 13. See Constitutionality note preceding section.

CONSTITUTIONALITY: Section making prostitute a competent witness in prosecution

of a person for sharing in proceeds of prostitution, held covered by title of the act. *People v. Sigers*, 217 Mich. 578, 187 N. W. 373.

COMPETENCY OF SPOUSE: For the general rule, see Compilers' § 14271.

Act 231, 1925, p. 339; Eff. Aug. 27.

AN ACT for the repression of prostitution, lewdness and immorality in certain cases.

The People of the State of Michigan enact:

16871 Solicitation of prostitution or immoral act; unlawfulness. SECTION 1. It shall be unlawful for any person to accost, solicit or invite another in any public place, or in or from any building or vehicle, by word, gesture or any other means, to commit prostitution or to do any other lewd or immoral act.

HISTORY: Title Am. 1929, p. 10, Act 4, Eff. Aug. 28.

IRREGULAR ARREST: Irregularity of defendant's arrest, held not to have resulted in her prejudice at trial or entitled her to discharge, nor did it give her right to say that she should not be tried. *People v. Miller*, 235

Mich. 340, 209 N. W. 81.

CROSS-EXAMINATION: Cross-examination of defendant, relative to conviction for other offenses for purpose of impeachment, held not error. *People v. Miller*, 235 Mich. 340, 209 N. W. 81.

16872 Admission of person to house or vehicle for purpose of prostitution; unlawfulness. SEC. 2. It shall be unlawful for any person to receive or admit or offer to receive or admit any person into any place, structure, house, building, or vehicle for the purpose of prostitution, lewdness or assignation, or to knowingly permit any person to remain in any such place for any such purpose.

16873 Aiding or abetting unlawful acts; unlawfulness. SEC. 3. It shall be unlawful for any person to aid, assist or abet another to commit, or offer to commit, any act prohibited by sections one [1] or two [2] of this act.

16874 First, second, subsequent offense; penalties. SEC. 4. Any person adjudged guilty of a violation of this act shall be punished by a fine not exceeding one hundred [100] dollars or by imprisonment in the county jail or in the Detroit house of correction not exceeding ninety [90] days; any person who shall be adjudged guilty a second [2nd] time of a violation of this act, the offense being charged as a second [2nd] offense, shall be punished by a fine not exceeding three hundred [300] dollars or by imprisonment in the county jail or in the Detroit house of correction not more than six [6] months; and any person adjudged guilty of a third [3rd] or any subsequent violation of this act, the offense being charged as a third [3rd] or subsequent offense shall be guilty of a felony and shall be punished by imprisonment for not more than two [2] years.

Act 138, 1885, p. 155; Eff. Sept. 19.

AN ACT to prevent the sale or otherwise disposing of obscene, immoral, and indecent books, pamphlets, papers, prints, pictures, writings, and other objectionable news.

16875 Immoral, obscene or criminal matter; sale, gift, possession, preparation, advertisement, distribution by child; penalty. SECTION 1. *The People of the state of Michigan enact,* That any person who sells, lends, gives away, or offers to sell, lend, or give away, or shows, or has in [his] possession with intent to sell, lend, or give away, or to show or advertise, or who offers to loan, give, sell, or distribute any obscene, immoral, lewd, lascivious, or indecent book, magazine, pamphlet, newspaper, writing, paper, print, picture,

drawing, publication, or photograph, or any article or instrument of indecent or immoral use, or who designs, copies, draws, photographs, prints, utters, publishes, or otherwise prepares such a book, picture, drawing, paper, or other article or thing, or writes or prints, or causes to be written or printed, a circular, advertisement, or notice of any kind, or gives information orally stating when, where, how, or of whom, or by what process such obscene article or thing can be purchased or obtained; or second, any person who sells, lends, gives away, or shows, or has in his possession with intent to sell, or give away, or to show, advertise, or otherwise offers for loan, gift, or distribution, any book, pamphlet, magazine, newspaper, or other printed paper, devoted to the publication or principally made up of criminal news, police reports, or accounts of criminal deeds, or pictures and stories of deeds of bloodshed, lust, or crime; or third, any person who in any manner hires, uses, or employs any minor child to sell, or give away, or in any manner to distribute, or who having the care, custody, or control of any minor child, permits such child to sell, give away, or in any other manner to distribute any book, magazine, pamphlet, newspaper, story paper, writing, paper, picture, drawing, photograph, or other article or matter coming within the descriptions of articles and matter mentioned in the first [1st] and second [2nd] subdivisions of this section or any of them, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by imprisonment in the county jail not more than three [3] months, or by fine not exceeding one hundred [100] dollars, or by both such fine and imprisonment in the discretion of the court.

HISTORY: How. 9290a;—C. L. '97, 11702;— | MINOR CHILD: Connection with obscene matter, see Compilers' § § 12802 and 12803.
C. L. '15, 15478.

16876 Same; complaint, search warrant, seizure, destruction. Sec. 2. All municipal courts and justices of the peace, on complaint supported by oath or affirmation, that any person has in his possession or control any indecent books, papers, articles, and things described in this act, shall issue a warrant directed to the sheriff of the county, within which such complaint shall be made, or to any constable, marshal, or police officer within said county directing him, them, or any of them to search for, seize, and take possession of, such obscene and indecent books, papers, articles, and things, and said court or justice of the peace shall, upon conviction of the person or persons offending, under the law, any of the provisions of this act, forthwith in the presence of the person or persons upon whose complaint the said seizure or arrest is made, if he or they shall, after notice thereof elect to be present, destroy, or cause to be destroyed, the aforesaid books, papers, articles or things, and shall cause to be entered upon the records of his court the fact of such destruction.

HISTORY: How. 9290b;—C. L. '97, 11703;— | SEARCH WARRANT: See Compilers' § 17493 subd. 2.
C. L. '15, 15477.

Act 62, 1911, p. 76; Eff. Aug. 1.

AN ACT to prohibit certain classes of immoral advertising and provide punishment for violators thereof.

The People of the State of Michigan enact:

16877 Advertisement relative to sexual disease and trouble; insertion, publication; penalty. SECTION 1. Any person who shall advertise in his own name or the name of another person, firm or pretended firm, association, corporation or pretended corporation, in any newspaper, pamphlet, circular, periodical or other written or printed paper, or the owner, publisher or manager of any newspaper or periodical who shall permit to be published or inserted in any newspaper or periodical owned or controlled by him, an

advertisement of
of "Lost manhood"
ner that he is a sp
by sexual vice, sel
in any manner any
ever whereby sexu
or miscarriage or
upon conviction th
[50] dollars nor m
the county jail for
of the court.

HISTORY: C. L. '15,
CONSTITUTIONALIT

16878 Same; di
Any person publishi
any of the advertisi
other printed or wr
section one [1] and
shall not be constr
act number two hu
hundred ninety-seve
four [164] of the pr
made unlawful there

HISTORY: C. L. '15, 1
NOTE: Act 237 of 1899
of Act 237 of 1897. Act 23

16879 Same; use
It is further enact
pamphlet or circular
or vigor," or other
evidence of the guilt
ments, their agents
to the publishers of
[1].

HISTORY: C. L. '15,

A
AN ACT

16880 Criminal or
People of the State
person to post, place
sidewalk, or other obje
picture, printing, or
fighting or of any pers
representation of the h
cent in the case of a li
street, square or highw.

HISTORY: How. 9314f;—
Act 148, Eff. Oct. 2;—C. L.

16881 Female seven
prostitution. Sec. 2.
for any purpose whatev
or suffer to remain in
house, house of assigna

NAME VandenBroek

CARREL

2-65

5891

OBSCENE MATTER; IMMORAL ADVERTISING

§ 16877

advertisement of the treating or curing of venereal diseases, the restoration of "Lost manhood" or "Lost vitality or vigor," or shall advertise in any manner that he is a specialist in diseases of the sexual organs, or diseases caused by sexual vice, self-abuse, or in any diseases of like cause, or shall advertise in any manner any medicine, drug, compound, appliance or any means whatever whereby sexual diseases of men or women may be cured or relieved, or miscarriage or abortion produced, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty [50] dollars nor more than five hundred [500] dollars, or by imprisonment in the county jail for not more than six [6] months, or both in the discretion of the court.

HISTORY: C. L. '15, 15512. | Constitutional. *People v. Kennedy*, 176 Mich. 384, 393, 142 N. W. 771.

16878 Same; distribution, circulation; penalty; act construed. Sec. 2. Any person publishing, distributing or causing to be distributed or circulated any of the advertising matter hereinbefore described, either in newspaper or other printed or written forms, shall be guilty of a misdemeanor as noted in section one [1] and punished as therein described: *Provided*, That this act shall not be construed as creating a penalty in addition to that specified in act number two hundred thirty-seven [237] of the public acts of eighteen hundred ninety-seven [1897], as amended by act number one hundred sixty-four [164] of the public acts of nineteen hundred seven [1907], for the acts made unlawful therein.

HISTORY: C. L. '15, 15513.

NOTE: Act 237 of 1899 was intended instead of Act 237 of 1897. Act 237 of 1899 as amended | by Act 164 of 1907, above referred to, is Compilers' § 6737 to 6747.

16879 Same; use of certain phrases therein as evidence of guilt. Sec. 3. It is further enacted that any advertisement found in any newspaper, pamphlet or circular containing the words "Lost manhood," "Lost vitality or vigor," or other expressions synonymous therewith, shall be prima facie evidence of the guilt of the party or parties subscribing to the said advertisements, their agents or representatives, and the same penalties shall apply to the publishers of papers containing the same as prescribed in section one [1].

HISTORY: C. L. '15, 15514.

CONSTRUED: *People v. Kennedy*, 176 Mich. 384, 393, 142 N. W. 771.

Act 209, 1885, p. 236; Eff. Sept. 19.

AN ACT to promote morality and to prevent crime.

16880 Criminal or indecent picture; unlawful display. SECTION 1. *The People of the State of Michigan enact*, That it shall be unlawful for any person to post, place or display on any sign board, bill board, fence, building, sidewalk, or other object, or in any street, road, or other public place, any sign, picture, printing, or other representation of murder, assassination, stabbing, fighting or of any personal violence, or of the commission of any crime, or any representation of the human form in an attitude or dress which would be indecent in the case of a living person; if such person so appeared in any public street, square or highway.

HISTORY: How. 2314f;—Am. 1889, p. 169. | '15, 15516.
Act 148, Eff. Oct. 2;—C. L. '97, 11724;—C. L.

16881 Female seventeen or under, unlawful use in connection with house of prostitution. SEC. 2. That it shall be unlawful for any person or persons, for any purpose whatever, to take or convey to, or to employ, receive, detain or suffer to remain in any house of prostitution, house of ill-fame, bawdy-house, house of assignation, or in any house or place for the resort of prosti-

ntes or other disorderly persons, any female of the age of seventeen]
years or under.

HISTORY: How. 9314g;—C. L. '97, 11725; | EMPLOYMENT AGENCY: Not to send
—C. L. '15, 15516. | woman to house of prostitution, see Compilers' § 8002.

16882 Penalty. SEC. 3. Any person who shall violate any of the provisions of this act shall upon conviction thereof be punished by a fine of not more than one hundred [100] dollars or by imprisonment in the county jail not exceeding ninety [90] days, and in case of the non-payment of such fine when imposed, the court may make a further sentence that the offender be imprisoned in the county jail for a definite period of time not exceeding ninety [90] days, unless said fine shall be sooner paid.

HISTORY: How. 9314h;—C. L. '97, 11726;— |
C. L. '15, 15517.

Act 106, 1869, p. 175; Eff. July 5.

AN ACT to prohibit the publication of the virtues of patent, and other simple and compound medicines in the state of Michigan, in language of immoral tendency, or of ambiguous character.

16883 Advertisement of patent medicine in immoral or ambiguous language; penalty, separability of offenses. SECTION 1. *The People of the State of Michigan enact,* That no person or persons, their agents or clerks, shall print, stamp, or engrave on any cards, bills, or posters for public display or advertisement, or publish in any newspaper in the state of Michigan, the virtues or applications and its or their effects of any such patent and other simple or compound medicine, in language of immoral tendency or of ambiguous character. Any person or persons, their agents or clerks, who shall fail to comply with the requirements herein expressed, shall be deemed guilty of a misdemeanor, and shall be liable to a fine not less than fifty [50] nor more than one hundred [100] dollars, or to imprisonment in the county jail not exceeding three [3] months, or both, for each and every offense. Any proprietor or proprietress of any newspaper published in the state of Michigan, who shall permit any such publications to appear in consecutive issues, each and every day shall be deemed a new and separate offense, and shall be liable to a penalty as herein expressed.

HISTORY: C. L. '71, 7724;—How. 9310;— |
C. L. '97, 11727;—C. L. '15, 15521.

16884 Prescription for certain medicines to be used by female; publication, sale; penalty, separability of offenses. SEC. 2. The publication or sale within this state of any circular, pamphlet, or book containing recipes or prescriptions in indecent or obscene language for the cure of chronic female complaints or private diseases, or recipes or prescriptions for drops, pills, tinctures, or other compounds designed to prevent conception, or tending to produce miscarriage or abortion is hereby prohibited; and for each copy thereof, so published and sold, containing such prohibited recipes or prescriptions, the publisher and seller shall each be deemed guilty of a misdemeanor, and shall be liable to the same penalties provided for a violation of the preceding section.

HISTORY: C. L. '71, 7725;—How. 9311;— |
C. L. '97, 11728;—C. L. '15, 15522.

Act 138, 1873, p. 185; Eff. July 31.

AN ACT to prevent the advertisement and sale of drugs or medicines designed to produce criminal abortion.

16885 Medicine or drug to procure abortion; advertisement or sale prohibited. SECTION 1. *The People of the State of Michigan enact,* That no per-

son shall sell, or pu drugs, des an abortio

HISTORY: C. L. '15, 15518

16886 cine know tion, shall practicing made; and for that p the kind a the physic

HISTORY: C. L. '15, 15519

16887 I this act, s than twent cretion of

HISTORY: C. L. '15, 15520

AN ACT t in the pu a penalty

16888 I ness. Sect. unlawful fe vulgar or i child within igan.

HISTORY:

16889 P: visions of th more than not exceedt fine when is that the off exceeding n

HISTORY: :

AN ACT to human bei representa

16890 E: lawfulness. son, to expo monstrosity, medical prof

NAME VandenBroek

CARREL 2-65

5893 UNLAWFUL ADVERTISEMENTS, LANGUAGE, EXHIBITIONS § 16885

son shall in any manner, except as hereinafter provided, advertise, publish, sell, or publicly expose for sale any pills, powders, drugs, or combination of drugs, designed expressly for the use of females for the purpose of procuring an abortion.

HISTORY: How. 9312;—C. L. '97, 11729;—
C. L. '15, 15323. |

16886 Same; lawful sale; prescription record. Sec. 2. Any drug or medicine known to be designed and expressly prepared for producing an abortion, shall only be sold upon the written prescription of an established practicing physician of the city, village, or township in which the sale is made; and the druggist or dealer selling the same shall, in a book provided for that purpose, register the name of the purchaser, the date of the sale, the kind and quantity of the medicine sold, and the name and residence of the physician prescribing the same.

HISTORY: How. 9313;—C. L. '97, 11730;—
C. L. '15, 15324. |

16887 Penalty. Sec. 3. Any person violating any of the provisions of this act, shall upon conviction thereof, be punished by a fine of not less than twenty-five [25] nor more than one hundred [100] dollars, in the discretion of the court.

HISTORY: How. 9314;—C. L. '97, 11731;—
C. L. '15, 15325. |

Act 219, 1897, p. 277; Eff. Aug. 30.

AN ACT to prohibit using indecent, immoral, obscene or insulting language in the presence of any woman or child within this state and to provide a penalty therefor.

16888 Use of certain language in presence of woman or child; unlawfulness. SECTION 1. *The People of the State of Michigan enact*, That it shall be unlawful for any person or persons to use any indecent, immoral, obscene, vulgar or insulting language in the presence or hearing of any woman or child within the limits of any township, village or city in the state of Michigan.

HISTORY: C. L. '97, 11737;—C. L. '15, 15333. |

16889 Penalty. Sec. 2. Any person who shall violate any of the provisions of this act shall, upon conviction thereof, be punished by a fine of not more than one hundred [100] dollars or imprisonment in the county jail not exceeding ninety [90] days, and in case of the non-payment of such fine when imposed, the court trying the same may make a further sentence that the offender be imprisoned in the county jail for a definite period not exceeding ninety [90] days, unless said fine shall be sooner paid.

HISTORY: C. L. '97, 11738;—C. L. '15, 15334. |

Act 103, 1903, p. 126; Eff. Sept. 17.

AN ACT to prohibit, discourage and punish the exhibition of deformed human beings, diseased or deformed human bodies, or parts thereof, or the representation of the same, for any other than purely medical purposes.

The People of the State of Michigan enact:

16890 Exhibition of deformed human body for non-scientific purpose; unlawfulness. SECTION 1. It shall be unlawful for any physician or other person, to expose or keep on exhibition any deformed human being or human monstrosity, except as used for scientific purposes before members of the medical profession or medical classes.

MICHIGAN
COMPILED LAWS

Annotated

*Under Arrangement of the Official
Compiled Laws of Michigan*

Volume 38

Sections

750.1 to 750.315

Copyright © 1968 by

St. Paul, Minn.

WEST PUBLISHING CO.

750.40

PENAL CODE

750.40 Private diseases, conceptive preventatives; publication cures

Sec. 40. PUBLICATION IN INDECENT LANGUAGE OF CURES FOR PRIVATE DISEASES AND CONCEPTIVE PREVENTATIVES—The publication or sale within this state of any circular, pamphlet or book containing recipes or prescriptions in indecent or obscene language for the cure of chronic female complaints or private diseases, or recipes or prescriptions for drops, pills, tinctures, or other compounds designed to prevent conception, or tending to produce miscarriage or abortion is hereby prohibited; and for each copy thereof, so published and sold, containing such prohibited recipes or prescriptions, the publisher and seller shall each be guilty of a misdemeanor.

Historical Note

Source:

P.A.1931, No. 328, § 40, Eff. Sept. 18.

How. § 9311.

Prior Laws:

P.A.1869, No. 106, § 2.
C.L.1871, § 7725.

C.L.1897, § 11728.

C.L.1915, § 15522.

C.L.1929, § 16884.

Cross References

Misdemeanor, see §§ 750.8, 750.9.

Law Review Commentaries

Marital right of privacy, prohibition as to use of contraceptives as violation. 12 Wayne L.Rev. 479 (1966).

Library References

Obscenity ⇨7.
C.J.S. Obscenity § 7.

M.L.P. Abortion § 4.

Notes of Decisions

I. Power of legislature

Advisability or necessity of imposing restrictions or limitations upon class or persons who could lawfully sell contraceptive devices or prophylatic rubber

goods of similar character was a "legislative question", and not a judicial one. *People v. Pennock* (1940) 293 N.W. 759, 294 Mich. 578.

750.41 Criminal news, sale and distribution of printed material

Sec. 41. SALE AND DISTRIBUTION OF PRINTED MATTER DEVOTED PRIMARILY TO PUBLICATION OF CRIMINAL NEWS—Any person who sells, lends, gives away or shows, or has in his possession with intent to sell, give away or to show, advertise or otherwise offers for loan, gift or distribution, any book, pamphlet, magazine, newspaper or other printed paper devoted to the publication or principally made up of criminal news, police reports or accounts of criminal deeds or pictures, stories of

deeds of t
hires, use
manner to
minor chi
ner to dis
printed m
ter mentic

Source:
P.A.1931, .

Obscenity

Misdemeanor

750.42

Sec. 42. .
DECEASED P
shall distrib
any advertis
intoxicating
ever to any
er by the us
utterances, s
guilty of a m
be held to ap
ments signed

Source:
P.A.1931, No.

Misdemeanor, se

Intoxicating Li



THE
GENERAL STATUTES

OF THE
STATE OF MINNESOTA

As Amended by Subsequent Legislation, with which are Incorporated
All General Laws of the State in Force December 31, 1894

COMPILED AND EDITED BY
HENRY B. WENZELL, Assisted by EUGENE F. LANE

WITH ANNOTATIONS BY
FRANCIS B. TIFFANY and Others

AND A GENERAL INDEX BY THE EDITORIAL STAFF OF THE NATIONAL
REPORTER SYSTEM

8113
✓

COMPLETE IN TWO VOLUMES



VOL. 2

CONTAINING

Sections 4822 to 8054 of the General Statutes, and the General Index

St. PAUL, MINN.
WEST PUBLISHING CO.
1894

U.M.L.

inne-
com-
state.

force
nety-
d en-
reby
tions
proof
Stat-

after

wise prepares such a book, picture, drawing, paper, or other article, or writes or prints, or causes to be written or printed, a circular, advertisement, or notice of any kind, or gives information orally, stating when, where, how, or of whom, or by what means, such an indecent or obscene article or thing can be purchased or obtained: or

2. Sells, lends, gives away, or shows, or has in his possession with intent to sell, or give away, or to show, or advertises or otherwise offers for loan, gift, sale, or distribution, to any minor child, any book, pamphlet, magazine, newspaper, or other printed paper, devoted to the publication, or principally made up, of criminal news, police reports, or accounts of criminal deeds, or pictures and stories of deeds of bloodshed, lust, or crime; or

3. Exhibits upon any street or highway, or in any other place within the view of any minor child, any book, magazine, pamphlet, newspaper, writing, paper, picture, drawing, photograph, or other article or articles coming within the descriptions of articles mentioned in the first and second subdivisions of this section, or any of them; or

4. In any manner hires, uses, or employs any minor child to sell or give away, or in any manner to distribute, or who, having the care, custody, or control of any minor child, permits such child to sell, give away, or in any other manner distribute, any book, magazine, pamphlet, newspaper, story paper, writing, paper, picture, drawing, photograph, or other article or matter coming within the descriptions of articles and matter mentioned in the first and second subdivisions of this section, or any of them;—

Is guilty of a misdemeanor. Upon conviction thereof shall be punished by imprisonment in the county jail for a term not exceeding one year nor less than ninety days, or by a fine not exceeding five hundred dollars nor less than one hundred dollars, or by both such fine and imprisonment, in the discretion of the court. Provided, however, that this act shall not affect nor shall the same apply to any offense committed before the passage hereof; but any person having violated the provisions of said section previous to the passage of this act shall be prosecuted and punished in the manner and according to the provisions of the statutes in force at the time of the commission of such offense.

(Id. § 277, as amended 1893, c. 91, § 1.)

See § 6549, and act of March 5, 1835 (§§ 6973-6975).

Obscene publications and letters. U. S. v. Bebout, 28 Fed. Rep. 523; U. S. v. Wrightman, 29 Fed. Rep. 636. Obscene letter. Thomas v. State, (Ind.) 2 N. E. Rep. 508. Indictment.—Description of publication. Com. v. Wright, (Mass.) 1 N. E. Rep. 411.

§ 6572. Indecent articles, etc.

A person who sells, lends, gives away, or in any manner exhibits or offers to sell, lend, or give away, or has in his possession, with intent to sell, lend, or give away, or advertises or offers for sale, loan, or distribution, any instrument or article, or any drug or medicine, for the prevention of conception, or for causing unlawful abortion, or who writes or prints, or causes to be written or printed, a card, circular, pamphlet, advertisement, or notice of any kind, or gives information orally, stating when, where, how, of whom, or by what means, such an article or medicine can be purchased or obtained, or who manufactures any such article or medicine, is guilty of a misdemeanor. And upon conviction thereof shall be punished by imprisonment in the county jail for a term not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment, in the discretion of the court; provided, however, that this act shall not affect nor shall the same apply to any offense committed before the passage thereof; but any person having violated the provisions of said section previous to the passage of this act shall be prosecuted and punished in the manner and according to the provisions of the statutes in force at the time of the commission of such offense.

(Pen. Code, § 278, as amended 1893, c. 92, § 1.)

See § 6549.

(1756)

Tit.

§ 65

A the s or of the l. relat press same veys. mail.

Ind

§ 65

Ar or by not : The : scrip

§ 65

A a hou other who conf agen is int a bui near

See

Chi

trial

Evi

ried c

v. Sa

Pro

act u

26 M

Crum

Sci

Lia

8 Ath

The

confi

to qu

clusi

474. (

See

§ 65

A

sons

whet

Clu

More

See

THE 10] CRIMES AGAINST PERSON, GOOD MORALS, ETC. §§ 6573-6576

§ 6573. Mailing, carrying obscene print, etc.

... person who deposits, or causes to be deposited, in any post-office within the state, or places in charge of an express company, or of a common carrier, or other person, for transportation, any of the articles or things specified in the last two sections, or any circular, book, pamphlet, advertisement, or notice relating thereto, with the intent of having the same conveyed by mail or express, or in any other manner, or who knowingly or willfully receives the same, with intent to carry or convey, or knowingly or willfully carries or conveys, the same, by express, or in any other manner, except in the United States mail, is guilty of a misdemeanor.

(Pen. Code, § 279.)

Indictment—"Send and convey." *Larison v. State*, (N. J.) 9 Atl. Rep. 700.

§ 6574. Physician's instruments.

An article or instrument, used or applied by physicians lawfully practicing, or by their direction or prescription, for the cure or prevention of disease, is not an article of indecent or immoral nature or use, within this chapter. The supplying of such articles to such physicians, or by their direction or prescription, is not an offense under this chapter.

(Pen. Code, § 280.)

§ 6575. Keeping disorderly houses, etc.

A person who keeps a house of ill fame or assignation of any description, or a house or place for persons to visit for unlawful sexual intercourse, or for any other lewd, obscene, or indecent purpose, shall be guilty of felony. Any person who keeps a disorderly house, or any place of public resort by which the peace, comfort, or decency of a neighborhood is habitually disturbed, or who, as agent or owner, lets a building, or any portion of a building, knowing that it is intended to be used for any purpose specified in this section, or who permits a building, or a portion of a building, to be so used, is guilty of a misdemeanor.

(Id. § 281.)

§ 6013, subds. 1, 2.

Charge for keeping a single day, held not bad. Right of accused to be present at trial may be waived. *State v. Reckards*, 21 Minn. 47.

Evidence of general reputation admissible. Not necessary that intercourse be carried on for hire or gain. Proof of lewd conduct of defendant herself, competent. *State v. Smith*, 29 Minn. 193, 12 N. W. Rep. 524.

Prosecution and conviction under city ordinance is no bar to a prosecution for same act under the statute. *State v. Lee*, 29 Minn. 445, 13 N. W. Rep. 918; *State v. Oleson*, 26 Minn. 507, 5 N. W. Rep. 959; *State v. Charles*, 16 Minn. 474, (Gil. 426); *State v. Crumney*, 17 Minn. 72, (Gil. 50.)

Scienter of landlord. *State v. Frazier*, (Me.) 8 Atl. Rep. 247.

Liability of agent. *Troutman v. State*, (N. J.) 6 Atl. Rep. 618; *State v. Frazier*, (Me.) 8 Atl. Rep. 247.

The city justice of St. Paul being a justice of the peace only, the legislature could not confer jurisdiction upon him over offenses against § 9, c. 100, Gen. St. 1878, and a motion to quash an indictment for such offense, based on the theory that such justice had exclusive jurisdiction in the premises, was properly denied. *State v. Charles*, 16 Minn. 474, (Gil. 426.) Followed, *State v. Oleson*, 26 Minn. 507, 5 N. W. Rep. 959.

See *Brown v. State*, (N. J.) 7 Atl. Rep. 810.

(8) LOTTERIES.

§ 6576. "Lottery" defined.

A lottery is a scheme for the distribution of property by chance, among persons who have paid, or agreed to pay, a valuable consideration for the chance, whether called a lottery, raffle, or gift enterprise, or by some other name.

(Pen. Code, § 282.)

Clubs formed by a tailor for distributing clothing by lot held a lottery. *State v. Moran*, 48 Minn. 535, 51 N. W. Rep. 618.

See *Smith v. State*, (Md.) 11 Atl. Rep. 738; *Clark v. State*, (N. J.) 4 Atl. Rep. 827.

(1757)

22-3

Allen H. ...

REVISED LAWS
OF MINNESOTA

1905

AS REPORTED BY THE COMMISSION APPOINTED UNDER
CHAPTER 241, LAWS OF 1901, TO REVISE AND CODIFY
THE GENERAL LAWS, ACTING IN PURSUANCE OF SAID
CHAPTER AS MODIFIED BY CHAPTER 157, LAWS OF 1903

UNIV. OF MICH. LAW LIBRARY

49833

500 COPIES ORDERED PRINTED

ST. PAUL, MINN.
WEST PUBLISHING CO.
1905

8 or otherwise prepare such a book, picture, drawing, paper, or other arti-
9 cle; or write or print, or cause to be written or printed, a circular, ad-
10 vertisement, or notice of any kind, or give oral information stating when,
11 where, how, or of whom or by what means such an indecent or obscene
12 article or thing can be purchased or obtained; or

13 2. Shall sell, lend, give away, show, or have in his possession with
14 intent to sell, lend, give away, show, advertise, or otherwise offer for
15 loan, gift, sale, or distribution to any minor, any book, pamphlet, mag-
16 azine, newspaper, or other printed paper devoted to the publication, or
17 largely made up, of criminal news, police reports, accounts of criminal
18 deeds, or pictures and stories of deeds of bloodshed, lust, or crime; or

19 3. Shall exhibit upon any public road, street, or other place within
20 view of any minor any of the books, papers, or other things hereinbefore
21 enumerated; or

22 4. Shall hire, use, or employ any minor to sell or give away, or in
23 any manner distribute, or shall permit any minor in his custody or con-
24 trol to sell, give away, or in any manner distribute, any of the articles
25 hereinbefore mentioned—

26 Shall be guilty of a gross misdemeanor, and be punished by impris-
27 onment in the county jail for not more than one year nor less than ninety
28 days, or by a fine of not less than \$100 nor more than \$500, or by both.
29 ('94—6571, 6973.)

1 **§ 30. Indecent articles, etc.**—Every person who shall sell, lend, or
2 give away, or in any manner exhibit, or offer to sell, lend, or give away, or
3 have in his possession with intent to sell, lend, give away, or advertise
4 or offer for sale, loan, or distribution, any instrument or article, or any
5 drug or medicine, for the prevention of conception or for causing unlaw-
6 ful abortion; or shall write or print, or cause to be written or printed,
7 a card, circular, pamphlet, advertisement, or notice of any kind, or shall
8 give oral information, stating when, where, how, of whom, or by what
9 means such article or medicine can be obtained or who manufactures it—
10 shall be guilty of a gross misdemeanor, and punished by imprisonment in
11 the county jail for not more than one year, or by a fine of not more than
12 \$500, or by both. ('94—6572.)

1 **§ 31. Mailing and carrying obscene matter.**—Every person who
2 shall deposit or cause to be deposited in any post office in the state, or
3 place in charge of any express company or other common carrier or per-
4 son for transportation, any of the articles or things specified in the last
5 two sections, or any circular, book, pamphlet, advertisement, or notice
6 relating thereto, with the intent of having the same conveyed by mail,
7 express, or in any other manner; or who shall knowingly or wilfully re-
8 ceive the same with intent to carry or convey it, or shall knowingly carry
9 or convey the same by express, or in any other manner except by United
10 States mail—shall be guilty of a misdemeanor. But the provisions of
11 this and the preceding section shall not be construed to apply to an article
12 or instrument used by physicians lawfully practicing, or by their direction
13 or prescription, for the cure or prevention of disease. ('94—6573, 6574.)

1 **§ 32. Search warrant—Destruction of property.**—Every municipal
2 court and justice of the peace, upon complaint under oath that any per-
3 son has in his possession or under his control any of the obscene books,
4 papers, or other matter specified in the last three sections, shall issue a
5 warrant directed to the sheriff or any constable of the county, therein
6 directing him to search for, seize, and take possession of such obscene
7 matter; and, upon conviction of the person in whose possession the same

person
continues
guilty of
not more

for five
or to be

void, or
—6550,

enters
exceeding
not more
—6552.)

of kin
il law,
gether,
ie state

mit the
course
prison
ration,
555.)

n shall
arried
in the
\$300;
e hus-
e, nor

have
ation,
ninty

who
creof.
shall
all be
pub-
mis-
ment

ve in
other-
cent
law-
char-
blish,

GENERAL STATUTES

OF

MINNESOTA

1913

PUBLISHED UNDER THE AUTHORITY OF THE
LEGISLATURE BY VIRTUE OF AN ACT
APPROVED APRIL 20, 1911
(LAWS 1911, CH. 299)

COMPILED AND EDITED BY
FRANCIS B. TIFFANY

ST. PAUL
WEST PUBLISHING CO.
1913

Copyright, 1913 by

s herein

e bright-
s are ex-
tation is

)
erson in
therein
y intoxi-
(13 c.

ting any
ed by a
r a term

ereby to
r to pre-
t or not,

the state
ore than

an who
se of any
miscar-
the child
fate pris-

r sell an
that the
an, shall

abortion,
und that

l endeav-
r, wheth-
emeanor;
nceal the
bastard,
quent to
be pun-
ve years.

son who,
tes to co-
of biga-
ore than

five years
be living.

d, or an-

8699. **Punishment of consort**—Every person who knowingly enters into a marriage with another which is prohibited to the latter by § 8698 shall be punished by imprisonment in the state prison for not more than five years, or by a fine of not more than one thousand dollars, or by both. (4948)

8700. **Incest**—Whenever any male and female persons, nearer of kin to each other than first cousins, computing by the rules of the civil law, whether of the half or the whole blood, shall have sexual intercourse together, each shall be guilty of incest, and be punished by imprisonment in the state prison for not more than ten years. (4949)

55-464, 57+205.

8701. **Crime against nature**—Every person who shall commit the crime against nature with mankind or beast, or attempt sexual intercourse with a dead body, shall be punished by imprisonment in the state prison for not more than twenty years, and any sexual penetration, however slight, shall be sufficient to complete the crime. (R. L. § 4950, amended '09 c. 270 § 1)

8702. **Adultery**—Whenever any married woman shall have sexual intercourse with a man, other than her husband, whether married or not, both shall be guilty of adultery, and punished by imprisonment in the state prison for not more than two years, or by a fine of not more than three hundred dollars; but no prosecution shall be commenced except on complaint of the husband or the wife, save when such husband or wife shall be insane, nor after one year from the commission of the offence. (4951)

41-50, 42+602; 57-225, 58+878. Under different statute (4-335, 251).

8703. **Fornication**—Whenever any man and a single woman cohabit with each other, both shall be guilty of fornication, and punished by imprisonment in the county jail for not more than ninety days, or by a fine of not more than one hundred dollars. (4952)

23-352; 27-52, 6+404; 94-819, 102+722.

Cited (103-428, 115+275).

8704. **Exposure of person—Public indecency**—Every person who shall wilfully and lewdly expose his person, or the private parts thereof, in any public place, or in any place where others are present, or shall procure another to so expose himself, and every person who shall be guilty of any open or gross lewdness or lascivious behavior, or any public indecency other than hereinbefore specified, shall be guilty of a misdemeanor, and punished by a fine of not less than five dollars, or by imprisonment in a county jail for not less than ten days. (4953)

8705. **Obscene literature—Sale, etc.**—Every person who—

1. Shall sell, lend, give away, or offer to give away, show, have in his possession with intent to sell, give away, show, advertise, or otherwise offer for loan, gift, sale, or distribution, any obscene or indecent book, magazine, pamphlet, newspaper, story paper, writing, picture, drawing, photograph, or any article or instrument of indecent or immoral character; or who shall design, copy, draw, photograph, print, utter, publish, or otherwise prepare such a book, picture, drawing, paper, or other article; or write or print, or cause to be written or printed, a circular, advertisement, or notice of any kind, or give oral information stating when, where, how, or of whom or by what means such an indecent or obscene article or thing can be purchased or obtained; or

2. Shall sell, lend, give away, show, or have in his possession with intent to sell, lend, give away, show, advertise, or otherwise offer for loan, gift, sale or distribution to any minor, any book, pamphlet, magazine, newspaper, or other printed paper devoted to the publication, or largely made up, of criminal news, police reports, accounts of criminal deeds, or pictures and stories of deeds of bloodshed, lust, or crime; or

3. Shall exhibit upon any public road, street, or other place within view of any minor any of the books, papers, or other things hereinbefore enumerated; or

4. Shall hire, use, or employ any minor to sell or give away, or in any manner distribute, or shall permit any minor in his custody or control to

sell, give away, or in any manner distribute, any of the articles hereinbefore mentioned—

Shall be guilty of a gross misdemeanor, and be punished by imprisonment in the county jail for not more than one year nor less than ninety days, or by a fine of not less than one hundred dollars nor more than five hundred dollars, or by both. (4954)

8706. Indecent articles, etc.—Every person who shall sell, lend, or give away, or in any manner exhibit, or offer to sell, lend, or give away, or have in his possession with intent to sell, lend, give away, or advertise or offer for sale, loan, or distribution, any instrument or article, or any drug or medicine, for the prevention of conception or for causing unlawful abortion; or shall write or print, or cause to be written or printed, a card, circular, pamphlet, advertisement, or notice of any kind, or shall give oral information, stating when, where, how, of whom, or by what means such article or medicine can be obtained or who manufactures it—shall be guilty of a gross misdemeanor, and punished by imprisonment in the county jail for not more than one year, or by a fine of not more than five hundred dollars, or by both. (4955)

8707. Mailing and carrying obscene matter—Every person who shall deposit or cause to be deposited in any postoffice in the state, or place in charge of any express company or other common carrier or person for transportation, any of the articles or things specified in §§ 8705, 8706, or any circular, book, pamphlet, advertisement, or notice relating thereto, with the intent of having the same conveyed by mail, express, or in any other manner; or who shall knowingly or wilfully receive the same with intent to carry or convey it, or shall knowingly carry or convey the same by express, or in any other manner except by United States mail—shall be guilty of a misdemeanor. But the provisions of this section and § 8706 shall not be construed to apply to an article or instrument used by physicians lawfully practicing, or by their direction or prescription, for the cure or prevention of disease. (4956)

8708. Search warrant—Destruction of property—Every municipal court and justice of the peace, upon complaint under oath that any person has in his possession or under his control any of the obscene books, papers, or other matter specified in §§ 8705–8707, shall issue a warrant directed to the sheriff or any constable of the county, therein directing him to search for, seize, and take possession of such obscene matter; and, upon conviction of the person in whose possession the same shall be found, shall cause such matter to be destroyed, and the fact to be entered upon the records of the court. (4957)

8709. Certain medical advertisements—Penalty—Any person who shall advertise, in his own name or 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, or the owner, publisher, or manager of any newspaper or periodical who shall permit to be inserted or published in any newspaper or periodical owned or controlled by him, the treatment or curing of venereal diseases, the restoration of "lost manhood" or "lost vitality," or 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 disease of like causes, or who shall advertise in any manner any medicine, drug compound, appliance or any means whatever whereby it is claimed that sexual diseases of men and women may be cured or relieved, or miscarriage or abortion produced, shall be guilty of a gross misdemeanor and shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for not more than six months. ('09 c. 162 § 1)

8710. Same—Publication, etc.—Penalty—Any person publishing, distributing, or causing to be distributed or circulated, any of the advertising matter herein above prohibited shall be guilty of a misdemeanor and punished as prescribed in section 1 [8709] of this act. ('09 c. 162 § 2)

8711. Same—Evidence—The production of any advertisement or advertising matter published or distributed contrary to the provisions of this act

shall be
advertis-
ers

8712
of ill f
descrip
other
every j
by wh
turbed
knowin
tion, o
the af

See §
21-4'

8713
any pe
any fe
directl
cancel
such f

8714
lation
convic
two y

8715
son to
mainte
tution

8716
this ac
ished
than t

8717
lish, c
used
nuisai
which
carrie
ments
nuisai
hereir

See

8718
ever
ty att
the n
ney o
ductir
same
sance
so us
such
verifi
allow
nuisa
evide
as th
shall
prese

GENERAL STATUTES

of

MINNESOTA

1923

PUBLISHED UNDER THE AUTHORITY OF
LAWS OF 1923, CHAPTER 95,
APPROVED MARCH 26TH, 1923

51557

COMPILED AND EDITED BY
HUBERT HARVEY, OF THE ST. PAUL BAR

PUBLISHER
REVIEW PUBLISHING COMPANY
ST. PAUL, 1924

CH. LAW LIBRARY
UNIV. OF

ished by imprisonment in the state prison for not more than ten years. (4949) [8700]

55-464, 574-206, 123-123, 143+119.

10183. Crime against Nature—A person who carnally knows in any manner any animal or bird, or carnally knows any male or female person by the anus or by or with the mouth; or voluntarily submits to such carnal knowledge; or attempts sexual intercourse with a dead body, is guilty of sodomy, and is punishable with imprisonment in the state prison for not more than twenty years, and any sexual penetration, however slight, shall be sufficient to complete the crime. (R. L. '05 § 4950, amended '09 c. 270 § 1; '21 c. 224 § 1) [8701]

10184. Adultery—Whenever any married woman shall have sexual intercourse with a man, other than her husband, whether married or not, both shall be guilty of adultery, and punished by imprisonment in the state prison for not more than two years, or by a fine of not more than three hundred dollars; but no prosecution shall be commenced except on complaint of the husband or the wife, save when such husband or wife shall be insane, nor after one year from the commission of the offense. (4951) [8702]

41-60, 424-602; 67-225, 53-878. Under different statute (4-335, 261).

123-382, 142+971; 140-363, 168+174.

10185. Fornication—Whenever any man and single woman have sexual intercourse with each other, each is guilty of fornication and shall be punished by imprisonment in the county jail for not more than ninety days, or by a fine of not more than one hundred dollars.

A. If issue is conceived of fornication, and within the period of gestation or within sixty days after the birth of a living child the father absconds from the state with intent to evade proceedings to establish his paternity of such child, he is guilty of a felony and shall be punished by imprisonment in the state prison for not more than two years. (R. L. '05 § 4952, G. S. '13 § 8703, amended '17 c. 211 § 1; '19 c. 193 § 1)

23-353; 27-52, 6-404; 94-219, 102+722. Cited (103-428, 115+275). See 126-497, 147+663.

OBSCENITY

10186. Exposure of person—Public indecency—Every person who shall wilfully and lewdly expose his person, or the private parts thereof, in any public place, or in any place where others are present, or shall procure another to so expose himself, and every person who shall be guilty of any open or gross lewdness or lascivious behavior, or any public indecency other than hereinbefore specified, shall be guilty of a misdemeanor, and punished by a fine of not less than five dollars, or by imprisonment in a county jail for not less than ten days. (4953) [8704]

10187. Obscene literature—Every person who—

1. Shall sell, lend, give away, or offer to give away, show, have in his possession with intent to sell, give away, show, advertise, or otherwise offer for loan, gift, sale or distribution, any obscene or indecent book, magazine, pamphlet, newspaper, story paper, writing, picture, drawing, photograph, or any article or instrument of indecent or immoral character; or who shall design, copy, draw, photograph, print, utter, publish, or otherwise prepare such a book, picture, drawing, paper, or other article; or write or print, or cause to be written or printed a circular, advertisement, or notice of any kind, or give oral information stating when, where, how, or of whom or by what means such an indecent or obscene article or thing can be purchased or obtained; or

2. Shall exhibit upon any public road, street, or other place within view of any minor any of the books, papers, or other things hereinbefore enumerated; or

3. Shall hire, use, or employ any minor to sell or give away, or in any manner distribute, or shall permit any minor in his custody or control to sell, give away, or in any manner distribute, any of the articles hereinbefore mentioned—

Shall be guilty of a gross misdemeanor, and be punished by imprisonment in the county jail for not more than one year nor less than ninety days, or by a fine not less than one hundred dollars nor more than five hundred dollars, or by both. (R. L. '05 § 4954, G. S. '13 § 8705, amended '17 c. 241 § 1)

10188. Indecent articles, etc.—Every person who shall sell, lend, or give away, or in any manner exhibit, or offer to sell, lend, or give away, or have in his possession with intent to sell, lend, give away, or advertise or offer for sale, loan, or distribution, any instrument or article, or any drug or medicine, for the prevention of conception or for causing unlawful abortion; or shall write or print, or cause to be written or printed, a card, circular, pamphlet, advertisement, or notice of any kind, or shall give oral information, stating when, where, how, of whom, or by what means such article or medicine can be obtained or who manufactures it—shall be guilty of a gross misdemeanor, and punished by imprisonment in the county jail for not more than one year, or by a fine of not more than five hundred dollars, or by both. (4955) [8706]

10189. Mailing and carrying obscene matter—Every person who shall deposit or cause to be deposited in any postoffice in the state, or place in charge of any express company or other common carrier or person for transportation any of the articles or things specified in §§ 10187, 10188, or any circular, book, pamphlet, advertisement, or notice relating thereto, with the intent of having the same conveyed by mail, express, or in any other manner; or who shall knowingly or wilfully receive the same with intent to carry or convey it, or shall knowingly carry or convey the same by express, or in any other manner except by United States mail—shall be guilty of a misdemeanor. But the provisions of this section and § 10188 shall not be construed to apply to an article or instrument used by physicians lawfully practicing, or by their direction or prescription, for the cure or prevention of disease. (4956) [8707]

10190. Search warrant—Destruction of property—Every municipal court and justice of the peace, upon complaint under oath that any person has in his possession or under his control any of the obscene books, papers, or other matter specified in §§ 10187-10189, shall issue a warrant directed to the sheriff or any constable of the county, therein directing him to search for, seize, and take possession of such obscene matter; and, upon conviction of the person in whose possession the same shall be found, shall cause such matter to be destroyed, and the fact to be entered upon the records of the court. (4957) [8708]

10191. Certain medical advertisements—Penalty—Any person who shall advertise, in his own name or 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, or the owner, publisher, or manager of any newspaper or periodical who shall permit to be inserted or published in any newspaper or periodical owned or controlled by him, the treatment or curing of venereal diseases, the restoration of "lost manhood" or "lost vitality," or 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 disease of like causes, or who shall advertise in any manner any medicine, drug compound, appliance or any means whatever

whereby it is claimed that sexual diseases of men and women may be cured or relieved, or miscarriage or abortion produced, shall be guilty of a gross misdemeanor and shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for not more than six months. ('09 c. 162 § 1) [8709]

10192. Publication, etc.—Penalty.—Any person publishing, distributing, or causing to be distributed or circulated, any of the advertising matter herein above prohibited shall be guilty of a misdemeanor and punished as prescribed in section 1 of this act. ('09 c. 162 § 2) [8710]

10193. Evidence.—The production of any advertisement or advertising matter published or distributed contrary to the provisions of this act shall be of itself prima facie evidence of the guilt of the person or persons advertising to cure any such disease herein above mentioned, or of the publishers who publish any matter such as is herein prohibited. ('09 c. 162 § 3) [8711]

HOUSES OF PROSTITUTION, ETC.

10194. Keeper of disorderly resort.—Every person who shall keep a house of ill fame or assignation, or a house, tent, vehicle, resort, or place of any description for persons to visit for unlawful sexual intercourse, or for any other lewd, obscene, or indecent purpose, shall be guilty of felony. And every person who shall keep a disorderly house, or any place of public resort by which the peace, comfort, or decency of a neighborhood is habitually disturbed, or who, as agent or owner, lets a building or any portion thereof, knowing that it is intended to be used for any purpose specified in this section, or who permits a building or any portion thereof to be used for any of the aforesaid purposes, shall be guilty of a gross misdemeanor. (4958) [8712]

21-47; 29-193; 12-524; 59-281; 61-450; 89-340; 94-1078; 89-348; 94-1077; 123-451; 143-1126; 126-95; 147-953.

10195. Detention in house of ill fame for debt.—It shall be unlawful for any person to hold, detain or restrain in any house of ill fame or prostitution, any female person for the purpose of compelling such female directly or indirectly by her voluntary or involuntary service or labor, to pay, liquidate or cancel any debt, dues or obligations incurred or said to have been incurred in such house of ill fame, or prostitution. ('09 c. 461 § 1) [8713]

10196. How punished.—Any person who violates or suffers the violation of any of the provisions of this act shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the state prison for not more than two years. ('09 c. 461 § 2) [8714]

10197. Receiving earnings of prostitute.—It shall be unlawful for any person to knowingly accept or receive in whole or in part his or her support or maintenance from the proceeds or earnings of any woman engaged in prostitution. ('09 c. 475 § 1) [8715]

193-303.

10198. How punished.—Any person who violates the provisions of this act shall be guilty of a felony and upon conviction thereof shall be punished by imprisonment in the state prison for not less than one year nor more than three years. ('09 c. 475 § 2) [8716]

10199. Houses of prostitution, etc., nuisances.—Whoever shall erect, establish, continue, maintain, use, own or lease any building, erection or place used for the purpose of lewdness, assignation or prostitution is guilty of a nuisance, and the building, erection or place, or the ground itself, in or upon which such lewdness, assignation or prostitution is conducted, permitted or carried on, continued or exists, and the furniture, fix-

tures, musical instruments, and movable property used in conducting or maintaining such public nuisance, are also declared a nuisance and shall be enjoined and abated as hereinafter provided. ('13 c. 562 § 1) [8717]

126-78; 147-951; 126-95; 147-953; 131-349; 154-1073.

10200. Action to enjoin.—Restraining order.—Answer, etc.—Whenever a nuisance is kept, maintained or exists, as defined in this act, the county attorney or any citizen of the county may maintain an action in equity in the name of the state of Minnesota, upon the relation of such county attorney or citizen, to perpetually enjoin said nuisance, the person or persons conducting or maintaining the same from further conducting or maintaining the same and the owner or agent of the building or ground upon which said nuisance exists from further permitting such building or ground or both to be so used. The defendants shall be served therein as in other actions and in such action the court, or judge in vacation, shall upon the presentation of a verified complaint therefor alleging that the nuisance complained of exists, allow a temporary writ of injunction without bond, if the existence of such nuisance shall be made to appear to the satisfaction of the court or judge by evidence in the form of affidavits, depositions, oral testimony or otherwise as the complainant may elect, unless the court or judge by previous order, shall have directed the form and manner in which such evidence shall be presented, in which case it shall be so presented. Where a temporary injunction is prayed for, the court, on the application of plaintiff, may issue an ex parte restraining order, restraining the defendants and all other persons from removing or in any manner interfering with the furniture, fixtures, musical instruments and movable property used in conducting the alleged nuisance, until the decision of the court or judge granting or refusing such temporary injunction and until the further order of the court thereon. The restraining order may be served by handing to and leaving a copy of said order with any person in charge of said property or residing in the premises or apartment wherein the same is situated, or by posting a copy thereof in a conspicuous place at or upon one or more of the principal doors or entrances to such premises or apartment where such nuisance is alleged to be maintained, or by both such delivery and posting. The officer serving such restraining order shall forthwith make a return into court and inventory of the personal property situated in and used in conducting or maintaining such nuisance. Any violation of such restraining order shall be a contempt of court, and where such order is so posted mutilation or removal thereof, while the same remains in force, shall be a contempt of court; provided, such posted order contains thereon or therein a notice to that effect. Three days' notice in writing shall be given the defendants of the hearing of the application for temporary injunction, and if then continued at the instance of defendant, the temporary writ as prayed shall be granted as a matter of course. Each defendant so notified, shall serve upon the complainant or his attorney a verified answer on or before the date fixed in said notice for said hearing, and such answer shall be filed with the clerk of the district court of the county wherein such cause is triable, but the court may allow additional time for so answering, providing such extension of time shall not prevent the issuing of said temporary writ as prayed for. The allegations of the answer shall be deemed to be traversed without further pleading. When an injunction has been granted, it shall be binding on the defendants throughout the judicial district in which it was issued, and any violation of the provisions of the injunction

MINNESOTA STATUTES

1945

Printed by the Commissioner of Administration pursuant to the provisions of Chapter 648 of these statutes, and embracing all general statutes in force at the close of the legislative session of 1945.

EDITED BY

WILLIAM B. HENDERSON, Revisor
DUNCAN L. KENNEDY, Assistant Revisor
GERTRUDE W. THOREN, Chief Clerk

APPROVED BY

J. A. A. BURNQUIST, Attorney General



PUBLISHED BY
THE
STATE OF MINNESOTA

issue of her body, which if born alive would be illegitimate, or the death of such issue under the age of two years, shall, subsequent to such conviction, endeavor to conceal any such birth or death, shall be punished by imprisonment in the state prison for not more than five years.

[R. L. s. 4946; 1917 c. 231 s. 1] (10179)

OBSCENITY

617.23 INDECENT EXPOSURE; PENALTIES. Every person who shall wilfully and lewdly expose his person, or the private parts thereof, in any public place, or in any place where others are present, or shall procure another to so expose himself, and every person who shall be guilty of any open or gross lewdness or lascivious behavior, or any public indecency other than hereinbefore specified, shall be guilty of a misdemeanor, and punished by a fine of not less than \$5.00, or by imprisonment in a county jail for not less than ten days.

Every person committing the offense herein set forth, after having once been convicted of such an offense in this state, shall be guilty of a gross misdemeanor.

[R. L. s. 4953; 1931 c. 321] (10186)

617.24 OBSCENE LITERATURE; PENALTY. Every person who shall:

(1) Sell, lend, give away, or offer to give away, show, or have in his possession with intent to sell, give away, show, advertise, or otherwise offer for loan, gift, sale or distribution, any obscene or indecent book, magazine, pamphlet, newspaper, story paper, writing, picture, drawing, photograph, or any article or instrument of indecent or immoral character; or who shall design, copy, draw, photograph, print, utter, publish, or otherwise prepare such a book, picture, drawing, paper, or other article; or write or print, or cause to be written or printed, a circular, advertisement, or notice of any kind, or give oral information stating when, where, how, or of whom or by what means such an indecent or obscene article or thing can be purchased or obtained;

(2) Exhibit upon any public road, street, or other place within view of any minor, any of the books, papers, or other things hereinbefore enumerated; or

(3) Hire, use, or employ any minor to sell or give away, or in any manner distribute, or shall permit any minor in his custody or control to sell, give away, or in any manner distribute, any of the articles hereinbefore mentioned—

Shall be guilty of a gross misdemeanor and be punished by imprisonment in the county jail for not more than one year, nor less than 90 days, or by a fine of not less than \$100, nor more than \$500, or by both.

[R. L. s. 4954; 1917 c. 241 s. 1] (10187)

617.25 INDECENT ARTICLES AND INFORMATION. Every person who shall sell, lend, or give away, or in any manner exhibit, or offer to sell, lend, or give away, or have in his possession with intent to sell, lend, give away, or advertise or offer for sale, loan, or distribution, any instrument or article, or any drug or medicine, for the prevention of conception, or for causing unlawful abortion; or shall write or print, or cause to be written or printed, a card, circular, pamphlet, advertisement, or notice of any kind, or shall give oral information, stating when, where, how, or whom, or by what means such article or medicine can be obtained or who manufactures it, shall be guilty of a gross misdemeanor, and punished by imprisonment in the county jail for not more than one year, or by a fine of not more than \$500, or by both.

[R. L. s. 4955] (10188)

617.26 MAILING AND CARRYING OBSCENE MATTER. Every person who shall deposit or cause to be deposited in any post-office in the state, or place in charge of any express company or other common carrier or person for transportation, any of the articles or things specified in section 617.24 or 617.25, or any circular, book, pamphlet, advertisement or notice relating thereto, with the intent of having the same conveyed by mail, express, or in any other manner; or who shall knowingly or wilfully receive the same with intent to carry or convey it, or shall knowingly carry or convey the same by express, or in any other manner except by United States mail, shall be guilty of a misdemeanor. The provisions of this section and section 617.25 shall not be construed to apply to an article or instrument used

by physicians lawfully practicing, or by their direction or prescription, for the cure or prevention of disease.

[R. L. s. 4956] (10189)

617.27 SEARCH WARRANT; DESTRUCTION OF PROPERTY. Every municipal court and justice of the peace, upon complaint under oath that any person has in his possession or under his control any of the obscene books, papers, or other matter specified in sections 617.24 to 617.26, shall issue a warrant directed to the sheriff or any constable of the county, therein directing him to search for, seize, and take possession of such obscene matter; and, upon conviction of the person in whose possession the same shall be found, shall cause such matter to be destroyed, and the fact to be entered upon the records of the court.

[R. L. s. 4957] (10190)

617.28 CERTAIN MEDICAL ADVERTISEMENTS. Subdivision 1. **Placing advertisement; penalty.** Any person who shall advertise, in his own name or in 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, or the owner, publisher, or manager of any newspaper or periodical who shall permit to be inserted or published in any newspaper or periodical owned or controlled by him, the treatment or curing of venereal diseases, the restoration of "lost manhood" or "lost vitality," or 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 disease of like causes, or who shall advertise in any manner any medicine, drug compound, appliance or any means whatever whereby it is claimed that sexual diseases of men and women may be cured or relieved, or miscarriage or abortion produced, shall be guilty of a gross misdemeanor, and shall be punished by a fine of not less than \$50.00, nor more than \$500, or by imprisonment in the county jail for not more than six months.

Subdivision 2. **Publication; penalty.** Any person publishing, distributing, or causing to be distributed or circulated, any of the advertising matter hereinabove prohibited, shall be guilty of a misdemeanor, and punished as prescribed in subdivision 1.

[1909 c. 162 ss. 1, 2] (10191, 10192)

617.29 EVIDENCE. The production of any advertisement or advertising matter published or distributed contrary to the provisions of sections 617.28 and 617.29 shall be of itself prima facie evidence of the guilt of the person advertising to cure any such disease hereinabove mentioned, or of the publishers who publish any matter such as is herein prohibited.

[1909 c. 162 s. 3] (10193)

PROSTITUTION AND HOUSES OF ILL-FAME

617.30 KEEPER OF DISORDERLY RESORT. Subdivision 1. Every person who shall keep a house of ill-fame or assignation, or a house, tent, vehicle, resort, or place of any description for persons to visit for unlawful sexual intercourse, or for any other lewd, obscene, or indecent purpose, shall be guilty of a felony.

Subd. 2. Every person who shall keep a disorderly house, or any place of public resort by which the peace, comfort, or decency of a neighborhood is habitually disturbed, or who, as agent or owner, lets a building or any portion thereof, knowing that it is intended to be used for any purpose specified in this section, or who permits a building or any portion thereof to be used for any of the aforesaid purposes, shall be guilty of a gross misdemeanor.

[R. L. s. 4958] (10194)

617.31 DETENTION FOR DEBT IN HOUSE OF ILL-FAME. Subdivision 1. **Prohibited.** It shall be unlawful for any person to hold, detain, or restrain in any house of ill-fame or prostitution, any female person for the purpose of compelling such female, directly or indirectly, by her voluntary or involuntary service or labor, to pay, liquidate, or cancel any debt, dues, or obligations incurred, or said to have been incurred, in such house of ill-fame or prostitution.

Subdivision 2. **Penalty.** Any person who violates or suffers the violation of any of the provisions of this section shall be guilty of a felony; and, upon conviction thereof, shall be imprisoned in the state prison for not more than two years.

[1909 c. 461 ss. 1, 2] (10195, 10196)

Minnesota Laws - 1953

MINNESOTA STATUTES

1953

Printed by the Commissioner of Administration. Embraces all general laws in force at the close of the 1953 session of the legislature.

EDITED BY

WILLIAM B. HENDERSON, Revisor
DUNCAN L. KENNEDY, Assistant Revisor
GERTRUDE W. THOREN, Chief Clerk



PUBLISHED BY
THE
STATE OF MINNESOTA

issue of her body, which if born alive would be illegitimate, or the death of such issue under the age of two years, shall, subsequent to such conviction, endeavor to conceal any such birth or death, shall be punished by imprisonment in the state prison for not more than five years.

[R. L. s. 4946; 1917 c. 231 s. 1] (10179)

OBSCENITY

617.23 INDECENT EXPOSURE; PENALTIES. Every person who shall wilfully and lewdly expose his person, or the private parts thereof, in any public place, or in any place where others are present, or shall procure another to so expose himself, and every person who shall be guilty of any open or gross lewdness or lascivious behavior, or any public indecency other than hereinbefore specified, shall be guilty of a misdemeanor, and punished by a fine of not less than \$5.00, or by imprisonment in a county jail for not less than ten days.

Every person committing the offense herein set forth, after having once been convicted of such an offense in this state, shall be guilty of a gross misdemeanor.

[R. L. s. 4953; 1931 c. 321] (10186)

617.24 OBSCENE LITERATURE; PENALTY. Every person who shall:

(1) Sell, lend, give away, or offer to give away, show, or have in his possession with intent to sell, give away, show, advertise, or otherwise offer for loan, gift, sale or distribution, any obscene or indecent book, magazine, pamphlet, newspaper, story paper, writing, picture, drawing, photograph, or any article or instrument of indecent or immoral character; or who shall design, copy, draw, photograph, print, utter, publish, or otherwise prepare such a book, picture, drawing, paper, or other article; or write or print, or cause to be written or printed, a circular, advertisement, or notice of any kind, or give oral information stating when, where, how, or of whom or by what means such an indecent or obscene article or thing can be purchased or obtained;

(2) Exhibit upon any public road, street, or other place within view of any minor, any of the books, papers, or other things hereinbefore enumerated; or

(3) Hire, use, or employ any minor to sell or give away, or in any manner distribute, or shall permit any minor in his custody or control to sell, give away, or in any manner distribute, any of the articles hereinbefore mentioned—

Shall be guilty of a gross misdemeanor and be punished by imprisonment in the county jail for not more than one year, nor less than 90 days, or by a fine of not less than \$100, nor more than \$500, or by both.

[R. L. s. 4954; 1917 c. 241 s. 1] (10187)

617.25 INDECENT ARTICLES AND INFORMATION. Every person who shall sell, lend, or give away, or in any manner exhibit, or offer to sell, lend, or give away, or have in his possession with intent to sell, lend, give away, or advertise or offer for sale, loan, or distribution, any instrument or article, or any drug or medicine, for the prevention of conception, or for causing unlawful abortion; or shall write or print, or cause to be written or printed, a card, circular, pamphlet, advertisement, or notice of any kind, or shall give oral information, stating when, where, how, or whom, or by what means such article or medicine can be obtained or who manufactures it, shall be guilty of a gross misdemeanor and punished by imprisonment in the county jail for not more than one year or by a fine of not more than \$500 or by both.

[R. L. s. 4955] (10188)

617.26 MAILING AND CARRYING OBSCENE MATTER. Every person who shall deposit or cause to be deposited in any post-office in the state, or place in charge of any express company or other common carrier or person for transportation, any of the articles or things specified in section 617.24 or 617.25, or any circular, book, pamphlet, advertisement or notice relating thereto, with the intent of having the same conveyed by mail, express, or in any other manner; or who shall knowingly or wilfully receive the same with intent to carry or convey it, or shall knowingly carry or convey the same by express, or in any other manner except by United States mail, shall be guilty of a misdemeanor. The provisions of this section and section 617.25 shall not be construed to apply to an article or instrument used by physicians lawfully practicing, or by their direction or prescription, for the cure or prevention of disease.

[R. L. s. 4956] (10189)

617.27 SEARCH WARRANT; DESTRUCTION OF PROPERTY. Every municipal court and justice of the peace, upon complaint under oath that any person has in his possession or under his control any of the obscene books, papers, or other matter specified in sections 617.24 to 617.26, shall issue a warrant directed to the sheriff or any constable of the county, therein directing him to search for, seize, and take possession of such obscene matter; and, upon conviction of the person in whose possession the same shall be found, shall cause such matter to be destroyed, and the fact to be entered upon the records of the court.

[R. L. s. 4957] (10190)

617.28 CERTAIN MEDICAL ADVERTISEMENTS. Subdivision 1. **Placing advertisement; penalty.** Any person who shall advertise, in his own name or in 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, or the owner, publisher, or manager of any newspaper or periodical who shall permit to be inserted or published in any newspaper or periodical owned or controlled by him, the treatment or curing of venereal diseases, the restoration of "lost manhood" or "lost vitality," or 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 disease of like causes, or who shall advertise in any manner any medicine, drug compound, appliance or any means whatever whereby it is claimed that sexual diseases of men and women may be cured or relieved, or miscarriage or abortion produced, shall be guilty of a gross misdemeanor and shall be punished by a fine of not less than \$50 nor more than \$500 or by imprisonment in the county jail for not more than six months.

Subd. 2. **Publication; penalty.** Any person publishing, distributing, or causing to be distributed or circulated, any of the advertising matter hereinabove prohibited, shall be guilty of a misdemeanor and punished as prescribed in subdivision 1.

[1909 c. 162 ss. 1, 2] (10191, 10192)

617.29 EVIDENCE. The production of any advertisement or advertising matter published or distributed contrary to the provisions of sections 617.28 and 617.29 shall be of itself prima facie evidence of the guilt of the person advertising to cure any such disease hereinabove mentioned, or of the publishers who publish any matter such as is herein prohibited.

[1909 c. 162 s. 3] (10193)

PROSTITUTION, HOUSES OF ILL-FAME

617.30 KEEPER OF DISORDERLY RESORT. Subdivision 1. Every person who shall keep a house of ill-fame or assignation, or a house, tent, vehicle, resort, or place of any description for persons to visit for unlawful sexual intercourse, or for any other lewd, obscene, or indecent purpose, shall be guilty of a felony.

Subd. 2. Every person who shall keep a disorderly house, or any place of public resort by which the peace, comfort, or decency of a neighborhood is habitually disturbed, or who, as agent or owner, lets a building or any portion thereof, knowing that it is intended to be used for any purpose specified in this section, or who permits a building or any portion thereof to be used for any of the aforesaid purposes, shall be guilty of a gross misdemeanor.

[R. L. s. 4958] (10194)

617.31 DETENTION FOR DEBT IN HOUSE OF ILL-FAME. Subdivision 1. **Prohibited.** It shall be unlawful for any person to hold, detain, or restrain in any house of ill-fame or prostitution, any female person for the purpose of compelling such female, directly or indirectly, by her voluntary or involuntary service or labor, to pay, liquidate, or cancel any debt, dues, or obligations incurred, or said to have been incurred, in such house of ill-fame or prostitution.

Subd. 2. **Penalty.** Any person who violates or suffers the violation of any of the provisions of this section shall be guilty of a felony; and upon conviction thereof shall be imprisoned in the state prison for not more than two years.

[1909 c. 461 s. 1, 2] (10195, 10196)

617.32 RECEIVING EARNINGS OF PROSTITUTE. Subdivision 1. **Prohibited.** It shall be unlawful for any person to knowingly accept or receive, in whole or in part, his or her support or maintenance from the proceeds or earnings of any woman engaged in prostitution.