

No bill in 1964
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& a separate bill.

C O N F I D E N T I A L

STATE OF NEW YORK
TEMPORARY COMMISSION ON REVISION
OF THE
PENAL LAW AND CRIMINAL CODE

PROPOSED AMENDMENTS TO PRESENT PENAL
LAW SECTIONS DEALING WITH ABORTION AREA

January 20, 1964

C O N F I D E N T I A L

§ 80. Definition and punishment of abortion

A person who, with intent thereby to procure the miscarriage of a woman, unless the same is [necessary to preserve the life of the woman, or of the child with which she is pregnant] justifiable pursuant to section eighty-a,^{*} either:

1. Prescribes, supplies, or administers to a woman, whether pregnant or not, or advises or causes a woman to take any medicine, drug, or substance; or,

2. Uses, or causes to be used, any instrument or other means,

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

§ 80-a. Justifiable abortion

1. A licensed physician is justified in procuring or attempting to procure the miscarriage of a woman when he reasonably believes that (a) there is a substantial risk that the continuance of the pregnancy will gravely impair the physical or mental health of such woman or (b) there is substantial risk that the child will be born with a grave physical or mental defect, or (c) the pregnancy resulted from rape, incest or any sexual intercourse committed when such woman was unmarried and less than eighteen years old.

2. Justifiable abortions shall be performed only in licensed hospitals, except in case of emergency when hospital facilities are not available.

3. No abortion shall be performed unless two physicians, one of whom may be the person performing the abortion, shall have certified the circumstances which they believe to justify the

* Bracketed matter is old law to be omitted. Underscored matter is new.

abortion. Such certificate shall be submitted prior to the abortion to the hospital where it is to be performed, and, in the case of pregnancy resulting from criminal or illicit sexual intercourse as specified in paragraph (c) of subsection one of this section, to the district attorney of the county in which the hospital is located.

4. Failure to comply with any of the requirements of subsections two and three of this section shall raise a presumption that the abortion was unjustifiable.

§ 81. Killing of a child in attempting miscarriage

A pregnant woman who takes any medicine, drug or substance, or uses or submits to the use of any instrument or other means, with intent thereby to produce her own miscarriage, unless the same is [necessary to preserve her life, or that of the child whereof she is pregnant] justifiable pursuant to section eighty-a, is punishable by imprisonment for not less than one year, nor more than four years.

§ 1050. Manslaughter in the first degree

Such homicide is manslaughter in the first degree, when committed without a design to effect death:

1. By a person engaged in committing, or attempting to commit, a misdemeanor, affecting the person or property, either of the person killed, or of another; or,

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

The wilful killing of an unborn **quick** child, by any injury committed upon the person of the mother of such child, is manslaughter in the first degree.

A person who provides, supplies, or administers to a woman, whether pregnant or not, or who prescribes for, or advises or procures a woman to take any medicine, drug, or substance, or who uses or employs, or causes to be used or employed, any instrument or other means, with intent thereby to procure the miscarriage of a woman, unless the same is [necessary to preserve her life] justifiable pursuant to section eighty-a, in case the death of the woman, or of any quick child of which she is pregnant, is thereby produced, is guilty of manslaughter in the first degree.

§ 1052. Manslaughter in the second degree defined

Such homicide is manslaughter in the second degree, when committed without a design to effect death:

1. By a person committing or attempting to commit a trespass, or other invasion of a private right, either of a person killed, or of another, not amounting to a crime; or,
2. In the heat of passion, but not by a dangerous weapon or by the use of means either cruel or unusual; or,
3. By any act, procurement or culpable negligence of any person, which, according to the provisions of this article, does not constitute the crime of murder in the first or second degree, nor manslaughter in the first degree.

Woman producing miscarriage. - A woman quick with child, who takes or uses, or submits to the use of any drug, medicine, or substance, or any instrument or other means with intent to produce her own miscarriage, unless the same is [necessary to preserve her own life, or that of the child whereof she is pregnant] justifiable pursuant to section eighty-a, if the death of such child is [hereby] thereby produced is guilty of manslaughter in the second degree.

Negligent use of machinery. - A person who, by any act of negligence or misconduct in a business or employment in which he is

engaged, or in the use or management of any machinery, animals, or property of any kind intrusted to his care, or under his control, or by any unlawful, negligent or reckless act, not specified by or coming within the foregoing provisions of this article, or by the provisions of some other statute, occasions the death of a human being, is guilty of manslaughter in the second degree.

Mischevious animals.-If the owner of a mischevious animal, knowing its propensities, wilfully suffers it to go at large, or keeps it without ordinary care, and the animal, while so at large, and not confined, kills a human being, who has taken all the precautions, which the circumstances permitted, to avoid the animal, the owner is guilty of manslaughter in the second degree.

Overloading passenger vessel.-A person navigating a vessel for gain, who wilfully or negligently receives so many passengers or such a quantity of other lading on board the vessel, that, by means thereof, the vessel sinks, or is upset or injured, and thereby a human being is drowned, or otherwise killed, is guilty of manslaughter in the second degree.

Persons in charge of steamboats.-A person having charge of a steamboat used for the conveyance of passengers, or of a boiler or engine thereof, who, from ignorance, recklessness, or gross neglect, or for the purpose of excelling any other boat in speed, creates, or allows to be created, such an undue quantity of steam as to burst the boiler, or other apparatus in which it is generated or contained, or to break any apparatus or machinery connected therewith, whereby the death of a human being is occasioned, is guilty of manslaughter in the second degree.

Persons in charge of steam engines.-An engineer or other person, having charge of a steam boiler, steam engine, or other apparatus for generating or applying steam, employed in a boat or railway, or in manufactory, or in any mechanical works, who wilfully, or from ignorance or gross neglect, creates or allows to

be created, such an undue quantity of steam as to burst the boiler, engine, or apparatus, or to cause any other accident, whereby the death of a human being is produced, is guilty of manslaughter in the second degree.

Acts of physicians while intoxicated.-A physician or surgeon, or person practising as such, who, being in a state of intoxication, without a design to effect death, administers a poisonous drug or medicine, or does any other act as a physician or surgeon, to another person, which produces the death of the latter, is guilty of manslaughter in the second degree.

Persons making or keeping gunpowder contrary to law.-A person who makes or keeps gunpowder or any other explosive substance within a city or village, in any quantity or manner prohibited by law, or by ordinance of the city or village, if any explosion thereof occurs, whereby the death of a human being is occasioned, is guilty of manslaughter in the second degree.