

## Chapter 435

### Birth Control; Abortions

#### Chapter 435

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#### 435.405 to 435.495

LAW REVIEW CITATIONS: 49 OLR 302-321; 6 WLJ 349-356; 2 EL 225-237.

#### 435.415

#### NOTES OF DECISIONS

Where the defendant is not a licensed physician nor assisting a licensed physician, the indictment need not negate the possibility that the abortion may have been lawful. *State v. Schulman*, (1971) 92 Or App Adv Sh 1505, 485 P2d 1252, Sup Ct review denied.

ATTY. GEN. OPINIONS: Validity of residency requirement, (1970) Vol 35, p 219.

#### 435.435

LAW REVIEW CITATIONS: 49 OLR 256, 258.

#### 435.455

#### NOTES OF DECISIONS

##### 1. Under former similar statute

The burden of proof was on the state to prove that the abortion was not necessary to preserve the life of the mother. *State v. Clements*, (1887) 15 Or 237, 14 P 410; *State v. Elliott*, (1955) 206 Or 82, 289 P2d 1075.

The term "pregnant with a child" designated the fetus throughout the period of gestation. *State v. Atwood*, (1909) 54 Or 526, 102 P 295, 104 P 195, 21 Ann Cas 516; *State v. Ausplund*, (1917) 86 Or 121, 167 P 1019.

It was immaterial whether deceased, prior to the commission of the crime attempted the abortion herself or not, unless such attempt contributed to her death. *State v. Glass*, (1873) 5 Or 73.

An instruction assuming as a fact criminal intimacy of defendant and the deceased was error where such a relation was not admitted. *State v. Bowker*, (1894) 26 Or 309, 38 P 124.

The deceased's dying declarations, tending to show that the means employed by accused to procure a miscarriage were unnecessary to preserve her life, were admissible. *State v. Fuller*, (1908) 52 Or 42, 96 P 456.

Dying declarations of the deceased were admissible when her death was an essential element of the crime. *Id.*

The term "the death of such child" meant the death of the fetus either before or after quickening. *State v. Atwood*, (1909) 54 Or 526, 102 P 295, 104 P 195, 21 Ann Cas 516.

It was error to admit prosecutrix's testimony as to other abortions previously performed upon her by the defendant. *State v. Willson*, (1925) 113 Or 450, 230 P 810, 233 P 259, 39 ALR 84.

The woman operated upon in an abortion case was not an accomplice of accused. *Id.*

Notwithstanding the provisions of the former statute a doctor was not guilty of an unlawful act if he complied with the statutory conditions. *State v. Buck*, (1953) 200 Or 87, 262 P2d 495.

Unless person was charged as a physician in the indictment, the fact that the abortion was performed under the Medical Practice Act was a matter of defense. *State v. Hawkins*, (1970) 255 Or 39, 463 P2d 858.

This section, as applied to an unlicensed person, was constitutional under U.S. Const., Am. 14, §1. *State v. Polk*, (1971) 5 Or App 605, 485 P2d 1241.

FURTHER CITATIONS: *Belt v. Spaulding*, (1888) 17 Or 130, 20 P 827; *Bd. of Medical Examiners v. Eisen*, (1912) 61 Or 492, 123 P 52; *State v. Farnam*, (1916) 82 Or 211, 161 P 417, Ann Cas 1918A, 318; *State v. Dewey*, (1956) 206 Or 496, 292 P2d 799; *State v. Beeson*, (1967) 248 Or 411, 434 P2d 460.

ATTY. GEN. OPINIONS: Liability of performing abortion without consent of husband, (1969) Vol 34, p 574.

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LAW REVIEW CITATIONS: 34 OLR 192; 46 OLR 212, 214.