
**CODE
OF LAWS
OF
SOUTH
CAROLINA
1962**

4

**Titles 15-18
—
Courts
to
Dams
and
Drains**

A3
6.962
v. 4

The Michie Co.

**CODE OF LAWS
OF
SOUTH CAROLINA
1962**

VOLUME 4

**Title 15
Courts
to
Title 18
Dams and Drains**



CODE OF LAWS
OF
SOUTH CAROLINA

1962

ANNOTATED

Prepared under the supervision and direction of the
Code Commissioner and the Committee on Statutory
Laws of the General Assembly of South Carolina

Volume 4

THE MICHIE COMPANY
CHARLOTTESVILLE, VA.
1962

S. C. STATE LIBRARY

COPYRIGHT 1962
BY
THE STATE OF SOUTH CAROLINA

THE CO
PASSED I
PROVED I
UTORY L
1962. THE
COMPILA
STATE A
SUANT T
TICLE VI,
WHICH R
BOTH HO
OF THE S

THE CODE OF LAWS OF 1962 WAS DECLARED BY AN ACT PASSED BY THE GENERAL ASSEMBLY OF 1962 AND DULY APPROVED BY THE GOVERNOR, TO BE THE ONLY GENERAL STATUTORY LAW OF THE STATE ON THE NINTH DAY OF JANUARY, 1962. THE CODE OF 1962 IS THE RESULT OF THE COLLECTION, COMPILATION AND REVISION OF THE STATUTORY LAW OF THE STATE AS REPORTED BY THE CODE COMMISSIONER PURSUANT TO THE STATUTES OF THE STATE AND SECTION 5, ARTICLE VI, OF THE CONSTITUTION OF SOUTH CAROLINA, 1895, WHICH REPORT WAS LAID ON THE DESKS OF THE MEMBERS OF BOTH HOUSES OF THE GENERAL ASSEMBLY ON THE FIRST DAY OF THE SESSION OF 1961.

Table of Titles

TITLE

1. Administration of the Government.
2. Aeronautics.
3. Agriculture.
4. Alcohol and Alcoholic Beverages.
5. Amusements and Athletic Contests.
6. Animals.
7. Appeals.
8. Banking, Commercial Paper and Finance.
9. Boards and Commissions.
10. Civil Remedies and Procedure.
11. Contracts and Agency.
12. Corporations.
13. Cotton.
14. Counties.
15. Courts.
16. Crimes and Offenses.
17. Criminal Procedure.
18. Dams and Drains; Sanitary and Drainage Commissions and Districts.
19. Decedents' Estates.
20. Domestic Relations.
21. Education.
22. Educational Institutions.
23. Elections.
24. Electricity.
25. Eminent Domain.
26. Evidence.
27. Fees and Costs.
28. Fish, Game, etc.
29. Forestry.
30. General Assembly.
31. Guardian and Ward.
32. Health.
33. Highways, Bridges and Ferries.
34. Homestead and Other Exemptions.
35. Hotels, Boardinghouses, Restaurants and Tourist Camps.
36. Housing and Redevelopment.
37. Insurance.
38. Juries and Jurors in Circuit Courts.
39. Jurisdiction of State and United States.
40. Labor and Employment.
41. Landlord and Tenant.

TITLE

42. Libraries.
43. Magistrates and Constables.
44. Military, Civil Defense and Veterans Affairs.
45. Mortgages and Other Liens.
46. Motor Vehicles.
47. Municipal Corporations.
48. Names.
49. Notaries Public and Commissioners of Deeds.
50. Officers and Employees.
51. Parks and Playgrounds.
52. Partnerships, Joint-Stock Companies and Business Trusts.
53. Peace Officers.
54. Ports and Maritime Matters.
55. Prisons and Other Methods of Correction.
56. Professions and Occupations.
57. Property and Conveyances.
58. Public Service Companies.
59. Public Works and Certain Public Authorities.
60. Registration and Recordation.
61. Retirement Systems.
62. Securities.
63. Soil Conservation and Improvement.
64. Sundays, Holidays and Other Special Days.
65. Taxation.
66. Trade and Commerce.
67. Trusts and Fiduciaries.
68. Unemployment Compensation.
69. Warehouses.
70. Waters and Watercourses.
71. Welfare.
72. Workmen's Compensation.

CHAPTER

1. General
2. The Sup
3. The Circ
4. The Pro
5. The Cou
6. Municipa
7. Juvenile
15-110
8. Juvenile
15-128
9. Juvenile
15-129
10. Juvenile
15-130
11. Juvenile
15-131
12. Domestic
15-132
13. Children
14. Special I
to 15-1
15. Courts o
16. Civil and
1585.36
17. Civil and
1591.29
18. Courts o
19. Civil and
20. Juvenile,
County
21. Civil and
1651.22
22. Richland
23. Civil Cou
24. Civil and
to 15-1
25. Civil and

Table of Contents

VOLUME 4

Title 15.

Courts.

CHAPTER	PAGE
1. General Provisions, §§ 15-1 to 15-15	2
2. The Supreme Court, §§ 15-101 to 15-164	7
3. The Circuit Courts, §§ 15-201 to 15-305	26
4. The Probate Courts, §§ 15-401 to 15-545	57
5. The County Courts, §§ 15-601 to 15-830	88
6. Municipal Courts, §§ 15-901 to 15-1091	136
7. Juvenile and Domestic Relations Courts in Certain Counties, §§ 15-1101 to 15-1276	168
8. Juvenile and Domestic Relations Court of Greenville County, §§ 15-1281 to 15-1281.32	205
9. Juvenile and Domestic Relations Court of Greenwood County, §§ 15-1291 to 15-1291.30	219
10. Juvenile and Domestic Relations Court of Lancaster County, §§ 15-1301 to 15-1301.30	230
11. Juvenile and Domestic Relations Court of Lexington County, §§ 15-1311 to 15-1311.30	241
12. Domestic Relations Court of Orangeburg County, §§ 15-1321 to 15-1321.34	252
13. Children's Courts, §§ 15-1331 to 15-1428	263
14. Special Provisions for Children in Anderson County, §§ 15-1431 to 15-1446	284
15. Courts of the City of Charleston, §§ 15-1501 to 15-1580	289
16. Civil and Criminal Court of Colleton County, §§ 15-1585 to 15- 1585.36	306
17. Civil and Criminal Court of Darlington County, §§ 15-1591 to 15- 1591.29	314
18. Courts of Florence County, §§ 15-1601 to 15-1621.31	322
19. Civil and Criminal Court of Horry, §§ 15-1631.1 to 15-1631.25....	335
20. Juvenile, Domestic Relations and Special Court of Kershaw County, §§ 15-1641 to 15-1641.31	341
21. Civil and Domestic Relations Court of Laurens, §§ 15-1651 to 15- 1651.22	353
22. Richland County Judicial System, §§ 15-1661 to 15-1661.7	359
23. Civil Courts of Spartanburg, §§ 15-1671 to 15-1671.29	362
24. Civil and Domestic Relations Court of Sumter County, §§ 15-1675 to 15-1675.49	369
25. Civil and Criminal Court of Union, §§ 15-1681 to 15-1681.28	384

CHAPTER	PAGE
26. Criminal, Juvenile and Domestic Relations Court of York County, §§ 15-1691 to 15-1691.37	391
27. Clerks of Court, §§ 15-1701 to 15-1787	398
28. Masters, §§ 15-1801 to 15-1828	418
29. Stenographers, Auctioneers, Bailiffs and Other Court Attaches, §§ 15-1901 to 15-1942	427
30. Judicial Council, §§ 15-2101 to 15-2110	437

Title 16.

Crimes and Offenses.

1. Accessories, §§ 16-1, 16-2	441
2. Felonies and Misdemeanors, §§ 16-11 to 16-13	443
3. Offenses Against the Person, §§ 16-51 to 16-95	444
4. Offenses Against the Peace, §§ 16-101 to 16-162	466
5. Offenses Against Public Justice, §§ 16-201 to 16-235	477
6. Offenses Against Property, §§ 16-301 to 16-396	485
7. Offenses Against Morality and Decency, §§ 16-401 to 16-421	521
8. Offenses Against Public Policy, §§ 16-501 to 16-573	530
9. Subversive Activities Registration Act, §§ 16-581 to 16-589	554

Title 17.

Criminal Procedure.

1. General Provisions, §§ 17-1 to 17-3	557
2. Coroners and Inquests on the Dead, §§ 17-51 to 17-157	558
3. Extradition, §§ 17-201 to 17-207	578
4. Process and Arrest, §§ 17-251 to 17-263	580
5. Bail and Recognizances, §§ 17-301 to 17-316	586
6. Habeas Corpus, §§ 17-351 to 17-369	592
7. Indictments, §§ 17-401 to 17-410	598
8. Venue, §§ 17-451 to 17-458	607
9. Pleading and Trial, §§ 17-501 to 17-514	612
10. Judgment and Execution, §§ 17-551 to 17-581	621

Title 18.

Dams and Drains; Sanitary and Drainage Commissions and Districts.

1. Dams, §§ 18-5 to 18-8	631
2. Rights of Way for Drainage, §§ 18-51 to 18-76	633
3. Sanitary and Drainage Commissions, §§ 18-101 to 18-110	637
4. Drainage Districts Under 1911 Act, §§ 18-201 to 18-333	641
5. Drainage Districts Under 1920 Act, §§ 18-401 to 18-638	666
6. Certain Local Provisions, §§ 18-751 to 18-760	711

Code o

Chapter

1. General Provisi
2. The Supreme
3. The Circuit Co
4. The Probate C
5. The County C
6. Municipal Cou
7. Juvenile and
ties
8. Juvenile and D
9. Juvenile and D
10. Juvenile and E
11. Juvenile and D
12. Domestic Rela
13. Children's Cou
14. Special Provisi
15. Courts of the
16. Civil and Crin
17. Civil and Crin
18. Courts of Flo
19. Civil and Cri
20. Juvenile, Dom
County
21. Civil and Dom
22. Richland Cou
23. Civil Courts c
24. Civil and Dom
25. Civil and Crin
26. Criminal, Ju
County
27. Clerks of Co
28. Masters
29. Stenographers
taches
30. Judicial Coun

TITLE 16.

CRIMES AND OFFENSES.

Chapter	Section
1. Accessories	16-1
2. Felonies and Misdemeanors	16-11
3. Offenses Against the Person	16-51
4. Offenses Against the Peace	16-101
5. Offenses Against Public Justice	16-201
6. Offenses Against Property	16-301
7. Offenses Against Morality and Decency	16-401
8. Offenses Against Public Policy	16-501
9. Subversive Activities Registration Act	16-581

Cross References.

As to criminal procedure generally, see Title 17. As to magistrates and constables generally, see Title 43. As to division of actions into civil and criminal, see § 10-11. For constitutional definition of treason, see S. C. Const., Art. 1, § 22. As to general criminal laws being in effect within certain State property in Columbia, see § 1-417. As to crimes while in flight, see § 2-8. As to offenses against the election laws, see §§ 23-650 to 23-667.

CHAPTER 1. ACCESSORIES.

Sec.	Sec.
16-1. Accessories before fact punished as principals.	16-2. When and how tried.

§ 16-1. Accessories before fact punished as principals.—Whoever aids in the commission of a felony or is accessory thereto before the fact by counseling, hiring or otherwise procuring such felony to be committed shall be punished in the manner prescribed for the punishment of the principal felon. (1952 Code § 16-1; 1942 Code § 1936; 1932 Code § 1936; Cr. C. '22 § 919; Cr. C. '12 § 919; Cr. C. '02 § 634; G. S. 2610; R. S. 521; 1714 (2) 484.)

Cross references.—As to classification of the crime referred to in this section as a felony, see § 16-11. As to aiders, procurers, counselors, etc., of offender killing by poison, see § 16-53. As to counseling, aiding or abetting administration of poison, see § 16-56. As to persons presumed to have aided and abetted lynching, see § 16-59.1. As to aiding, counseling or procuring the commission of arson or other offenses involving fire, see §§ 16-311 to 16-314, 16-317 to 16-320. As to assisting, procuring or

causing forgery, see § 16-351. As to hiring or counseling another to breach a trust with fraudulent intent, see § 16-365. As to crime of conspiracy generally, see § 16-550. As to accessory after the fact to a felony, see § 17-453. As to accessories, aiders and abettors in violations of the laws as to certificates of title for vehicles, see § 46-150.94.

Acquittal as principal does not bar trial of defendant as accessory.—Although punishment of principals and accessories before the fact in felonies is the

meanors unless the statute creating any such offense shall expressly provide that the offense is a felony. (1960 (51) 1602.)

CHAPTER 3.

OFFENSES AGAINST THE PERSON.

Article 1.

Homicide.

Sec.

- 16-51. Murder defined.
- 16-52. Punishment for murder.
- 16-53. Killing by poison.
- 16-54. Killing by stabbing, etc.
- 16-55. Manslaughter.
- 16-56. Administering or attempting to administer poison.

Article 2.

Lynching.

- 16-57. Lynching in the first degree.
- 16-58. Lynching in the second degree.
- 16-59. Mob defined.
- 16-59.1. Members of mob guilty as principals.
- 16-59.2. Duties of sheriff and solicitor when mob commits act of violence.
- 16-59.3. Solicitor may investigate to apprehend members of mob.
- 16-59.4. Civil liability of members of mob.

Article 3.

Dueling.

- 16-61. Sending or accepting challenge to fight.
- 16-62. Carrying or delivering challenge.
- 16-63. Killing in a duel.
- 16-64. Principal or second compellable to give testimony.
- 16-65. Persons concerned in duel may be used as witnesses.
- 16-66. Such witness may not be subsequently prosecuted.

ARTICLE 1.

Homicide.

§ 16-51. Murder defined.—“Murder” is the killing of any person with malice aforethought, either express or implied. (1952 Code § 16-51; 1942 Code § 1101; 1932 Code § 1101; Cr. C. '22 § 1; Cr. C. '12 § 135; Cr. C. '02 § 108; G. S. 2453; R. S. 108; 1712 (2) 418.)

Article 4.

Rape, Abortion, etc.

Sec.

- 16-71. Rape.
- 16-72. Punishment for rape or assault with intent to ravish.
- 16-73. Testimony by deposition in rape, etc., cases.
- 16-74. How deposition to be taken.
- 16-75. Deposition to be read to jury.
- 16-76. Judge may direct depositions in rebuttal.
- 16-77. Custody of deposition.
- 16-78. Deposition to be destroyed.
- 16-79. Sheriff to procure attendance of accused; absence of counsel.
- 16-80. Carnal knowledge of woman child.
- 16-81. Misdemeanor to publish name of person raped, etc.
- 16-82. Death resulting from abortion or attempted abortion.
- 16-83. Abortion or attempted abortion not resulting in death.
- 16-84. Punishment of woman in such cases.
- 16-85. Testimony in offenses under §§ 16-82 to 16-84.
- 16-86. Limitation of prosecutions under §§ 16-82 to 16-84.

Article 5.

Kidnapping, Assault, etc.

- 16-91. Kidnapping, etc.
- 16-92. Conspiracy to kidnap.
- 16-93. Assault, etc., with concealed weapon.
- 16-94. Failing to remove doors from abandoned iceboxes, refrigerators, etc.
- 16-95. Unlawful to leave abandoned wells open.

- I. General Con
- II. What Consti
- III. Malice.
 - A. Definitions
 - B. Instructions
 - C. Presumptio

As to classific
As to indictment

I. GENERAL

Editor's note: section are not complete treatise. Only those interpret this s

This section statutory offenses law crime. Stat (1875); State v S. E. 656 (1902 C. 351, 89 S. E.

This definitio ingredients whi stitute murder, and in every p common law. S 497, 38 S. E. (2

And definitio section.—Trial and manslaughter definition give use the comm Stukes, 73 S. C.

Quoted in S 167, 130 S. E. 225 S. C. 267,

II. WHAT C

Malice is a murder. State 68 S. E. (2d)

Which is kill intention.—If kills him with tion of killing v. Sullivan, 4 (1894).

If the killin stances which criminal inten a fight in orde ant, that is r 55 S. C. 32, 32

And is not When a man under a prev do so, he is n tion given to homicide. Sta 21 S. E. 4 (18

vision, making the age of consent sixteen years, is not in violation of S. C. Const. Art. 3, § 33. *State v. Smith*, 181 S. C. 485, 188 S. E. 132 (1935).

This section and §§ 16-71 and 16-72 are subservient to the age of consent provisions of S. C. Const., Art. 3, § 33. *State v. Whitener*, 228 S. C. 244, 89 S. E. (2d) 701 (1955), cert. denied 350 U. S. 861, 76 S. Ct. 101, 100 L. Ed. 764 (1955).

This is a statutory offense, distinct from rape. *State v. Haddon*, 49 S. C. 308, 27 S. E. 194 (1896); *State v. Coleman*, 54 S. C. 162, 31 S. E. 866 (1898).

And distinct from § 16-71.—When S. C. Const., Art. 3, § 33, and § 16-71 and this section are construed together, it is apparent that § 16-71 has reference to rape at common law, and that this section refers to carnal knowledge of an unmarried woman who has not attained the age of fourteen years (now sixteen years), and who, by reason of her tender years, cannot legally consent to sexual intercourse. *State v. Gilchrist*, 54 S. C. 159, 31 S. E. 866 (1898); *State v. Ward*, 204 S. C. 210, 28 S. E. (2d) 785 (1943).

Where the conviction is for rape, under § 16-71 or the common-law indictment, this section does not apply, though the woman child is under 14 years of age, since the two offenses are separate and distinct. *State v. Haddon*, 49 S. C. 308, 27 S. E. 194 (1896).

But both common-law and statutory rape may be joined in the same indictment. *State v. Harrison*, 236 S. C. 246, 113 S. E. (2d) 783 (1960).

Boy between 7 and 14 years of age may be convicted, if the physical capacity be shown. *State v. Coleman*, 54 S. C. 162, 31 S. E. 866 (1898).

Only age of girl and fact of intercourse

§ 16-81. Misdemeanor to publish name of person raped, etc.—Whoever publishes or causes to be published the name of any woman, maid or woman child upon whom the crime of rape or an assault with intent to ravish has been committed or alleged to have been committed in this State in any newspaper, magazine or other publication shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars or imprisonment of not more than three years. But the provisions of this section shall not apply to publications made by order of court. (1952 Code § 16-81; 1942 Code § 1275; 1932 Code § 1275; Cr. C. '22 § 170; Cr. C. '12 § 317; 1909 (26) 208.)

§ 16-82. Death resulting from abortion or attempted abortion.—Any person who shall administer to any woman with child, prescribe for any

need be shown.—Where the female is under the age of 16, the only other element necessary to be proven in order to establish the crime of carnal knowledge under this section is the fact that the defendant had intercourse with her. *State v. Whitener*, 228 S. C. 244, 89 S. E. (2d) 701 (1955), cert. denied 350 U. S. 861, 76 S. Ct. 101, 100 L. Ed. 764 (1955).

Use of force will not prevent conviction under this section. — While force is not a necessary ingredient of this offense, the fact that the act was accompanied by force will not prevent a conviction of statutory rape as charged in the indictment. *State v. Horton*, 209 S. C. 151, 39 S. E. (2d) 222 (1946).

Where indictment did not allege any offense occurring prior to the prosecutrix' becoming 14 years of age, evidence as to intercourse occurring prior to such time was inadmissible, and the trial judge erred when he charged the jury only on item (1) of this section without any reference to item (2). *State v. Bailey*, 226 S. C. 612, 86 S. E. (2d) 472 (1955).

Defendant not prejudiced by endorsement of the word "rape" on back of indictment.—A defendant charged with violating the provisions of this section is not prejudiced because the word "rape" is endorsed upon the back of the indictment, for this offense is known as "statutory rape." *State v. Horton*, 209 S. C. 151, 39 S. E. (2d) 222 (1946).

Conviction under this section does not disqualify person as witness. — *State v. Jeffcoat*, 148 S. C. 322, 146 S. E. 95 (1928).

Applied in *State v. Wagstaff*, 202 S. C. 443, 25 S. E. (2d) 484 (1941).

Quoted in *State v. Wilson*, 162 S. C. 413, 161 S. E. 104 (1930).

such woman or substance, drug the use or employment, with intent or premature labor necessary to prevent death of such child from, be deemed punished by imprisonment twenty years notwithstanding the provision such woman. (1 Cr. C. '22 § 12; 547.)

Cross reference. of the crimes referred as felonies, see §

Section is directed which death resulted to a case which is aborted, or attempted and dies by reason woman "quick with attempted to be woman or child 214 S. C. 1, 51 S. mented on in 2 S

"Child" in this use in § 16-83.— used in the same this section. It was legislature to make light of the common earlier statutes in try. *State v. Steadman*, E. (2d) 91 (1948) C. L. Q. 181 (194

Under this section separate existence a conviction for destruction of a with which the be so far advanced law as having a is, a life capital *State v. Steadman* (2d) 91 (1948), L. Q. 181 (1949)

Which it lacks of pregnancy.—I knowledge fact three months of no independent man, 214 S. C. 1, commented on in

Meaning of "corroboration,"

e the female is un-
only other element
in order to estab-
l knowledge under
t that the defend-
with her. State v.
, 89 S. E. (2d) 701
0 U. S. 861, 76 S.
! (1955).

ot prevent convic-
— While force is
dient of this of-
the act was ac-
ill not prevent a
rape as charged
e v. Horton, 209
222 (1946).

l not allege any
o the prosecutrix'
re, evidence as to
ior to such time
the trial judge
the jury only on
without any ref-
te v. Bailey, 226
472 (1955).

iced by endorse-
" on back of in-
charged with vi-
f this section is
e word "rape" is
f the indictment,
n as "statutory
209 S. C. 151,

section does not
ess. — State v.
146 S. E. 95

gstaff, 202 S. C.
41).

lson, 162 S. C.

tc.—Whoever
an, maid or
ith intent to
itted in this
ll be deemed
be punished
ment of not
all not apply
; 1942 Code
; 1909 (26)

ortion.—Any
cribe for any

such woman or suggest to or advise or procure her to take any medicine, substance, drug or thing whatever or who shall use or employ or advise the use or employment of any instrument or other means of force whatever, with intent thereby to cause or procure the miscarriage, abortion or premature labor of any such woman, unless the same shall have been necessary to preserve her life or the life of such child, shall, in case the death of such child or of such woman results in whole or in part therefrom, be deemed guilty of a felony and, upon conviction thereof, shall be punished by imprisonment in the Penitentiary for a term not more than twenty years nor less than five years. But no conviction shall be had under the provisions of this section upon the uncorroborated evidence of such woman. (1952 Code § 16-82; 1942 Code § 1112; 1932 Code § 1112; Cr. C. '22 § 12; Cr. C. '12 § 150; Cr. C. '02 § 122; R. S. 122; 1883 (18) 547.)

Cross reference. — As to classification of the crimes referred to in this section as felonies, see § 16-11.

Section is directed to abortion from which death results.—This section is directed to a case where a pregnant woman is aborted, or attempted to be aborted, and dies by reason thereof, or where a woman "quick with child" is aborted, or attempted to be aborted, and either the woman or child dies. State v. Steadman, 214 S. C. 1, 51 S. E. (2d) 91 (1948), commented on in 2 S. C. L. Q. 181 (1949).

"Child" in this section differs from its use in § 16-83.—The word "child" is not used in the same sense in § 16-83 as in this section. It was the intent of the legislature to make such distinction in the light of the common-law rule and much earlier statutes in England and this country. State v. Steadman, 214 S. C. 1, 51 S. E. (2d) 91 (1948), commented on in 2 S. C. L. Q. 181 (1949).

Under this section "child" must have separate existence. — In order to sustain a conviction for an abortion where the destruction of a child is alleged, the child with which the woman is pregnant must be so far advanced as to be regarded in law as having a separate existence; that is, a life capable of being destroyed. State v. Steadman, 214 S. C. 1, 51 S. E. (2d) 91 (1948), commented on in 2 S. C. L. Q. 181 (1949).

Which it lacks during first three months of pregnancy.—It is a recognized and acknowledged fact that within the first three months of pregnancy the child has no independent existence. State v. Steadman, 214 S. C. 1, 51 S. E. (2d) 91 (1948), commented on in 2 S. C. L. Q. 181 (1949).

Meaning of "corroboration." — The "corroboration," required under the terms

of this statute, means "anything which tends to strengthen, add to, add weight, or credulity, or that which makes more certain." State v. Parsons, 171 S. C. 449, 172 S. E. 424 (1934).

Corroboration of the woman's evidence does not have to come from testimony of some person who actually saw the crime committed; it may come from circumstances, from the words and acts of the defendant, previous to, about the time of, and after the alleged commission of the offense, testified to by some witness other than the woman. State v. Parsons, 171 S. C. 449, 172 S. E. 424 (1934).

Section applies even though drug be sent from another state. — The courts of South Carolina have jurisdiction of defendant for the offense of advising and procuring a woman of that State to take a drug with intent thereby of causing her to abort, though the drug has been procured by defendant in another state and sent to the woman by mail. State v. Morrow, 40 S. C. 221, 18 S. E. 853 (1892).

And though abortion was in fact caused by use of instruments. — A person who gives a woman a drug with intent to cause her to abort may be convicted, though the abortion was in fact caused by the use of instruments. State v. Morrow, 40 S. C. 221, 18 S. E. 853 (1892).

Applied in State v. Evans, 202 S. C. 463, 25 S. E. (2d) 492 (1942).

Quoted in State v. Steadman, 216 S. C. 579, 59 S. E. (2d) 168 (1950), cert. denied 340 U. S. 850, 71 S. Ct. 78, 95 L. Ed. 623 (1950).

Cited in Evans v. Manning, 217 S. C. 10, 59 S. E. (2d) 341 (1950); State v. Hollman, 232 S. C. 489, 102 S. E. (2d) 873 (1958).

§ 16-83. Abortion or attempted abortion not resulting in death.—Any person who shall administer to any woman with child, prescribe, procure or provide for any such woman or advise or procure any such woman to take any medicine, drug, substance or thing whatever or shall use or employ or advise the use or employment of any instrument or other means of force whatever, with intent thereby to cause or produce the miscarriage, abortion or premature labor of any such woman, shall, upon conviction thereof, be punished by imprisonment in the Penitentiary for a term not more than five years or by fine of not more than five thousand dollars or by such fine and imprisonment both, at the discretion of the court. But no conviction shall be had under the provisions of this section upon the uncorroborated evidence of such woman. (1952 Code § 16-83; 1942 Code § 1113; 1932 Code § 1113; Cr. C. '22 § 25; Cr. C. '12 § 170; Cr. C. '02 § 139; R. S. 137; 1882 (18) 547.)

Cross reference. — As to classification of the crimes referred to in this section as felonies, see § 16-11.

Section is directed to abortion not resulting in death.—This section is directed to a case where a woman is aborted or attempted to be aborted in the early stages of pregnancy prior to the time when it could be said that she was "quick with child," that is, when the embryo gives the first physical proof of life after advancing to that degree of maturity where the child has a separate and independent existence and the woman has herself felt the child alive and quick within her, and death to the woman does not result. *State v. Steadman*, 214 S. C. 1, 51 S. E. (2d) 91 (1948), commented on in 2 S. C. L. Q. 181 (1949).

Intent to produce abortion must be proved. — The specific intent or purpose to produce a criminal abortion must be proved before the guilt of the accused is established. *State v. Steadman*, 216 S. C. 579, 59 S. E. (2d) 168 (1950), cert. denied 340 U. S. 850, 71 S. Ct. 78, 95 L. Ed. 623 (1950).

And burden of proof is upon State.—In an abortion prosecution the element of criminal intent is an essential ingredient of the offense charged, and the burden is cast on the State to prove such element by adequate and substantial evidence in its case in chief. *State v. Steadman*, 216 S. C. 579, 59 S. E. (2d) 168 (1950), cert. denied 340 U. S. 850, 71 S. Ct. 78, 95 L. Ed. 623 (1950).

Evidence of other abortions is admissible.—Where the element of intent is an essential ingredient of the crime charged and must be proved by the State, evidence of other abortions or attempted

abortions is admissible, because relative to that issue, as part of the State's case in chief. *State v. Steadman*, 216 S. C. 579, 59 S. E. (2d) 168 (1950), cert. denied 340 U. S. 850, 71 S. Ct. 78, 95 L. Ed. 623 (1950).

But is limited to question of intent.—Where the act itself is not admitted, the jury should be clearly instructed by the court, when requested, that evidence of other abortions or attempted abortions is limited to the question of intent. *State v. Steadman*, 216 S. C. 579, 59 S. E. (2d) 168 (1950), cert. denied 340 U. S. 850, 71 S. Ct. 78, 95 L. Ed. 623 (1950).

"Child" in this section differs from its use in § 16-82. — *State v. Steadman*, 214 S. C. 1, 51 S. E. (2d) 91 (1948), commented on in 2 S. C. L. Q. 181 (1949).

Child lacks separate existence during first three months of pregnancy.—*State v. Steadman*, 214 S. C. 1, 51 S. E. (2d) 91 (1948), commented on in 2 S. C. L. Q. 181 (1949).

Conviction does not depend upon third party's seeing crime. — Conviction for procuring an abortion, in violation of this section, does not depend on some third party's seeing the crime, but corroboration of the woman on whom the act was committed may come from words or acts of defendants or from circumstances. *State v. Sharpe*, 138 S. C. 58, 135 S. E. 635 (1926); *State v. Steadman*, 216 S. C. 579, 59 S. E. (2d) 168 (1950), cert. denied 340 U. S. 850, 71 S. Ct. 78, 95 L. Ed. 623 (1950).

Medicines used may be admitted in evidence.—In prosecution under this section, for procuring an abortion, medicines used by woman involved are properly admitted in evidence, in view of showing that they

were provided a tions of defendar S. C. 58, 135 S. 1

Evidence showi without undue i tion under this an abortion, evid ing witness sign proper pressure is proper, where ing to show un Sharpe, 138 S. C.

Absence of den

§ 16-84. Pun who shall appl whomsoever al or administer operation of ar or produce a r shall have bee shall be guilty punished by in a term not mo dollars, or by court. (1952 C '22 § 26; Cr. (

§ 16-85. Tes liminary exam trial of any in 16-84 no perso reason that th disgrace such of a character be used in ev criminal, again § 16-85; 1942 § 172; Cr. C. '1

§ 16-86. Lir prosecutions u after the com 1114-1; 1932 (§ 141; 1882 (

death.—Any describe, procure such woman shall use or ent or other produce the t, shall, upon itentiary for ive thousand etion of the this section ode § 16-83; . '12 § 170;

cause relative ie State's case an, 216 S. C.), cert. denied 95 L. Ed. 623

n of intent.— admitted, the ructed by the t evidence of d abortions is tent. State v. 59 S. E. (2d) U. S. 850, 71 50). fers from its Steadman, 214 (1948), com- 181 (1949). stance during ney.—State v. S. E. (2d) 91 . C. L. Q. 181

ad upon third onviction for lation of this a some third ut corroborat- hom the act om words or ircumstances. 58, 135 S. E. an, 216 S. C. , cert. denied 95 L. Ed. 623

nitted in evi- this section, edicines used rly admitted ng that they

were provided and used under instructions of defendant. *State v. Sharpe*, 138 S. C. 58, 135 S. E. 635 (1926).

Evidence showing warrant was signed without undue influence. — In prosecution under this section for procuring an abortion, evidence showing prosecuting witness signed warrant without improper pressure being brought upon her is proper, where there was evidence tending to show undue influence. *State v. Sharpe*, 138 S. C. 58, 135 S. E. 635 (1926).

Absence of denial of payment for oper-

ation.—In prosecution under this section for procuring an abortion, solicitor is properly permitted to argue that defendant had not denied payment for operation as testified to by State witness, in view of fact that defendant had not directly denied it. *State v. Sharpe*, 138 S. C. 58, 135 S. E. 635 (1926).

For additional related case, see *State v. Fields*, 68 S. C. 148, 46 S. E. 771 (1902).

Cited in *State v. Hollman*, 232 S. C. 489, 102 S. E. (2d) 873 (1958).

§ 16-84. Punishment of woman in such cases.—Any woman with child who shall apply to or solicit from any physician, druggist or other person whomsoever any medicine, drug, substance or thing whatever, shall take or administer the same or shall submit to or perform upon herself any operation of any sort or character whatever, with intent thereby to cause or produce a miscarriage, abortion or premature labor, unless the same shall have been necessary to preserve her life or the life of such child, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail or State Penitentiary for a term not more than two years or by fine not exceeding one thousand dollars, or by both such fine and imprisonment, at the discretion of the court. (1952 Code § 16-84; 1942 Code § 1114; 1932 Code § 1114; Cr. C. '22 § 26; Cr. C. '12 § 171; Cr. C. '02 § 140; R. S. 138; 1882 (18) 547.)

§ 16-85. Testimony in offenses under §§ 16-82 to 16-84.—In any preliminary examination, on any inquiry before a grand jury and on the trial of any indictment for any alleged offense under §§ 16-82, 16-83 or 16-84 no person shall be protected from testifying as a witness for the reason that the testimony of such witness would tend to incriminate or disgrace such witness; *provided, however*, that no testimony so given of a character tending to incriminate or disgrace such witness shall ever be used in evidence in any action, prosecution or proceeding, civil or criminal, against such witness or against his representatives. (1952 Code § 16-85; 1942 Code § 1013; 1932 Code § 1013; Cr. P. '22 § 99; Cr. C. '12 § 172; Cr. C. '02 § 141; 1882 (18) 547.)

§ 16-86. Limitation of prosecutions under §§ 16-82 to 16-84. — All prosecutions under §§ 16-82 to 16-84 shall be commenced within two years after the commission of the offense. (1952 Code § 16-86; 1942 Code § 1114-1; 1932 Code § 1013; Cr. P. '22 § 99; Cr. C. '12 § 172; Cr. C. '02 § 141; 1882 (18) 547.)