

CRIMINAL LAW: Giving false information for the purpose of a birth certificate is a misdemeanor and is barred by the statute of limitations.

September 12, 1939

9-13

Hon. L. Cunningham, Jr.
Prosecuting Attorney
Camden County
Camdenton, Missouri



Dear Sir:

We are in receipt of your request for an opinion, under date of September 6th, 1939, which reads as follows:

"I would appreciate an opinion from your office as to whether there would be any criminal law violation in the following set of facts.

"A man and his wife were divorced six or seven years ago, three years ago his wife had a daughter and in the birth certificate with the Board of Health, she stated that her ex-husband was the father of the child. Sometime later in a suit in the nature of habeas corpus to determine the custody of child born during the married life of the man and his ex-wife, she testified that the man was not the father of the three year old daughter and stated that another in another county was the father of the child and that the birth certificate was false. Of course, the proceedings were in the Circuit Court and the testimony was taken by the Court reporter. The man is very desirous of prosecuting his ex-wife for her misstatement on the birth certificate,

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however, I have been unable to find any law to base such a prosecution upon."

Section 9061 R. S. Mo. 1929, partially reads as follows:

" * * * And any other person or persons who shall violate any of the provisions of this article, or who shall willfully neglect or refuse to perform any duties imposed upon them by the provisions of this article, or shall furnish false information to a physician, undertaker, midwife, or informant, for the purpose of making incorrect certification of births or deaths, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five dollars nor more than one hundred dollars. * * "

Under the above section, an informant, who furnishes false information to a physician in reference to the certification of a birth, shall be deemed guilty of a misdemeanor.

Section 3393 R. S. Mo. 1929, reads as follows:

"No person shall be prosecuted, tried or punished for any offense, other than felony, or for any fine or forfeiture, unless the indictment be found or prosecution be instituted within one year after the commission of the offense, or incurring the fine or forfeiture."

Under this section, and in accordance with the statement of facts in your request, prosecution under section 9061, supra, will be barred by the statute of limitations. After a careful research, the only statute

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under which the ex-wife could be charged is Section 3878 R. S. Mo. 1929, which reads as follows:

"Every person who shall willfully and corruptly swear, testify or affirm falsely to any material matter, upon any oath or affirmation, or declaration, legally administered, in any cause, matter or proceeding, before any court, tribunal or public body or officer, and whoever shall falsely, by swearing or affirming, take any oath prescribed by the Constitution of this state, or any law or ordinance thereof, when such oath shall be legally administered, shall be deemed guilty of perjury."

The punishment under this section is set out in section 3879 R. S. Mo. 1929, which partially reads as follows:

" * * * for perjury committed in any other case wherein the punishment is not otherwise prescribed by law, by imprisonment in the penitentiary for a term not exceeding seven years."

It is very doubtful that a conviction could be had under the perjury charge, and under the statement of facts, as set out in your request. The evidence would be very technical and involve considerable medical testimony, and should conclusively show that the ex-wife committed perjury beyond a reasonable doubt. This section, which is a felony section, would be barred under the statute of limitations, after a period of three years. The statute would begin to run at the time that the ex-wife testified to the false testimony at the time of the habeas corpus proceedings.

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CONCLUSION

After a careful research, we find that the perjury section is the only section under which there can possibly be a prosecution under the statements set out in your request.

Respectfully submitted,

W. J. BURKE
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

WJB:RW