

Opinion No. 408**Bastardy—Verdict—Witnesses, Expense of.**

HELD: Bastardy cases are special proceedings to be tried as civil actions and resulting in civil liability. Not being a felony, two-thirds in number of the jury may render verdict. The witnesses must be subpoenaed at state expense.

December 19, 1933.

You request advice from the office on the following matters:

1. Is a proceeding in bastardy a civil or a criminal action?
2. What number of jurors are necessary to arrive at a verdict?
3. In such actions, are witnesses subpoenaed at the expense of the state?

Replying to question 1, in the absence of special regulations proceedings in bastardy must be governed by the rules of procedure applicable to civil actions. (7 C. J. 966 and cases cited; Skaggs v. State, 207 Pac. 877.) Bastardy cases are special proceedings to be tried as civil actions. (Clark v. State, 289 Pac. 313.) There are no "special regulations" governing such proceedings in our statutes other than Sections 12267-12274 R. C. M. 1921. The judgment provided by Section 12273 is in the nature of a civil liability. The fact that the offense is dealt

with in the Penal Code does not classify it as a crime.

Replying to question 2, in cases not amounting to a felony two-thirds in number of the jury may render a verdict. (Section 11929 R. C. M. 1921.) Bastardy is nowhere defined as a felony.

Replying to question 3, while the action is in the nature of a civil proceeding, it must be brought in the name of the state (Section 12267) and be prosecuted by the county attorney, (Section 12271) and witnesses must, in our opinion, be subpoenaed at the expense of the state.