

VIRGINIA'S ABORTION LAWS

**REPORT OF THE
VIRGINIA ADVISORY LEGISLATIVE COUNCIL
To
THE GOVERNOR
And
THE GENERAL ASSEMBLY OF VIRGINIA**



HO 15, 1970

COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
Richmond
1969

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VIRGINIA'S ABORTION LAWS

REPORT

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THE VIRGINIA ADVISORY LEGISLATIVE COUNCIL

Richmond, Virginia
December 16, 1969

To: HONORABLE MILLS E. GODWIN, JR., *Governor of Virginia*

and

THE GENERAL ASSEMBLY OF VIRGINIA

The wide news media coverage of the November 10, 1969 ruling of U.S. District Court Judge Gerhard A. Gesell in which he held unconstitutional a statute of the District of Columbia enacted in 1901 which permitted induced abortions only when necessary for the preservation of the mother's life or health, points up the general public concern about the laws in the United States on abortion. In September 1969, California's law on abortion was declared unconstitutional by the California Supreme Court. Recently, four New York physicians instituted suit to challenge the constitutionality of New York's abortion statutes. In recent years, twenty-two states have considered or enacted statutes making abortions legal which are performed for many reasons other than to preserve the mother's life. Virginia's neighbors, North Carolina and Maryland have enacted such statutes.

Research reveals that Virginia's statutes concerning abortion are presently written in almost the same language as they were in 1847. A comparison follows:

The Acts of Assembly 1847-1848 read:

§ 8. Any free person who shall administer to, or cause to be taken, by a woman, any drug or other thing, or use any means, with intent to destroy her unborn child, or to produce abortion or miscarriage, and shall thereby destroy such child, or produce such abortion or miscarriage, shall be confined to the penitentiary not less than one, nor more than five years. No person, by reason of any act mentioned in this section, shall be punishable where such act is done in good faith, with the intention of saving the life of such woman or child.

The Code of Virginia, §§ 18.1-62 and 18.1-63 are:

§ 18.1-62. **Producing abortion or miscarriage, etc.**—If any person administer to, or cause to be taken by a woman, any drug or other thing, or use means, with intent to destroy her unborn child, or to produce abortion or miscarriage, and thereby destroy such child, or produce such abortion or miscarriage, he shall be confined in the penitentiary not less than one nor more than ten years. No person, by reason of any act mentioned in this section, shall be punishable when such act is done in good faith, with the intention of saving the life of such woman or child.

§ 18.1-63. **Encouraging procuring of abortion by advertisement, etc.**—If any person, by publication, lecture, advertisement, or by the sale or circulation of any publication, or in any other manner, encourage or prompt the procuring of abortion or miscarriage, he shall be guilty of a misdemeanor.

The apparent need for considering revision of the State's laws on abortion was called to the attention of the 1968 General Assembly of Virginia by a bill which was introduced to repeal all the State's laws on abortion. This did not

pass, but a resolution was adopted by the General Assembly creating this study. This was House Joint Resolution No. 148 and reads as follows:

HOUSE JOINT RESOLUTION NO. 148

Directing the Virginia Advisory Legislative Council to study the desirability of revising the State's laws relating to abortion.

Whereas, the laws relating to abortion have recently been subject to extensive scrutiny and criticism throughout the country, both generally and with particular regard to the serious and tragic problems attending births in cases involving German Measles and the use of drugs by the mother prior to birth; and

Whereas, the laws of Virginia do not take into account such particular problems and have not been subject to revision or study over a prolonged period of time; now, therefore, be it

Resolved by the House of Delegates, the Senate of Virginia concurring, That the General Assembly of Virginia directs the Virginia Advisory Legislative Council to conduct a study on the desirability of revising the State's laws relating to abortion, including relevant provisions of the criminal code, the laws governing professional conduct, and questions of negligence with respect to and the rights of unborn children.

The Council may examine the laws of other jurisdictions relevant to the area, and every agency of the State shall assist the Council in its study.

The Council shall conclude its investigation and submit its report and any recommended legislative changes to the Governor and the General Assembly no later than November one, nineteen hundred sixty-nine.

Pursuant to the resolution, the Virginia Advisory Legislative Council selected Dr. J. D. Hagood, Clover, member of the Senate and of the Council to be Chairman of a committee to make a study of this matter and report to it. The following citizens of Virginia served with Dr. Hagood on the Committee:

Honorable Howard P. Anderson, Halifax; Dr. J. McDermott Barnes, Richmond; Anthony C. Gaudio, Arlington; Dr. E. Stanley Grannum, Newport News; Rev. J. Fletcher Lowe, Jr., Richmond; Mrs. James P. Mills, Middleburg; Honorable A. H. Richardson, Dinwiddie; Dr. Mack I. Shanholtz, Richmond; Dr. Robert S. Smith, Dinwiddie; Dr. H. Hudnall Ware, Jr., Richmond; Dr. W. W. Walton, Pulaski; and Mrs. Alex H. Williams, Jr., Richmond.

The Committee at its organizational meeting elected A. H. Richardson, member of the House, Vice-Chairman. The office of the Secretary to the VALC acted as secretariat to the Committee, Frank R. Dunham representing it. The Committee held public hearings in Richmond and Arlington, in addition to many executive meetings and received and studied many articles, reports, statutes, pamphlets, letters, surveys and other material on the various aspects of abortion including its medical and legal history, and its present status. Also the attitudes toward abortion in Virginia and in other states and nations were presented and studied. The Committee conducted its study with an open mind and gave careful consideration to every opinion and suggestion expressed to it.

The Committee submitted a report, from which one of its members dissented.

After carefully considering the Committee's Report and the one dissenting statement, the Council adopted the majority report and recommends as follows:

RECOMMENDATIONS

1. The laws of the State on abortion should be amended to permit abortions in cases where a licensed physician is satisfied and believes an abortion is medically indicated to protect the mother from dying, or when her mental or physical health would be impaired if she had the child or when there is a substantial likelihood that the child will be born with an incurable mental or physical defect, or when the pregnancy resulted from rape or incest. Before any abortion can be performed, the consent of the mother must be obtained and no abortion can be performed outside a hospital unless approved by the Abortion Committee thereof.

In addition, residency requirements are imposed and more discretion is given a physician in cases of emergency to save a mother's life.

2. This study should be continued so that the opinion of the U.S. Supreme Court, when such is rendered, can be incorporated in Virginia's law; to study the effects of the proposed statute on abortion practices and occurrences in the State; and lastly, to consider the means necessary to make legal abortions available to persons of modest financial means.

REASONS FOR RECOMMENDATIONS

1. The purpose of any statute is to protect the State and those who are citizens thereof. A statute which is not obeyed because its language is vague and difficult to understand, or because it is not applicable to the society it was enacted to control because the mores of that society have changed and the populace and the police blink at its enforcement, must be changed. Certainly this can be said of Virginia's abortion statutes. This was aptly expressed by Dr. Geoffrey T. Mann in a paper presented at the Law Institute on Hospitals and Medicine at the Medical College of Virginia entitled "Abortion: Medical and Moral Aspects." His comment was:

"Under Virginia law, it is necessary that the abortion be done only for the purposes of saving the life of the mother or the unborn child. On truly medical grounds it is difficult to imagine the situation in which an abortion would save the life of an unborn child. I would not think that the usual postmortem Caesarian section would come under this category. A number of years ago the Attorney General for Virginia ruled that the words "saving the life of the mother" did not mean that it had to be absolutely certain that she would die if the abortion was not performed, but that an abortion was lawful if it was for the purpose of preventing a progression of her present disease or was necessary to maintain her present state of health (written communication, Feb. 28, 1952). Still, this did not provide for those cases in which the female had been subjected to rape and was impregnated thereby, nor was it interpreted as covering mental disease."

Another defect not so apparent in these statutes is the absence of a requirement that abortions which are permitted should be performed by a licensed physician in a hospital.

In addition to these deficiencies there are others, principal among which is the well-known fact that abortions are performed illegally every day. This nation's experience with the former 18th amendment to the Constitution clearly illustrates the necessity of changing these laws which are either not enforced or are only partially enforced. Many other laws could be cited which are laxly enforced or not enforced at all. The laxity in enforcement is apparent from the fact that occasionally an abortionist is prosecuted but the woman who was aborted is never prosecuted as an accomplice. To quote from the article "We Should Legalize Abortion" by William B. Ober, M.D., appearing in the *Saturday Evening*

Post, "when medical problems, legal statutes and social forces intersect with a question involving sex, there is a great deal of hypocrisy. We say one thing in public, but we mean another, and we certainly do something quite different in private."

Figures on the number of illegal abortions performed in Virginia are based on estimates and projections. The absolute validity of the figures is of course subject to attack. However, the figures do give some insight into what is going on. During the calendar year 1967, a survey was conducted by Dr. R. W. Jessee, then Director of the State Health Department's division on local health services and Dr. Frederick J. Spencer, Chairman of the Medical College of Virginia's Department of Preventive Medicine, with Dr. James A. Santrain, Associate Professor of Sociology at the University of Richmond providing consultant assistance. To quote from the *Richmond Times-Dispatch* story of May 30, 1968 concerning this study:

"Essentially, the aim of the survey was to poll 1,100 Virginia doctors—about one-fourth of the State's doctors—on how many persons contacted them seeking an abortion; the number of persons they saw with evidence of attempted or completed abortion, and the number of other abortions they knew of.

"The physicians were surveyed four times during the year—during one week in each quarter. The survey of the physicians, selected from throughout the State according to random procedures, drew an approximate 79 per cent response.

"On the question of how many persons contacted them seeking an abortion, 197 instances were reported by 109 doctors. Projecting these figures for the whole year to the State's total physician population yields the estimate of 10,244 such inquiries during 1967.

"And there were 132 other abortions that physicians otherwise knew about during the four weeks of the study. The average number per survey week was 33, according to the report.

"Projecting these figures for the whole year, Virginia physicians knew about an estimated 6,864 other abortions during 1967, Dr. Jessee said."

Another group of figures perhaps less controversial and speculative are those showing the number of fetal deaths in hospitals in Virginia reported to the Bureau of Vital Records and Health Statistics of the State Department of Health. These figures for the year 1968 show there were:

- 151 fetal deaths caused by therapeutic abortions (of these abortions, 7 were performed because the mother contacted measles, 93 because of the mother's psychosis and 51 to protect [not save] the mother's life)
- 4 from the use of uterine devices
- 13 self-induced

168 Total

Not a single one of these abortions is presently permitted under Virginia law. Yet no prosecution was begun and those who engaged in them were either so open-minded or misinformed as to have no hesitancy in reporting them.

There are many other figures which could be cited to show similar facts, but are not included because these two series of figures show that Virginia's laws are ineffective to prevent what they were enacted to accomplish and are not followed.

Another consideration in gauging the effectiveness of a law is what does the citizenry think about it. Do women want the laws on abortion to be liberalized or amended? One such survey was conducted by six medical students in Richmond in 1967. The poll is calibrated by the following social classes:

- Income: Less than \$3,000 (Social Class III).
- \$3,000-\$6,999 (Social Class II)
- \$7,000 or more (Social Class I).

The sampling was done as follows:

“Two hundred blocks, from which four housing units per block would be sampled, were randomly selected using an attribute sampling method. Each housing unit on the selected blocks was visited by a two-member team and each team was assigned an equal number of blocks representing the same socioeconomic group ratio as was established in the original sample selection. The survey was begun on June 20, 1967, and completed on August 11, 1967.”

Some of the results of this poll are as follows:

SAMPLE POPULATION CHARACTERISTICS

	SOCIAL CLASS (%)			
AGE	ALL (I+II+III)	I*	II*	III*
Under 20 years.....	3	2	3	4
20-29.....	14	11	16	15
30-39.....	17	16	18	17
40-49.....	20	21	16	24
Over 50 years.....	46	50	47	40
COLOR				
White.....	56	91	64	15
Non-White.....	44	9	36	85
MARITAL STATUS				
Married.....	53	65	54	42
Single.....	10	8	11	10
Divorced/widowed/separated..	37	27	35	48
RELIGION				
Baptist.....	55	29	52	81
Episcopalian.....	7	18	6	0
Methodist.....	15	18	18	9
Presbyterian.....	3	4	3	1
Roman Catholic.....	8	13	10	1
Other.....	12	18	11	8

*Census Tract Median Incomes
 III Less than \$3,000
 II \$3,000—\$6,999
 I \$7,000 or more

TABLE 2

QUESTION	RESPONSE	SOCIAL CLASS (%)				
		ALL (I+II+III)	I	II	III	
1. Do you think it should be made easier to obtain a legal abortion?	Yes	54	71	55	41	
	No	32	21	31	43	
	Don't Know	14	8	14	16	
2. Should a woman be able to have an abortion if—	Yes	80	87	80	74	
	(a) her health would suffer by having a child?	No	11	5	12	15
	Don't Know	9	8	8	11	
	(b) the baby was likely to be born seriously deformed?	Yes	65	76	63	57
	No	19	14	21	27	
	Don't Know	16	10	16	16	
	(c) she had been raped?	Yes	68	84	68	55
	No	19	7	20	28	
	Don't Know	13	9	12	17	
	(d) the pregnancy was the result of incest?	Yes	54	65	54	49
	No	25	13	27	33	
	Don't Know	21	22	19	18	

Another survey was presented during this study which was conducted in 1967 by the Southeastern Institute of Research for the Virginia Society for Human Life and was based on 500 telephone interviews with a systematically selected sample from Virginia telephone listings from all areas of the State. The percentages differ from the former one, but the results do show considerable desire for change. The questions asked were:

- A. Are there any circumstances other than to save the life of the mother under which you would favor abortion?
- B. What would these be?

Results

Overall, 54% of all Virginians do not favor changing present Virginia abortion laws. Thirty-nine percent would like to see them expanded to include other circumstances. Six percent had no opinion, and one percent refused to answer the question. Opinions differed widely according to the various characteristics of Virginia's residents. Tables showing these differences are presented on the following pages.

TABLE 1
 VIRGINIA PUBLIC OPINION
Attitudes Toward Abortion Circumstances

	BY AGE OF HEAD OF HOUSEHOLD					Distribution of Ages
	Only to Save Life of Mother	Other Circum- stances	Don't Know	Refused	Total	
Twenties.....	38%	56%	6%	..%	100%	17%
Thirties.....	50	42	8		100	24
Forties.....	49	41	9	1	100	21
Fifties.....	65	29	5	1	100	20
Sixties.....	66	30	2	2	100	13
Seventies.....	70	25	5		100	5
Total ¹	54%	39%	6%	1%	100%	100%

¹Totals include no answers and refusals for demographic questions.

TABLE 2
 VIRGINIA PUBLIC OPINION
Attitudes Toward Abortion Circumstances

	BY EDUCATION OF HEAD OF HOUSEHOLD					Distribution of Education
	Only to Save Life of Mother	Other Circum- stances	Don't Know	Refused	Total	
Grade School or Below.....	77%	20%	3%	..%	100%	17%
Some High School.....	69	20	11		100	19
Graduated High School.....	59	33	6	2	100	25
Attended or Graduated College.	38	56	5	1	100	39
Total ¹	54%	39%	6%	1%	100%	100%

¹Totals include no answers and refusals for demographic questions.

TABLE 7
 VIRGINIA PUBLIC OPINION
Reasons for Abortion Other Than to Save Life of Mother

	<i>Percent*</i>
<i>Economic</i>	15
Financial hardship	9
Family hardship	4
Family on welfare	1
Mother incapable of planning family	1
<i>Social</i>	81
Rape	46
Unwed mother	16
Incest	10
Mother under 18	4
Social reasons	1
Child mother	1
Inter-racial pregnancy	1
Impair future of mother	1
Psychological effect on father	1
<i>Medical—Mother</i>	30
Psychological effect on mother	12
Pre-natal disease	8
Harm health of mother	6
If qualified doctor says it is necessary	3
Old age	1
<i>Medical—Child</i>	31
Deformed child	20
Retarded child	4
Abnormal child	3
Drugs endanger child	2
Defective birth	1
Congenital disease	1
<i>All Other</i>	22
Unwanted child	10
Mother desires it	3
No reason	2
Should be up to the individual, not regulated by law	2
Don't know	2
Other	1
Depends on situation	1
Absolute necessity	1

*Totals can add to more than 100% due to multiple response.

CONCLUSION

Most people have very definite opinions regarding the abortion question. Slightly more than half (54%) are satisfied with the present law, and 39% desire

a change to include circumstances "other than to save the life of the mother." Only 6% had no opinion, and 1% did not answer.

Definite relationships with demographic characteristics were found. Those persons who tend to favor more liberal abortion laws fall in the following categories:

Young

Well-educated

Above average income

Higher type occupation

Persons favoring the present laws tend to be:

Old

Poorly educated

Low income

Lower type occupation

"Social" reasons are the leading "other circumstances" mentioned by 81% of those favoring more liberal laws. "Medical" reasons are a close second at 61%. "Economic" reasons (15%) were the third highest mentioned, but are obviously less important than the others.

The foregoing shows two significant facts: (1) illegal abortions are performed in Virginia, and (2) there is support from Virginia citizenry for more liberal laws on abortion. This is the lay viewpoint. What is the medical viewpoint? An article in the May 1966 *Reader's Digest* "Let's Speak Out On Abortion" states:

"Injuries and deaths ascribed to hack abortionists have obscured the fact that the hospital-performed therapeutic abortion has become, in recent decades, one of the simplest and safest of all operations. Deaths from it are virtually nonexistent."

The Medical Society of Virginia in 1967 issued a statement of policy concerning abortions. This statement was reaffirmed at the October, 1969 meeting of the Society. The statement in part reads as follows:

"This statement of policy is in actuality the outgrowth of numerous requests received by the Society to make its thoughts and recommendations known on the subject of therapeutic abortion. Consequently, the Society has addressed itself to the many aspects of the problem in Virginia. Perhaps it should be stated at this time that medicine has always been dedicated to the preservation of life rather than its destruction.

"The Medical Society of Virginia is cognizant of the fact that there is no consensus among physicians regarding the medical indications for therapeutic abortion. However, the majority of physicians believe that, in the light of recent advances in scientific medical knowledge, there may be substantial medical evidence brought forth in the evaluation of an occasional obstetric patient which would warrant the institution of therapeutic abortion either to safeguard the health or life of the patient, or to prevent the birth of a severely crippled, deformed or abnormal infant.

"Under these special circumstances, it is consistent with the policy of the Medical Society of Virginia for a licensed physician, in a hospital ac-

credited by the Joint Commission on Accreditation of Hospitals, and in consultation with two other physicians chosen because of their recognized professional competence who have examined the patient and have concurred in writing, to be permitted to prescribe and administer treatment for his patient commensurate with sound medical judgment and currently established scientific knowledge. Prior to the institution of a therapeutic abortion, the patient and her family should be fully advised of the medical implications and the possible untoward emotional and physical sequelae of the procedure and recognizing that there are many physicians who on moral or religious grounds oppose therapeutic abortions under any circumstances.

“In view of the above, The Medical Society of Virginia is opposed to induced abortion except when:

- (1) There is documented medical evidence that continuance of the pregnancy is likely to threaten the health or life of the mother; or
- (2) There is documented medical evidence that the infant is likely to be born with incapacitating physical deformity or mental deficiency; or
- (3) There is documented medical evidence that continuance of a pregnancy, resulting from legally established statutory or forcible rape or incest is likely to constitute a threat to the mental or physical health of the patient.

“Furthermore, the circumstances described above shall be recognized as valid indications for induced abortion only when:

- (1) Two physicians (other than the attending), chosen because of their recognized professional competence, have examined the patient and have concurred in writing; and
- (2) The procedure is performed in a hospital accredited by the Joint Commission on Accreditation of Hospitals.”

The statistics and articles cited thus far in this report are only a small part of those received and studied but are representative of the material secured and point out that some change in the State's abortion laws is both desired and necessary to deal with our present day society and also that certain changes will be safe for the patient and constitute good medical practice.

In a study of this kind, the moral, religious, philosophical, or whatever it may be called, question arises of the right to be born. Is this an inalienable right? Is abortion a thwarting of nature? Is abortion the killing of another human being? These questions are constantly on everyone's mind during a study of this kind and were carefully analyzed and discussed during this study. Not attempting to dodge the question, it was determined that the morality aspect of an abortion is the individual determination of the persons involved, namely the physician and the woman. Each must answer this question and be intellectually and conscientiously satisfied. Moral beliefs cannot be legislated. Each person is free to choose the street down which he walks. This nation was founded by free men seeking free thought and freedom of action. The proposed legislation in no way *compels* any woman to obtain an abortion nor any physician to perform an abortion. What the proposed legislation does is permit a pregnant woman to have an abortion performed by a competent physician under sterile conditions, if he can conscientiously perform it and she can conscientiously ask it to be done. The procuring of an abortion is a personal matter. Only the safest and most competent means presently known is made available to those who wish to make use of it.

The recommended legislation is placed in Title 18.1 of the Code of Virginia only after careful consideration and considerable deliberation. The medical profession preferred it be placed in Title 32, which is the title of the Code of Virginia dealing with health.

However, abortion has been for years and possibly still is, thought of in terms of being something prohibited. While the proposed new legislation does not prohibit anything but permits, the permission is an exception to prosecution under the criminal law. Thus, it was believed sounder practice to add the permitted abortions to the criminal prohibition and § 18.1-63 was selected as the place for the proposed legislation.

The Proposed Legislation

The amendment to § 18.1-63 of the Code of Virginia permits an abortion in three cases: (1) where the continuation of pregnancy is likely to result in the death of the mother or impair her physical or mental health; (2) where there is substantial medical likelihood the child will be born with an irremedial mental or physical defect; or (3) where the pregnancy resulted from rape, where the parties have not been thereafter married, or incest. A discussion of some of the changes made by this amendment follows:

- (a) *Where the continuation of pregnancy is likely to result in the death of the mother or impair her physical or mental health.*

Actually, the first exception permitted does not change the present law. An abortion to save the mother's life has been the law of Virginia for over a century and an abortion for such purpose is generally accepted. The second reason, namely: *if to continue a pregnancy would impair the mother's physical or mental health* is new in Virginia. Whether bearing a child will impair the physical or mental health is primarily a medical question. There are many women who for a variety of medical reasons should not bear children. This is a question medicine can best answer and as a physician's judgment is trusted by everyone many times in a lifetime, his expert judgment must prevail. Certainly a doctor's judgment about what should be done and not done after a heart attack, or what to eat or not to eat when a person has an ulcer, or what to do or not to do after a person breaks a leg or a back or an arm are followed. The same reasoning applies to the physical health upon bearing a child.

The impairment to the mother's mental health is the same question, but generally is subject to more debate. Generally, three classes of women are placed in the category of those who might be mentally impaired at being pregnant; namely, very young women who unpreparedly and unthinkingly become pregnant, the neurotically disturbed or unhappily married women, and those reaching menopause, who believe they are incapable of and do not wish to become pregnant. The question to be asked of this group of women is do they become desirable mothers. As Dr. Garrett Hardin, writing in the May 1967 issue of *Redbook* asks "Is there anyone who will maintain seriously that society will be made healthier by encouraging mothers among the premature, the postmature and the neurotic? Does society benefit when the "unwilling bear the unwanted" [A phrase coined by Hal Wertenbaker in her novel *The Afternoon Women*.] If such benefit to society exists, it has yet to be demonstrated."

Again, emotional impact and emotional instability are becoming more and more an integral part of medicine. A physician is well versed in the signs of emotional bad health and after he knows and examines a patient, can reach a sound medical determination on this question. Once more it is a medical judgment based on study and individual analysis and determination. Some women who bear so-called "unwanted" children not only become a care to their husbands, families

and society, but also become so disturbed they cannot function properly as mothers and damage the emotional life of the newborn child.

(b) *Where the pregnancy resulted from rape, where the parties have not been thereafter married, or incest.*

To permit an abortion where impregnation occurred by rape or incest is believed to be not only just, but humane. Of course rape and incest are not the same, but the birth of a child in such circumstances shocks the conscience of society. Since rape has been forced upon a woman against her will and she has unwantedly become pregnant, she should be afforded a legal means to remove some small part of this crime from her mind. As Martin M. Moore, Assistant Professor of Law, University of Akron College of Law, writing in the *Washington and Lee Law Review*, Fall, 1963, stated:

“It is difficult to understand how a law can be supported that compels a woman to give birth to a child conceived by her as a consequence of rape. Yet this is the result produced by the existing abortion acts in the United States.”

With this statement almost everyone will agree, and a legal means of removing the result of such a heinous crime should be and is suggested.

“Incest” is another crime, not necessarily involving violence, which has been prohibited for centuries and is based on eugenic considerations which forbid sexual relations between closely blood related persons to prevent the inception of an offspring with latent genetic family defects. To be consistent, the same laws which prohibit incestuous marriages should permit termination of pregnancies resulting from such illegal intercourse.

The Safeguards

The mother must consent to the abortion. This is only just. The right to bear children belongs solely to the mother. It is her life and her well-being that is involved. The decision is the woman's. If, after competent medical advice, she believes her physical or mental well-being would better be protected by not having the child, she must give her consent in writing.

The proposed amendment to § 18.1-63 of the Code of Virginia authorizes any married woman to give her consent to an abortion. Perhaps this is unnecessary as § 32-137 was amended by the 1968 General Assembly to permit “Any person eighteen years or older who has been separated from the custody of his parent or guardian, and whose custody is not within the control of the courts or institutions hereinabove enumerated, who is in need of surgical or medical treatment may consent to such surgical or medical treatment.”

However, the language “in need of” may or may not be construed to apply to an abortion. Thus the specific authority to consent is expressly given in the proposed amendment. The reason for this is that it seems unfair to distinguish between a married woman of 21 and those from 18 to 21. The same medical reasons exist for performing an abortion on the younger age group as on the older. In this case, particularly with the marriage of younger girls increasing in number year by year, the age of consent seems justifiably lowered.

One other comment on the Safeguards. It is to be noted the consent of the father is not required. Again, the feeling in this report is that bearing a child is the sole function of a woman. All medical problems involve her. It is hoped that women obtaining medical advice to procure an abortion will consult their husbands and that this will be a joint decision. If not, the emotional difficulty of living with a mother who was compelled to bear a child only because her husband would not consent to an abortion, after she had received medical advice not

to have the child, would create many domestic problems. As Dr. Garnett Hardin wrote in *The Journal of Marriage and the Family*, May 1968, "perhaps the best thing we can say to men who are 'hung up' on this issue is this: 'Do you really want to live for another eight months with a woman whom you are compelling to be pregnant against her will?'"

Or, in terms of public policy, do we want to pass laws which give men the right to compel their wives to be pregnant? Psychologically, such compulsion is akin to rape. Is it in the public interest to encourage rape?

The other safeguards relate to the medical aspects of abortions. The amendment requires that only licensed physicians can perform abortions in licensed hospitals and then only with the written approval of the Abortion Committee of the hospital. This it is believed will provide the most competent medical opinion and techniques in the performance of an abortion. These requirements discourage avoidance or intervention of the law, provide supervision of all abortions and insure that they are performed in a completely sterile and safe place. An integral part of the procedure is protection against abuse. The physician is given the responsibility of following good medical techniques and complying with those generally accepted as such. Not only is he subject to criminal penalties, but to professional disciplinary action, least of which is the loss of hospital privileges. Hopefully, the amended statute will enable abortions to be performed in the very best medical environment.

The residence requirement is perhaps a safeguard and was inserted to prevent promiscuous abortions or the making of Virginia "an abortion factory or mill" to use the popular language. Perhaps this is not necessary as aforesaid. North Carolina and Maryland permit abortions under almost similar conditions as those proposed and, until the United States Supreme Court finally determines the status of the District of Columbia laws, it has no restrictive statutes prohibiting abortion. In any event, the residence requirement was inserted to relieve physicians from extra pressure and to protect the State's reputation.

A final observation about the proposed amendment is that all procedural formalities but the mother's consent are waived in cases where an abortion is *found* necessary to save the mother's life. This was believed justifiable and necessary.

The suggestion is made and a resolution drawn to continue this study by the Virginia Advisory Legislative Council for several reasons. First, the United States Supreme Court is almost certain to rule on the constitutionality of State laws on abortion. The suit in New York referred to in the beginning of this report in all probability will be appealed and *Time* magazine, November 21, 1969, states "Judge Gessell himself urged the government to appeal to the U.S. Supreme Court for a final resolution of the constitutional issues [involved, in his ruling]. If the high court agrees with him, it may well sweep away rigid abortion laws in 40 states. To conform to any such ruling, a group should be available to act almost immediately and the VALC having made this study is best able to continue and use the information gathered by it in this study, to obey the mandate of the court when and if it is issued.

Another reason to continue the study is that if the recommendations of this report are adopted, a great change will be effected in Virginia's laws on abortion. This change may breed further changes or perhaps some unthought of situation may arise not covered by the proposed change. Thus, the study should be continued to watch the operation of the new law and make any necessary changes if the need arises. Other states have made subsequent amendments in such laws and perhaps Virginia will experience the same need.

The last and perhaps the most important reason to continue the study is the necessity to deter and stamp out the so-called "back alley" or unsterile abortions which cause at worst death and at best unnecessary grief and emotional experience. People of modest financial means should be afforded the same medical care in abortions as are the more affluent. Again quoting Dr. William B. Ober's article in the *Saturday Evening Post* in 1966 "Many women without money are terrified of pregnancy and rush blindly to their doom because the price is right."

"Whether one agrees with the laws on the books or not, one may at least request that the law apply equally to the rich and the poor." With this general thought, this report agrees. It is the hope by the continuance of this study ways and means can be conceived to provide clinics and other free medically performed abortions for the poor and health insurance policies to cover such service under existing policies. The need for hospital abortions is most apparent among the poor, the uneducated and the young. These need help and should receive it.

CONCLUSION

As stated, the conclusions in this report were reached after a great deal of careful thought and study. It is hoped the proposals contained in it will improve society and particularly the State of Virginia. It is not the intent of this report to encourage abortions, but to make safe those which are performed and protect the lives of women who undergo them. In making this recommendation, the Council wants it clearly understood that nothing herein proposed *requires* any woman to seek an abortion nor any physician to perform one. All individual religious and conscientious feelings and beliefs can and should remain unchanged.

Proposed legislation to carry out the recommendations of this Report is attached.

ACKNOWLEDGMENTS

We express our appreciation to the members of the Committee for the great amount of time and effort which they gave to this study. We also express our appreciation to all who afforded the Committee the benefit of their knowledge and views both at public hearings and in conference.

Respectfully submitted,

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A BILL to amend and reenact §§ 18.1-62 and 18.1-63 as amended, of the Code of Virginia relating to producing abortion or miscarriage, encouraging or procuring abortion by advertising or other means, and exceptions thereto.

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.1-62 and 18.1-63, as amended, of the Code of Virginia be amended and reenacted as follows:

§ 18.1-62. Producing abortion or miscarriage, etc., *exceptions*. If any person administer to, or cause to be taken by a woman, any drug or other thing, or use means, with intent to destroy her unborn child, or to produce abortion or miscarriage, and thereby destroy such child, or produce such abortion or miscarriage, he shall be confined in the penitentiary not less than one nor more than ten years; * *except that any physician licensed by the Board of Medical Examiners for the State of Virginia to practice medicine and surgery may terminate or attempt to terminate a human pregnancy or aid or assist in the termination of a human pregnancy by performing an abortion or causing a miscarriage on any woman who has been a bona fide resident of the State for six months immediately preceding the date of such termination of pregnancy or attempt to terminate such pregnancy in any hospital licensed by the Department of Health upon the following conditions: before performing any abortion or inducing any miscarriage, the physician shall sign an affidavit stating that in his medical opinion, the continuation of the pregnancy is likely to result in the death of the mother, or impair the mental or physical health of the mother, or there is a substantial medical likelihood that the child will be born with an irremedial mental or physical defect, and file such affidavit in the hospital records of the mother. In the event the pregnancy resulted from rape, where the parties have not thereafter married, or incest, an affidavit from the mother so stating shall be filed in the hospital records in lieu of the physician's affidavit. In no event shall such abortion or miscarriage be performed or induced by any physician unless authorization therefore is given in writing by the Hospital Abortion Review Board of the hospital in which the abortion takes place, and written consent thereto is given by the mother if married, and legally competent to give such consent. For the purpose of this section any married woman over the age of eighteen years shall be deemed competent to give her consent in the same manner as though she were twenty-one years of age or older notwithstanding the provisions of § 32-137 of the Code of Virginia. In the event that such married woman is under the age of eighteen, the written consent of one parent or legal guardian shall be required. In the event the mother has been legally declared incompetent, the written consent of her husband or guardian shall be required. If the mother is unmarried and over twenty-one years of age, her written consent shall be sufficient, but in the event that she is not twenty-one years of age the written consent of a parent or legal guardian shall be necessary.*

In the event it is necessary to terminate a human pregnancy or assist in the termination of a human pregnancy by performing an abortion or causing a miscarriage on any woman in order to save her life, in the opinion of the physician so performing an abortion or causing a miscarriage, the only provision of this section which shall be applicable is the written consent of the woman, or of the parent or guardian of such woman if she is incompetent or under the age of eighteen.

§ 18.1-63. Encouraging, procuring of abortion by advertisement, etc.— * *Except as provided in § 18.1-62 of the Code of Virginia any person who by publication, lecture, advertisement, or by the sale or circulation of any publication, or in any other manner, encourage or prompt the procuring of abortion or miscarriage, * shall be guilty of a misdemeanor.*

SENATE JOINT RESOLUTION NO. ___

Directing the Virginia Advisory Legislative Council to continue its study of the State's abortion laws.

Whereas, the Virginia Advisory Legislative Council has completed a study of Virginia's abortion laws and recommended certain changes in the present State Statutes, and

Whereas, the Virginia Advisory Legislative Council feels that the application of such new laws should be observed and perhaps further amendment suggested, and

Whereas, the Virginia Advisory Legislative Council believes that legal abortions might be included and made available through existing medical insurance programs, and

Whereas, the State Department of Health might under its existing health programs make legal abortions available to indigent people,

Now, therefore, be it resolved by the Senate of Virginia, the House of Delegates concurring, That the Virginia Advisory Legislative Council is hereby directed to continue its study of Virginia's abortion laws, and complete its study and make its report to the Governor and General Assembly not later than November 1, 1971.