

Findings



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Aborting N.C.'s Future

A Look Back and Where We Stand Today

By Alysse ElHage



began to see these little parts of these babies, you know, I'd do a D&C, and scrape out a baby, and I could see the skeletal parts, and I could see the head.

We'd do a saline abortion, and the baby would be delivered, and I'd put the baby in the palm of my hand, and I'd think, 'What am I doing? ... Here's this child that I'm killing...'" Dick Douglas, M.D., a retired OB/GYN from Greenville, N.C., who performed abortions during the 1960s and 70s and is now pro-life.¹

Over the past three decades, nearly one million of North Carolina's unborn children have been aborted. More specifically, according to the State Center for Health Statistics (SCHS), a total of 948,035 abortions were performed on North Carolina residents between 1973 and 2005 (the latest year for which data is available).² On average, 76 of North Carolina's unborn children are aborted every day.³

More than just statistics, these numbers represent the untold stories and untapped possibilities of hundreds of thousands of lives. Unborn babies who will never feel the touch of a mother's kiss, know the strength of a father's arms, or experience the joy and pride of their own first steps. These aborted children also represent missed chances at parenthood for thousands of North Carolina's infertile couples wishing to adopt. While abortion advocates like to portray them as the mere byproducts of unwanted pregnancies, the testimony of doctors like Dick Douglas reveal the painful truth about abortion.

At one time, unborn children and their mothers were protected under a state law that made abortion—for reasons other

than to save the life of the mother—a crime. Today, as a result of Supreme Court decisions and North Carolina's own revision of its abortion laws in the 1960s and 1970s, abortion for any reason at any stage of pregnancy is allowed in most circumstances when performed by a doctor. As a result, in just over three decades, abortion has changed from a rare procedure that was difficult to obtain to one of the most common medical procedures performed.

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Following is a broad overview of abortion in North Carolina, beginning with a brief profile of abortion in the state, a look at its history and current abortion policy, and what needs to be done at the legislative level to move the state one step closer to a future where every unborn child is safe from the threat of abortion.

Profile of Abortion

The business of abortion is performed every day in clinics and hospitals across the state on women of various ages, marital status, racial and educational backgrounds, and at virtually every stage of pregnancy. No profile of abortion would be complete without a look at where and how abortions are performed in North Carolina, the women obtaining abortions, and the gestational ages of the unborn babies they are aborting.

North Carolina law allows abortions to be performed by a licensed physician in three types of facilities: licensed abortion clinics, an ambulatory surgery center, or a hospital. According to the State Division of Facility Services, there are 15 licensed

abortion clinics currently operating in North Carolina.⁴ Most of these clinics are located in large metropolitan areas, such as Raleigh, Fayetteville, and Charlotte.⁵

Because abortion clinics in North Carolina can only perform abortions up to 20 weeks gestation, abortions after 20 weeks must be done in a hospital. There are 127 hospitals and 58 ambulatory surgical centers in the state; however, because North Carolina law protects the rights of physicians, hospitals and other health care institutions to refuse to perform abortions, not all of these facilities provide abortion services.⁶

In 2005, 32 licensed abortion facilities in North Carolina reported 32,335 abortions to the State Center for Health Statistics (SCHS) (this number includes abortions performed on both residents and non-residents). According to the SCHS, 99.0 percent of North Carolina's abortions in 2005 took place in "17 non-hospital settings, primarily free-standing clinics" in the following 14 counties: Buncombe, Catawba, Cumberland, Durham, Forsyth, Guilford, Iredell, Mecklenburg, Moore, New Hanover, Onslow, Orange, Pitt, and Wake.⁷

Abortion Procedures. The three most common reported abortion procedures in North Carolina, are: suction curettage (also known as D&C), dilation and evacuation (also known as D&E), and medical or non-surgical abortion.

In 2005, D&C accounted for 12,356 (44.6 percent) of the reported abortions performed on North Carolina residents. This procedure involves the use of a vacuum aspirator, which is used to suction out the tissues of the unborn child and placenta, after the woman's cervix is dilated. It is used most often in the first trimester.⁸

The second most common abortion procedure in North Carolina is dilation and evacuation, or D&E, which accounted

for 10,775 (38.9 percent) of the resident abortions in 2005. During the D&E procedure, an abortionist dilates a woman's cervix and inserts sharp instruments, as well as suction devices and forceps, which are then used to cut up and extract her unborn baby, piece by piece.⁹

Abortions performed by medical or non-surgical methods are the third most common abortion procedure in North Carolina. Medical abortions involve the use of drugs, such as RU-486, which are typically dispensed during the first trimester.¹⁰ North Carolina did not begin collecting data on medical abortions until 1997. Since then, the percentage of medical abortions has increased from 0.2 percent in 1997 to 11.4 percent of resident abortions in 2005.¹¹

Women. The average North Carolina abortion patient is single, educated and around the age of 25. According to the SCHS, the majority (74.1 percent) of women who obtained abortions in 2005 were unmarried, 42.1 percent had at least 13 years of education, 32.4 percent were between the ages of 20 and 24 (23.6 percent were between the ages of 25-29), 37.6 percent had no living children, and 49.8 percent reported no previous abortions.¹²

About 15 percent of women were between the ages of 15-19, and 0.7 percent were age 14 and under. Minorities accounted for a slight majority of resident abortions in 2005 at 47.3 percent, while 43.1 percent of the women were white (the race of 9.5 percent of the women was unknown).¹³

Just over half of the North Carolina residents who obtained an abortion in 2005 did so at 8 weeks or less into their pregnancy, 21.8 percent had an abortion between 9 and 12 weeks, 5.7 percent had an abortion at 13-15 weeks, 2.6 percent had an abortion at 16 to 20 weeks, and 0.4 percent had an abortion at 21 weeks or over.¹⁴

A Look Back

Legal abortion did not begin in North Carolina with *Roe v. Wade* in 1973. Before the United States Supreme Court made abortion-on-demand the law of the land, North Carolina was one of the first states to liberalize its abortion laws to make it easier for women to legally abort their unwanted unborn children. In 1967, 28 states, including North Carolina, considered abortion reform bills. In May of that year—only two months after the legislation was introduced in the General Assembly—the Tar Heel State became the second in the nation, after Colorado, to pass legislation that effectively ended its

86-year-old ban on abortion.¹⁵ Under that ban, which was enacted in 1881, abortion was a felony. Prior to that, abortion was a misdemeanor under English common law.¹⁶

For all practical purposes, North Carolina's abortion reform legislation passed the General Assembly in 1967 with little controversy in a short time span.¹⁷ What should have been viewed as the most controversial legislation in state history was successfully masked by proponents as the modernization of an out-of-date ban on a procedure they claimed most doctors were

already performing.

Background. In many ways, the man behind the successful initiative to liberalize North Carolina's abortion laws was Wallace Kuralt, director of public welfare in Mecklenburg County.¹⁸ Mr. Kuralt, who helped draft the state's voluntary sterilization law in the 1960s, had a strong interest in abortion and believed liberalization of the abortion law was necessary to address "the socio-economic aspects of unwanted pregnancies and deformed children."¹⁹ With the help of an attorney he worked

Pro-Life Legislation Left Undone:

No new substantive pro-life legislation has passed the General Assembly in over a decade. Following is a list of abortion-related legislation that has been introduced over the last several years but never passed, and the number of states that have enacted similar laws.

Parental Consent Notarized—Legislation that would strengthen North Carolina's 1995 Parental Consent for Abortion law has been introduced every session since 2001. The legislation would close the current loophole in the law by requiring the parent or guardian to have the consent notarized and/or to accompany the minor to the clinic/hospital and present identification. Thirty-four states require some type of parental involvement, either notification or consent, in a minor's abortion.*

Abortion-Woman's Right to Know ("Informed Consent for Abortion")—Every legislative session since 1995, bills have been introduced that would require that women seeking abortions in North Carolina are fully informed about the medical risks associated with the procedure, the probable gestational age of the unborn child, alternatives to abortion, and other information at least 24-hours prior to the time of the abortion. Twenty-eight states require that women receive some type of counseling before an abortion is performed, and 24 states also require women to wait a specific amount of time between the counseling and abortion procedure, usually 24 hours.*

Fetal Murder/Unborn Victims of Violence—Modeled after the federal law, this legislation would provide that a person who murders a pregnant woman is guilty of a separate offense if the murder results in the death of her unborn child. Twenty-four states have laws that recognize unborn babies as homicide victims.** In the 1998 budget bill (SB 1366, section 17.16B), the General Assembly enacted "injury to pregnant woman," which authorizes an enhanced penalty for a crime against a pregnant woman that results in miscarriage or stillbirth; however, the unborn child is not recognized as a separate victim.

Choose Life License Plates—This legislation would authorize the N.C. Dept. of Motor Vehicles to issue a "Choose Life" special registration plate and direct a portion of the proceeds from the sale of the plates to pregnancy resource centers across the state. Thirteen states allow production of "Choose Life" license plates.*

State Health Plan: No Abortion Coverage—This legislation would either enact restrictions to the types of abortions covered by the state employees health plan or ban any funding of abortions under the plan. Eleven states currently restrict the coverage of abortion in state insurance plans.*

*Source: Guttmacher Institute, Abortion: State Policies in Brief, November 2006, <http://www.guttmacher.org/sections/abortion.php>.

**Source: National Right to Life Committee, State Unborn Victims of Violence laws, http://www.nrlc.org/Unborn_Victims/Statehomicidelaws092302.html.

with at the Mecklenburg County Public Welfare Department, Kuralt wrote the initial abortion reform legislation that was brought to Raleigh in 1967.²⁰

Representative Arthur Jones (D-Mecklenberg), Kuralt's close friend who was serving his first term in the State House, agreed to sponsor the legislation. Rep. Jones also had an interest in abortion, having formed Ohio's first planned parenthood association in college.²¹ Both men decided from the start to distance the abortion bill from the controversial issues of public welfare and population control. This is why Kuralt never testified in support of the bill.²²

The first draft of the bill that Rep. Jones brought to Raleigh included a key clause that allowed for abortion "to preserve the life or health of the mother or child."²³ The use of the term "health" was very important. "We aimed to make abortion as private an operation as possible," Kuralt said in an interview. "We wanted it to be a decision involving a woman and her doctor and nobody else—as simple as an appendectomy."²⁴

But before Jones could introduce the legislation in the House, it hit a roadblock when several North Carolina physicians criticized it as overly broad and unclear.²⁵ Eventually, Rep. Jones redrafted the bill after the American Law Institute's (ALI) model abortion law. Proposed by the legal group in 1962, the ALI law attempted to clearly identify for states the conditions under which "therapeutic" abortions (or abortions for the purpose of preserving a woman's mental or physical health) could be performed.²⁶

During debate over the bill in the Senate, issues were raised about the use of abortion for eugenics purposes. Senator J. Ruffin Bailey (D-Wake), the father of two adopted children, questioned a clause that allowed for abortions of physically or mentally deformed unborn children. Sen. Bailey was worried that this clause would have a negative impact on adoption. "Many of them [adopted children] would be aborted," he said. "Such physically deformed geniuses as Helen Keller and Dr. Charles Steinmetz could easily have been aborted under the bill."²⁷

Instead of setting Senator Bailey's mind at ease, Senator Jack White, the bill's Senate sponsor, essentially acknowledged the eugenics potential of the bill. He said the clause "will have a profound effect on our mental health program." He mentioned a trip that legislators had recently taken to a state hospital in Goldsboro, N.C.,

where mentally challenged and physically deformed individuals were housed, stating that "hundreds of 'vegetables' and 'basket cases' now cared for at state expense would be eliminated under the law."²⁸ An amendment to remove the clause from the bill failed, and shortly thereafter the legislation passed the Senate. Some senators later reported that the swift passage of the bill was due in part to the impact of their trip to the Goldsboro hospital.²⁹

1967 Abortion Act. The bill later passed the House by two-thirds majority with several amendments. With the passage of the "North Carolina Abortion Act of 1967," the General Assembly amended the 1881 law and added a new section, G.S. §14-46, to allow abortion by a licensed physician under several conditions, including the following:

- When it could be established that the pregnancy would "threaten the life or gravely impair the health" of the woman (previously, abortion had only been allowed to preserve the mother's life);
- OR when there was "substantial risk that the child would be born with grave physical or mental defect;"
- OR if the pregnancy was the result of rape or incest and the rape was reported within seven days;
- AND only after the woman had given written consent, or in cases where the woman was judged incompetent or was a minor, written consent could be obtained from her parents and/or husband or legal guardian.
- AND only when the woman had lived in North Carolina for at least four months prior to the abortion request.
- The law also required that all abortions be performed in a hospital and required three doctors, including the doctor performing the abortion, to examine the woman and certify in writing the need/justification for the abortion.³⁰

Strategy. According to a 1968 study of North Carolina's abortion reform legislation published by UNC-Chapel Hill's Carolina Population Center (CPC), a number of factors influenced the successful passage of North Carolina's abortion reform law in 1967. Much can be learned from the strategies highlighted in the CPC article, including the following:

- Rather than call for the liberalization of the law, proponents argued that the bill would "modernize" the law in order to protect doctors who they claimed were already performing abortions.
- For the most part, Rep. Jones and Mr.

Kuralt attempted to disassociate the abortion bill from the controversial issues of public welfare and population control, although these issues did come up during debate.

- Proponents managed to prevent publicity of the bill, so that even the bill's most vocal opponents were caught off guard and "suffered from inadequate preparation and organization."³¹ In addition, the bill was introduced during a time that the General Assembly was engaged in debate over other controversial issues, such as the state's liquor law, which drew attention away from the abortion debate.³²

No Strong Opposition. In addition to these factors, the 1968 CPC study notes another reason for the abortion bill's swift passage—"the lack of a large, interested opposition."³³ The only outspoken critics of the abortion legislation were Roman Catholics, although no official clergyman from the Church testified against the 1967 bill. This may have been because Catholics only made up one percent of the state's population at that time, and the Church did not think a fight would be successful.³⁴ Dr. David Young, a professor of entomology at North Carolina State University and one of the Catholic laymen who testified against the bill, explained in an interview, "we assumed we would be beaten and so we fought as hard as possible to restrict the bill, although, personally, we rejected every word of the bill."³⁵

Those who did testify against the bill, according to the CPC report, were unprepared and disorganized. The opponents' lack of preparation and organization was partly due to the successful efforts by the bill's backers to keep the abortion legislation under the radar.³⁶ Finally, the authors of the CPC report wrote that "by making the abortion bill a Catholic issue," [Rep. Jones] "prevented it from becoming a moral or racial issue" and distracted "other potential opponents."³⁷

Abortion Policy Today

In May 1973, in response to the U.S. Supreme Court's ruling in *Roe v. Wade* earlier that year, the North Carolina General Assembly made further revisions to the state's abortion law.³⁸ As a result, a woman could obtain an abortion from a licensed physician for any reason at virtually any stage of pregnancy.

North Carolina's current abortion law, G.S. §14-45.1 states, in part: "...it shall not be unlawful, during the first 20 weeks of a woman's pregnancy, to advise,

procure, or cause a miscarriage or abortion when the procedure is performed by a physician licensed to practice medicine in North Carolina in a hospital or clinic certified by the Department of Health and Human Services to be a suitable facility for the performance of abortions.”³⁹

In addition, the law contains the following requirements:

- To obtain an abortion after 20 weeks, a woman must show that there is a “substantial risk” that the pregnancy would “threaten” her life or “gravely impair” her health.⁴⁰
- After 20 weeks, abortions must be performed in a hospital.⁴¹
- Abortion providers must report data on abortions and general info on patients annually to the state Department of Health and Human Services (DHHS).⁴²
- Protect the rights of physicians, nurses, hospitals and other health care institutions to refuse to perform or participate in abortion on “moral, ethical or religious grounds.”⁴³

In addition to these requirements, facilities that perform abortions in North Carolina must meet a number of additional criteria in order to be certified by the State, including 18 minimum physical components for the building where the clinic is housed; emergency back-up services; and the hiring of a registered nurse to be on duty at all times when patients are in the clinic.⁴⁴ North Carolina is one of 19 states with similar laws regulating abortion facilities.⁴⁵

Two laws, both enacted by the General Assembly in 1995, further restrict abortion in North Carolina—one dealing with taxpayer funding of abortions for low-income people, and the other with parental consent for minors seeking abortions.

State-Funded Abortions. After Congress passed the Hyde Amendment in 1977, and ended the use of federal tax dollars to pay for abortions except in cases of incest, rape or life of the mother, former Governor James Hunt created the State Abortion Fund in 1978. Under the fund, taxpayer dollars were used to pay for the elective abortions of low-income women in the state’s welfare program. For the next 17 years, North Carolina was the only southern state to pay for elective abortions under its welfare program.⁴⁶ The State Abortion Fund paid for 4,587 abortions with \$1.2 million in state taxpayer dollars in 1994 alone.⁴⁷

In 1995, the General Assembly enacted restrictions to the State Abortion Fund,

limiting the types of abortions that would be paid for by the Fund to only those cases when the life of the mother is in danger, and in cases of rape or incest. Since that time, only one abortion has been paid for through the fund.⁴⁸ It is important to note that public funds are still used to pay for elective abortions under the state’s health plan for state employees.

Parental Consent. The legislature also enacted the state’s parental consent for abortion law in 1995. The law requires that prior to performing an abortion on a minor, physicians obtain written consent from the parent of a minor, the minor’s legal guardian or custodian, or a grandparent “with whom the minor has been living for at least six months.” The law allows the minor to petition a judge for a waiver

The Tar Heel state is seriously lacking in pro-life laws compared to other states.

of the parental consent requirement if consent cannot be obtained, or if the minor chooses to utilize the judicial waiver procedure.⁴⁹

Legislative Efforts

While North Carolina does have some strong policies in place that are aimed at restricting abortion and regulating providers, the Tar Heel state is seriously lacking in pro-life laws compared to other states. In fact, since 1995, the General Assembly has failed to enact any new substantive pro-life legislation.

Although a wealth of pro-life legislation has been introduced over the years—from bills dealing with “Choose Life” license plates to fetal murder—none of these bills have been enacted. The only pro-life measure that has had repeated success in the General Assembly is the provision in the budget bill that maintains the eligibility restrictions on the State Abortion Fund.

Although every pro-life bill is important (see page 19 sidebar), it is worth focusing on two measures that have been successful in other states, and have been continuously introduced in the North Carolina General Assembly.

Informed Consent. One of the most important measures for the pro-life movement is the Woman’s Right to Know Act, or Informed Consent for Abortion. Informed consent legislation has been

introduced in the North Carolina General Assembly every session since 1995. The measure would strengthen informed consent requirements for women seeking an abortion, ensuring that women receive basic information about abortion, its potential effects on their mental and physical health, and alternatives to abortion. In addition, it would require at least a 24-hour waiting period before an abortion is performed.⁵⁰ According to the Alan Guttmacher Institute, 28 states require some form of counseling for women seeking an abortion prior to the procedure, and most of these states also require a 24-hour waiting period.⁵¹

Strengthening Parental Consent. Another goal for pro-lifers in North Carolina is to strengthen the state’s parental consent for abortion law, which was weakened by a 1997 court ruling. The State Court of Appeals determined that a physician did not have to confirm the validity of a note of consent for a minor to obtain an abortion. This created a loophole that essentially allows a minor to avoid the law’s requirements by simply forging a note from her parent(s) to obtain an abortion.⁵² Since 2001, legislation has been introduced in the General Assembly to close the loophole by amending the law to require that parents sign their consent at the abortion facility and/or that the consent be notarized.⁵³

South Carolina. While pro-life legislative efforts have stalled in North Carolina, a growing number of states have managed to pass major pieces of legislation aimed at protecting women from the dangers of abortion, regulating abortion providers, and preserving the rights of parents to be involved in their daughter’s medical decisions. South Carolina is an excellent example. North Carolina’s southern neighbor has seven pro-life laws on the books, including a 1990 parental consent law, a 1994 Women’s Right to Know Act, and a 1994 Abortion Clinic Regulation Act. According to South Carolina Citizens for Life, abortions in South Carolina have dropped by 50 percent in the state as a result of the enactment of pro-life laws. Abortions in South Carolina peaked at 14,133 reported abortions in 1988, and dropped to 6,565 in 2004—their lowest levels since 1977.⁵⁴

The Way Forward

Despite the legislative setbacks over the past decade and the state’s liberal history on the issue of abortion, there is much to be hopeful about in North Carolina.

The pro-life movement has come a long way in the past 30-plus years. Unlike the circumstances surrounding the abortion debate in 1967, the state's pro-life community is united across sectarian and racial lines. Pro-lifers are more politically active and better informed than ever before, and advances in technology have made it easier to present the truth about abortion to women. In addition, through the work of the state's 70-plus pregnancy resource centers, women facing unplanned pregnancies are being provided with alternatives to abortion and resources to help them continue their pregnancies. At the legislative level, pro-life lawmakers have shown their dedication to protecting the unborn by continuously introducing life-affirming legislation.

This is not the time for the pro-life community to quit. Pro-life citizens in North Carolina should learn from the mistakes that were made in 1967. Abortion proponents should not be allowed to define the debate over the unborn in North Carolina, and pro-lifers should never assume defeat, even if the outcome appears bleak. There is a lot of work left to do in North Carolina on the issue of abortion—starting with strengthening the pro-life laws already in place and enacting other laws that can help reduce the number of abortions in the state. Where North Carolina goes from here on the issue of abortion depends on how the pro-life community chooses to respond to the setbacks of the past decade. The state's nearly one million aborted children (and counting) should serve to motivate pro-life citizens and lawmakers to continue to work toward the day when life at every stage of development is protected under state law.

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