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COMMENTS

Criminal Law—Abortion—The New North Carolina Abortion Statute

I. INTRODUCTION

In 1967, the North Carolina General Assembly substantially amended the state's abortion laws by adopting, essentially intact, the provisions of the American Law Institute's Model Penal Code relating to abortion and kindred offenses. Similar enactments recently have been made by the legislatures of Colorado and California. By these enactments, all three states have expanded significantly the range of circumstances under which physicians may legally terminate pregnancies. As set out by the new North Carolina provisions, these circumstances include: (1) the presence of a substantial risk that continuance of the pregnancy would threaten the life or gravely impair the health of the pregnant woman, or (2) the presence of a substantial risk that the child will be born with grave physical or mental defects, or (3) the fact that the pregnancy resulted from rape or incest. The justifications for abortion outlined in the Colorado and California amendments are similar. This com-

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3 CAL. HEALTH & SAFETY CODE §§ 25950-54 (1967).
4 The exact wording of G.S. § 14-45.1 is as follows:

Notwithstanding any of the provisions of G.S. 14-44 and 14-45, it shall not be unlawful to advise, procure, or cause the miscarriage of a pregnant woman or an abortion when the same is performed by a doctor of medicine licensed to practice medicine in North Carolina, if he can reasonably establish that:

There is substantial risk that continuance of pregnancy would threaten the life or gravely impair the health of the said woman, or

There is substantial risk that the child would be born with grave physical or mental defect, or

The pregnancy resulted from rape or incest and the said alleged rape was reported to a law-enforcement agency or court official within seven days after the alleged rape, and

Only after the said woman has given her written consent for said abortion to be performed, and if the said woman shall be a minor or incompetent as adjudicated by any court of competent jurisdiction then only after permission is given in writing by the parents, or if married, her husband, guardian or person or persons standing in loco parentis to said minor or incompetent, and

Only when the said woman shall have resided in the State of North
ment will consider briefly the essential provisions of the new North Carolina amendments.

II. ABORTION: THE TIMELESS CONTROVERSY

In daring to reform the state's abortion laws, the North Carolina General Assembly ventured into an area fraught with complex and multi-faceted issues of all types—religious, moral and legal. Historically, abortion has provoked quite varied attitudes on the part of different societies and cultures. It is clear, however, that the significance attached to the subject by Western civilization is primarily a product of inextricably intertwined civil law and canon law precepts, of relatively recent origin.

Although any comprehensive examination of the ecclesiastical and philosophical foundations of the abortion controversy lies outside the scope of this comment, the special position of the Roman Catholic Church demands mention. The only organized opposition

Carolina for a period of four months immediately preceding the operation being performed except in the case of emergency where the life of the said woman is in danger, and

Only if the abortion is performed in a hospital licensed by the North Carolina Medical Care Commission, and

Only after three doctors of medicine not engaged jointly in private practice, one of whom shall be the person performing the abortion, shall have examined said woman and certified in writing the circumstances which they believe to justify the abortion, and

Only when such certificate shall have been submitted before the abortion to the hospital where it is to be performed; provided, however, that where an emergency exists, and the certificate so states, such certificate may be submitted within twenty-four hours after the abortion.

The body of literature dealing with abortion is growing rapidly. Those who wish to familiarize themselves with the general scope of abortion and its social implications are referred to L. LADER, ABORTION (1966) (hereinafter cited as LADER); M. CALDERONE, ABORTION IN THE UNITED STATES (1958); P. GERHARD, PREGNANCY, BIRTH AND ABORTION (1958); THERAPEUTIC ABORTION (H. Rosen, ed. 1954); TAUSIG, ABORTION, SPONTANEOUS AND INDUCED (1936). For an excellent study of the ecclesiastical and moral issues associated with abortion, See G. WILLIAMS, THE SANCTITY OF LIFE AND THE CRIMINAL LAW 146-247 (1937).

The history of abortion is summarized in LADER 75-84, and in G. WILLIAMS, THE SANCTITY OF LIFE AND THE CRIMINAL LAW 148-152 (1957).

The Roman Catholic Church's opposition to abortion is grounded historically in the doctrine of original sin, that a child would die without the sacrament of baptism and thus be condemned to eternal punishment. This concept is still recognized, but has lost its significance as an anti-abortion argument. Instead, the Church contends that the embryo is infused with all aspects of humanity—including a "soul"—from the moment of conception, so that willful destruction constitutes an intentional homicide of an innocent person. For an excellent analysis of the Catholic position, see G. WILLIAMS, THE SANCTITY OF LIFE AND THE CRIMINAL LAW 192-206 (1957).
to the recent abortion law reforms has been conducted by Catholic spokesmen; their efforts stimulated heated public controversies which delayed reform in both Colorado and California. Public uproar was noticeably absent from the North Carolina experience, however. The lack of fanfare accompanying the North Carolina reform may be explained in part by one fact: only about one per cent of the state's population, or about 56,000 persons, is Roman Catholic. (This was, in 1966, the lowest percentage of any state.)

The general inability of Catholic spokesmen to interject theological issues into the legislative process helped speed passage of the abortion reforms, and helped limit public debate to the most pragmatic social and legal considerations.

III. THE CURRENT STATE OF THE LAW

Despite the somewhat limited scope of their provisions, the new abortion statutes of California, Colorado and North Carolina represent important additions to the general state of abortion law in the United States. Existing law in the vast majority of jurisdictions is interpreted to prohibit the licensed physician from prescribing or undertaking termination of a pregnancy to treat a woman's health. In thirty-eight states it is a criminal offense to procure or attempt to procure abortion by any means, except when it is necessary to preserve the life of the woman. Louisiana, whose statute appears

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9 See The Denver Post, June 18, 1967, Empire Magazine at 38-45.
13 See The News and Observer (Raleigh, N. C.), May 9, 1967, at 6, col. 5-8, reporting the general failure of Catholic spokesmen to mount an attack on the bill.
14 ALAS. STAT. § 11.15.060 (1962); ARIZ. REV. STAT. ANN. § 13-211 (1956); ARK. STAT. ANN. § 41-301 (1947); CONN. GEN. STAT. ANN. § 53-29 (1958); DEL. CODE ANN. tit. 11, § 301 (1953); FLA. STAT. ANN. §§ 782.10, 797.01 (1965); GA. CODE ANN. § 26-1102 (1953); HAWAII REV. LAWS §§ 309-3, 309-4 (1955); IDAHO CODE ANN. §§ 18-601, 18-602 (1948); ILL. ANN. STAT. ch. 38, § 23-1 (Smith-Hurd 1964); IND. ANN. STAT. § 10-105 (1956); IOWA CODE ANN. § 701.1 (1950); KAN. STAT. ANN. §§ 21-410, 21-437 (1964); KY. REV. STAT. § 436.020 (1962); ME. REV. STAT. ANN. tit. 17, § 51 (1964); MICH. STAT. ANN. § 28.204 (1962); MINN. STAT. ANN.
to prohibit all abortions without exception, effectively places itself in the majority by prescribing different standards for physicians than for non-physicians. The physician's license can be suspended unless he concludes, with concurring medical opinion, that the woman's life is in peril.

A few jurisdictions subscribe to one or more of the justifications outlined in the ALI Model Penal Code. Alabama, New Mexico and the District of Columbia expressly provide that abortions may be performed to preserve the woman's health or protect her from serious injury. The same result appears to have been reached by the courts of Massachusetts and New Jersey, the statutes of which prohibit "unlawful" abortions. In Maryland, a doctor may terminate a pregnancy if, with concurring medical opinion, he believes "that no other method will secure the safety of the mother."

Although


For the purpose of this case at least, we may assume that, in general, a physician may lawfully procure the abortion of a patient if in good faith he believes it to be necessary to save her life or to prevent serious impairment of her health, mental or physical, and if his judgment corresponds with the general opinion of competent practitioners in the community in which he practices.


20 Mass. Gen. Laws Ann. ch. 272, § 19 (1956) (Whoever "unlawfully administers to her . . . or . . . unlawfully uses any instrument or other means . . . ").
no cases interpret this statute, an Attorney General of the state has privately equated "safety" with "health."\textsuperscript{23}

Oregon prohibits all abortions except those necessary to save the woman's life\textsuperscript{24} but, like Louisiana, provides more flexible standards for physicians than for non-physicians. Notwithstanding the restrictive terms of the law, a doctor may protect his license by obtaining a non-associate physician's opinion that a particular abortion is necessary to preserve the health of the patient.\textsuperscript{25} If this step is taken, the doctor apparently is immune from criminal prosecution.\textsuperscript{26} Thus Oregon effectively countenances all abortions grounded on sound medical judgment, while aiming its penal provisions at the unskilled abortionist.

Mississippi, which has adopted none of the medical justifications for abortion, recently amended its statute to include the rape-incest provision suggested by the ALI.\textsuperscript{27} Pennsylvania's abortion statute simply prohibits "unlawful" abortions, but no cases have interpreted it.\textsuperscript{28}

IV. NORTH CAROLINA LAW PRIOR TO 1967

Prior to the 1967 amendments, North Carolina was aligned with the majority of jurisdictions, in that G.S. 14-44 prohibited abortion "unless the same shall be necessary to preserve the life of the mother."\textsuperscript{29} However, judicial interpretation limited the purposes of this statute to the protection of the child \textit{en ventre sa mere},\textsuperscript{30} and no prosecution could be sustained under it without proof that the child was "quick."\textsuperscript{31} A separate statute, G.S. 14-45, was held to have as its purpose the protection of the mother rather than the fetus.\textsuperscript{32} This provision carried lesser penalties than G.S. 14-44,\textsuperscript{33}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{23} \textit{Therapeutic Abortion} 152 (H. Rosen ed. 1954).
\item \textsuperscript{24} \textsl{Ore. Rev. Stat.} § 163.060 (1953).
\item \textsuperscript{25} \textsl{Ore. Rev. Stat.} § 677.190(2) (1953).
\item \textsuperscript{26} State v. Buck, 200 Ore. 87, 262 P.2d 495 (1953).
\item \textsuperscript{27} \textsl{Miss. Code Ann.} § 2223 (1966).
\item \textsuperscript{29} \textsl{N.C. Gen. Stat.} § 14-44 (1953).
\item \textsuperscript{30} State v. Hoover, 252 N.C. 133, 113 S.E.2d 281 (1960).
\item \textsuperscript{31} State v. Jordan, 227 N.C. 579, 42 S.E.2d 674 (1947).
\item \textsuperscript{32} State v. Michener, 256 N.C. 620, 124 S.E.2d 831 (1962).
\item \textsuperscript{33} Maximum imprisonment five years, \textsl{N.C. Gen. Stat.} § 14-15 (1953), as opposed to ten years under the statute protecting the fetus, \textsl{N.C. Gen. Stat.} § 14-44 (Supp. 1967).
\end{itemize}
\end{footnotesize}
but the courts applied it throughout the entire term of pregnancy without regard to quickening. Both statutes remain in effect, with certain changes, to provide basic sanctions against abortion; the new amendments provide all pertinent exceptions.

V. THE PROVISIONS OF G.S. 14-45.1

The initial justification for abortion stated by the new law is a finding, by a licensed physician, that "there is substantial risk that continuance of pregnancy would threaten the life or gravely impair the health" of the impregnated woman. This language is quite broad, and at least one authority has severely criticized it for the "remarkable leeway" it gives to doctors. But the freedom of physicians to exercise sound medical judgment in regard to abortion should hardly be thought "remarkable;" in no other aspect of medicine does the legislature attempt to prescribe what is good for the patient. Indeed, the release of the practitioner's judgment from the fear and tension produced by more restrictive laws would appear to be a positive benefit of the new amendments; the procedural safeguards built into the amendments, and administrative sanctions provided by law should be relied upon to protect society from the corrupt or unthinking doctor.

The medical indications for therapeutic abortion may be divided into two categories: physical and psychiatric. As a result of advancements in medical science, the strictly physical indications for abortion have decreased consistently in recent years. But whenever

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3 The phrase, "unless the same shall be necessary to preserve the life of the mother" was deleted from G.S. 14-44. N.C. GEN. STAT. § 14-44 (Supp. 1967).
38 "Even an operation like lobotomy (prefrontal leucotomy), which has marked effects upon character, is not regulated by law." G. Williams, THE SANCTITY OF LIFE AND THE CRIMINAL LAW 223 (1957).
40 See section VI, infra.
3 The State Board of Medical Examiners is accorded express statutory authority to rescind a practitioner's license when, inter alia, "it shall find that any physician licensed by it has been guilty of ... producing or attempting to produce a criminal abortion ..." N.C. GEN. STAT. § 90-14 (1965).
a physician concludes that the operative facts to justify an abortion are present, the new amendments aid him by conforming the law to accepted medical practice. The burden of establishing the upper limits of the physical justifications for abortion must ultimately be borne by the medical profession. The new law does not—indeed, could not—determine whether such justification must be limited to specific physical effects of pregnancy and childbirth, or whether it may be expanded to cover other circumstances—such as those in which the prospective mother is clearly capable of bearing the child, but will thereafter be rendered incapable of giving it adequate care.

Unlike the recent Colorado and California enactments, G.S. 14-45.1 contains no special reference to "mental health." In light of the steadily increasing psychiatric indications for abortion, however, it seems clear that the General Assembly intended physicians to promote the interests of society and of pregnant woman by exercising freely sound medical judgment in regard to mental health. The fact that the General Assembly considered—and defeated—an amendment which would have required one psychiatrist to be among the three concurring physicians in cases involving the woman's mental health supports the conclusion that the new law is intended to be among the three concurring physicians in cases involving the woman's mental health supports the conclusion that the new law is intended to.

L. Rev. 435 (1965). Certain severe medical indications, including cancer of the cervix, severe cardiac disease, severe hypertension, nephritis or kidney disease, and breast cancer, are still recognized as primary justifications for abortion. LADER 39. For a comprehensive survey and evaluation of the medical bases of abortion, see Niswander, Medical Abortion Practices in the United States, 17 W. Res. L. Rev. 403 (1965), and Quay, Justifiable Abortion—Medical and Legal Foundations, 49 Geo. L.J. 173, 185-220 (1960).

Where economic hardship is added to the burden of illness or disease, it may not cause the immediate death of the patient, but it can certainly hasten it.... If the physician is convinced that the burden has become too heavy to endure, it would seem high time that physicians and hospitals cease being cowed by conservative interpretations of the law. Their responsibility to their profession and their community is care of the total patient. When socio-economic factors affect her very existence, they must be included with everything else in a decision concerning abortion. LADER 40-41.

45 Cal. Health & Safety Code § 25951 (c) (West 1967). California would seem to have severely limited the effects of its psychiatric justification provision by incorporating a definition of "mental health" confined to "the extent that the woman is dangerous to herself or to the person or property of others or is in need of supervision or restraint." Cal. Health & Safety Code § 25954 (West 1967).
intended to apply in medical cases of all types. The recognized psychiatric indications for abortion include, but are not limited to, suicidal tendencies, repeated post-partum psychotic reactions, manic-depressive psychosis and schizophrenia. As with the physical justifications, primary responsibility for the proper and ethical application of all psychiatric justifications must rest with the medical profession. In both types of cases, the new law promotes a balancing of distinct interests: the continued life or health of the woman, and continued existence of the fetus. Most state laws (and our own prior statute) pre-perform this balancing at the general expense of the woman; now the freedom—and the burden—is the physician's.

The second major justification for abortion under G.S. 14-45.1 is a physician's finding of "a substantial risk that the child would be born with grave physical or mental defect." Because termination of a pregnancy on these grounds requires medical speculation as to whether the child will in fact be defective, this language constitutes the most controversial portion of the amendments. Medical authorities describe several conditions, the occurrence of which during pregnancy will produce relatively high percentages of birth defects. These include (1) the ingestion of certain harmful drugs, such as thalidomide, during pregnancy; (2) contraction by the mother of certain viral infections, especially rubella (German measles); (3) exposure of the pregnant woman's abdomen to radiation; (4) substantial evidence of certain genetic factors; and (5) sensitization to the Rh factor. Of these conditions, rubella poses the most serious

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47 According to information supplied by the Institute of Government, Chapel Hill, N. C., this amendment was introduced by State Representative Jim Beatty of Mecklenburg County, and was defeated by voice vote. Two reasons for the defeat of the amendment may be suggested: (1) the fact that all physicians receive some training in psychiatric medicine, and (2) the general unavailability of psychiatric specialists in the state.


52 The most famous thalidomide case—in which Mrs. Sherri Finkbine dramatized the medical, legal and ethical problems associated with U.S. abortions by obtaining an abortion in Sweden—is reviewed in Lader 10-16.

threat, especially if contracted during the first trimester (12 weeks) of pregnancy; one authority has estimated the chances of serious deformity to be as high as eighty-five per cent if the disease is contracted during the first month. While it is to be hoped that rubella may soon be eradicated by an effective vaccine, it and similar eugenic justifications for abortion have inestimable effects at present. And, while a physician's determination to advise an abortion for eugenic reasons necessarily invokes certain of the physical or psychiatric considerations discussed above (since the agony of bearing a defective child may be clearly detrimental to a woman's health), the interests protected by this provision cannot be disassociated from socio-economic factors. The law allows the pregnant woman to decide, on the basis of her doctor's advice, whether she shall be relieved of the burden of bearing and caring for a defective child. It is suggested that the freedom to make such choice—in the interest of society, the woman herself, and her future children—is a laudable concomitant of life in a democratic society.

Finally, the substantive provisions of the new law permit the termination of a pregnancy when "[t]he pregnancy resulted from rape or incest and the said alleged rape was reported to a law enforcement agency or court official within seven days after the alleged rape . . . ." The humanitarian foundations of this provision contrast sharply with the primarily medical origins of the sections discussed previously. Thus, although the eugenic considerations in incest cases may invoke medical judgments quite similar to those

64 Niswander, id., reports that Dr. John L. Sever of the National Institutes of Health has estimated that 30,000 defective children were born following a rubella epidemic which occurred in the United States during 1964-65. See, also, Quay, Justifiable Abortion—Medical and Legal Foundations, 49 Geo. L.J. 173, 238-241 (1960), and Therapeutic Abortion 12, 20-21 (H. Rosen ed. 1954).
65 "After the twelfth week, there seemed to be no increased risk of congenital malformation." Niswander, Medical Abortion Practices in the United States, 17 W. Res. L. Rev. 403, 412 (1965).
67 LADER 38.
68 "Obviously, the fetal indications for abortion are primarily socio-economic, since few, if any, actually threaten the life of the pregnant patient; however, the social as well as economic ramifications of a severely deformed infant are incalculable." Niswander, Medical Abortion Practices in the United States, 17 W. Res. L. Rev. 403, 415 (1965).
in thalidomide or rubella cases, no medical-psychiatric standards appear in this portion of the statute. And while it may be argued that the goal here is to provide a certain narrow type of "protection" for the mother's physiological and psychological well-being, the primary impetus for the provision clearly is society's feeling that the rapist's attack is horrible enough without forcing the victim to give birth to the result of that attack.\(^6\)

In support of their belief that society does not consider termination of a rape-induced pregnancy to be "a secular anti-social act," the drafters of the Model Penal Code cited two pieces of evidence:\(^6\) the dearth of reported prosecutions in such cases, and the English decision in *Rex v. Bourne*.\(^6\) The infrequency of American prosecutions growing out of rape-incest cases may be substantiated by perusal of reports and digests; the *Bourne* case, as a more positive piece of evidence, merits a closer look.

In *Bourne*, a prominent London physician aborted a 14-year-old girl who had been raped by two soldiers. Although British law provided a penalty as high as life imprisonment for illegal abortion, the surgeon invited prosecution by performing the operation in a hospital in the presence of the resident obstetrical surgeon. At trial, Dr. Bourne's testimony attacked the idea that abortions could be performed lawfully only if they were intended to save life. He argued that sooner or later the trauma of bearing the child would wreck the girl's entire life, and that to wait for immediate danger to her life would be to deny her effective assistance. The jury acquitted Bourne, apparently on the belief that the patient's mental and physical health would be jeopardized if she were forced to bear the rapist's child. The *Bourne* decision has been accepted into British case law, and broadened somewhat by subsequent decisions of subordinate courts.\(^6\)

No doubt the attitudes reflected by the *Bourne* jury are, as suggested by the ALI, widely held today. Public acceptance of the rape-incest provision, however, cannot alone insure that it can be

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\(^{61}\) Model Penal Code § 207.11, Comment (Tent. Draft No. 9, 1959).


\(^{63}\) Lader 106; G. Williams, *The Sanctity of Life and the Criminal Law* 163-64 (1957).
administered without difficulty. This difficulty arises from the fact that, unlike the new Colorado statutes, G.S. 14-45.1 makes no special reference to statutory rape. Thus the statute follows the Model Penal Code’s 1959 draft, which omitted references to statutory rape because of the drafters’ concern that “availability of legal abortion might encourage illicit intercourse or that exemption from liability in these circumstances might be misinterpreted as affirmative approval . . . of a practice strongly disapproved by substantial groups in our society.” The 1962 draft of the Model Penal Code extends the provision’s coverage to statutory rape by including it within the broader term of “felonious intercourse.”

One definition of “rape” under North Carolina’s basic rape statute is “carnally knowing and abusing any female child under the age of twelve years;” no proof of force or lack of consent is required. It would seem that, in light of the language and purposes of the rape-incest provision, pregnancies resulting from offenses of this type may be terminated. Carnal knowledge of a previously chaste girl between the ages of twelve and sixteen is a separate statutory offense, however; it would appear that judicial construction or amendment of the statute is necessary to determine whether impregnated victims of such offense might be eligible for abortions. Inasmuch as the statute is grounded in the legal concept that chaste girls in this age group cannot consent to such offense, there would appear to be neither legal nor moral grounds for denying them the protection granted others.

North Carolina’s statutory definition of “incest” extends to sexual relations among parent and child (including stepchildren and adopted children), grandparent and grandchild, brother and sister.

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65 Model Penal Code § 207.11, Comment (Tent. Draft No. 9, 1959).
71 Since one of the requisite elements of the crime under N.C. Gen. Stat. § 14-26 (1953) is the previous chastity of the victim, problems of proof appear certain to arise if the justifications for abortion are held to apply to such victims. It is submitted, therefore, that any amendment to the statute should provide any and all special procedures necessary to expedite an adjudication of this element—including discovery, special hearings, and the like.
(whole or half blood), uncle and niece, or aunt and nephew. Since the crime has been characterized as purely statutory, any female of any age who is impregnated as the result of any of the described sexual relationships would appear to be eligible for an abortion. Although eugenic considerations may provide grounds for terminating a pregnancy produced by incest, it seems clear that, as with rape, the affront to public decency engendered by the offense constitutes the primary justification for abortion in such cases.

The seven-day reporting requirement for rape cases, though essentially procedural in character, would appear to have potentially detrimental effects upon the substantive aspects of this section. This unique requirement would appear to be grounded in the sound public policy of requiring substantial evidence of an alleged crime before an alleged victim may be eligible for an abortion. But it is submitted that fear or ignorance may cause some victims to fail to meet this strict time limit, especially where the offense is statutory, even though substantial evidence of a crime may otherwise be present. The California and Colorado enactments impose no such time limit, but instead require district attorneys to handle evidentiary problems by making certifications of probable cause to officials of the hospital in which the abortion is to be performed. North Carolina should, via amendment, adopt a similar provision in order to afford maximum protection to the pregnant victims of sexual crimes.

VI. PROCEDURAL PROVISIONS OF G.S. 14-45.1

North Carolina’s provision for consent by the woman requires no consent by her husband, or any other person, provided she is legally competent. It has been argued that abortion should be a joint burden for the husband and wife, especially if the abortion is grounded in eugenic considerations. This argument fails to

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73 N.C. GEN. STAT. § 14-179 (1953).
75 Authorities now recognize that incestuous inbreeding merely accentuates the recessive traits of the parents—whether those traits are good or bad. WEINBERG, INCESTUOUS BEHAVIOR 225 (1955).
78 Comment, 19 HASTINGS L.J. 242, 254 (1967).
recognize, however, that (1) the woman is entitled to the primary protection of the statute because it is she who is primarily subjected to danger; and (2) there is no sound reason to discriminate between unmarried and married women in implementing the law. When the woman is incompetent, the consent requirements under G.S. 14-45.1 are essentially identical to those which the law may require for any medical operation.\footnote{W. PROSSER, TORTS § 18, 102 (3d ed. 1964).}

The residence requirement of four months set out in G.S. 14-45.1 is apparently intended to prevent the state from becoming an "abortion haven."\footnote{The Wall Street Journal, Aug. 18, 1967, at 1, col. 1.} Yet medical authorities have asserted that there is no physiological time-limit on termination of pregnancy;\footnote{See, e.g., Rosen, Psychiatric Implications of Abortion: A Case Study in Social Hypocrisy, 17 W. Res. L. Rev. 435, 449 (1965). Although neither the Colorado nor the California statute includes a residence requirement, the California law does contain a substantive provision prohibiting abortion for any reason after 20 weeks of pregnancy. CAL. HEALTH & SAFETY CODE § 25953 (West 1967). This provision appears to expand greatly the legal protection of the fetus. It has been suggested that the provision was a necessary political concession calculated to gain the support of those who oppose the destruction of the fetus in an advanced state of maturity, on religious or moral grounds. Comment, 19 HASTINGS L.J. 242, 249-50 (1967).} thus it would appear that a non-resident might effectively establish residence for the requisite time and then avail herself of the law. Judicial construction or an amendment to the statute would seem to be in order to clarify the phrase "shall have resided in the State of North Carolina . . ." so that no woman shall be unnecessarily prejudiced by this language.\footnote{In a series of recent cases, Federal courts have held that residence requirements imposed upon recipients of public welfare funds are unconstitutional abridgments of the right to interstate travel and the privileges and immunities clause of the Fourteenth Amendment. Thompson v. Shapiro, 270 F. Supp. 331 (D. Conn. 1967); Green v. Dept. of Public Welfare, 270 F. Supp. 173 (D. Del. 1967). Contra, Harrell v. Board of Comm'trs, 269 F. Supp. 919 (D.D.C. 1967). Future developments in this area of the law may hold significant implications for residence requirements of the type set out in the North Carolina abortion law.} It is to be hoped that the significance of this provision will diminish as other states modernize their abortion statutes.

In requiring every therapeutic abortion to be certified by three doctors not engaged in joint practice, and limiting the situs of such an abortion to an accredited hospital, the General Assembly took steps which insure maximum safety for the patient. These requirements also further the public interest in objective, uniform appli-
cation of the new law. Both California and Colorado chose to vest hospital committees with the responsibility for determining whether an abortion is required in each individual case;\(^8\) North Carolina's three-doctor certification would seem to be more flexible, since it mitigates the pressures experienced by the individual physician, yet avoids the necessity for complex and time-consuming hospital administrative procedures. The hospital would appear to be protected adequately by the receipt of the certificate from the doctors before the operation.

VII. Conclusions

North Carolina's new therapeutic abortion act has been lauded—and attacked—as a "liberal" innovation. Viewed in light of the highly restrictive abortion laws extant in the majority of American jurisdictions, it undeniably expands the opportunities for legal abortion. But it is equally clear that no woman can avail herself of the law's protection in the absence of rather specific evidence, supported by the opinion of three physicians, that an abortion is justified. Even the broadest interpretation of the law will not permit the conclusion that legal abortions may now be had in North Carolina for the sake of mere convenience, or on the basis of a woman's desire not to bear a child. Trends in social opinion indicate that future legislatures will have to determine whether abortion should be condoned for these broad purposes, but the strictly medical orientation of the current law evidences a present intention to approve abortion only in the most crucial circumstances. It would seem that this narrowness of purpose will cause the new law to have only the most minimal effects upon criminal abortion; that avenue is still the only one open to those whose only justification for an abortion is a personal decision not to give birth.

It would further seem that, with minor exceptions, the North Carolina law has been constructed so as to maximize the potential for attainment of its relatively narrow goals. Given some future clarification of the status of statutory rape, and perhaps a reconsideration of the impact of the residence requirement, the statute would seem to place North Carolina in the vanguard of abortion reform for some time to come. But it would also seem that, be-