# Abortion laws still in ferment

## States are rewriting and liberalizing antiquated abortion laws, but they will be subject to attack until the Supreme Court rules on their constitutionality

by Robert J. Trotter

In recent years four states—Alaska, Hawaii, New York and Washington—have liberalized their abortion laws to permit abortion on demand. In New York abortions are legal during the first six months of pregnancy. The decision is between the woman and her doctor, and there is no residency requirement. The Alaska and Hawaii laws are essentially the same, except for a 30-day residency requirement in Alaska and a 90-day requirement in Hawaii. In Washington abortions are legal during the first four months of pregnancy with a 90-day residency requirement.

The result of these liberalized laws, as far as pro-abortionists are concerned, has been encouraging. Statistical studies by Christopher Tietze of the Population Council (SN: 12/18/71, p. 409) show that there have been far fewer deaths and medical complications from legal abortions than the antiabortionists had predicted.

During the first year of New York's liberal abortion law 165,000 abortions were performed. During that time the number of complications declined from a rate of 12.4 per 1,000 to 8.7 per 1,000. The price of an abortion declined by almost 50 percent to an average of $250. The number of illegal abortions declined and the maternal mortality rate (to which criminal abortions have always contributed) declined from 52 per 100,000 live births to a record low of 2.3 per 100,000 live births. Tietze predicts that the birth rate will decline by only about 1.5 per 1,000 population. But he says illegitimacy will decline. The number of illegitimate babies born (14,000) in New York in the first six months of 1971 is 1,100 fewer than the number for the previous year. The decline in illegitimacy is New York City's first in more than a decade.

The number of abortions performed on women from outside of New York rose to 64 percent of the total. "New York would be happy to relinquish its role as abortion center for the country," said John Pakter, head of maternal services for the city. "We have set a good example for the other states to follow." Many states may eventually do so. At least 29 other states have considered liberalizing their abortion laws and more are waiting for guidelines from the Supreme Court. Abortion laws in Wisconsin, Vermont and the District of Columbia have been declared unconstitutional or invalid by lower courts.

But the issue is complex and the Supreme Court has been slow to act. Ethics, women's rights and family privacy are all involved. As Justice William O. Douglas said: "The subject of abortions—like cases involving obscenity—is one of the most inflammatory ones to reach the Court. People instantly take sides and the public, from which juries are drawn, makes up its mind one way or the other before the case is even argued."

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The issue is becoming even more complex. New York's 18-month-old law came under attack in December—just one week before the high court was scheduled to hear abortion cases from Texas and Georgia. Fordham University Prof. Robert M. Byrn, who wants to stop abortions, claimed that the New York law violates the Constitution.

Bringing suit on behalf of a fictitious "Infant Roe," representing all the fetuses in the state, Byrn said the pulsating heart of a four-week-old fetus indicates the presence of life. He contended that abortion therefore violates the 14th Amendment, which says in part that no state shall "deprive any person of life, liberty or property without due process of law."

On Jan. 5 the New York State Supreme Court granted a preliminary injunction to halt all abortions in municipal hospitals.

Mayor John V. Lindsay immediately ordered an appeal of the injunction, saying, "It would be tragic if, as a consequence of any court decision, abortions are available only to those who can afford to pay for them in voluntary and proprietary hospitals." The appeal was granted Jan. 11, and the municipal hospitals will continue to perform abortions, until the case is decided. But this case makes it clear that a definitive ruling from the Supreme Court is necessary.

Jimmye Kimmey, associate director of the Association for the Study of Abortion (a pro-abortion group in New York), has been trying to get such a ruling. More than two years ago she said, "The idea now is to file as many lawsuits in as many states as possible so that at least one will reach the Supreme Court in such a way that the Court can rule on the constitutionality of any abortion law" (SN: 1/17/70, p. 75).

Two such cases (one from Texas and one from Georgia) came before the high court in December, and a written opinion is expected this spring. But Kimmey is not optimistic. "God only knows what this Court will do," she says. It could send these cases back without a decision on procedural grounds that it does not have jurisdiction. She feels the Byrn suit is just an attempt to confuse the whole issue and make it so complicated that the Court will say abortion is something the legislature should decide. Byrn could have taken his case to court 18 months ago when the liberal law went into effect. Instead, he let his compassion for the unborn wait until one week before the Supreme Court heard its abortion cases.

"So if these two cases don't get us what we want," says Kimmey, "we have many more and we must keep trying." □