

1974 WL 27791 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 28, 1974

***1 Re: Abortions for Female Inmates**

Honorable William D. Leeke
Director
South Carolina Department of Corrections
P. O. Box 766
Columbia, South Carolina

Dear Mr. Leeke:

You have asked this office to advise you as to whether or not the Department of Corrections must grant a female inmate's request for termination of her pregnancy.

The question is certainly a novel one and, insofar as we have been able to determine, has not been addressed by any court or legislature in the nation to this date. The United States Supreme Court has considered the issue of a woman's right to an abortion and in the landmark decisions of [Roe v. Wade](#), 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973) and [Doe v. Bolton](#), 410 U.S. 179, 93 S.Ct. 739, 35 L.Ed.2d 201 (1973) held that the right of privacy was broad enough to encompass a woman's decision whether or not to terminate her pregnancy. In the first trimester of pregnancy, both the decision to have an abortion and its performance are matters to be determined by the woman and her attending physician 'free of interference by the State.'

The State's interests in the abortion process are two-fold: preserving maternal health and protecting human life. The fact that a woman may be incarcerated does not give the State authority to interfere with the process beyond the assertion of these denominated interests. As long as the health of the mother is sufficiently safeguarded in the early stages of pregnancy, the Department has no legal basis for prohibiting the performance of the abortion. It would seem, to the contrary, that the State has an interest in seeing to it that the Department is not faced with the choice of either allowing the raising of children in detention facilities or increasing the number of wards of the State.

It is, therefore, the opinion of this office that the Department of Corrections should grant a female inmate's request for termination of her pregnancy.

If we can be of further assistance to you in this matter, please feel free to call upon us.

Sincerely,

Dudley Salceby, Jr.
Assistant Attorney General

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