

**Presentation
House Bill 1654**

Dr. Rosalina Valcárcel-Ruiz, MD, MPH, Pediatrician
House Committee on the Judiciary Sept. 4, 2018

Honorable Chairman of the Committee on Legal Affairs and its Members,

I appreciate the invitation to testify before this distinguished Committee on House Bill 1654:

"To create and establish the new private legal system that will govern in Puerto Rico, to be known as the "Civil Code of Puerto Rico"; to provide for its structure and effective; to repeal the current "Civil Code of Puerto Rico of 1930," as amended; and for other related purposes."

I understand that this project has favorable repercussions for our country, its inhabitants, and their rights. I, Dr. Rosalina Valcárcel-Ruiz, present this paper as a Health Professional, Pediatrician and Salubrist, committed to the greater welfare of humanity and health. My experience as past Director of the Division of Mothers, Children and Adolescents of the Department of Health, and my work as a pediatrician in the Neonatal Intensive Care Unit have forged my character day by day in the practice of medicine. They have instilled in me a sensitivity and respect for the vocation of service to health, wellness and life.

It is with this commitment that I stand before you today to present my position on the amended Civil Code, which sets forth the legal order of the period of gestation, birth and the recognition of the natural person as a subject of law; the right to life of every human person.

In this paper I present relevant points, based on scientific, medical and ethical evidence, that support the amendments presented in the revised Civil Code. Specifically, Article 70 on the determination of personality and legal capacity; Article 71 on the legal consequences of the unborn and the rights recognized to the conceived during gestation, being irrevocable when born alive; Article 72 that defines the presumption of life; and Article 73 that abounds in the term and effects of pregnancy (Book One: Legal Relations / Title I: The Person / Chapter II. Gestation, Birth and Recognition of the Natural Person as a Subject of Law).

Article 70. Personality and capacity.

Among the existing modern codes, we find the Civil Code of Peru, where the unborn, called "*nasciturus*" (a legal term that designates the human being from the moment he/she is granted until his/her birth), is recognized as a subject of law, like other natural persons; and the Civil Code of Argentina, which expresses "the existence of the human person begins with the birth of the child" (the "*nasciturus*").

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conception", and categorically affirming that it has personality from conception; thus recognizing the "*nasciturus*" as a human "person".

Within the field of medicine, all the characteristics of the unborn (*nasciturus*) that identify it as a natural person, exist from the moment of conception, creating a whole, separate and unique being; with an exclusive genetic material (DNA) and genuine; existing only for the species conceived in the union of the ovum with the spermatozoid; this is an irrefutable scientific fact. This is the beginning of a new life with exclusive genetic information, with a personal human constitution, defined and unique. The development of this human being is continuous and progressive, similar to the stages of life from the neonatal period to old age, and inevitably to natural death.

This early human being is a member of our species "homosapiens"; he is of our race. Therefore, there is no reason why a natural person such as the "*nasciturus*" should not be recognized as a legal person.

However, in an inheritance case involving a pregnant woman, the "unborn child" has to be considered as a legal person for inheritance purposes. Similarly, in a divorce case, if the wife is pregnant, the "*nasciturus*" baby is considered a legal person for pension purposes.

In addition, it is extremely important to recognize what is set forth in Article 100 of our Penal Code, which establishes the death of a pregnant baby as a crime. Therefore, we recognize that murdering a pregnant woman is considered a double murder. An example of this is the Laci Peterson case where Judge Alfred A. Delucchi sentenced Scott Peterson to death on March 16, 2005, finding him guilty of the murder of his wife and unborn child, calling the murder "cruel, callous, and merciless.

Given these facts, is every human life dignified at any moment of its development? Well, dignity is a key issue when reflecting on the beginning of human life. Respect for the dignity of every living being must go hand in hand with the development of science, medical knowledge, technology and with the development of new human rights for every living being from conception to death.

A classic example where we link technological medical advances with respect for human dignity is the first human fetal surgery performed in 1965. With this, several different surgical procedures have been developed and perfected, resulting in significantly improved outcomes for many fetuses. **For more than half a century science has been successfully performing fetal surgery, that is, intervening on the fetus in the womb for various medical or congenital reasons.** Some of the fetal conditions for which fetal surgery is considered are

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Prenatal surgery includes lower urinary tract obstruction, intertwin transfusion syndrome, myelomeningocele, congenital diaphragmatic hernia, cervical masses occluding the trachea, and tumors such as congenital cystic adenomatoid malformation or sacrococcygeal teratoma when associated with the development of hydrops fetalis.

In Barcelona they have developed the Fetal Medicine Area, which has subspecialists in different fetal problems and an innovative structure for comprehensive care of the mother and fetus. The specialized units evaluate more than 1400 consultations per year and more than 100 fetal therapy and surgery interventions are performed. The multidisciplinary program of surgery on the fetus, in the context of the Agrupació Sanitària Hospital Clínic-Sant Joan de Deu, allows us to offer all fetal treatments currently available.

In this context, it is important to highlight that science gives individual and specific medical care to the fetus, even if the mother is totally healthy, recognizing and protecting the life of a different human being in development. Today, from 18 weeks the "nasciturus" is considered to be strong enough to withstand surgery.

As a physician, I affirm and understand that there is life in the womb, and that it is not only cells in development, since it has been scientifically and biologically proven that life begins at conception, when the sperm enters the ovum. This is how it has been taught historically in educational institutions.

Legal consequences of the unborn and Article 72. Presumption of life.

In Article 71, line 1, the phrase "Whoever is considered to be born" should read: "Whoever is considered to be born", so as not to create ambiguity in the concept.

"A human being is born who has life independent of the mother, demonstrated by medical examination or witness statement that after birth he/she exhibited vital signs and physiological and biological reactions of his/her own. The rights recognized to the conceived during gestation are irrevocable if born alive".

Therefore, it is worth remembering the Born-alive Infants Protection Act of August 5, 2002 (Born-alive Infants Protection Act 2002) which upholds the right of the born baby to receive all existing medical treatment that supports its survival regardless of the natural or provoked circumstances by which it was born prematurely. It is in our hands, within the field of medicine and ethics, to offer with sensitivity and respect all medical treatment for the benefit of the born and the survivor of such circumstances. As a pediatrician who has worked arduously in the neonatal intensive care units of this country, I emphasize the importance of making this law viable in Puerto Rico.

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He considered that the current viability of a developing intrauterine creature has depended on advanced technological medical advances that favor life. Therefore, it is preposterous to ascribe the medical technology of past centuries to the 21st century. This means that viability is intrinsically linked to technological advances in science and medicine.

Article 71, line 7 states: "If the conceived is born dead, it is presumed never to have existed" to which I submit the following postulate: It is scientifically proven that if a creature dies in the womb or is born without life; there was an existing human life and it did exist; because that which did not have life cannot die. To such effects, I submit that the premise of Article 71, line 7 be substituted by the postulate presented.

As a pediatrician and health care provider, I am committed to offer all my medical knowledge for the health and well-being of my neonatal patients, infants, adolescents and pregnant women. This commitment reaffirms the importance of taking on each of the challenges that arise to achieve the development of the new rights of all living beings.

I am willing to continue to work with you to create a legacy for the benefit of humanity. To conclude this presentation, I would like to share with you the following thoughts:

The greatest wealth of a society is the human life in a mother's womb and by taking care of it, we reverse the aging of our society.

Reflection by Mahatma Gandhi, who asked,

"what factors destroy the human being?" and this was his answer: Wisdom without character; Pleasure without commitment; Prayer without charity; Business without morality; and Science without humanity."