



# Virginia State Crime Commission

Legal Standard for Prosecuting  
Infanticide Cases

December 9, 2008

# Overview



- Study Request
- Lane v. Commonwealth (Supreme Court of Virginia)
- Aldridge v. Commonwealth (Virginia Court of Appeals)
- Virginia Code § 18.2-32.2
- Legislative Proposal
- Discussion

# Study Request



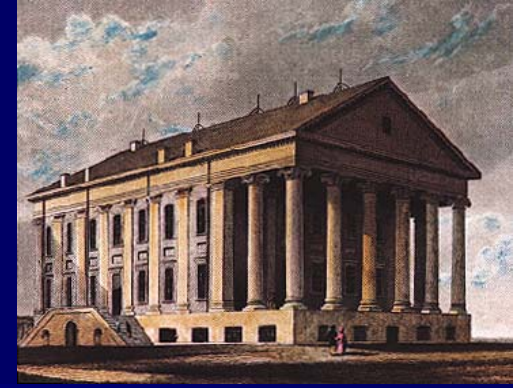
- Letter request received by the Crime Commission from Senator Hurt, asking the Commission to study the standard required for prosecuting the death of a newborn.
  - Specifically, a Commonwealth's Attorney from his district asked the Senator to look into changing the standard, as is currently set forth in Lane v. Commonwealth.

# Lane v. Commonwealth



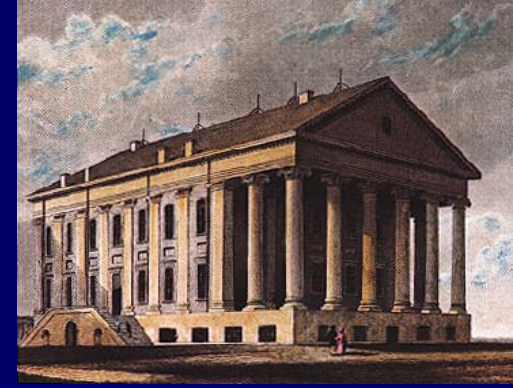
- The standard for prosecuting the killing of a newborn was set forth by the Virginia Supreme Court in Lane v. Commonwealth.
- This standard requires that the Commonwealth prove three elements to find an individual guilty of infanticide:
  - The child was born alive;
  - The child had an independent and separate existence from its mother; and,
  - The accused was the criminal agent that caused the infant's death.
- This standard is an extension of the traditional *corpus delicti* rule in homicide cases, requiring a “showing of death and that death resulted from the criminal act or agency of another.”
  - This standard is often referred to as the “born alive rule.” The “born alive rule” has been prevalent in the common law since the 16<sup>th</sup> century, and is still the prevailing rule in the overwhelming majority of jurisdictions.

# Lane v. Commonwealth



- In Lane, the prosecution proved that the child was “born alive,” however, it could not prove conclusively that the child had an “independent and separate existence” from its mother.
- Also, while the evidence showed the child’s death was caused by a lack of oxygen, the evidence was insufficient to prove the criminal agency of the mother.
- It should be understood that the standard in Lane does not require direct evidence to prove each element. Rather, as in all *corpus delecti* cases, proof of each or all elements “may be furnished by circumstantial evidence.”

# Aldridge v. Commonwealth



- There is only one other published decision in the Commonwealth using the Lane standard. In Aldridge v. Commonwealth, the Virginia Court of Appeals upheld the conviction of a defendant for killing her newborn child.
  - The medical evidence, like the medical evidence in Lane, was not conclusive to a “medical certainty” to prove the elements required in Lane, but combined with the defendant’s statements, there was sufficient evidence to uphold the conviction.
- The Lane standard does not require definitive medical evidence to prove each or all the elements. It requires, like all homicide cases, that the Commonwealth prove that a living human being’s death was caused by the defendant. This determination is a question to be made by the finder of fact.
- Since the Lane standard is flexible, and not fixed, any advances in forensic science and medical technology will increase the ability of a finder of fact to determine whether each element of the Lane standard is satisfied.

# Va. Code § 18.2-32.2



- In Virginia, as well as other jurisdictions, feticide is also punishable as a separate crime. This crime applies when the killing occurs prior to birth.
- § 18.2-32.2 makes it a Class 2 felony for any “person who unlawfully, willfully, deliberately, maliciously and with premeditation kills the fetus of another.”
  - An individual may receive a sentence of no less than 5 years or more than 40 years for killing the fetus, without premeditation.

# Legislative Proposal



- The following definition was proposed as an addition to §18.2-6; *The word “person” includes a human infant that has been born alive regardless of whether the infant has achieved an independent and separate existence from the mother.*
- The proposal suggested would remove the requirement of proving the “separate and independent existence” of the newborn, as required by the Lane standard.
- **This is a significant departure from the common law rule, that is still followed by the vast majority of jurisdictions.**
  - Only four states (Arizona, California, Massachusetts, and Oklahoma) have adopted standards treating the fetus as a person before birth.
  - However, in all of these states the prosecution must prove viability or a separate and independent existence prior to birth *and* will likely follow the “born alive” standard after birth.

# Discussion