

MAINE STATE LEGISLATURE

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CHAPTER 193

STERILIZATION

Sec.

- 2461. Consent necessary; procedure prior to operation.
- 2462. Recommendation.
- 2463. Written order.
- 2464. Notice.
- 2465. Appeal from sterilization order.
- 2466. Proceedings stayed on appeal; order put to effect.
- 2467. Permanent record; inspection.
- 2468. Liability of persons executing provisions.

§ 2461. Consent necessary; procedure prior to operation

The operations of vasectomy and fallocotomy may be performed under the conditions and within the restrictions described and under such provisions shall be lawful.

When either of the recognized sterilizing operations referred to may be indicated for the prevention of the reproduction of further feeble-mindedness, or for the therapeutic treatment of certain forms of mental disease, physicians may recommend to the nearest relative, guardian and affected individual the advisability and necessity of such operation. When the written consent of the patient, when mentally competent to give such consent or the written consent of the nearest relative or guardian when the patient is mentally incompetent to give such consent, is given, the physician shall call a council of 2 registered medical practitioners, one a physician and one a surgeon, of not less than 5 years' practice and not related to the patient, whose duty it shall be in conjunction with the physician in charge of the case, to examine the individual recommended for operation. Whether the person to be operated upon is mentally capable of giving his consent shall be decided by the consultants and stated in writing, with their reasons therefor, and such written statement shall be kept on file at the Pineland Hospital and Training Center and in case they find that the patient is mentally incapable of giving his consent, the consent of the nearest relative or guardian must be secured. If in the judgment of the consulting physicians the operation will prevent the further propagation of mental deficiency, or if in the judgment of the medical consultants the physical or mental condition of any such person will be substantially benefited thereby, then the consultants shall select a competent

surgeon to perform the operation of fallocotomy or vasectomy, as the case may be, upon such person, and such surgeon may be the consulting surgeon.

R.S.1954, c. 27, § 149; 1957, c. 21, § 2.

§ 2462. Recommendation

Whenever it appears to the medical staff or institution physician of any institution in this State which has the care or custody of mentally ill or feeble-minded persons that any inmate under the care or custody of such institution would be likely, if released without sterilization, to produce a child or children who by reason of inheritance would have a tendency to serious mental disease or mental deficiency, said medical staff or institution physician shall submit to the department a recommendation that a surgical operation be performed upon said patient for the prevention of parenthood. This recommendation shall be in writing and accompanied by the sworn statement of the superintendent of such institution containing the history of the inmate as shown by the records of the institution, so far as it bears upon the recommendation for sterilization and setting forth the reasons why sterilization is recommended.

R.S.1954, c. 27, § 150; 1959, c. 242, § 8.

§ 2463. Written order

If, in the judgment of the department, procreation by said inmate would be likely to produce a child or children who by reason of inheritance would have a tendency to serious mental deficiency, it shall be the duty of the department to approve said recommendation within 30 days and send to the superintendent of such institution a written order, signed by the commissioner directing him to proceed with the sterilization not earlier than 50 days after the receipt of said order. No order of sterilization shall be carried into effect until the same shall have been further approved by 2 of the following persons: The Superintendent of the Bangor State Hospital, the Superintendent of the Augusta State Hospital and the Superintendent of the Pineland Hospital and Training Center.

R.S.1954, c. 27, § 151; 1957, c. 21, § 2.

§ 2464. Notice

Such department shall send one copy of the order for sterilization to the inmate and another copy to the father or mother,

husband or wife, or legal guardian of the inmate, accompanying it in each case by a certified copy of the recommendation and notification that the inmate or his or her representative has a right of appeal to the courts. If none of the foregoing relatives are known and no legal guardian has been appointed, the department shall request a Justice of the Superior Court to appoint some attorney to protect the rights of the inmate and such notices and copies shall be sent to such attorney.

R.S.1954, c. 27, § 152.

§ 2465. Appeal from sterilization order

Within 30 days of the issuance of any order of sterilization an appeal may be taken therefrom to the Superior Court by the inmate or his or her representative. Such appeal shall be filed and heard in the county where inmate was domiciled when committed. The proceedings in such appeals shall be governed by the rules provided for probate appeals.

In this appeal the person for whom an order of sterilization has been issued shall be designated as the plaintiff and the superintendent of the institution in which said inmate is under care or custody shall be designated as defendant. The finding of the court shall be certified to the department. Such finding may affirm, revise or reverse the order of the board appealed from.

R.S.1954, c. 27, § 153; 1961, c. 317, § 46.

§ 2466. Proceedings stayed on appeal; order put to effect

The pendency of any appeal shall stay proceedings under the order of such department until the appeal is determined. Should the decision of the court uphold the plaintiff's objection, the order for sterilization shall be vacated automatically and the case may not be initiated again within one year of the date of the final decision of the court. Should the court find against the plaintiff said order shall be put into effect by the superintendent of the institution in which the inmate is under care or custody and the inmate shall be sterilized by vasectomy, if a male and by a fallocotomy, if a female.

R.S.1954, c. 27, § 154.

§ 2467. Permanent record; inspection

The completed original documents in every case not originated and completed at the Pineland Hospital and Training Cen-

ter shall be forwarded to said institution for permanent record and a duplicate thereof shall be retained by the institution where the inmate was confined. Such records or documents shall not be open to public inspection, except for such purposes as may be approved by the Superintendent of the Pineland Hospital and Training Center and the commissioner, with the assurance that the names of the persons sterilized shall not be made public.

R.S.1954, c. 27, § 155; 1957, c. 21, § 2.

§ 2468. Liability of persons executing provisions

Neither any of said superintendents nor any other person legally participating in the execution of this chapter shall be liable either civilly or criminally on account of said participation, except in the case of negligence in the performance of the operation.

R.S.1954, c. 27, § 156.