

MAINE STATE LEGISLATURE

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March 7, 1968

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Sterilization Procedures at Pineland Hospital and Training Center.

QUESTION:

In proceedings relative to the sterilization of inmates at the Pineland Hospital and Training Center, may the procedure outlined in Mo. Rev. Stat. Ann., Tit. 34, § 2461 (1964) be followed, or must the procedure specified in Mo. Rev. Stat. Ann., Tit. 34, §§ 2462-2463P

ANSWER:

Each procedure is designed to serve a particular state of facts. Therefore, in sterilization proceedings, each case must be dealt with on its facts in order to determine which procedure to follow. Either procedure is permissible provided the statutory requirements are fulfilled. However, we feel constrained to point out that the section 2462 procedure, although in most instances likely to be more time-consuming than the procedure under section 2461, is by far the more preferable. Under the section 2462 procedure, the patient and his relatives have the right to appeal the sterilization decision to the Superior Court. If they fail to do so, it is highly probable that any suit for damages resulting from the sterilization order thereafter brought by the patient or his relatives against the State would be barred. If the suit is brought and fails, the physicians can operate under the protection of a judicial decree. In either case, the State enjoys a significant degree of protection from future litigation that is not available to it under section 2461.

DISCUSSION:

Section 2461 sterilization procedures may be initiated when indicated "for the prevention of the reproduction of further feeble-mindedness, or for the therapeutic treatment of certain forms of mental disease." Note that, under section 2461, the attending physician may recommend sterilization, but he does not have to do so. Further, if such recommendation is made, the consent of the patient (if found competent) or of the nearest relative or guardian (if the patient is found incompetent) must be obtained and a physicians' council must pass on the likelihood of the operation to fulfill the statutory purpose before sterilization can be performed.

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Sections 2462-2463 direct the medical staff or institution physician of any State institution which has care or custody of feeble-minded or mentally ill persons to recommend sterilization of an inmate who, if released without sterilization, might tend to produce mentally deficient off-spring. Once the recommendation for sterilization is made, consent of the patient or of his relatives does not figure in the final decision to sterilize, which must be made by certain officials whose decision to sterilize may be appealed to the Superior Court.

To summarize: There is no bar to using the procedures of section 2461 for sterilization of a Pineland inmate, providing (1) a physician so recommends; (2) the competency of the patient to consent to the procedure is determined in the manner provided by statute and (a) if found competent to do so, the patient consents; or (b) if the patient is found incompetent to consent, the consent of the nearest relative or guardian is secured; and (3) the consulting physicians make the statutory determination of the likelihood of the operation to fulfill the statutory purposes. Neither is there any bar to using the procedures of sections 2462-2463 for sterilization of a Pineland inmate providing (1) the medical staff or institutional physician at Pineland so recommends on the grounds that the patient would be likely, if released without sterilization, to produce mentally deficient off-spring; (2) the department approves the recommendation and issues the order; (3) the order is approved in the manner provided by statute; and (4) no appeal is taken within the statutory period. Nonetheless, we emphasize that the section 2462 procedure is by far the most preferable in terms of protecting the State from future litigation resulting from a sterilization operation, and we urge that this procedure be followed in preference to that under section 2461.

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