

# MAINE STATE LEGISLATURE

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# STATE OF MAINE

Inter-Departmental Memorandum Date 5 September 1968

To William E. Schumacher, M.D., Acting Dept. Mental Health and Corrections  
Commissioner  
From Courtland D. Perry, Assistant Atty. Gen'l. Dept. " "  
Subject Sterilization Procedures at Pineland Hospital and Training Center

## SYLLABUS:

In order to effect the eugenic sterilization of a Pineland Hospital and Training Center patient it is necessary to follow the procedures prescribed in 34 M.R.S.A., 1964, §§2462-2466 requiring institutional recommendation of the procedure, approval thereof by the Commissioner of Mental Health and Corrections, the issuance of his order, notice to the patient and other interested parties, a period of delay between the order and the execution of the procedure and the availability of appeal from the Commissioner's order, involving a judicial hearing.

The procedure prescribed in 34 M.R.S.A., 1964, §2461 is intended for use only with respect to the eugenic sterilization of persons residing in the community.

## QUESTION:

Is the procedure for effecting the eugenic sterilization of Pineland Hospital and Training Center patients prescribed exclusively in 34 M.R.S.A., 1964, §§2462-2466?

## ANSWER:

Yes.

## OPINION:

It is our opinion that 34 M.R.S.A., 1964, §2461 prescribes a procedure under which the eugenic sterilization of a person residing in the community shall be effected and that the procedure therein set forth is unavailable to personnel of the Pineland Hospital and Training Center with respect to sterilization of Pineland patients, and that the procedure set forth in 34 M.R.S.A., 1964, §§2462-2466 is the only method by which to effect sterilization of such patients.

The procedure prescribed in §2461 has the appearance of general applicability and the purpose of eugenic sterilization under §2461 and under §§2462-2466 is, with respect to the mentally retarded, identical; viz., the prevention of procreation of retardates; however, the language of §2462 is clearly, exclusively and mandatorily applicable to inmates of institutions. Section 2462 appears in pertinent part below:

### "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


William E. Schumacher, M.D.,  
Acting Commissioner

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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..." [Emphasis supplied]

It is our opinion that the detailed provisions found in §§2462-2466 applicable exclusively to the eugenic sterilization of inmates of institutions are for the protection of such inmates against the possibility of any over-reaching on the part of those persons in whose care and custody such inmates reside. It appears clear, that the Legislature intended that a distinction be made between the mentally deficient person residing in the community with the benefit of family care and interest, and those deficient persons residing in institutions under the control of strangers. It is because of this distinction that we view the procedures under §2461 and those under §§2462-2466 to be applicable to two distinct classes of persons, i.e., in the first instance, those residing in the community and in the second, those residing in institutions.

  
Courtland D. Perry  
Assistant Attorney General

NOTE: This opinion supplants the opinion of this office re: the same subject dated 7 March 1968.