

MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 887

H. P. 708

House of Representatives, March 9, 1977

On Motion of Mr. Spencer of Standish referred to the Committee on Judiciary. Sent up for concurrence and 2,000 ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Davies of Orono.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

AN ACT Regulating Sterilization.

Be it enacted by the People of the State of Maine, as follows:

34 MRSA c. 193, as amended by P&SL 1973, c. 53, is repealed and the following enacted in its place:

CHAPTER 193
STERILIZATION

§ 2461. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings.

1. Constraint. "Constraint" shall include, but not be limited to, institutionalization, legal custody, confinement, duress and possible express or implied inducements or contingencies which are controlled by other individuals, agencies or organizations.

2. Person of impaired capacity. "Person of impaired capacity" means an individual who:

A. Has been formally adjudicated by a court of competent jurisdiction to be legally incompetent or incapacitated;

B. On the basis of professional assessment, is found to be sufficiently mentally incompetent about an issue as grave as sterilization; or

C. While possessing the mental capacity to make an informed judgment, is under some form of constraint which limits his freedom to exercise this judgment.

3. Sterilization. "Sterilization" means a surgical procedure, the primary purpose of which is to render an individual incapable of procreating without impairing his capacity to engage in sexual activity.

§ 2462. Prohibiting sterilization without consent; validity of consent

No person shall order, conduct or otherwise cause the sterilization of any individual without that individual's consent. An individual's consent shall only be valid if:

1. Impaired capacity. He is not of impaired capacity, as defined below;
2. Alternative forms of contraception. Prior to reaching a decision, the individual is informed of, and has access to, less restrictive forms of contraception. When other forms of contraception are provided, they must be offered under circumstances which favor their effective use; and
3. Notice of nature and likely consequences. Prior to electing to be sterilized, the person shall have a full explanation of the nature and likely consequences of the sterilization procedure and an opportunity to signify his understanding. If the person is unable to read, a verified record or transcription of the essential features of the oral interchange shall be maintained.

§ 2463. Sterilization of a person of impaired capacity

Sterilization of a person of impaired capacity as defined above shall be deemed voluntary only if prior to the decision to sterilize, the district court in the jurisdiction where the person to be sterilized resides has received evidence and affirmed that all of the following conditions have been met:

1. Capability for procreation. The individual is presumed to be physiologically capable of procreation.
2. Sexual activity. The individual is or is likely to be sexually active in the near future.
3. Pregnancy. Pregnancy would not usually be intended by a competent person facing analogous choices.
4. Alternative contraceptive methods. Less drastic alternative contraceptive methods have proved unworkable or are inapplicable.
5. Approval of guardian, next of kin or guardian ad litem. The guardian of the person or, if there is no legal guardian other than a public official, the next of kin or, if lacking next of kin, the guardian ad litem agrees that sterilization is a desirable course of action for the individual.
6. Expert advice. The court has received advice based on a comprehensive medical, psychological and social evaluation of the individual.
7. Legal counsel. The individual is represented by legal counsel with a demonstrated competence in dealing with the medical, legal, social and ethical issues involved in sterilization.

8. **Opportunity to be heard.** The individual, regardless of his level of competence, has been granted a full opportunity to express his views regarding sterilization and these views have been taken into account in determining whether to sterilize the individual.

§ 2464. A petition for approval of sterilization

A petition for approval of sterilization under section 2463 may be initiated by the individual, his guardian or next of kin or a person primarily responsible for the care of the individual. The petition shall be brought in the District Court in the jurisdiction in which the individual resides. The court shall give prompt notice of the petition, the court's findings and the right of appeal and time limit for appeal in hand and orally to the individual, and in hand or by certified mail to his attorney and to any person filing the petition. The court shall give the individual notice of the hearing date at least 72 hours before the hearing by the same means described above. The hearing shall be conducted in the setting and manner most conducive to the individual's comfort and maximum participation. All persons to whom notice is required to be given shall be afforded an opportunity to appear at the hearing, to testify and to present and cross-examine witnesses. All relevant and material evidence which is offered shall be received. The proceedings shall be confidential, and all persons not necessary to the conduct of the hearing shall be excluded, unless the individual requests otherwise.

§ 2465. Order for sterilization

Upon approval of sterilization, the court shall approve a licensed surgeon who was in no way connected with any aspect of the proceedings to approve the sterilization to perform the operation. If the individual initiated the petition and is a resident of a state institution under the control of the Department of Mental Health and Corrections, a final court decision approving sterilization shall operate as an order the superintendent to cause the operation to be performed within 90 days.

§ 2466. Approval becoming final; appeal

District court approval of sterilization shall not become final until 30 days after issuance. During this time, an appeal on behalf of the individual may be had in Superior Court. A timely appeal shall operate to enjoin sterilization during the pendency of the appeal. The same petition shall not be initiated within one year of a final court decision denying approval for sterilization.

STATEMENT OF FACT

The purpose of this bill is to facilitate the exercise of free and informed choice regarding family planning alternatives for every person, to the maximum extent of his capability. Application of the current statute dealing with sterilization is unclear and overly complex. This bill clarifies for patients, their families and physicians, the elements of consent and the conditions and procedures for voluntary sterilization of persons of varying levels of mental capacity.