

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE
AS PASSED BY THE

ONE HUNDRED AND TENTH LEGISLATURE

SECOND SPECIAL SESSION

September 25, 1981

AND

THIRD SPECIAL SESSION

December 9, 1981

AND

SECOND REGULAR SESSION

January 6, 1982 to April 13, 1982

AND AT THE

FOURTH SPECIAL SESSION

April 28, 1982 to April 29, 1982

AND AT THE

FIFTH SPECIAL SESSION

May 13, 1982

PUBLISHED BY THE DIRECTOR OF LEGISLATIVE RESEARCH IN
ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 164, SUBSECTION 6.

J.S. McCarthy Co.
Augusta, Maine
1981

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
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of the

ONE HUNDRED AND TENTH LEGISLATURE

1981

CHAPTER 621

H.P. 2179 - L.D. 2065

AN ACT Relating to Informed Consent and Determination of Best Interest for those Unable to Give Informed Consent for Sterilization.

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

Sec. 1. 34 MRSA c. 193, as amended by P&SL 1973, c. 53, is repealed.

Sec. 2. 34 MRSA c. 194 is enacted to read:

CHAPTER 194

DUE PROCESS IN STERILIZATION ACT OF 1982

§2471. Short title

This chapter may be known and may be cited as the "Due Process in Sterilization Act of 1982."

§2472. Legislative intent

The Legislature finds and declares that sterilization procedures are generally irreversible and represent potentially permanent and highly significant consequences for the patient involved. The Legislature recognizes that certain legal safeguards are necessary to prevent indiscriminate and unnecessary sterilization and to assure equal access to desired medical procedures for all Maine citizens.

§2473. Definitions

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

1. Disinterested expert. "Disinterested expert" means an appropriately licensed or certified professional not associated with an institution serving the person for whom sterilization is being sought and not personally related to the petitioner.

2. Guardian. "Guardian" means the legal guardian of a

person as appointed by a court of competent jurisdiction.

3. Informed consent. "Informed consent" means consent that is:

A. Based upon an actual understanding by the person to be sterilized of the nature of sterilization, its potentially permanent consequences, all alternative methods of contraception and all reasonably foreseeable risks and benefits of sterilization; and

B. Wholly voluntary and free from express or implied coercion.

4. Parent. "Parent" means a natural or adoptive mother or father of a person.

5. Physician. "Physician" means any person licensed to practice medicine under Title 32, chapter 48, subchapter II.

6. Psychiatrist. "Psychiatrist" means a physician licensed to practice medicine under Title 32, chapter 48, subchapter II who specializes in the diagnosis and treatment of mental disorders.

7. Psychologist. "Psychologist" means any person licensed to practice psychology under Title 32, chapter 48, subchapter II.

8. Sterilization. "Sterilization" means a medical or surgical procedure, the purpose of which is to render an individual permanently incapable of procreation. Sterilization does not refer to procedures which must be performed for distinct and urgent medical reasons and which have the unavoidable secondary effect of rendering the individual infertile.

§2474. Informed consent required for sterilization

1. Informed consent required. Except as provided in this chapter, prior to initiating sterilization procedures on any individual, a physician shall obtain and record the informed consent of that individual.

2. Hearing required to determine ability to give informed consent for sterilization. A hearing to determine ability to give informed consent for sterilization is required when sterilization is sought for:

A. Persons under age 18 years and not married or otherwise emancipated;

B. Persons presently under public or private guardianship or conservatorship;

C. Persons residing in a state institution providing care, treatment or security, or otherwise in state custody; or

D. Persons from whom a physician could not obtain informed consent.

§2475. Sterilization authorized by court

1. Court order required. A District Court order authorizing sterilization is required before the sterilization of any person described in section 2474, subsection 2.

2. Determination prior to issuance of order. Before an order may be issued, the court shall determine whether the person seeking sterilization or for whom sterilization is sought is able to give informed consent for sterilization and if so whether he has given informed consent for sterilization.

§2476. Contents of petition for determination of ability to give informed consent for sterilization

The petition for determination of ability to give informed consent for sterilization shall be executed under oath and shall set forth:

1. Person seeking sterilization or for whom sterilization is sought. Name, age and residence of the person seeking sterilization or for whom sterilization is sought;

2. Parent, guardian or spouse. Names and residences of any parents, spouse or legal guardian of the person seeking sterilization or for whom sterilization is sought;

3. Basis of petition. A statement of the factors, including any listed in section 2474, subsection 2, and mental condition, when appropriate, which necessitate a determination of the ability of the person seeking sterilization or for whom sterilization is sought to give informed consent for sterilization;

4. Reasons for sterilization. A statement of the reasons for which sterilization is sought; and

5. Person initiating petition. The name, address, position and statement of interest of the person initiating the petition or any person assisting with a self-initiated petition.

§2477. Submitting petition to determine informed consent;
notice of hearing

1. Petition submission. The petition for a determination of ability to give informed consent shall be submitted to the District Court in the division of residence of the person seeking sterilization or for whom sterilization is sought.

2. Notice of hearing. Upon the receipt of a petition to determine informed consent, the District Court shall assign a time, not later than 30 days thereafter, and a place for hearing the petition. The court may, at its discretion, hold the hearing on the petition at a place within the division other than the usual courtroom if it would facilitate the presence of the person seeking sterilization or for whom sterilization is sought.

3. Service of notice. The court shall cause a copy of the petition and notice of hearing to be served on the person seeking sterilization or for whom sterilization is sought and his legal guardian or custodian, if any, at least 7 days prior to the hearing date. If a legal guardian or custodian of the person seeking sterilization or for whom sterilization is sought is not a resident of this State, notice may be served by registered mail. If the residence of a legal guardian or custodian is unknown, an affidavit so stating shall be filed in lieu of service.

§2478. Hearing upon a petition to determine informed consent for sterilization

1. Counsel. If the person seeking sterilization or for whom sterilization is sought requests counsel and cannot afford counsel, the court shall appoint counsel to represent that person at public expense. If the person is not represented by counsel and appears to the court unable to request counsel, the court shall order that counsel be retained or shall appoint counsel to represent the person at public expense if the person cannot afford counsel. A reasonable fee shall be set for appointed counsel by the District Court. Counsel, or the person seeking sterilization or for whom sterilization is sought, may present evidence, call witnesses and cross-examine witnesses who testify or present evidence at any hearing on the petition.

2. Appointment of disinterested experts. For the purpose of determining a person's ability to give informed consent, the court shall appoint not less than 2 disinterested experts experienced in the field of developmental disabilities or mental health, including at least one licensed psychologist or psychiatrist, to examine the person, to

report on that examination and to testify at the hearing as to his competency. Other evidence regarding the person's capabilities may be introduced at the hearing by any party.

3. Preference of person seeking sterilization or for whom sterilization is sought. If the person seeking sterilization or for whom sterilization is sought has any preference as to a disinterested expert by whom he would prefer to be examined, the court shall make a reasonable effort to accommodate that preference.

4. Person's presence at hearing. The person seeking sterilization or for whom sterilization is sought shall be present at any hearing regarding his ability to give informed consent for sterilization, unless that right is waived by the person, personally or through his attorney, and that waiver is approved by the court. The court shall inquire at the time of the hearing as to the types and effects of any medications being administered to or taken by the person.

5. Determination that person is able to give informed consent for sterilization. If the court determines by clear and convincing evidence that the person is able to give informed consent for sterilization and that the person does consent to sterilization, it shall issue an order so stating and permitting the sterilization to be performed. Prior to the performance of the sterilization the physician and hospital involved shall also obtain the written consent of the person for sterilization.

If the court determines by clear and convincing evidence that the person is able to give informed consent for sterilization but determines that the person does not consent to sterilization, it shall issue an order so stating and forbidding sterilization of the person, unless that person later makes a different choice and only after a rehearing under this section.

6. Determination that person is not able to give informed consent for sterilization. If the court determines that the person is not able to give informed consent for sterilization, it shall issue an order so stating and forbidding sterilization of the person, unless a determination is made under section 2483 that sterilization is in the best interest of the person.

§2479. Limitations

1. Consent not to be a condition for exercise of any right, privilege or freedom. Consent to sterilization shall not be made a condition for release from or confinement in

any institution nor shall it be made a condition for the exercise of any right, privilege or freedom, nor shall it be made a condition for receiving any form of public assistance, nor as a prerequisite for any other service. The consent must be free from express or implied inducements or constraints.

2. Guarantees and limitations to be given to person to be sterilized. The guarantees and limitations provided in this section shall be communicated to the person seeking sterilization or for whom sterilization is sought by the court prior to issuing an order under section 2478. These guarantees and limitations shall also appear prominently at the top of the consent document used by a physician or hospital to obtain written consent for sterilization.

§2480. Determination of the best interests of a person unable to give informed consent for sterilization

The parent, spouse, legal guardian or custodian of any person found unable to give informed consent for sterilization may petition the District Court, in the county of residence of the person being considered for sterilization to determine if sterilization is in the best interest of that person. The court shall have sole jurisdiction and authority to order that a sterilization procedure may be performed when a person is incapable of giving informed consent, as determined by the hearing required in section 2478.

§2481. Contents of petition for consideration of sterilization of a person based upon a determination of best interest

The petition for determination if sterilization is in the best interest of a person shall be executed under oath and shall set forth:

1. Person being considered for sterilization. The name, age and residence of the person being considered for sterilization;

2. Parents, spouse, custodian or guardian of person being considered for sterilization. The names and residences of any parents, spouse or legal guardian of the person being considered for sterilization;

3. Mental condition. The mental condition of and effects of any medications being administered to or taken by the person being considered for sterilization;

4. Reasons sterilization is sought. A statement, in terms of the best interest of the person, of the reasons for

which sterilization is sought;

5. Petitioner. The name and relationship of the petitioner to the person being considered for sterilization;

6. Alternatives. Less drastic alternative contraceptive methods which have been tried or the reason those methods are believed to be unworkable or inappropriate for the person being considered for sterilization;

7. Physiological capability to procreate. A medical statement assessing the physiological capability of the person to procreate;

8. Risk to life or health. A medical statement regarding the potential risk to the life or health of the person which could be caused by procreation or child rearing;

9. Person's attitudes or desires regarding sterilization. Any attitudes or desires expressed by the person regarding sterilization; and

10. Informed consent order. The date and contents of the order issued under section 2478 concerning the ability to give informed consent for sterilization of the person being considered for sterilization.

§2482. Notice of hearing upon the petition to determine the best interest of a person being considered for sterilization

Upon the receipt of a petition, the court shall assign a time, not later than 30 days thereafter, and a place for a hearing on the petition. The court may, at its discretion, hold the hearing on the petition at a place within the county other than the usual courtroom, if it would facilitate the presence of the person being considered for sterilization. The court shall cause the petition and notice of the hearing to be served on the person being considered for sterilization and his legal guardian or custodian at least 20 days prior to the hearing date. The court shall direct that personal service be made upon the person being considered for sterilization and his legal guardian or custodian. If the legal guardian or custodian of the person being considered for sterilization is not a resident of this State, notice may be served by registered mail. If the residence of the guardian or custodian of the person being considered for sterilization is unknown, an affidavit so stating shall be filed in lieu of service.

§2483. Hearing upon a petition to determine the best interest of a person being considered for sterilization

1. Ability to give or withhold informed consent. In all instances where the issue of whether sterilization is in the best interest of a person is to be considered, a prior determination, as required by section 2478, that the person cannot give or withhold informed consent shall be required.

2. Presence of person; counsel; findings. The person being considered for sterilization shall be physically present throughout the entire best interest hearing, unless that right is waived by the person, personally or through his attorney, and that waiver is approved by the court. The person being considered for sterilization shall be represented by counsel and provided the right and opportunity to be confronted with and to cross-examine all witnesses. The right to counsel may not be waived. If the person cannot afford counsel, the court shall appoint an attorney, not less than 20 days before the scheduled hearing, to represent the person at public expense. A reasonable fee shall be set for appointed counsel by the District Court. Counsel shall represent the person being considered for sterilization in assuring that information and evidence in opposition to sterilization without informed consent is fully represented. All stages of the hearing shall be recorded by a tape recorder or a court reporter, as the court may direct. In all cases, the court shall issue written findings to support its decision.

3. Disinterested experts; evidence. The court shall hear the petition to determine whether sterilization is in the best interest of the person being considered for sterilization. The court shall appoint not less than 3 disinterested experts with experience related to the condition of the person as alleged in the petition, including at least one licensed physician and one licensed psychologist or psychiatrist, to examine the person and to testify at the hearing. The court shall hear and consider evidence on the following:

A. All issues raised by the petition executed under section 2481; and

B. The beneficial or detrimental psychological and physiological effects of sterilization on the person being considered for sterilization.

Any other relevant evidence concerning the mental and physical condition of the person being considered for sterilization may be introduced at the hearing.

4. Burden of proof. The burden of proof by clear and

convincing evidence that sterilization is in the best interest of the person being considered shall rest with the party seeking to establish that sterilization is the appropriate course of action.

5. Finding that sterilization is in person's best interest. The court shall find that sterilization is in the best interest of the person being considered for sterilization if it is shown by clear and convincing evidence that:

A. Methods of contraception less drastic than sterilization have proven to be unworkable or inappropriate for the person; and

B. Sterilization is necessary to preserve the physical or mental health of the person.

6. Court order. If the court finds that sterilization is in the best interest of the person being considered for sterilization, the court shall order that sterilization may be performed. The sterilization procedure used shall be the most reversible procedure available at the time when, in the judgment of the physician performing the sterilization, that procedure is not inconsistent with the health or safety of his patient. If the court finds that sterilization is not in the best interest of the person being considered for sterilization, the court shall order that sterilization may not be performed unless the order is amended by a District Court to permit sterilization.

7. Appeal. Appeal of a final order of a District Court shall be by right in accordance with the Maine Rules of Civil Procedure, except that upon a finding of inability to pay the required fees for an appeal, those fees shall be waived. Pendency of an appeal of an order under this section shall stay any order allowing sterilization.

§2484. Confidentiality; court costs

1. Confidentiality of proceedings and records. All court proceedings occurring under this chapter shall be confidential and closed to the public, unless the person seeking sterilization or being considered for sterilization, personally or through his attorney, requests that the proceedings be open to the public. Records of the court proceedings shall not be open to inspection by the public, except under section 2487, without the consent, personally or through his attorney, of the person seeking sterilization or for whom sterilization is being considered.

2. Costs and fees. The court, after considering the financial resources of the parties concerned and the source

of a petition under this chapter, shall assess court costs and attorneys' fees.

§2485. Penalties

1. Violations. Anyone knowingly or willfully violating section 2479, subsection 1, is guilty of a Class D crime.

2. Falsification of petition; aiding or procuring unlawful sterilization. Anyone knowingly or willfully falsifying a petition under this chapter or otherwise aiding or procuring the performance of a sterilization without a court order in a situation covered by this chapter is guilty of a Class D crime.

§2486. Liability

1. Participation in sterilization. Nothing in this chapter requires any hospital or any person to participate in performing any sterilization procedure, nor may any hospital or any person be civilly or criminally liable for refusing to participate in performing any sterilization procedure.

2. Immunity. A physician, psychiatrist or psychologist acting nonnegligently and in good faith in his professional capacity under this chapter is immune from any civil liability that might otherwise result from his actions. In a proceeding regarding immunity from liability, there shall be a rebuttable presumption of good faith.

§2487. Sterilization procedures review committee

A committee shall be established whose purpose shall be to review annually the authorization of sterilizations under this chapter for the purpose of assessing the need for any changes in the procedures or standards set forth in this chapter. The committee shall consist of not less than 6 members, including representatives of the Maine court system, the medical community, a designee from the Department of Mental Health and Mental Retardation, a designee from the Department of Human Services, a member of the joint standing committee of the Legislature having jurisdiction over health and institutional services, and a member of the joint standing committee of the Legislature having jurisdiction over the judiciary. The representatives of the 2 joint standing legislative committees shall be appointed by the chairmen of those legislative committees. Other members of the review committee shall be appointed annually by the Governor who shall also designate the chairman of the committee.