

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

SESSION LAW 2003-13
HOUSE BILL 36

AN ACT TO REPEAL THE LAW THAT AUTHORIZES THE INVOLUNTARY STERILIZATION OF PERSONS WHO ARE MENTALLY ILL OR MENTALLY RETARDED, TO PERMIT THE STERILIZATION OF MENTALLY ILL OR MENTALLY RETARDED WARDS ONLY WHEN THERE IS A MEDICAL NECESSITY, AND TO MAKE CONFORMING CHANGES TO THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

PART I. REPEALS THE LAW AUTHORIZING INVOLUNTARY STERILIZATIONS AND PERMITS THE STERILIZATION OF MENTALLY ILL OR MENTALLY RETARDED WARDS ONLY WHEN THERE IS A MEDICAL NECESSITY.

SECTION 1. Article 7 of Chapter 35 of the General Statutes is repealed.

SECTION 1.(a) Article 8 of Chapter 35A is amended by adding a new section to read:

"§ 35A-1245. Procedure to permit the sterilization of a mentally ill or a mentally retarded ward in the case of medical necessity.

(a) A guardian of the person shall not consent to the sterilization of a mentally ill or mentally retarded ward unless an order from the clerk has been obtained in accordance with this section.

(b) If a mentally ill or mentally retarded ward needs to undergo a medical procedure that would result in sterilization, the ward's guardian shall petition the clerk for an order to permit the guardian to consent to the procedure. The petition shall contain the following:

(1) A sworn statement from a physician licensed in this State who has examined the ward that the proposed procedure is medically necessary and not for the sole purpose of sterilization or for the purpose of hygiene or convenience.

(2) The name and address of the physician who will perform the procedure.

(3) A sworn statement from a psychiatrist or psychologist licensed in this State who has examined the ward as to whether the mentally ill or mentally retarded ward is able to comprehend the nature of the proposed procedure and its consequences and provide an informed consent to the procedure.

(4) If the ward is able to comprehend the nature of the proposed procedure and its consequences, the sworn consent of the ward to the procedure.

(c) A copy of the petition shall be served on the ward personally. If the ward is unable to comprehend the nature of the proposed procedure and its consequences and is unable to provide an informed consent, the clerk shall appoint an attorney to represent the ward.

(d) Should the ward or the ward's attorney request a hearing, a hearing shall be held. Otherwise, the clerk may enter an order without the appearance of witnesses. If a hearing is held, the guardian and the ward may present evidence.

(e) If the clerk finds the following, the clerk shall enter an order permitting the guardian to consent to the proposed procedure:

- (1) The ward is capable of comprehending the procedure and its consequences and has consented to the procedure, or the ward is unable to comprehend the procedure and its consequences.
- (2) The procedure is medically necessary and is not solely for the purpose of sterilization or for hygiene or convenience.

(f) The guardian or the ward, the ward's attorney, or any other interested party may appeal the clerk's order to the superior court in accordance with G.S. 1-301.2(e)."

PART II. CONFORMING CHANGES TO THE GENERAL STATUTES.

SECTION 2. G.S. 1-301.2(g) reads as rewritten:

"(g) Exception for Incompetency and Foreclosure Proceedings. Proceedings and Proceedings to Permit Sterilization for Medical Necessity. –

- (1) Proceedings for adjudication of incompetency or restoration of competency under Chapter 35A of the General Statutes, or proceedings to determine whether a guardian may consent to the sterilization of a mentally ill or mentally retarded ward under G.S. 35A-1245, shall not be transferred even if an issue of fact, an equitable defense, or a request for equitable relief is raised. Appeals from orders entered in these proceedings are governed by Chapter 35A to the extent that the provisions of that Chapter conflict with this section.
- (2) Foreclosure proceedings under Article 2A of Chapter 45 of the General Statutes shall not be transferred even if an issue of fact, an equitable defense, or a request for equitable relief is raised. Equitable issues may be raised only as provided in G.S. 45-21.34. Appeals from orders entered in these proceedings are governed by Article 2A of Chapter 45 to the extent that the provisions of that Article conflict with this section."

SECTION 2.(a) G.S. 7A-451(a)(10) is repealed.

SECTION 3. G.S. 35A-1203(e) reads as rewritten:

"(e) Where a guardian or trustee has been appointed for a ward under former Chapter 33 or former Chapter 35 of the General Statutes, the clerk, upon his own motion or the motion of that guardian or trustee or any other interested person, may designate that guardian or trustee or appoint another qualified person as guardian of the person, guardian of the estate, or general guardian of the ward under this Chapter; provided, the authority of a guardian or trustee properly appointed under former Chapter 33 or former Chapter 35 of the General Statutes to continue serving in that capacity is not dependent on such motion and designation."

SECTION 4. G.S. 35A-1241(a) reads as rewritten:

"(a) To the extent that it is not inconsistent with the terms of any order of the clerk or any other court of competent jurisdiction, a guardian of the person has the following powers and duties:

- (1) The guardian of the person is entitled to custody of the person of ~~his~~the guardian's ward and shall make provision for ~~his~~the ward's care, comfort, and maintenance, and shall, as appropriate to the ward's needs, arrange for ~~his~~the ward's training, education, employment, rehabilitation or habilitation. The guardian of the person shall take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects that are with the ward.
- (2) The guardian of the person may establish the ward's place of abode within or without this State. In arranging for a place of abode, the guardian of the person shall give preference to places within this State over places not in this State if in-State and out-of-State places are substantially equivalent. ~~He~~ The guardian also shall give preference to places that are not treatment facilities. If the only available and

appropriate places of domicile are treatment facilities, ~~he~~ the guardian shall give preference to community-based treatment facilities, such as group homes or nursing homes, over treatment facilities that are not community-based.

- (3) The guardian of the person may give any consent or approval that may be necessary to enable the ward to receive medical, legal, psychological, or other professional care, counsel, treatment, or service. ~~He~~ The guardian may shall not, however, consent to the sterilization of a mentally ill or mentally retarded ward. ~~Such sterilization may be performed only after compliance with Chapter 35, Article 7.~~ ward unless the guardian obtains an order from the clerk in accordance with G.S. 35A-1245. The guardian of the person may give any other consent or approval on the ward's behalf that may be required or in the ward's best interest. ~~He~~ The guardian may petition the clerk for the clerk's concurrence in the consent or approval."

SECTION 5. G.S. 90-21.13(e) reads as rewritten:

"(e) In the event of any conflict between the provisions of this section and those of ~~Article 7 of Chapter 35 and G.S. 35A-1245 and Articles 1A and 19 of Chapter 90,~~ the provisions of those Articles shall control and continue in full force and effect."

SECTION 6. G.S. 90-275 reads as rewritten:

"§ 90-275. Article does not affect eugenical or therapeutical sterilization laws. duty of guardian to obtain order permitting guardian to consent to sterilization of a mentally ill or mentally retarded ward.

Nothing in this Article shall be deemed to affect the provisions of ~~Article 7 of Chapter 35 of the General Statutes of North Carolina.~~ G.S. 35A-1245."

SECTION 7. G.S. 108A-14(a)(10) is repealed.

SECTION 8. G.S. 148-22.2 reads as rewritten:

"§ 148-22.2. Procedure when surgical operations on inmates are necessary.

The medical staff of any penal institution of the State of North Carolina is hereby authorized to perform or cause to be performed by competent and skillful surgeons surgical operations upon any inmate when such operation is necessary for the improvement of the physical condition of the inmate. The decision to perform ~~such an~~ operation shall be made by the chief medical officer of the institution, with the approval of the superintendent of the institution, and with the advice of the medical staff of ~~said~~ the institution. No ~~such~~ operation shall be performed without the consent of the inmate; or, if the inmate ~~be~~ is a minor, without the consent of a responsible member of ~~his~~ the inmate's family, a guardian, or one having legal custody of ~~such~~ the minor; or, if the inmate be non compos mentis, then the consent of a responsible member of ~~his~~ the inmate's family or of a guardian ~~must~~ shall be obtained. Any surgical operations on inmates of State penal institutions shall also be subject to the provisions of Article 1A of Chapter 90 of the General Statutes and G.S. 90-21.13 and G.S. 90-21.14.

If the operation on the inmate is determined by the chief medical officer to be an emergency situation in which immediate action is necessary to preserve the life or health of the inmate, and the inmate, if sui juris, is unconscious or otherwise incapacitated so as to be incapable of giving consent or in the case of a minor or inmate non compos mentis, the consent of a responsible member of ~~his~~ the inmate's family, guardian, or one having legal custody of ~~such~~ the inmate cannot be obtained within the time necessitated by the nature of the emergency situation, then the decision to proceed with the operation shall be made by the chief medical officer and the superintendent of the institution with the advice of the medical staff of the institution.

In all cases falling under this Article [section], the chief medical officer of the institution and the medical staff of the institution shall keep a careful and complete record of the measures taken to obtain the permission for ~~such~~ the operation and a complete medical record signed by the medical superintendent or director, the surgeon performing the operation and all surgical consultants of the operation performed.

~~This Article [section] is not to be considered as affecting the provisions of Article 7 of Chapter 35 of the General Statutes dealing with eugenical sterilization."~~

SECTION 9. This act is effective when it becomes law and applies to all petitions for sterilization pending and orders authorizing sterilization that have not been executed as of the effective date of this act.

In the General Assembly read three times and ratified this the 7th day of April, 2003.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ Richard T. Morgan
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 10:35 a.m. this 17th day of April, 2003