

Chapter 6 Sterilization of a Person with a Disability

62A-6-101 Definitions.

As used in this chapter:

- (1) "Informed consent" means consent that is voluntary and based on an understanding by the person to be sterilized of the nature and consequences of sterilization, the reasonably foreseeable risks and benefits of sterilization, and the available alternative methods of contraception.
- (2) "Institutionalized" means residing in the Utah State Developmental Center, the Utah State Hospital, a residential facility for persons with a disability as defined in Sections 10-9a-103 and 17-27a-103, a group home for persons with a disability, a nursing home, or a foster care home or facility.
- (3) "Sterilization" means any medical procedure, treatment, or operation rendering an individual permanently incapable of procreation.

Amended by Chapter 366, 2011 General Session

62A-6-102 Sterilization of persons 18 years of age or older.

- (1) It is lawful for a physician to sterilize a person who is 18 years of age or older and who has the capacity to give informed consent.
- (2) It is unlawful for a physician to sterilize a person who is 18 years of age or older and who is institutionalized, unless:
 - (a) the physician, through careful examination and counseling, ensures that the person is capable of giving informed consent and that no undue influence or coercion to consent has been placed on that person by nature of the fact that he is institutionalized; or
 - (b) the person is not capable of giving informed consent, a petition has been filed in accordance with Section 62A-6-107, and an order authorizing the sterilization has been entered by a court of competent jurisdiction.
- (3) It is unlawful for a physician to sterilize a person who is 18 years of age or older and who is not capable of giving informed consent unless a petition has been filed in accordance with Section 62A-6-107 and an order authorizing sterilization has been entered by a court of competent jurisdiction.

Enacted by Chapter 1, 1988 General Session

62A-6-103 Sterilization of persons under 18 years of age.

It is unlawful for a physician to sterilize a person who is under 18 years of age unless:

- (1) the person is married or otherwise emancipated and the physician, through careful examination and counseling, ensures that the person is capable of giving informed consent. If that person is institutionalized, the physician shall also ensure that no undue influence or coercion to consent has been placed on the person by nature of the fact that he is institutionalized; or
- (2) a petition has been filed in accordance with Section 62A-6-107, and an order authorizing sterilization has been entered by a court of competent jurisdiction.

Enacted by Chapter 1, 1988 General Session

62A-6-104 Emergency -- Medical necessity.

If an emergency situation exists that prevents compliance with Section 62A-6-102 or 62A-6-103 because of medical necessity, if delay in performing the sterilization could result in serious physical injury or death to the person, the attending physician shall certify, in writing, the specific medical reasons that necessitated suspension of those requirements. That certified statement shall become a permanent part of the sterilized person's medical record.

Enacted by Chapter 1, 1988 General Session

62A-6-105 Persons who may give informed consent.

For purposes of this chapter, the following persons may give informed consent to sterilization: (1) a person who is the subject of sterilization, if he is capable of giving informed consent; and (2) a person appointed by the court to give informed consent on behalf of a subject of sterilization who is incapable of giving informed consent.

Enacted by Chapter 1, 1988 General Session

62A-6-106 Declaration of capacity to give informed consent -- Hearing.

- (1) A person who desires sterilization but whose capacity to give informed consent is questioned by any interested party may file a petition for declaration of capacity to give informed consent.
- (2) If, after hearing all the relevant evidence, the court finds by a preponderance of the evidence that the person is capable of giving informed consent, the court shall enter an order declaring that the person has the capacity to give informed consent.

Enacted by Chapter 1, 1988 General Session

62A-6-107 Petition for order authorizing sterilization.

A petition for an order authorizing sterilization may be filed by a person who desires sterilization, or by his parent, spouse, guardian, custodian, or other interested party. The court shall adjudicate the petition for sterilization in accordance with Section 62A-6-108.

Enacted by Chapter 1, 1988 General Session

62A-6-108 Factors to be considered by court -- Evaluations -- Interview -- Findings of fact.

- (1) If the court finds that the subject of sterilization is not capable of giving informed consent, the court shall consider, but not by way of limitation, the following factors concerning that person:
 - (a) the nature and degree of his mental impairment, and the likelihood that the condition is permanent;
 - (b) the level of his understanding regarding the concepts of reproduction and contraception, and whether his ability to understand those concepts is likely to improve;
 - (c) his capability for procreation or reproduction. It is a rebuttable presumption that the ability to procreate and reproduce exists in a person of normal physical development;
 - (d) the potentially injurious physical and psychological effects from sterilization, pregnancy, childbirth, and parenthood;
 - (e) the alternative methods of birth control presently available including, but not limited to, drugs, intrauterine devices, education and training, and the feasibility of one or more of those methods as an alternative to sterilization;
 - (f) the likelihood that he will engage in sexual activity or could be sexually abused or exploited;

- (g) the method of sterilization that is medically advisable, and least intrusive and destructive of his rights to bodily and psychological integrity;
 - (h) the advisability of postponing sterilization until a later date; and
 - (i) the likelihood that he could adequately care and provide for a child.
- (2) The court may require that independent medical, psychological, and social evaluations of the subject of sterilization be made prior to ruling on a petition for sterilization. The court may appoint experts to perform those examinations and evaluations and may require the petitioner, to the extent of the petitioner's ability, to bear the costs incurred.
 - (3) The court shall interview the subject of sterilization to determine his understanding of and desire for sterilization. The expressed preference of the person shall be made a part of the record, and shall be considered by the court in rendering its decision. The court is not bound by the expressed preference of the subject of sterilization; however, if the person expresses a preference not to be sterilized, the court shall deny the petition unless the petitioner proves beyond a reasonable doubt that the person will suffer serious physical or psychological injury if the petition is denied.
 - (4) When adjudicating a petition for sterilization the court shall determine, on the basis of all the evidence, what decision regarding sterilization would have been made by the subject of sterilization, if he were capable of giving informed consent to sterilization. The decision regarding sterilization shall be in the best interest of the person to be sterilized.
 - (5) If the court grants a petition for sterilization, it shall make appropriate findings of fact in support of its order.

Enacted by Chapter 1, 1988 General Session

62A-6-109 Advanced hearing.

On motion by the person seeking sterilization or by any other party to the proceeding, the court may advance hearing on the petition.

Enacted by Chapter 1, 1988 General Session

62A-6-110 Notice of hearing -- Service.

A copy of the petition and notice of the hearing shall be served personally on the person to be sterilized not less than 20 days before the hearing date. The notice shall state the date, time, and place of the hearing, and shall specifically state that the hearing is to adjudicate either a petition for declaration of capacity to give informed consent to sterilization or a petition for sterilization. Notice shall be served on that person's parents, spouse, guardian, or custodian and on his attorney by the clerk of the court, by certified mail, not less than 10 days before the hearing date.

Enacted by Chapter 1, 1988 General Session

62A-6-111 Guardian ad litem -- Procedural rights.

- (1) The court shall appoint an attorney to act as guardian ad litem to defend the rights and interests of the person to be sterilized.
- (2) The person to be sterilized is entitled to appear and testify at the hearing, to examine and cross examine witnesses, and to compel the attendance of witnesses.
- (3) The person who is the subject of a sterilization proceeding may, on motion to the court and for good cause shown, waive the right to be present at the hearing. If the court grants that motion, the person shall be represented by a guardian ad litem at the hearing.

Enacted by Chapter 1, 1988 General Session

62A-6-112 Jury -- Rules of evidence -- Transcript -- Burden of proof.

- (1) The petitioner is entitled to request a jury to hear the petition. The rules of evidence apply in any hearing on a petition for sterilization. A transcript shall be made of the hearing and shall be made a permanent part of the record.
- (2) The burden of producing evidence and the burden of proof shall be upon the petitioner to prove by clear and convincing evidence that the petition for or order authorizing sterilization should be granted.

Enacted by Chapter 1, 1988 General Session

62A-6-113 Appeal to Supreme Court -- Stay.

Any party to a proceeding under this chapter may file a notice of appeal from any adverse decision with the Supreme Court in accordance with Rule 73, Utah Rules of Civil Procedure. The pendency of an appeal in the Supreme Court shall stay the proceedings until the appeal is finally determined.

Enacted by Chapter 1, 1988 General Session

62A-6-114 Treatment for therapeutic reasons unaffected.

Nothing in this chapter shall be construed to prevent the medical or surgical treatment, for sound therapeutic reasons, of any person by a physician or surgeon licensed by this state, which treatment may incidentally involve destruction of reproductive functions.

Enacted by Chapter 1, 1988 General Session

62A-6-115 Immunity.

A physician, assistant, or any other person acting pursuant to an order authorizing sterilization, as provided in this chapter, is not civilly or criminally liable for participation in or assistance to sterilization. This section does not apply to negligent acts committed in the performance of sterilization.

Enacted by Chapter 1, 1988 General Session

62A-6-116 Unauthorized sterilization -- Criminal penalty.

Except as authorized by this chapter, any person who intentionally performs, encourages, assists in, or otherwise promotes the performance of a sterilization procedure for the purpose of destroying the power to procreate the human species, with knowledge that the provisions of this chapter have not been met, is guilty of a third degree felony.

Enacted by Chapter 1, 1988 General Session