

Effective 5/3/2023

Part 8
Rights and Privileges of Minors and Individuals with a Disability

26B-6-801 Definitions.

As used in this part:

- (1) "Disability" has the same meaning as defined in 42 U.S.C. Sec. 12102 of the Americans With Disabilities Act of 1990, as may be amended in the future, and 28 C.F.R. Sec. 36.104 of the Code of Federal Regulations, as may be amended in the future.
- (2) "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.
- (3) "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.
- (4)
 - (a) "Service animal" includes any dog that:
 - (i) is trained, or is in training, to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability; and
 - (ii) performs work or tasks, or is in training to perform work or tasks, that are directly related to the individual's disability, including:
 - (A) assisting an individual who is blind or has low vision with navigation or other tasks;
 - (B) alerting an individual who is deaf or hard of hearing to the presence of people or sounds;
 - (C) providing non-violent protection or rescue work;
 - (D) pulling a wheelchair;
 - (E) assisting an individual during a seizure;
 - (F) alerting an individual to the presence of an allergen;
 - (G) retrieving an item for the individual;
 - (H) providing physical support and assistance with balance and stability; or
 - (I) helping an individual with a psychiatric or neurological disability by preventing or interrupting impulsive or destructive behaviors.
 - (b) "Service animal" does not include:
 - (i) an animal other than a dog, whether wild or domestic, trained or untrained; or
 - (ii) an animal used solely to provide:
 - (A) a crime deterrent;
 - (B) emotional support;
 - (C) well-being;
 - (D) comfort; or
 - (E) companionship.
- (5) "Sterilization" means any medical procedure, treatment, or operation rendering an individual permanently incapable of procreation.
- (6) "Support animal" means an animal, other than a service animal, that qualifies as a reasonable accommodation under federal law for an individual with a disability.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-802 Rights and privileges of an individual with a disability.

- (1) An individual with a disability has the same rights and privileges in the use of highways, streets, sidewalks, walkways, public buildings, public facilities, and other public areas as an individual who is not an individual with a disability.
- (2) An individual with a disability has equal rights to accommodations, advantages, and facilities offered by common carriers, including air carriers, railroad carriers, motor buses, motor vehicles, water carriers, and all other modes of public conveyance in this state.
- (3) An individual with a disability has equal rights to accommodations, advantages, and facilities offered by hotels, motels, lodges, and all other places of public accommodation in this state, and to places of amusement or resort to which the public is invited.
- (4)
 - (a) An individual with a disability has equal rights and access to public and private housing accommodations offered for rent, lease, or other compensation in this state.
 - (b) This chapter does not require a person renting, leasing, or selling private housing or real property to modify the housing or property in order to accommodate an individual with a disability or to provide a higher degree of care for that individual than for someone who is not an individual with a disability.
 - (c) A person renting, leasing, or selling private housing or real property to an individual with a disability shall comply with the provisions of Section 26B-6-803.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-803 Right to be accompanied by service animal or support animal -- Security deposits -- Discrimination -- Liability.

- (1)
 - (a) An individual with a disability has the right to be accompanied by a service animal, unless the service animal is a danger or nuisance to others as interpreted under the Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12102:
 - (i) in any of the places specified in Section 26B-6-802; and
 - (ii) without additional charge for the service animal.
 - (b) An owner or lessor of private housing accommodations:
 - (i) may not, in any manner, discriminate against an individual with a disability on the basis of the individual's possession of a service animal or a support animal, including by charging an extra fee or deposit for a service animal or a support animal; and
 - (ii) may recover a reasonable cost to repair damage caused by a service animal or a support animal.
- (2) An individual who is not an individual with a disability has the right to be accompanied by an animal that is in training to become a service animal, as defined in Section 10-8-65:
 - (a) in any of the places specified in Section 26B-6-802; and
 - (b) without additional charge for the animal.
- (3) An individual described in Subsection (1) or (2) is liable for any loss or damage the individual's accompanying service animal, support animal, or animal described in Subsection (2) causes or inflicts to the premises of a place specified in Section 26B-6-802.
- (4) Nothing in this section prohibits the exclusion, as permitted under federal law, of a service animal or a support animal from a place described in Section 26B-6-802.

Renumbered and Amended by Chapter 308, 2023 General Session
Amended by Chapter 419, 2023 General Session

26B-6-804 Policy of state to employ individuals with a disability.

It is the policy of this state that an individual with a disability is employed in the state service, the service of the political subdivisions of the state, in the public schools, and in all other employment supported in whole or in part by public funds on the same terms and conditions as an individual who is not an individual with a disability, unless it is shown that the particular disability prevents the performance of the work involved.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-805 Interference with rights provided in this part -- Misrepresentation of rights under this part.

- (1) Any individual, or agent of any individual, who denies or interferes with the rights provided in this chapter is guilty of a class C misdemeanor.
- (2) An individual is guilty of a class C misdemeanor if:
 - (a) the individual intentionally and knowingly falsely represents to another person that an animal is a service animal or a support animal;
 - (b) the individual knowingly and intentionally misrepresents a material fact to a health care provider for the purpose of obtaining documentation from the health care provider necessary to designate an animal as a service animal or a support animal; or
 - (c) the individual, except for an individual with a disability, uses an animal to gain treatment or benefits only provided for an individual with a disability.
- (3) This section does not affect the enforceability of any criminal law, including Subsection 76-6-501(2).
- (4) An agent of a protection and advocacy agency, acting in the agent's professional capacity and in compliance with 29 U.S.C. Sec. 794e et seq., 42 U.S.C. Sec. 15041 et seq., and 42 U.S.C. Sec. 1801 et seq., is not criminally liable under Subsection (2).

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-806 Sterilization of persons 18 years old or older.

- (1) It is lawful for a physician to sterilize a person who is 18 years old 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 old 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 26B-6-811, 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 old or older and who is not capable of giving informed consent unless a petition has been filed in accordance with Section 26B-6-811 and an order authorizing sterilization has been entered by a court of competent jurisdiction.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-807 Sterilization of persons under 18 years old.

It is unlawful for a physician to sterilize a person who is under 18 years old 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 the person is institutionalized; or
- (2) a petition has been filed in accordance with Section 26B-6-811, and an order authorizing sterilization has been entered by a court of competent jurisdiction.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-808 Emergency -- Medical necessity.

If an emergency situation exists that prevents compliance with Section 26B-6-806 or 26B-6-807 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-809 Persons who may give informed consent.

For purposes of this part, the following persons may give informed consent to sterilization:

- (1) a person who is the subject of sterilization, if the person 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-810 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-811 Petition for order authorizing sterilization.

- (1) A petition for an order authorizing sterilization may be filed by a person who desires sterilization, or by the person's parent, spouse, guardian, custodian, or other interested party.
- (2) The court shall adjudicate the petition for sterilization in accordance with Section 26B-6-812.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-812 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 the person's mental impairment, and the likelihood that the condition is permanent;
 - (b) the level of the person's understanding regarding the concepts of reproduction and contraception, and whether the person's ability to understand those concepts is likely to improve;
 - (c) the person's capability for procreation or reproduction, with 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 the person 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 the person's rights to bodily and psychological integrity;
 - (h) the advisability of postponing sterilization until a later date; and
 - (i) the likelihood that the person could adequately care and provide for a child.
- (2)
 - (a) 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.
 - (b) 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)
 - (a) The court shall interview the subject of sterilization to determine the person's understanding of and desire for sterilization.
 - (b) 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.
 - (c) 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)
 - (a) 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 the person were capable of giving informed consent to sterilization.
 - (b) 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, the court shall make appropriate findings of fact in support of its order.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-813 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-814 Notice of hearing -- Service.

- (1) 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.
- (2) 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.
- (3) 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-815 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)
 - (a) 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.
 - (b) If the court grants that motion, the person shall be represented by a guardian ad litem at the hearing.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-816 Jury -- Rules of evidence -- Transcript -- Burden of proof.

- (1) The petitioner is entitled to request a jury to hear the petition.
- (2) The rules of evidence apply in any hearing on a petition for sterilization.
- (3) A transcript shall be made of the hearing and shall be made a permanent part of the record.
- (4) 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-817 Appeal to Supreme Court -- Stay.

- (1) 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.
- (2) The pendency of an appeal in the Supreme Court shall stay the proceedings until the appeal is finally determined.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-818 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-819 Immunity.

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

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-820 Unauthorized sterilization -- Criminal penalty.

Except as authorized by this part, 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 part have not been met, is guilty of a third degree felony.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-821 Annual "White Cane Safety Day" proclaimed.

Each year the governor shall take notice of October 15 as White Cane Safety Day.

Renumbered and Amended by Chapter 308, 2023 General Session