

1 S.5

2 Introduced by Senator Lyons

3 Referred to Committee on

4 Date:

5 Subject: Human services; intellectual disabilities; involuntary sterilization

6 Statement of purpose of bill as introduced: This bill proposes to prohibit the
7 involuntary sterilization of individuals with an intellectual disability.

8 An act relating to prohibiting the involuntary sterilization of individuals
9 with an intellectual disability

10 It is hereby enacted by the General Assembly of the State of Vermont:

11 Sec. 1. LEGISLATIVE INTENT

12 It is the intent of the General Assembly to prohibit the involuntary
13 sterilization of a person with an intellectual disability while simultaneously
14 reaffirming the right of such person to seek voluntary sterilization when the
15 person's physician deems that the person has the ability to give informed
16 consent. To ensure that a person with an intellectual disability is treated with
17 dignity and has the opportunity to exercise self-determination, the General
18 Assembly reaffirms its commitment to allow a person to seek a judicial
19 opinion on his or her competency to provide informed consent to sterilization
20 in the event a physician has refused to perform the procedure on those grounds.

1 Sec. 2. 4 V.S.A. § 33 is amended to read:

2 § 33. JURISDICTION; FAMILY DIVISION

3 (a) Notwithstanding any other provision of law to the contrary, the Family
4 Division shall have exclusive jurisdiction to hear and dispose of the following
5 proceedings filed or pending on or after October 1, 1990:

6 * * *

7 (12) All ~~involuntary~~ sterilization proceedings filed pursuant to
8 18 V.S.A. chapter 204.

9 * * *

10 Sec. 3. 4 V.S.A. § 36 is amended to read:

11 § 36. COMPOSITION OF THE COURT

12 (a) Unless otherwise specified by law, when in session, a Superior Court
13 shall consist of:

14 * * *

15 (2)(A) For cases in the Family Division, except as provided in
16 subdivision (B) of this subdivision (2), one presiding judicial officer and two
17 assistant judges, if available.

18 (B) The Family Division shall consist of one presiding judicial
19 officer sitting alone in the following proceedings:

20 * * *

1 with an intellectual disability has the ability to give the informed consent
2 required by section 8706 of this title, the person with an intellectual disability
3 may file a petition in Superior Court for a determination of the person's
4 competency to consent to the sterilization.

5 * * *

6 (3) Upon filing of the petition, the court shall appoint a qualified
7 developmental disabilities professional ~~as defined in subdivision 8821(8) of~~
8 ~~this title~~ to examine the person with an intellectual disability and present
9 evidence to the court as to that person's ability to give informed consent.

10 * * *

11 (b)(1) If, after the hearing, the court determines on the basis of clear and
12 convincing proof that the person with an intellectual disability is competent to
13 consent and has given the required consent, it shall order that a voluntary
14 sterilization may be performed.

15 (2) If the court determines that the person with an intellectual disability
16 is not competent to give consent ~~it shall inform the person that he or she has~~
17 ~~the right to petition the court for an involuntary sterilization pursuant to the~~
18 ~~requirements of section 8708 of this title, the sterilization procedure shall not~~
19 be performed.

1 § 8708. INVOLUNTARY STERILIZATION

2 ~~(a) Any sterilization sought on behalf of a person with an intellectual~~
3 ~~disability or requested by any person denied a voluntary sterilization by section~~
4 ~~8707 of this title shall be considered an involuntary sterilization.~~

5 ~~(b) Involuntary sterilizations may be performed only after a hearing in the~~
6 ~~Superior Court pursuant to sections 8709-8712 of this title. For the purposes~~
7 ~~of involuntary sterilization proceedings under this chapter, the person with an~~
8 ~~intellectual disability subject to a petition for sterilization shall be defined as~~
9 ~~the respondent. [Repealed.]~~

10 § 8709. PETITION AND NOTICE OF HEARING

11 (a) Any adult with an intellectual disability, ~~his or her parent, private~~
12 ~~guardian, near relative, as defined in section 8821 of this title, or physician,~~
13 may file a petition in the Superior Court alleging that ~~the person~~ he or she has
14 an intellectual disability ~~and~~ is in need of sterilization, and the physician from
15 whom the sterilization has been sought refuses to perform the sterilization
16 because the physician is not satisfied that the person has the ability to give the
17 informed consent required by section 8706 of this title.

18 (b) The petition shall set forth:

19 (1) the name, age, and residence of the ~~person to be sterilized~~ petitioner;

20 (2) the names name and addresses address of the ~~petitioner and parents,~~
21 ~~guardians, spouse, and nearest relative of said person~~ respondent-physician;

1 (3) the mental condition of ~~said person~~ the petitioner;

2 (4) a statement of ~~said person's~~ the petitioner's ability to give informed
3 consent to the sterilization; and

4 (5) ~~said person's~~ the petitioner's ability to pay for legal counsel;

5 ~~(6) the relation of said person to the petitioner;~~

6 ~~(7) the reasons and supporting facts why sterilization is in the best~~
7 ~~interest of said person.~~

8 (c) Upon the filing of the petition, the court shall fix a time and place for
9 the hearing not more than 45 days from the receipt of the petition. Not less
10 than 20 days prior to the date set for the hearing, the court shall cause the
11 petitioner to serve the ~~respondent~~ respondent-physician with the petition and
12 notice of hearing. The court shall also mail a copy of the petition and notice of
13 the hearing to the ~~respondent's~~ petitioner's counsel, his or her legal guardian,
14 and nearest relative.

15 § 8710. APPOINTMENT OF COUNSEL

16 The ~~respondent~~ petitioner shall be represented by counsel throughout the
17 proceeding. Upon the filing of the petition, the court shall notify the
18 ~~respondent~~ petitioner that he or she shall be afforded the right to counsel. If
19 the petition states that the ~~respondent~~ petitioner is unable to pay for counsel,
20 the court shall appoint counsel to be paid by the State or set a hearing for a
21 determination of the ~~respondent's~~ petitioner's ability to pay for counsel. The

1 court may also require appointment of a guardian ad litem to represent the
2 ~~interest~~ interests of the ~~respondent~~ petitioner. Counsel shall receive copies of
3 the comprehensive evaluations required by ~~section~~ subsection 8711(d) of this
4 title and such other documents as may be received and issued by the court.

5 § 8711. CONDUCT OF HEARING

6 (a) The ~~respondent, the~~ petitioner, the respondent-physician, and all other
7 persons to whom notice has been sent may attend the hearing, testify, present
8 evidence, and subpoena, present, and cross-examine witnesses, including those
9 who prepared the comprehensive evaluation. The court may exclude any
10 person not necessary for the conduct of the hearing.

11 * * *

12 (c) The court shall determine the following:

13 (1) whether the ~~respondent~~ petitioner has an intellectual disability; and

14 (2) whether the ~~respondent~~ petitioner is competent to give informed
15 consent as defined in section 8706 of this title; ~~and~~

16 ~~(3) if the court determines that the respondent is not competent to give~~
17 ~~informed consent, whether a sterilization is in the best interests of the~~
18 ~~respondent by considering the following factors:~~

19 ~~(A) that the respondent is physically capable of conceiving a child;~~

20 ~~(B) that the respondent is likely to engage in sexual activity at present~~
21 ~~or in the near future under circumstances which may result in pregnancy;~~

1 ~~(C) that the nature of the respondent's disability renders the~~
2 ~~respondent incapable now or in the future of caring for a child;~~

3 ~~(D) that the respondent's disability is not likely to improve, nor does~~
4 ~~medical knowledge exist to establish that an advance in treatment of the~~
5 ~~disability is likely; and~~

6 ~~(E) that no effective, less drastic alternative to sterilization is~~
7 ~~medically indicated which will meet the needs of the respondent.~~

8 (d) The court shall order the Commissioner of Disabilities, Aging, and
9 Independent Living to arrange for the preparation of a comprehensive medical,
10 psychological, and social evaluation of the person through developmental
11 disability agencies affiliated with the Department. The comprehensive
12 evaluation shall be completed within 30 days of the receipt of the petition. The
13 medical report shall be prepared by a physician, other than the physician who
14 refused to perform the sterilization because he or she was not satisfied the
15 petitioner had the ability to give informed consent, and shall describe the
16 physical condition of the ~~respondent~~ petitioner and the availability of ~~the~~
17 effective, alternative contraceptive measures to meet the needs of the ~~person~~
18 petitioner. The psychological report shall include a diagnosis of the person's
19 intellectual ability and social functioning. The social report shall be prepared
20 by a qualified developmental disabilities professional, and shall describe the
21 ~~respondent's~~ petitioner's developmental and social functioning.

1 (e) The petitioner shall have the burden of proving the elements of the
2 petition by clear and convincing evidence.

3 (f) The evaluation shall be received into evidence, if the persons who
4 prepared the evaluation are available for the hearing or subject to service of
5 subpoena. However, the court shall not be bound by the evidence contained in
6 the evaluation, but shall make its determination upon the entire record.

7 § 8712. FINDINGS; ORDER

8 (a) The court shall prepare written findings of fact and state separately its
9 conclusions of law in all cases.

10 (b) If, upon completion of the hearing and consideration of the record, the
11 court finds that the ~~person with an intellectual disability~~ petitioner is competent
12 to give informed consent and ~~no such consent has been given, no sterilization~~
13 ~~may be ordered~~ has given the required consent, the court shall order that a
14 voluntary sterilization may be performed.

15 (c) If, upon completion of the hearing and consideration of the record, the
16 court finds that the ~~person~~ petitioner is incompetent to consent ~~and that the~~
17 ~~sterilization is in the best interests of the person, it shall order that an~~
18 ~~involuntary sterilization may be performed, the sterilization shall not be~~
19 performed.

1 § 8713. CONFIDENTIALITY OF PROCEEDINGS

2 All proceedings under this chapter shall be closed to the public, and the
3 records shall be sealed unless requested to be opened by the ~~respondent~~
4 petitioner.

5 * * *

6 Sec. 5. EFFECTIVE DATE

7 This act shall take effect on July 1, 2019.