

1 H.116

2 Introduced by Representatives Durfee of Shaftsbury, Cina of Burlington,
3 Ancel of Calais, Arrison of Weathersfield, Birong of
4 Vergennes, Coffey of Guilford, Cordes of Lincoln, Donnally of
5 Hyde Park, Killacky of South Burlington, Kitzmiller of
6 Montpelier, Masland of Thetford, Mrowicki of Putney, Pugh of
7 South Burlington, Stebbins of Burlington, Townsend of South
8 Burlington, Troiano of Stannard, White of Hartford, and Wood
9 of Waterbury

10 Referred to Committee on

11 Date:

12 Subject: Human services; intellectual disabilities; involuntary sterilization

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

15 An act relating to prohibiting the involuntary sterilization of individuals
16 with an intellectual disability

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

18 Sec. 1. LEGISLATIVE INTENT

19 It is the intent of the General Assembly to prohibit the involuntary
20 sterilization of a person with an intellectual disability while simultaneously

1 reaffirming the right of such person to seek voluntary sterilization when the
2 person's physician deems that the person has the ability to give informed
3 consent. To ensure that a person with an intellectual disability is treated with
4 dignity and has the opportunity to exercise self-determination, the General
5 Assembly reaffirms its commitment to allow a person to seek a judicial
6 opinion on his or her competency to provide informed consent to sterilization
7 in the event a physician has refused to perform the procedure on those grounds.

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

9 § 33. JURISDICTION; FAMILY DIVISION

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

13 * * *

14 (12) All ~~involuntary~~ sterilization proceedings filed pursuant to
15 18 V.S.A. chapter 204.

16 * * *

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

18 § 36. COMPOSITION OF THE COURT

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

21 * * *

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

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

6 * * *

7 (iv) all ~~involuntary~~ sterilization proceedings filed pursuant to
8 18 V.S.A. chapter 204;

9 * * *

10 Sec. 4. 18 V.S.A. chapter 204 is amended to read:

11 CHAPTER 204. STERILIZATION

12 § 8705. STERILIZATION; POLICY

13 (a) It is the policy of the State of Vermont to allow voluntary ~~and~~
14 ~~involuntary~~ sterilizations of adults with an intellectual disability under
15 circumstances that will ensure that the best interests and rights of such persons
16 are fully protected. In accordance with this policy, a person with an
17 intellectual disability, as defined in 1 V.S.A. § 146, may not be sterilized
18 without his or her consent ~~unless there is a prior hearing in the Superior Court~~
19 ~~as provided in this chapter.~~ A person with an intellectual disability under
20 18 years of age shall not ~~be sterilized~~ consent to voluntary sterilization.

1 (b) Sterilization is defined to mean a surgical procedure, the purpose of
2 which is to render an individual incapable of procreating.

3 * * *

4 § 8707. COMPETENCY TO CONSENT; PROCEDURE

5 (a)(1) If the physician from whom the sterilization has been sought refuses
6 to perform the sterilization because he or she is not satisfied that the person
7 with an intellectual disability has the ability to give the informed consent
8 required by section 8706 of this title, the person with an intellectual disability
9 may file a petition in Superior Court for a determination of the person's
10 competency to consent to the sterilization.

11 * * *

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

16 * * *

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

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

6 § 8708. INVOLUNTARY STERILIZATION

7 ~~(a) Any sterilization sought on behalf of a person with an intellectual~~
8 ~~disability or requested by any person denied a voluntary sterilization by section~~
9 ~~8707 of this title shall be considered an involuntary sterilization.~~

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

15 § 8709. PETITION AND NOTICE OF HEARING

16 (a) Any adult with an intellectual disability, ~~his or her parent, private~~
17 ~~guardian, near relative, as defined in section 8821 of this title, or physician,~~
18 may file a petition in the Superior Court alleging that ~~the person~~ he or she has
19 an intellectual disability ~~and~~ is in need of sterilization, and the physician from
20 whom the sterilization has been sought refuses to perform the sterilization

1 because the physician is not satisfied that the person has the ability to give the
2 informed consent required by section 8706 of this title.

3 (b) The petition shall set forth:

4 (1) the name, age, and residence of the ~~person to be sterilized~~ petitioner
5 and the names and addresses of the petitioner's counsel, legal guardian, and
6 nearest relative;

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

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

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

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

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

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

16 (c) Upon the filing of the petition, the court shall fix a time and place for
17 the hearing not more than 45 days from the receipt of the petition. Not less
18 than 20 days prior to the date set for the hearing, the court shall cause the
19 petitioner to serve the ~~respondent~~ respondent-physician with the petition and
20 notice of hearing. The court shall also mail a copy of the petition and notice of

1 the hearing to the ~~respondent's~~ petitioner's counsel, his or her legal guardian,
2 and nearest relative.

3 § 8710. APPOINTMENT OF COUNSEL

4 The ~~respondent~~ petitioner shall be represented by counsel throughout the
5 proceeding. Upon the filing of the petition, the court shall notify the
6 ~~respondent~~ petitioner that he or she shall be afforded the right to counsel. If
7 the petition states that the ~~respondent~~ petitioner is unable to pay for counsel,
8 the court shall appoint counsel to be paid by the State or set a hearing for a
9 determination of the ~~respondent's~~ petitioner's ability to pay for counsel. The
10 court may also require appointment of a guardian ad litem to represent the
11 ~~interest~~ interests of the ~~respondent~~ petitioner. Counsel shall receive copies of
12 the comprehensive evaluations required by ~~section~~ subsection 8711(d) of this
13 title and such other documents as may be received and issued by the court.

14 § 8711. CONDUCT OF HEARING

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

20 * * *

1 (c) The court shall determine the following:

2 (1) whether the respondent has an intellectual disability; and

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

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

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

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

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

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

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

18 (d) The court shall order the Commissioner of Disabilities, Aging, and
19 Independent Living to arrange for the preparation of a comprehensive medical,
20 psychological, and social evaluation of the person through developmental
21 disability agencies affiliated with the Department. The comprehensive

1 evaluation shall be completed within 30 days of the receipt of the petition. The
2 medical report shall be prepared by a physician other than the physician who
3 refused to perform the sterilization because he or she was not satisfied the
4 petitioner had the ability to give informed consent and shall describe the
5 physical condition of the ~~respondent~~ petitioner and the availability of effective,
6 alternative contraceptive measures to meet the needs of the ~~person~~ petitioner.
7 The psychological report shall include a diagnosis of the person's intellectual
8 ability and social functioning. The social report shall be prepared by a
9 qualified developmental disabilities professional, and shall describe the
10 ~~respondent's~~ petitioner's developmental and social functioning.

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

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

17 § 8712. FINDINGS; ORDER

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

20 (b) If, upon completion of the hearing and consideration of the record, the
21 court finds that the person with an intellectual disability is competent to give

1 informed consent ~~and no such consent has been given, no sterilization may be~~
2 ~~ordered~~ and has given the required consent, the court shall order that a
3 voluntary sterilization may be performed.

4 (c) If, upon completion of the hearing and consideration of the record, the
5 court finds that the person is incompetent to consent ~~and that the sterilization is~~
6 ~~in the best interests of the person, it shall order that an involuntary sterilization~~
7 ~~may be performed,~~ the sterilization shall not be performed.

8 § 8713. CONFIDENTIALITY OF PROCEEDINGS

9 All proceedings under this chapter shall be closed to the public, and the
10 records shall be sealed unless requested to be opened by the ~~respondent~~
11 petitioner.

12 * * *

13 Sec. 5. EFFECTIVE DATE

14 This act shall take effect on July 1, 2021.