

NORTH CAROLINA GENERAL ASSEMBLY
1973 SESSION

CHAPTER 1281
HOUSE BILL 1611

AN ACT TO REWRITE CHAPTER 35, ARTICLE 7, OF THE GENERAL STATUTES
ENTITLED "PERSONS WITH MENTAL DISEASES AND INCOMPETENTS".

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 35 of the General Statutes of North Carolina is hereby rewritten to read:

"Article 7.

"Sterilization of Persons Mentally 111 and Mentally Retarded.

"§ 35-36. **Sterilization of mental defectives in State institutions.** — The responsible director, or other public official performing the functions of such director, of any institution supported wholly or in part by the State of North Carolina is hereby authorized to petition the district court of the county in which such institution is located for the sterilization operation of any mentally ill or retarded resident or patient thereof as may be considered in the best interest of the mental, moral, or physical improvement of the resident or patient, or for the public good, provided, that no operation authorized in this section shall be lawful unless and until the provisions of this Article shall first be complied with. It shall be the responsibility of the State institution to provide or pay for the cost and expense of the operations authorized in this section for those persons residents or patients in State institutions.

"§ 35-37. **Sterilization of mental defectives not in State institutions.** — The county director of social services, or other public official performing the functions of such director, is hereby authorized to petition the district court of his county for the sterilization operation of any mentally ill or retarded resident of the county, not a resident or patient of any State institution, or of any mentally ill or retarded person who is on parole from a State institution considered in the best interest of the mental, moral, or physical improvement of such resident, or for the public good, provided that no operation authorized in this section shall be lawful unless and until the provisions of this Article shall first be complied with. It shall be the responsibility of the board of commissioners of the respective counties to provide or pay for the cost and expense of the operations authorized in this section for those persons residents in their respective counties.

"§ 35-38. **Who shall perform sterilization operations upon the mental defectives.** — No operation under this Article shall be performed by other than a duly qualified and licensed North Carolina physician or surgeon, pursuant to Chapter 90 of the General Statutes as amended, and by him only upon a written order signed by the court having authority under the provisions of either G.S. 35-41 or G.S. 35-42. The petitioner will select the physician or surgeon to perform the sterilization operation and notify the patient and next of kin. If however, the patient or next of kin wishes to select a physician or surgeon other than the one selected by the petitioner, it will be the responsibility of the patient or next of kin to pay for the costs and expense of the sterilization operation. In the event the patient or next of kin is unable to provide for payment of the physician or surgeon selected by them, the operation will be performed by the physician or surgeon selected by the petitioner.

"§ 35-39. **Duty of petitioner.** — It shall be the duty of such petitioner promptly to institute proceedings as provided by this Article in any of the following circumstances:

- (1) When in his opinion it is for the best interest of the mental, moral or physical improvement of the patient, resident of an institution, or noninstitutional individual, that he or she be sterilized.
- (2) When in his opinion it is for the public good that such patient, resident of an institution, or noninstitutional individual be sterilized.
- (3) When in his opinion such patient, resident of an institution, or noninstitutional individual would be likely, unless sterilized, to procreate a child or children who would have a tendency to serious physical, mental, or nervous disease or deficiency; or, because of a physical, mental, or nervous disease or deficiency which is not likely to materially improve, the person would be unable to care for a child or children.
- (4) When requested to do so in writing by the next of kin or legal guardian of such patient, resident of an institution, or noninstitutional individual.

"§ 35-39.1. Contents of petition. — The petition shall contain allegations of the results of psychological or psychiatric tests supporting the assertion that such person is subject to the provisions of this Article; shall contain the statement of a physician who has examined such person affirming whether or not there is any known contraindication to the requested surgical procedure; shall state the name and address of the physician or surgeon who will perform the operation; and shall contain the written consent or objection of the next of kin, the legal guardian or, if there is no next of kin and no known legal guardian a guardian ad litem who shall be appointed by the district court judge and who shall make investigation and report to the court before the hearing shall commence. The petition should also contain the consent or objection of the person upon whom the sterilization operation is to be performed. In the event the person upon whom the operation is to be performed is not capable of giving consent or objection, there must be a certification by the petitioner that the procedure has been explained to the person upon whom the operation is to be performed.

"§ 35-39.2. Copy of petition served on patient. — At least 20 days prior to the hearing on the petition in the district court, a copy of such petition must be served upon the resident of the institution, patient, or noninstitutional individual and to the legal or natural guardian, guardian ad litem, or next of kin of the resident of the institution, patient, or noninstitutional individual.

"§ 35-40. Judge to order investigation. — If the petitioner instituting the sterilization proceedings is other than the county director of social services the judge shall order the county director of social services in the county in which the person upon whom the operation is to be performed has domicile to investigate and make recommendations to him regarding the case.

"§ 35-41. Hearing before the judge of district court. — Should the petitioner, the person subject to the petition, or any other interested party request a hearing, a hearing shall be held in the district court before the judge without a jury. In the absence of written objection filed with the court by the person alleged to be subject to this section or by any other interested party on his or her behalf, the court may render judgment without the appearance of witnesses. In the event a hearing is requested the district attorney for the district in which the petition is heard or the district attorney's assistant shall present the evidence for the petitioner. The respondent shall be entitled to examine the petitioner's witnesses and shall be entitled to present evidence in his own behalf. If the judge of the district court shall find from the evidence that the person alleged to be subject to this section is subject to it and that because of a physical, mental, or nervous disease or deficiency which is not likely to materially improve, the person would probably be unable to care for a child or children; or, because the person would be likely, unless sterilized, to procreate a child or children which probably would have serious physical, mental, or nervous diseases or deficiencies, he shall enter an order and judgment authorizing the physician or surgeon named in the petition to perform the operation.

"§ 35-42. Appeal to superior court. — An appeal to the superior court may be had by the person alleged to be subject to this section or any other interested party on such judgment in the

district court if filed within 15 days following the date the court judgment is entered. The proceedings before the superior court shall constitute a trial de novo, and upon application of either party shall be heard before a jury. The District Attorney for the district in which the petition is heard or his assistant shall present the evidence for the petitioner. The respondent shall be entitled to examine the petitioner's witnesses and to present evidence in his own behalf. Any decision of the superior court in such cases may be appealed to the appellate courts as in other civil cases. The cost of the appeal, if any, to the superior court and higher courts shall be taxed as in other civil cases and the pendency of any appeal shall stay the proceedings in the lower court until the appeal be finally determined. Pauper's affidavits regarding court costs and costs of appeal may be filed as in other cases made and provided by the laws of this State.

"§ 35-43. Right to counsel. — The person alleged to be subject to the provisions of this section shall have the right to counsel at all stages of the proceedings provided for herein. This person and all others served with the notification provided for in G.S. 35-39.2 shall be fully informed of the person's entitlement to counsel at the time of this service of notice. This information shall be given in language and in a manner calculated to insure, insofar as such is possible in view of the individual's capability to comprehend it, that the recipient understands the entitlement. Every person subject to be sterilized under this Article after the filing of the petition shall have counsel at every stage of the proceedings. If there is a conflict between the election of the person concerned and that of the other persons being served with notice, determination of the question of representation by counsel shall be made by the court having jurisdiction of the case. The person concerned may, in any instance, be represented by counsel retained by him. In cases of claimed indigency, a request for counsel shall be processed in the manner provided for in Subchapter IX, Chapter 7A, General Statutes of North Carolina.

"§ 35-44. Sterilization procedure to be performed after court judgment. — After judgment of the court in accordance with G.S. 35-41 and G.S. 35-42 shall have become final to the effect that such sterilization shall be performed upon such person subject to this section, a sterilization procedure may be performed by a physician upon such person subject to this section.

"§ 35-44.1. Sterilization procedure defined. — Wherever used in this section, the words 'sterilization procedure' shall include and authorize the performance by the physician of any procedure or operation deemed to be in the best interest of the individual patient or intended to prevent conception, but does not include castration.

"§ 35-44.2. Civil or criminal liability of parties limited. — When an operation shall have been performed in compliance with the provisions of this law, no physician duly licensed without restriction to practice medicine and surgery in this State or other person legally participating in the execution of the provisions of this act shall be liable civilly or criminally on account of such operation or participation therein, except in the case of negligence in the performance of said procedures.

"§ 35-44.3. Necessary medical treatment unaffected by Article. — Nothing in this section shall be construed so as to require compliance with this section or to prevent the medical or surgical treatment for sound therapeutic purposes of any person in this State, by a physician duly licensed without restriction to practice medicine and surgery in this State, which treatment may involve the nullification or destruction of the reproductive functions at the same time that it serves such sound therapeutic purposes.

"§ 35-44.4. Hospitals not compelled to admit patient. — Nothing in this section shall require a hospital to admit any patient under the provisions hereof for the purpose of performing a sterilization procedure."

Sec. 2. This act shall become effective on and after January 1, 1975.

In the General Assembly read three times and ratified, this the 11th day of April, 1974.