

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

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HOUSE BILL 36

Short Title: Repeal Involuntary Sterilization. (Public)

Sponsors: Representatives Womble, Luebke, Weiss, Insko (Primary Sponsors);
Adams, Alexander, B. Allen, Bell, Black, Hall, Holliman, Lucas,
McAllister, McGee, Miller, Parmon, Pate, Ross, Wainwright, and Wood.

Referred to: Health.

February 19, 2003

A BILL TO BE ENTITLED

1 AN ACT TO REPEAL THE LAW THAT AUTHORIZES THE INVOLUNTARY
2 STERILIZATION OF PERSONS WHO ARE MENTALLY ILL OR MENTALLY
3 RETARDED AND TO MAKE CONFORMING CHANGES TO THE GENERAL
4 STATUTES.
5

6 The General Assembly of North Carolina enacts:

7 **PART I. REPEAL THE LAW AUTHORIZING INVOLUNTARY**
8 **STERILIZATIONS.**

9 **SECTION 1.** Article 7 of Chapter 35 of the General Statutes is repealed.

10 **PART II. CONFORMING CHANGES TO THE GENERAL STATUTES.**

11 **SECTION 2.** G.S. 7A-451(a)(10) is repealed.

12 **SECTION 3.** G.S. 35A-1203(e) reads as rewritten:

13 "(e) Where a guardian or trustee has been appointed for a ward under former
14 Chapter 33 or former Chapter 35 of the General Statutes, the clerk, upon his own
15 motion or the motion of that guardian or trustee or any other interested person, may
16 designate that guardian or trustee or appoint another qualified person as guardian of the
17 person, guardian of the estate, or general guardian of the ward under this Chapter;
18 provided, the authority of a guardian or trustee properly appointed under former Chapter
19 33 or former Chapter 35 of the General Statutes to continue serving in that capacity is
20 not dependent on such motion and designation."

21 **SECTION 4.** G.S. 35A-1241(a) reads as rewritten:

22 "(a) To the extent that it is not inconsistent with the terms of any order of the clerk
23 or any other court of competent jurisdiction, a guardian of the person has the following
24 powers and duties:

25 (1) The guardian of the person is entitled to custody of the person of his
26 ward and shall make provision for his ward's care, comfort, and
27 maintenance, and shall, as appropriate to the ward's needs, arrange for

1 his training, education, employment, rehabilitation or habilitation. The
2 guardian of the person shall take reasonable care of the ward's
3 clothing, furniture, vehicles, and other personal effects that are with
4 the ward.

5 (2) The guardian of the person may establish the ward's place of abode
6 within or without this State. In arranging for a place of abode, the
7 guardian of the person shall give preference to places within this State
8 over places not in this State if in-State and out-of-State places are
9 substantially equivalent. He also shall give preference to places that
10 are not treatment facilities. If the only available and appropriate places
11 of domicile are treatment facilities, he shall give preference to
12 community-based treatment facilities, such as group homes or nursing
13 homes, over treatment facilities that are not community-based.

14 (3) The guardian of the person may give any consent or approval that may
15 be necessary to enable the ward to receive medical, legal,
16 psychological, or other professional care, counsel, treatment, or
17 service. He may not, however, consent to the sterilization of a mentally
18 ill or mentally retarded ward. ~~Such sterilization may be performed only
19 after compliance with Chapter 35, Article 7.~~ The guardian of the
20 person may give any other consent or approval on the ward's behalf
21 that may be required or in the ward's best interest. He may petition the
22 clerk for the clerk's concurrence in the consent or approval."

23 **SECTION 5.** G.S. 90-21.13(e) reads as rewritten:

24 "(e) In the event of any conflict between the provisions of this section and those of
25 ~~Article 7 of Chapter 35 and~~ Articles 1A and 19 of Chapter 90, the provisions of those
26 Articles shall control and continue in full force and effect."

27 **SECTION 6.** G.S. 90-275 is repealed.

28 **SECTION 7.** G.S. 108A-14(a)(10) is repealed.

29 **SECTION 8.** G.S. 148-22.22 reads as rewritten:

30 **"§ 148-22.2. Procedure when surgical operations on inmates are necessary.**

31 The medical staff of any penal institution of the State of North Carolina is hereby
32 authorized to perform or cause to be performed by competent and skillful surgeons
33 surgical operations upon any inmate when such operation is necessary for the
34 improvement of the physical condition of the inmate. The decision to perform ~~such an~~
35 operation shall be made by the chief medical officer of the institution, with the approval
36 of the superintendent of the institution, and with the advice of the medical staff of ~~said~~
37 the institution. No ~~such~~ operation shall be performed without the consent of the inmate;
38 or, if the inmate ~~beis~~ is a minor, without the consent of a responsible member of ~~his~~the
39 inmate's family, a guardian, or one having legal custody of ~~such~~the minor; or, if the
40 inmate be non compos mentis, then the consent of a responsible member of ~~his~~the
41 inmate's family or of a guardian ~~must~~shall be obtained. Any surgical operations on
42 inmates of State penal institutions shall also be subject to the provisions of Article 1A of
43 Chapter 90 of the General Statutes and G.S. 90-21.13 and G.S. 90- 21.14.

1 If the operation on the inmate is determined by the chief medical officer to be an
2 emergency situation in which immediate action is necessary to preserve the life or
3 health of the inmate, and the inmate, if sui juris, is unconscious or otherwise
4 incapacitated so as to be incapable of giving consent or in the case of a minor or inmate
5 non compos mentis, the consent of a responsible member of ~~his~~the inmate's family,
6 guardian, or one having legal custody of ~~such~~the inmate cannot be obtained within the
7 time necessitated by the nature of the emergency situation, then the decision to proceed
8 with the operation shall be made by the chief medical officer and the superintendent of
9 the institution with the advice of the medical staff of the institution.

10 In all cases falling under this Article [section], the chief medical officer of the
11 institution and the medical staff of the institution shall keep a careful and complete
12 record of the measures taken to obtain the permission for ~~such~~the operation and a
13 complete medical record signed by the medical superintendent or director, the surgeon
14 performing the operation and all surgical consultants of the operation performed.

15 ~~This Article [section] is not to be considered as affecting the provisions of Article 7
16 of Chapter 35 of the General Statutes dealing with eugenical sterilization."~~

17 **SECTION 9.** This act is effective when it becomes law and applies to all
18 petitions for sterilization pending and orders authorizing sterilization that have not been
19 executed as of the effective date of this act.