

1978 WL 35086 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 30, 1978

\*1 The Honorable Roddey L. Bell  
311 North Catawba Street  
Lancaster, S. C. 29720

Dear Judge Bell:

You have directed to this Office an inquiry as to whether a patient at Whitten Village may be sterilized. It is my understanding that the patient is a thirteen (13) year old mentally retarded female who can neither stand nor sit and thus requires infant care. You have stated further that she has recently been hospitalized for a vaginal tear. This Office has also been informed that the sterilization is to be performed for reasons of personal hygiene, safety, and to aid in the physical care and comfort of the patient and that it is not necessarily to be performed for purposes of promiscuity or contraception. Also, this Office has been instructed that a medical doctor and the parents of the child concur in the necessity and the desire for such an operation being performed.

As you are aware, there is provided in [Section 44-47-10, et seq. of the 1976 Code](#) of Laws statutory authorization for sterilization in restricted types of cases. A determination of whether or not this is a situation where sterilization should be permitted is a matter that can only be determined after full compliance with the statutory procedures set forth in the above referenced statutes. As indicated by Section 44-47-60, judicial review is permitted, so this may be a matter for the courts to ultimately decide.

As indicated by the statutes, the only present means of obtaining sterilization in this particular type situation is on the petition of the superintendent or person in charge of an institution of this State who is of the opinion that it would be for the best interest of the inmates of the institution that any inmate who is afflicted with any of the conditions set forth below be sterilized. The conditions referenced by [Section 44-47-10](#) are: any hereditary form of insanity that is recurrent, idiocy, imbecility, feeble-mindedness, and epilepsy. The petition is presented to the Department of Health and Environmental Control who after giving notice and providing a hearing in the manner statutorily provided may deny or grant the petition thereby permitting the sterilization to be performed. Sterilization is authorized upon a finding

a. That such inmate is insane, idiotic, imbecile, feeble-minded or epileptic and by the laws of heredity is or would be the probable potential parent of socially inadequate offspring likewise afflicted,

b. That such inmate may be sexually sterilized without detriment to his or her general health and

c. That the welfare of such inmate and of society will be promoted by such sterilization . . . (Section 44-47-50)

This Office in a previous opinion, Opinion No. 2540 dated November 13, 1968, a copy of which is enclosed, stated that 'the statutes do not permit involuntary sterilization merely because of promiscuousness.' Furthermore, Section 44-47-90 states specifically that

'nothing in this chapter shall be construed to authorize the operation of castration nor the removal of sound organs from the body. But this provision shall not be construed as to prevent the medical or surgical treatment for sound therapeutic reasons of any person in this State by a physician or surgeon licensed by this State in such a way as may incidentally involve the nullification or destruction of the reproductive functions.'

\*2 A review of other state statutes authorizing sterilization of mental defectives indicates that such statutes have been attacked on a number of constitutional grounds.

Most of the instances of invalidation of statutes authorizing the . . . (sterilization of mental defectives). . . have occurred where the statute was inadequate by due process standards for notice, hearing, opportunity to confront or cross-examine witnesses or right of appeal, or where the statute denied the equal protection of the laws by creating an arbitrary classification. However, even in cases involving due process or equal protection arguments, those objections have more often been unsuccessful. 53 A.L.R. 3d 690.

However, it has further been stated that the probability of successfully attacking the validity of statutes authorizing the sterilization of mental defectives is greater now than it was in the past. 53 A.L.R. 3d 960 A review of relevant cases in this area indicates that several grounds have been asserted in attempt to negate the contention that a particular mental defective is a proper subject for sterilization.

As you can see, even if it may be apparent that sterilization is warranted in a particular situation, this is an area where extreme caution and careful consideration must be given to all aspects of the relevant statutes and the procedures authorizing sterilization. Therefore, this Office is not in a position of absolutely determining whether this is a proper circumstance warranting sterilization. Furthermore, it appears that only sterilization and not any type of operation such as a hysterectomy are permitted in this type of situation. As referenced in Section 44-47-90 'the removal of sound organs from the body' is not authorized by these pertinent sections.

If there are any further questions concerning this matter, do not hesitate to contact me.

Sincerely yours,

Charles H. Richardson  
Assistant Attorney General

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