

TITLE 39
HEALTH AND SAFETY

CHAPTER 39
STERILIZATION

39-3901. LEGISLATIVE INTENT. The legislature of the state of Idaho acknowledges that sterilization procedures are highly intrusive, generally irreversible and represent potentially permanent and highly significant consequences for individuals incapable of giving informed consent. The legislature recognizes that certain legal safeguards are required to prevent indiscriminate and unnecessary sterilization of such individuals, and to assure equal access to desired medical procedures for all Idaho citizens.

[39-3901, added 2003, ch. 189, sec. 2, p. 512.]

39-3902. DEFINITIONS. For purposes of this chapter, the following words and terms have the meanings hereinafter stated:

(1) "Emergency medical treatment" means immediate medical intervention required, according to the prevailing medical standards of judgment and practice within the community, because of the medical condition of the person subject to this chapter.

(2) "Evaluation committee" means an interdisciplinary team consisting of at least four (4) individuals qualified by education and training to evaluate an individual as required by the provisions of this chapter, and an advocate designated by the person subject to this chapter. Each committee must include: two (2) social workers, at least one (1) of whom must be a master's level; a clinical psychologist or a psychiatrist; and a physician.

(3) "Informed assent" means a process by which a person subject to this chapter who lacks or is alleged to lack the capacity to consent to sterilization is given a fair opportunity to acknowledge the nature, risks and consequences of the procedures and, insofar as he or she is able to, indicates willingness and choice to undergo sterilization.

(4) "Interested person" means an interested, responsible adult including, but not limited to, the legal guardian, spouse, parent, legal counsel, adult child, or next of kin of a person subject to this chapter, or if none of these are available, the department of health and welfare.

(5) "Medically necessary" means that, according to the prevailing medical standards of judgment and practice within the community, the procedure is reasonably calculated to prevent or treat conditions in the person subject to this chapter that endanger life, cause severe pain, or cause functionally significant deformity or malfunction, and for which there is not an equally effective alternative course of treatment available or suitable.

(6) "Person subject to this chapter" means all persons, except adults who may consent to their own treatment pursuant to chapter 45, title 39, Idaho Code. Adults who are alleged to lack this capacity are also persons subject to this chapter.

(7) "Physician" means a person duly licensed in the state of Idaho to practice medicine and surgery without restriction pursuant to laws of the state of Idaho.

(8) "Records" includes, but is not limited to, all court files of judicial proceedings brought under this chapter, written clinical information, observations and reports, or fiscal documents relating to a person subject

to this chapter who has undergone or is about to undergo sterilization and which are related to the sterilization.

(9) "Sterilization" means any medical or surgical operation or procedure which can be expected to result in a patient's permanent inability to reproduce.

[39-3902, added 2003, ch. 189, sec. 2, p. 512; am. 2005, ch. 120, sec. 5, p. 390; am. 2009, ch. 130, sec. 1, p. 409.]

39-3903. STERILIZATION OF PERSONS SUBJECT TO THIS CHAPTER. Persons subject to this chapter have the legal right to be sterilized following the entry of an order providing for sterilization and the expiration of the time allowed by law for perfecting an appeal. In no event shall persons subject to this chapter be sterilized without court approval in accordance with this chapter unless sterilization occurs as part of emergency medical treatment.

[39-3903, added 2003, ch. 189, sec. 2, p. 513.]

39-3904. INITIATION OF PROCEEDING. A person subject to this chapter or any interested person may file a petition in the district court in which the person subject to this chapter resides, alleging that said person meets the requirements for sterilization.

[39-3904, added 2003, ch. 189, sec. 2, p. 513.]

39-3905. APPOINTMENT OF COUNSEL. Persons subject to this chapter shall have counsel at all stages of the proceedings provided for in this chapter. Unless independently provided for by the persons subject to this chapter, counsel shall be appointed by the district court which shall also conduct an investigation to determine whether or not the person has funds in trust or otherwise to pay reasonable compensation to counsel. If the investigation discloses that the person is without such funds, the court shall order that counsel be paid reasonable compensation at public expense.

[39-3905, added 2003, ch. 189, sec. 2, p. 513.]

39-3906. NOTICE. The court shall order that the petition be served personally upon the person subject to this chapter, his or her guardian or parent, his or her counsel, his or her guardian ad litem, and such other persons as the court may designate.

[39-3906, added 2003, ch. 189, sec. 2, p. 513.]

39-3907. REFERRAL TO THE EVALUATION COMMITTEE. The court shall refer the petition to the evaluation committee for review and recommendation.

[39-3907, added 2003, ch. 189, sec. 2, p. 513.]

39-3908. HEARING. (1) The court shall set a hearing on the petition upon receipt of the recommendation of the evaluation committee and shall order that copies of the evaluation committee's reports and notice of the time and place of the hearing be provided the person subject to this chapter, their guardian, their counsel, their guardian ad litem, and such other persons as the court may designate.

(2) The person subject to this chapter is entitled to be present at the hearing, and to see and hear all evidence bearing on the petition. The person subject to this chapter may be absent from the hearing if he or she is unwilling or is unable to participate.

(3) A hearing shall be held in district court with the right of cross-examination preserved at all stages. The members of the evaluation committee may be subpoenaed and questioned by any party to the proceedings. Any party to the proceedings may submit additional evidence.

(4) The court must enter findings of fact and conclusions of law as well as an order either directing sterilization of the person subject to this chapter or dismissing the petition for insufficiency of evidence or any other reason.

[39-3908, added 2003, ch. 189, sec. 2, p. 513.]

39-3909. CRITERIA. (1) The court may grant an order authorizing a specific sterilization procedure if the court finds by clear and convincing evidence that the person subject to this chapter is functionally capable of giving and withholding informed assent to the proposed sterilization and has given informed assent to the proposed sterilization, or that the person is functionally incapable of giving or withholding informed assent but sterilization is in the best interest of the person.

(2) The person subject to this chapter assents to sterilization if the person manifests an uncoerced willingness to undergo sterilization after being fully informed of the nature, risks, consequences and alternatives to the procedure. A person who lacks the capacity to manifest an uncoerced willingness or unwillingness to sterilization cannot assent to the procedure. To determine whether the person is capable of giving informed assent, the court shall consider whether the person understands and appreciates:

- (a) The causal relationship between sexual intercourse and pregnancy or parenthood;
- (b) The causal relationship between sterilization and the impossibility of pregnancy or parenthood;
- (c) The nature of the sterilization operation including the pain, discomfort and risks of the procedure;
- (d) The probable permanency and irreversibility of the sterilization procedure;
- (e) All medically approved alternatives to sterilization;
- (f) The consequences of initiation of pregnancy or becoming pregnant, mothering or fathering a child, and becoming a parent; and
- (g) The power to change one's mind about being sterilized at any time before the procedure is performed.

To assure the adequacy of the person's informed assent, evidence shall be presented showing that the person received appropriate counseling from the physician who will perform the sterilization and at least one (1) other qualified independent counselor such as a social worker with a master's degree, a clinical nurse specialist, or a licensed psychologist or psychiatrist. The counseling shall cover the benefits or advantages to sterilization and conversely the losses and disadvantages of sterilization including the feelings, values and lifestyle changes attendant with sterilization.

Witnesses who attest in court as to the soundness of informed assent shall comment on and assess the person's understanding of each issue and shall comment on and assess the degree to which the person expresses an uncoerced willingness to accept each risk and consequence. Any reservations or resistance expressed or otherwise evidenced by the person shall be disclosed to the court.

(3) The persons subject to this chapter may be sterilized if the court finds by clear and convincing evidence that:

(a) The person is functionally incapable of giving or withholding informed assent and that the incapacity is not likely to change in the foreseeable future; and

(b) Sterilization is in the best interest of the person.

(4) To determine whether sterilization is in the best interest of the person subject to this chapter the court shall find by clear and convincing evidence that:

(a) The person is likely to be fertile. Fertility may be conclusively presumed if the medical evidence indicates normal development of the sexual organs, and the evidence does not otherwise raise doubts about fertility;

(b) There is a likelihood that the person will engage in sexual intercourse;

(c) The nature and extent of the person's disability, as determined by empirical evidence and not solely the basis of standardized tests, renders him or her permanently incapable of caring for a child, even with reasonable assistance;

(d) The person will suffer severe physical or psychological harm if he or she were to parent a child, which may include any harm occurring from the removal of the child from the person's custody;

(e) The person will not suffer severe physical or psychological harm from the sterilization;

(f) Less restrictive alternatives to sterilization, both at the present time and under foreseeable future circumstances, are not feasible or medically advisable;

(g) The proposed method of sterilization entails the least invasion of the body of the individual; and

(h) Scientific or medical advances will not occur within the foreseeable future which will materially make possible the improvement of the person's condition with respect to sterilization.

[39-3909, added 2003, ch. 189, sec. 2, p. 514.]

39-3910. AUTHORIZED STERILIZATION PROCEDURE. A sterilization procedure authorized under this chapter shall not include hysterectomy or castration unless the court finds by clear and convincing evidence that hysterectomy or castration is medically necessary treatment, independent of the need for sterilization. No sterilization procedure authorized under this chapter shall be performed by any person other than a physician.

[39-3910, added 2003, ch. 189, sec. 2, p. 515.]

39-3911. APPEALS. The order approving, denying or otherwise disposing of the petition for sterilization shall be appealable to the supreme court of Idaho. Such appeal may be perfected in the same manner as in civil actions. In the case of appeals from any order directing sterilization, the order of the district court shall be stayed pending disposition of such appeal and no sterilization shall take place until after the expiration of the time allowed by law for perfecting appeal.

[39-3911, added 2003, ch. 189, sec. 2, p. 515.]

39-3912. EVALUATION COMMITTEE. (1) There is established the evaluation committee composed of persons contracted by or employees of the department of health and welfare.

(2) The committee shall review and make recommendations to the court on all petitions for sterilization. In making its recommendation to the court, the committee shall investigate and determine whether the person subject to this chapter is capable of giving informed assent and, if not, whether sterilization is in the best interest of the person. The committee shall consider the criteria set forth in section 39-3909, Idaho Code, in determining whether the person is capable of providing informed assent or whether sterilization is in the best interest of the person.

(3) The committee or designated member of the committee may interview or request a written statement from the person subject to this chapter, physicians, relatives, concerned individuals, and others who, in the committee member's judgment, possess relevant information concerning the petition for sterilization. Conversely, the person subject to this chapter, the guardian ad litem, the petitioner, or any other person may request to speak to the committee or submit a written statement to the committee concerning the proposed sterilization.

(4) The committee shall submit a report in writing to the court containing its recommendations together with supporting documents. Committee members who do not concur with the majority recommendation shall submit a report in writing to the court detailing the basis for their dissent.

[39-3912, added 2003, ch. 189, sec. 2, p. 515.]

39-3913. CONFIDENTIALITY OF AND ACCESS TO RECORDS. (1) Records developed by the evaluation committee and records contained in court files of judicial proceedings brought under this chapter shall be governed by the provisions of chapter 1, title 74, Idaho Code.

(2) The administrative director of the courts shall compile statistics for each calendar year, accessible to the public, including:

(a) The total number of petitions filed pursuant to this chapter;

(b) The number of petitions in which the evaluation committee recommended a procedure and the number of petitions in which the evaluation committee recommended against a procedure;

(c) The number of petitions granted by the court;

(d) For categories described in paragraphs (b) and (c) of this subsection, the number of appeals taken from the court's order in each category; and

(e) For each of the categories set out in paragraph (d) of this subsection, the number of cases for which the district court's order was affirmed and the number of cases for which the district court's order was reversed.

[39-3913, added 2003, ch. 189, sec. 2, p. 516; am. 2003, ch. 300, sec. 1, p. 826; am. 2015, ch. 141, sec. 91, p. 445.]

39-3914. CIVIL AND CRIMINAL IMMUNITY -- EXCEPTION. When an operation shall have been performed in compliance with the provisions of this law, no physician duly licensed to, without restriction, practice medicine and surgery in this state or other person legally participating in the execution of the provisions of this chapter shall be liable civilly or to criminal prosecution on account of such operation or participation therein, except in the case of negligence in the performance of said procedures. Nothing in this chapter shall be construed so as to prevent sterilization of persons subject to this chapter as part of emergency medical treatment or the voluntary sterilization of a person competent to give his or her consent.

[39-3914, added 2003, ch. 189, sec. 2, p. 516.]

39-3915. REFUSAL TO PARTICIPATE IN STERILIZATION. No hospital shall be required to furnish facilities or admit any patient for sterilization procedures if, upon determination by its governing board, it elects not to do so. No physician, nurse, technician or other employee of any hospital, physician or governmental agency shall be required to assist or participate in any sterilization procedure if he or she, for religious or moral reasons, objects thereto. Any such objection shall be made in writing and shall state the reason for such objection. No refusal to accept a patient for sterilization procedures shall form the basis for any claim for damages or for recriminatory action against the declining person or hospital.

[39-3915, added 2003, ch. 189, sec. 2, p. 516.]