

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1974



ENROLLED

HOUSE BILL No. 1351

(By Mr. Smith & Mr. Edwards)



PASSED March 9 1974

In Effect 90 days Passage



FILED IN THE OFFICE
EDGAR S. WHEELER III
SECRETARY OF STATE
THIS DATE 3/29/74

1351

ENROLLED

H. B. 1351

(By MRS. SMIRL and MR. EDWARDS)

[Passed March 9, 1974; in effect ninety days from passage.]

AN ACT to repeal article ten, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter twenty-seven of said code by adding thereto a new article, designated article sixteen, relating to the sterilization of mentally incompetents; providing for procedures and persons subject to sterilization; right to appeal from court order; immunity of physician from civil or criminal liability; limitations; appointment of legal counsel and compensation and costs.

Be it enacted by the Legislature of West Virginia:

That article ten, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that chapter twenty-seven of said code be amended by adding thereto a new article, designated article sixteen, to read as follows:

ARTICLE 16. STERILIZATION OF MENTAL DEFECTIVES.

§27-16-1. Persons subject to sterilization; procedure.

1 Whenever any parent, guardian, committee or authority re-
2 sponsible for a person who has been declared mentally in-
3 competent shall be of the opinion that it is in said person's
4 best interest and the best interest of society that the said per-
5 son be sterilized, such parent, guardian, committee or au-
6 thority shall apply to the circuit court of the county of which
7 such incompetent person is a resident or where he may be
8 found, by petition setting forth, under oath, all of the facts of
9 the case and the grounds of his opinion, and praying that an

10 order may be entered by said court authorizing and requiring
11 him to have performed, by a duly licensed physician to be des-
12 ignated in the petition and order, upon such incompetent per-
13 son named in such petition, sterilization procedures as medi-
14 cally indicated.

15 The court in which such petition is filed, or the judge thereof
16 in vacation or a referee appointed by the court for this pur-
17 pose shall review the circumstances under which the indi-
18 vidual was declared incompetent and shall take evidence to de-
19 termine that the circumstances warrant continuation of the in-
20 competent status of the individual.

21 If, as a result of such review it is determined that the in-
22 competent status should be continued, a further hearing shall
23 be scheduled.

24 A copy of such petition shall be served upon such incom-
25 petent person, together with a notice, in writing, designating
26 the date and time when the court, or the judge thereof in
27 vacation, will hear the matters arising upon such petition.
28 Such notice shall be served not less than fifteen days prior
29 to the date of such hearing.

30 After the notice required by this article to be served shall
31 have been given, as herein provided, the court, or the judge
32 thereof in vacation or referee appointed for this purpose shall
33 proceed to hear and consider the petition and the evidence of-
34 fered in support of and against the same. For every such in-
35 competent person who is not represented by counsel the court
36 shall appoint competent legal counsel who shall represent the
37 rights and interests of such incompetent person who shall have
38 the right, but shall not be required to be present at such
39 hearings in person, and shall have the opportunity to present
40 evidence in his own behalf and cross-examine witnesses. A
41 transcript of all testimony at such hearing shall be made a
42 part of the record filed with the clerk and shall be made
43 available to the incompetent person or his counsel.

44 However, prior to such hearing the court shall order a com-
45 plete medical-social evaluation by one licensed physician and
46 one licensed psychologist or by two licensed physicians, at least
47 one of whom shall be qualified in the field of psychiatry, neur-

48 ology or genetics. Such examiners shall be present at the hear-
49 ing and may be examined and cross-examined.

50 Upon consideration of the full record, the court, the judge
51 thereof in vacation or the referee may find:

52 (1) That sterilization is unwarranted and the proceedings
53 shall be dismissed;

54 (2) That the individual is mentally impaired and that such
55 defect is of a genetic nature that is likely to be passed on to
56 any children; or

57 (3) That the individual is mentally impaired to such a
58 degree as to be unable to care for a child and that the indi-
59 vidual is unlikely to recover from such mental impairment.

60 If the finding is made as enumerated in (2) or (3) above,
61 and it is further determined that no alternative method of
62 birth control is feasible, the court or the judge thereof in
63 vacation may order that medically appropriate sterilization
64 procedures shall be performed, and for a female, that such
65 procedures be performed in a medical facility licensed by the
66 state board of health. In no case shall such procedures be
67 carried out until sixty days have elapsed from the date of
68 such order.

§27-16-2. Appeal from court order.

1 From any such order so entered by the court, or the judge
2 thereof in vacation, any party thereto shall have, within sixty
3 days after the entry of such order, the right to apply for an
4 appeal to the supreme court of appeals, which may grant or
5 refuse such appeal and shall have jurisdiction to hear and to
6 determine the same upon the record of the hearing in the
7 circuit court and to enter such order as it may deem appro-
8 priate. The filing of such an appeal in the supreme court of
9 appeals shall operate as a stay of proceedings under any such
10 order of the circuit court until such appeal shall be determined
11 by the supreme court of appeals.

§27-16-3. Immunity of physician performing surgical procedure.

1 Except as to the laws governing negligence, no such physi-
2 cian shall be liable either civilly or criminally by reason of

3 having performed any procedure authorized by the provisions
4 of this article upon any person in this state.

§27-16-4. Limitations of article.

1 Nothing in this article shall be construed to authorize the
2 operation of castration nor the removal of sound organs from
3 the body; but this provision shall not be construed so as to
4 prevent the medical or surgical treatment for sound thera-
5 peutic reasons of any person in this state, by a physician li-
6 censed by this state, in such a way as may incidentally in-
7 volve the nullification or destruction of the reproductive func-
8 tions.

§27-16-5. Legal counsel; compensation; costs.

1 When, in any case, the court, or judge thereof in vacation,
2 is satisfied that the counsel appointed by the court has ren-
3 dered substantial service to the mental incompetent, it may
4 allow him reasonable compensation therefor, and his actual
5 expenses, if any, to be paid by the petitioners.

6 The costs of any proceeding pursuant to this article shall
7 be paid by the petitioner.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

H. Laurel Hardy
Chairman Senate Committee

Lawrence C. Johnston, Jr.
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Howard Wasson
Clerk of the Senate

W. Blankenship
Clerk of the House of Delegates

H. P. Brotherton, Jr.
President of the Senate

Levin H. McManus
Speaker House of Delegates

The within approved this the 26th
day of March, 1974.

Arch A. Hansen, Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 3/15/74

Time 2:50 p.m.