STERILIZATION LAWS IN VIRGINIA

REPORT OF THE
VIRGINIA ADVISORY LEGISLATIVE COUNCIL
to
THE GOVERNOR
and
THE GENERAL ASSEMBLY OF VIRGINIA

COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
Richmond
1961

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A REPORT

OF THE

VIRGINIA ADVISORY LEGISLATIVE COUNCIL

RICHMOND, VIRGINIA, August 19, 1961.

TO:

HONORABLE J. LINDSAY ALMOND, JR., *Governor of Virginia*

and

THE GENERAL ASSEMBLY OF VIRGINIA

The 1960 Regular Session of the General Assembly directed the Virginia Advisory Legislative Council to study the laws of Virginia relating to sexual sterilization. This directive was contained in Senate Joint Resolution No. 18, which was adopted by the General Assembly as the result of a recommendation made by a Commission created by the 1958 General Assembly and charged with a study of problems relating to children born out of wedlock. This recommendation for such a study was one of several made by that Commission, among which was a proposal that the law relating to sexual sterilization be clarified and broadened to permit sexual sterilization on a voluntary basis with the full consent of all persons directly concerned and with adequate protection to the physicians performing such operations. This proposal was one of several dealing with the subject which was considered by the General Assembly, none of which was adopted. The Assembly did, however, direct the instant study by Senate Joint Resolution No. 18, the text of which is as follows:

SENATE JOINT RESOLUTION NO. 18

Directing the Virginia Advisory Legislative Council to study the laws relating to sexual sterilization.

Whereas, the grounds for compulsory sexual sterilization of persons, as set forth in Chapter 9 of Title 37 of the Code of Virginia, do not appear to be in keeping with advances made in medical science since such laws were enacted; and

Whereas, compulsory sexual sterilization for the reason that a person by the laws of heredity is the probable potential parent of socially inadequate offspring should not be ordered unless such conclusion is based on the most recently available medical knowledge; and

Whereas, a person may be afflicted with a mental illness which is not hereditary but which renders him or her incapable of assuming the responsibilities of parenthood; now, therefore, be it

Resolved by the Senate, the House of Delegates concurring, That the Virginia Advisory Legislative Council is hereby directed to review the provisions of Chapter 9 of Title 37 of the Code of Virginia in the light of knowledge most recently available to the medical profession in the fields of

hereditary forms of mental illness, mental deficiency and epilepsy, and the treatment thereof. The Council shall recommend any changes in such laws which appear necessary in the light of such medical knowledge.

All agencies of the State shall assist the Council in its study. The Council shall conclude its study and make its report to the Governor and the General Assembly not later than October one, nineteen hundred and sixty-one.

The members of the Council shall receive no compensation for their services but shall be paid their necessary expenses which, together with such secretarial and other expenses that the Council may incur, shall be paid from the contingent fund of the General Assembly to an amount not exceeding fifteen hundred dollars.

The Council selected John Warren Cooke, member of the House of Delegates and member of the Council, Mathews, to serve as Chairman of a Committee to make the initial study and report to it. Chosen to serve with Mr. Cooke on this Committee were the following: Dr. Hiram W. Davis, Commissioner of Mental Hygiene and Hospitals, Richmond; Lyman C. Harrell, Jr., Attorney at Law and member of the House of Delegates, Emporia; Raleigh C. Hobson, Director, Department of Public Welfare, Richmond; E. Eugene Luther, Attorney at Law, Arlington; Blake T. Newton, member of the Senate of Virginia, Hague; Mrs. Mary Alice Roberts, Roanoke; Dr. Mack I. Shanholtz, State Health Commissioner, Richmond; and Dr. H. Hudnall Ware, Jr., Richmond. John B. Boatwright, Jr. and G. M. Lapsley served as Secretary and Recording Secretary, respectively, to the Committee.

There were on the Committee persons who have had experience in the operation of our present law permitting compulsory sterilization under certain conditions and also persons familiar with problems faced by the medical profession in connection with sterilizations performed for other reasons. The Committee had the benefit of research which has been recently conducted in connection with the subject of sexual sterilization and it sought and received the advice of individuals whose experience has brought them into intimate knowledge of the problems inherent in our present statutes. It held a public hearing at which testimony was received both in advocacy of and in opposition to liberalization of the present law insofar as it relates to voluntary sterilization.

The Committee gave careful attention to the information and material before it, and the views expressed at the public hearing, and, after thorough discussion and consideration, made its report to the Council. Having studied this report at length, the Council makes the following recommendations:

RECOMMENDATIONS

1. That no change be made in the present Virginia statute providing for the sexual sterilization of a patient in a mental institution upon a finding by the State Hospital Board that such inmate is suffering from a specified mental condition which renders him or her "the probable potential parent of socially inadequate offspring likewise afflicted".

2. That a statute be adopted which would permit licensed physicians and surgeons, after consultations, to perform operations in accredited hospitals for the sexual sterilization of patients who desire the same, subject to the consent of the spouse of any such patient who is married and subject, in the case of an unmarried minor, to a finding by the appropriate court of record that such operation would be in the best interest of such minor.

THE PRESENT VIRGINIA STERILIZATION LAW

Statutes permitting the sterilization of persons afflicted with mental conditions whch may result in the procreation of children likewise afflicted who may become burdens upon society have been in effect in the United States for more than half a century. Virginia was not a pioneer in this field but our sterilization law was adopted in 1924 and was upheld by our own Supreme Court and the Supreme Court of the United States in the leading case in this field, *Buck* v. *Bell,* 143 Va. 310, affirmed in 274 U. S. 200. This statute is operative only as to inmates of publicly maintained mental institutions, requires that proceedings be initiated by the superintendent of the institution concerned, provides for notice to and opportunity to be heard for the inmate concerned as well as the parents, guardian or committee of such inmate, requires a determination by the State Hospital Board, and provides for the right of appeal. The statute as originally adopted has been the law of Virginia until the present time with no major change.

There has been no substantial complaint concerning the operation of the statute in Virginia. During the 36 years in which it has been in effect, only 2826 males and 4146 females have been sterilized. We are advised that there are no medical or other scientific data indicating that a change in the basis set out in the statute for sterilization of inmates of institutions is either imperative or desirable. Accordingly, we recommend that no change in this statute be made.

THE PROPOSED VOLUNTARY LAW

The statute which the Council was directed to consider—Chapter 9 of Title 37 of the Code of Virginia—while it deals primarily with compulsory sterilization of certain persons, inferentially recognizes the legality or sterilization for other reasons. § 37-246 refers to such treatment "for sound therapeutic reasons". This is the only reference in Virginia law to sexual sterilization other than compulsory sterilization of patients in institutions afflicted with hereditary mental conditions.

It is noted that the same General Assembly which directed the instant study also had before it proposals both for compulsory and for voluntary sterilization under certain conditions. We are advised that due to the absence of statute law in the field of therapeutic or other voluntary sterilization, many physicians and surgeons feel uncertain as to just what their responsibilities and liabilities may be in such cases. There is no legal definition of the word "therapeutic" in Virginia case law, and the doctor who is presented with a case which, in his judgment, calls for the application of these surgical procedures, is in many instances faced with a very hard decision from a legal standpoint.

The problem is not a rare one. In the operation of both general hospitals and public clinics, many cases are presented to the medical authorities which can be characterized as "borderline" cases. For this reason, and based upon the experience in many such clinics and institutions, it was felt necessary to consider the scope of the instant study as being broader than the limited terms of Senate Joint Resolution No. 18.

It should be emphasized that present Virginia law does not forbid an operation for sexual sterilization directly. The reference in § 37-246 is by inference only. Insofar as the criminal law is concerned an operation for the voluntary sterilization of any man or woman, performed with the consent

of the person being sterilized, appears to be a matter purely between doctor and patient, and the Commonwealth has no direct interest in it. But between doctor and patient, the surgeon has no sure guide as to all cases in which the operation may be performed, within the bounds of good medical practice and without potential liability to civil responsibility. Where there is actually a disease of the reproductive organs, surgical treatment of which will destroy the ability to procreate, the physician's right and duties are clear. Similarly, if the bearing of children will place the life of the potential mother in grave danger, there is no problem. But when it is a question of the effect of the production of children by persons who are plainly not equal to the responsibilities of parenthood, or of adding to the size of a family, where the parents are unable physically or otherwise to provide adequately for children they have already had, physicians and surgeons are much more hesitant in assenting to the performance of such operations.

We believe that the principle in law which, in cases involving children, indicates that the welfare of the child is of paramount importance, should serve as a guide in such cases. We therefore recommend that the law be so changed as to make it clear that in cases where the well-being of a child who might be conceived or of children whom the parents may have already produced is involved, the question of the performance of sterilization operations should be left to the discretion of the individuals concerned, if adults, and the physicians or surgeons to whom the cases have been committed for care.

However, those who have advocated the adoption of a voluntary sterilization law have suggested, and the evidence presented to support such advocacy indicates, that safeguards should be incorporated into the law so that it will not sanction sterilizations performed casually, or merely because of the convenience or desires of the individuals concerned. We therefore believe that sterilization should only be permitted under conditions which will insure not only that it is the considered judgment of the individual to be sterilized that it should be done but that more than one competent doctor concurs in this judgment.

As to adults and married presons under twenty-one years of age upon whom the operation might be performed, the proposed bill accompanying this report requires that such operations be performed only with the consent of the patient, and the spouse of the patient if married, given after a full explanation by the physician of the nature and effect of the operation and after a period of thirty days during which the patient would have an opportunity to think the matter over. It further proposes that such operations be performed only as is now done in accredited hospitals in therapeutic cases, after consultation between two or more physicians or surgeons; and to underscore this condition the bill would limit the performance of such operations to those done in hospitals which are accredited by the Joint Commission on Accreditation of Hospitals of the United States and Canada.

We believe that the safeguards hereinabove outlined are sufficient in the case of adults and married minors upon whom the operation might be beneficially performed. In the case of younger persons who are unmarried and the consent of whose spouse therefore cannot be obtained, we feel that a further safeguard should be imposed. Because such individuals are immature, the proposed bill also requires the consent not only of the minor but of the parent or parents of the minor, if living, or the committee, guardian, or next friend of such minor; and it goes further and requires the case to be brought before a court of record and imposes as a prerequisite

to sterilization that the court must find and enter an order to the effect that the operation is in the minor's best interests.

A further provision makes it clear that no licensed physician or surgeon will incur any liability because of the performance of the operation of vasectomy or salpingectomy in accordance with the requirements of the bill. The bill is not intended, however, to have any effect as to the type of operations now performed and recognized as being for sound therapeutic reasons by § 37-246 of the Code, and a provision to this effect has also been inserted.

We express our appreciation to the members of the Committee for the time and effort given by them to the conduct of this study, which has greatly aided the Council in the making of this report.

Respectfully submitted,

ROBERT Y. BUTTON, Chairman
CHARLES K. HUTCHENS, Vice-Chairman
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A Bill to authorize the performance by physicians and surgeons of certain operations upon the reproductive organs of certain persons; to prescribe the consent which shall be required to be given for the performance of such operations, the time within which the same may be performed, and the conditions which shall be complied with; and to provide for exemption from liability for the nonnegligent performance of such operations.

Be it enacted by the General Assembly of Virginia:

1. § 1. (a) It shall be lawful for any physician or surgeon licensed by this State and acting in collaboration or consultation with at least one or more physicians or surgeons so licensed, when so requested by any person twenty-one years of age or over, or less than twenty-one years of age if legally married, to perform, in an accredited hospital, upon such person a vasectomy or salpingectomy, as the case may be, provided a request in writing is made by such person and by his or her spouse, if there be one, at least thirty days prior to the performance of such surgical operation, and provided, further, that prior to or at the time of such request a full and reasonable medical explanation is given by such physician or surgeon to such person as to the meaning and consequences of such operation.

(b) As used in this section, "accredited hospital" means a hospital accredited by the Joint Commission on Accreditation of Hospitals of the United States and Canada.

§ 2. Any such physician or surgeon may perform a vasectomy or salpingectomy upon any unmarried person under the age of twenty-one years when so requested in writing by such minor and in accordance with the conditions and requirements set forth in § 1 of this Act, provided that the circuit court of the county or the corporation court of the city wherein such minor resides, upon petition of the parent or parents, if they be living, or the committee, guardian, or next friend of such minor, shall determine that the operation is in the best interest of such minor and shall enter an order authorizing the physician or surgeon to perform such operation. In any such proceeding, the provisions of § 8-88 of the Code of Virginia shall be complied with.

§ 3. No such operation shall be performed pursuant to the provisions of this Act prior to thirty days from the date of consent or request therefor, or in the case of an infant, from the date of the order of the court authorizing the same, and in neither event if the consent for such operation is withdrawn prior to its commencement.

§ 4. Subject to the rules of law applicable generally to negligence, no physcian or surgeon licensed by this State shall be liable either civilly or criminally by reason of having performed a vasectomy or salpingectomy authorized by the provisions of this Act upon any person in this State.

§ 5. Nothing in this Act shall be deemed to affect the provisions of § 37-246 of the Code of Virginia.