

§7008. Hearing upon a petition to determine informed consent for sterilization

1. Counsel. If the person seeking sterilization or for whom sterilization is sought requests counsel and cannot afford counsel, the court shall appoint counsel to represent that person at public expense. If the person is not represented by counsel and appears to the court unable to request counsel, the court shall order that counsel be retained or shall appoint counsel to represent the person at public expense if the person cannot afford counsel. A reasonable fee shall be set for appointed counsel by the District Court. Counsel, or the person seeking sterilization or for whom sterilization is sought, may present evidence, call witnesses and cross-examine witnesses who testify or present evidence at any hearing on the petition.

[PL 1983, c. 459, §7 (NEW).]

2. Appointment of disinterested experts. For the purpose of determining a person's ability to give informed consent, the court shall appoint not less than 2 disinterested experts experienced in the field of developmental disabilities or mental health, including at least one psychologist or psychiatrist, to examine the person, to report on that examination and to testify at the hearing as to the person's competency. Other evidence regarding the person's capabilities may be introduced at the hearing by any party.

[RR 2019, c. 2, Pt. B, §105 (COR).]

3. Preference of person seeking sterilization or for whom sterilization is sought. If the person seeking sterilization or for whom sterilization is sought has any preference as to a disinterested expert by whom that person would prefer to be examined, the court shall make a reasonable effort to accommodate that preference.

[RR 2019, c. 2, Pt. B, §106 (COR).]

4. Person's presence at hearing. The person seeking sterilization or for whom sterilization is sought must be present at any hearing regarding the person's ability to give informed consent for sterilization, unless that right is waived by the person, personally or through the person's attorney, and that waiver is approved by the court. The court shall inquire at the time of the hearing as to the types and effects of any medications being administered to or taken by the person.

[RR 2019, c. 2, Pt. B, §107 (COR).]

5. Determination that person is able to give informed consent for sterilization. If the court determines by clear and convincing evidence that the person is able to give informed consent for sterilization and that the person does consent to sterilization, it shall issue an order so stating and permitting the sterilization to be performed. Prior to the performance of the sterilization, the physician and hospital involved shall also obtain the written consent of the person for sterilization.

If the court determines by clear and convincing evidence that the person is able to give informed consent for sterilization, but determines that the person does not consent to sterilization, it shall issue an order so stating and forbidding sterilization of the person, unless that person later makes a different choice and only after a rehearing under this section.

[PL 1983, c. 459, §7 (NEW).]

6. Determination that person is not able to give informed consent for sterilization. If the court determines that the person is not able to give informed consent for sterilization, it shall issue an order so stating and forbidding sterilization of the person, unless a determination is made under section 7013 that sterilization is in the best interest of the person.

[PL 1983, c. 459, §7 (NEW).]

SECTION HISTORY

PL 1983, c. 459, §7 (NEW). RR 2019, c. 2, Pt. B, §§105-107 (COR).

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