

## Sterilization Laws

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### Issue

This report briefly summarizes the laws in New England states and New York authorizing the sterilization of individuals who are unable to consent to the procedure.

### Summary

Connecticut's sterilization statutes ([CGS § 45a-690](#) et seq.) allow an individual to undergo sterilization if he or she is age 18 or over and has given written informed consent. If an individual is unable to provide informed consent or is under a conservatorship or guardianship (e.g., because of intellectual disability), the law prohibits sterilization unless the probate court determines, after a hearing, that the procedure is in the individual's best interest. The law (1) specifies several factors the court must consider when making such a determination (e.g., whether less drastic contraceptive methods have proved unworkable or, for a woman, whether child birth would endanger her life or severely impair her health) and (2) sets forth several procedural requirements for such cases. The law specifies that a plenary or limited guardian does not have the authority to consent to the protected individual's sterilization outside of this court process ([CGS § 45a-677\(e\)](#)).

We surveyed the laws in other New England states and New York on the sterilization of individuals who lack the capacity to consent to the procedure. All New England states except Rhode Island allow a court, under specified procedures, to authorize the sterilization of an individual who is unable to consent. Maine and Vermont have detailed statutory procedures that are generally similar to Connecticut law. In Massachusetts and New Hampshire, the required procedures are exclusively or primarily set forth in case law from each state's highest court rather than in statute.

New York statutory law does not directly address this issue, but some courts have granted petitions to approve sterilization of individuals unable to consent. We were unable to find any statutes or case law in Rhode Island directly addressing this issue.

The following table provides a brief overview of the applicable laws in nearby states.

**Table 1: Laws in Nearby States Authorizing Courts to Approve Sterilization of Someone Unable to Consent**

<b>State</b>	<b>Brief Overview of Applicable Law</b>
<b>Maine</b>	<p>Under Maine’s “Due Process in Sterilization Act,” a district court order authorizing sterilization is required before the procedure may be performed on:</p> <ul style="list-style-type: none"> <li>• a minor (unless the minor is married or emancipated);</li> <li>• an individual under public or private guardianship or conservatorship;</li> <li>• an individual in state custody or who is residing in a state institution providing care, treatment, or security; or</li> <li>• an individual from whom a physician could not obtain informed consent.</li> </ul> <p>If the individual is unable to provide informed consent, the court can authorize sterilization only if the procedure is in the individual’s best interest. The law sets forth various procedural requirements for such cases (<a href="#">Maine Rev. Stat. tit. 34-B, § 7001 et seq.</a>). Another statute provides that an individual with an intellectual disability or autism may not be sterilized except in accordance with the Due Process in Sterilization Act (<a href="#">Maine Rev. Stat. tit. 34-B, § 5605</a>).</p>
<b>Massachusetts</b>	<p>In a 1982 case, the Supreme Judicial Court of Massachusetts held that the probate court, without specific statutory authorization, had the authority to grant a mother’s petition to sterilize her adult daughter with severe intellectual disability (<i>In re Moe</i>, 385 Mass. 555 (1982)).</p> <p>Among other things, the court concluded that a state statute prohibiting doctors (except in an emergency) from performing sterilization without the patient’s consent “cannot be read to deny incompetent individuals the same procreative choices which competent persons may exercise.” According to the court, such individuals could be provided these rights “through the doctrine of substituted judgment” in which a court “substitutes itself as nearly as possible for the individual in the decision making process.” The opinion set forth several procedural requirements which must be met in such cases for a court to authorize sterilization.</p>
<b>New Hampshire</b>	<p>New Hampshire statutes provide that a guardian of a minor or of an incapacitated person may not give consent for sterilization unless the procedure is first approved by court order (N.H. Rev. Stat. §§ <a href="#">463:12(III)(d)</a> and <a href="#">464-A:25(I)(d)</a>). The statutes do not specify the standard that must be met in such cases. In a 1980 case involving a petition by parents to authorize sterilization of their 14-year-old daughter with severe intellectual disability, the state Supreme Court held that the probate court had jurisdiction over such a petition and could order sterilization if certain procedural and evidentiary requirements were met (<i>In re Penny N.</i>, 120 N.H. 269 (1980)).</p>

Table 1 (continued)

State	Brief Overview of Applicable Law
<b>New York</b>	<p>No statutes specifically authorize the sterilization of individuals who are unable to consent, but some courts have granted petitions authorizing the practice. For example, a court in 1983 approved a petition by adoptive parents to authorize a sterilization procedure for their 14-year-old daughter with intellectual disability (<i>In re Nilsson</i>, 471 N.Y.S.2d 439 (Sup. Ct. Livingston County 1983)). In its opinion, the court adopted standards from a New Jersey Supreme Court case.</p> <p>As another example, a court in 2002 held that a 26-year-old woman with intellectual disability had the capacity to consent to sterilization. Additionally, the court applied the standards adopted in <i>Nilsson</i> and concluded that even if the woman were not capable of giving informed consent, it would be in her best interest to authorize her mother (as court-appointed guardian) to consent on her behalf (<i>In re Guardianship of B.</i>, 738 N.Y.S.2d 528 (County Ct. Tompkins County 2002)). In its opinion, the court distinguished two earlier cases in which New York courts had denied petitions to authorize the procedure. According to the court, the cases were inapplicable because one involved a different guardianship type that had less authority to make medical decisions and the second involved regulations that applied only when a facility director, and not a guardian, sought a patient's sterilization (<i>In re D.D.</i>, 394 N.Y.S.2d 139 (Surr. Ct. Nassau Co.1977) (affirmed on appeal) and <i>In re Cheryl O.</i>, 546 N.Y.S.2d 51 (4th Dept. 1989)).</p>
<b>Rhode Island</b>	<p>No statutes or case law authorize sterilization of individuals who are unable to consent.</p> <p>A statute explicitly prohibits sterilization of minors, unless the procedure is incidental to, or is rendered necessary by, some other medical treatment or procedure required to preserve the person's life or health (<a href="#">R.I. Gen. Laws § 11-9-17</a>).</p>
<b>Vermont</b>	<p>Under Vermont statutes, if an individual with intellectual disability is unable to consent to sterilization, the Superior Court can authorize the procedure only if it is in the individual's best interest. The law sets forth various procedural requirements for such cases and prohibits sterilization of such an individual who is under age 18 (<a href="#">Vt. Stat. tit. 18, § 8705 et seq.</a>). Other laws specify that an individual's guardian does not have the authority to consent to sterilization (Vt. Stat. tit. <a href="#">14, § 3074</a> and tit. <a href="#">18, § 9310</a>).</p>

Source: State statutes and cases

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