

1975 WL 29716 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 15, 1975

***1 Re: Involuntary Sterilization**

Honorable G. Werber Bryan
County Attorney
Bryan, Bahnmuller, King and Goldman
Attorneys at Law
Post Office Box 2038
Sumter, South Carolina 29150

Dear Mr. Bryan:

Your letter of April 9, 1975, with regard to the status of involuntary sterilization in this State has been referred to me for response.

Answering your second question first, there are no statutory provisions for involuntary sterilization of mentally deficient, ill or retarded persons other than is provided for in Sections 32-671, et seq., South Carolina Code of Laws (1962) relating to inmates of penal or charitable institutions.

You have also inquired as to the advisability of having 'apparently retarded persons' sterilized by a private physician employed by the county to perform such an operation. As noted above, there is no statutory authorization for such a procedure and as the authority you submit with your letter indicates, current decisions run strongly against court ordered sterilizations which are not founded upon express statutory authorization. There is also the problem of receiving 'informed consent' from an 'apparently retarded person'. These considerations would make the type of practice you propose a most risky one from the standpoint of the potential liability of both the physician and the institution which employs him.

You might be interested to know that the Legislature currently has under advisement a bill which would regulate voluntary sterilizations in this State. It is designated S-294, has been passed by the State Senate and is now being considered by the House of Representatives.

If this office can be of any further assistance to you in this matter, please feel free to call upon us.

Sincerely,

Dudley Saleeby, Jr.
Assistant Attorney General

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