

The Guardianship Forms subcommittee of the Washington Courts is considering a [proposal](#) to develop forms for medical sterilization of persons who are incapacitated. These include a number of people with disabilities. Commissioner Zinn has [asked](#) for public comment.

The committee's concern is that currently sterilization of the disabled is known to have been performed without following proper legal procedures. The committee believes that the existence of a form and its dissemination will increase the likelihood that proper legal procedures will be followed.

Disability Rights Washington is concerned that the mere existence and dissemination of forms will increase the likelihood of guardians seeking permission for sterilization while doing little to decrease the incidence of sterilizations that do not follow proper procedure.

Current state [law](#) requires that in such hearings the disabled person be represented by an advocate and that those advocates vigorously defend the rights of the person in question. A specific case - the guardianship of KM in 1980 addressed this. Despite clear state law the Guardianship Forms committee has reason to believe that coerced or involuntary sterilizations are currently being performed.

The issue is very nuanced. There are two possible positions: sterilization of the disabled without their active consent is never correct or there are circumstances where sterilization might be acceptable as long as the interests of the disabled individual are properly considered.

Before discussing arguments that sterilization might be considered, consider the position that because sterilization is never acceptable therefore no procedures should be in place to consider this eventuality. The subcommittee proposed the form precisely because sterilizations were being performed and they were concerned about the lack of a formal procedure and the lack of protection of the right of disabled people. An absolute position that because sterilization is uniformly wrong in effect argues for the current state of affairs sterilizations are being performed in the absence of any regulation.

Any discussion of involuntary sterilization of the disabled must acknowledge massive abuse and overreach that occurred in the last century with the advent of the eugenics movement. Washington State still has a law on the books from 1909 allowing the sterilization of criminals and the disabled. Tens of thousands of the 'feeble minded' were sterilized and the overreach of these actions remains a mark of shame.

Consider the arguments that sterilization might be a reasonable option in some cases. Virtually every civilized society recognizes the concept of the age of consent. In this state intercourse with girls under the age of 16 is considered rape because the girl is too young to give informed consent. While one may argue about the exact age, it is clear that there is an age, certainly 10 or 11 where a girl is never able to give informed consent for sex.

I would argue that there is also a level of disability where a woman regardless of age cannot give informed consent. We might argue about what this level is, clearly we might decide that a woman with level of developmental disability comparable to a 15 year old could give informed consent. But there is little doubt that there are individuals lacking the intellectual power to give informed consent.

The levels of sexual abuse among women with intellectual disabilities is very high. One [study](#) places the rate of sexual abuse among women with developmental disabilities at 83%. Other [work](#) finds that 90% of people with developmental disability will experience sexual abuse at some time in their lives with 49% reporting 10 or more incidents. With these numbers the issue is not if sexual abuse will occur but when.

Another issue is that there are [cases](#) women with intellectual disabilities react inappropriately aggressively pursuing men. The fact that about 50% of people with intellectual disabilities who are incarcerated are convicted of sexual offenses points to the issue that a significant fraction of the community with disabilities may have problems with control of sexual behavior.

With the developmentally disabled there is a high likelihood that women with developmental disabilities will be sexually abused and may lack the capacity to make reasonable judgements or to the resources to bear and raise children. While some parents with intellectual disabilities may have the resources to bear and successfully raise children and the state should bend over backwards to support this behavior others lack this capacity.

Given the very real issues with sexuality and the disabled community and the fact that there is a not insignificant subset who lack the resources to give what society would consider as 'consent' let alone the much more demanding responsibility for raising a child it is reasonable that careful consideration be given to the interests of the individual and of society as a whole. After careful consideration sterilization might, in some cases, be the best and most appropriate option.

If sterilization is accepted as the best option in some cases procedures to make sure the procedure is applied only after consideration of all other options and that following current state law, a committed and forceful advocate for the interests of the disabled person as an active participant in the hearings. The form proposed by the Guardianship committee is a good first step toward safeguarding the rights of the affected woman.

It is also worth recognizing that the motivating factor in the proposal is the fact that the medical community is performing sterilizations without following the guidelines in state law. Changing the behavior of this community should be a major goal.

References

State Law - Guardianship of KM <https://casetext.com/case/guardianship-of-km>

Sexual Abuse -

<https://www.thl.fi/documents/470564/817072/Disabilitiesandsexualassault.pdf/f10b347e-69d9-48ca-b6db-a00a4a1cd70a>

<https://www.professionaltrainingresourcesinc.com/wp-content/uploads/People-with-Developmental-Disabilities-and-Sexual-Abuse.pdf>

Pursuit - https://scholar.google.com/scholar_case?case=9588899653522111810

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The procedure known as Ashley's treatment is massively more radical than simple sterilization. It involves removal of many organs to essentially prevent puberty. Sterilization is a minor and incidental side effect of a very radical procedure. I believe this procedure raises many ethical issues that fall outside of a debate on simple sterilization and should be excluded from any discussion of sterilization.

This is [‘Ashley’](#) a child born in 1997 in Seattle. She cannot move, talk or feed herself. Her parents call her “pillow angel” because once placed, usually on a pillow, she will remain. They have a [blog](#) talking about her and their lives. At age 6 her parents, in cooperation with doctors at Children's Hospital performed a [series of operations](#) to arrest growth and puberty. Their concerns were that someone would have to care for her for the rest of her life and that being smaller (and cuter) would make it easier for whoever was providing care. Ashley [started puberty at age 6](#), a situation not uncommon in similar cases.



Ashley at age 6

There are huge ethical issues. The case attracted national and international attention. The hospital's medical ethics committee.



Ashley at age 20

Yes, in the past the eugenics movement had a serious effort to sterilize the 'feeble minded'. Yes there have been misguided attempts to conduct sterilization on the developmentally disabled and we need to oppose those or at least fight for severe restrictions.

Ashley and people like Ashley are a completely different case. We do not know these people. We might know their parents. They care very deeply about their children and are concerned about their having the best life and the best care possible. The issue is an ethical minefield but I feel for the parents and their hard decision.

References on Ashley's treatment

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<http://content.time.com/time/nation/article/0,8599,1574851,00.html>

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<http://www.pillowangel.org/>

End references on Ashley's treatment

The commission could make a public comment of this issue but in addition individual commissioners could make comments as individuals. I propose the following comment.

Historically sterilization of people with disabilities has been widely abused. The American Eugenics movement saw over 60,000 people forcibly sterilized on the basis of disability or race, usually without their knowledge, and directly inspired the Nazi sterilization and mass extermination of disabled people. In modern times sterilization has been applied to women in prison and has been offered as an alternative to prison.

State law in Washington requires a court hearing and a vigorous advocate representing the interests of the disabled person. These legal rights are not infrequently ignored and sterilizations are performed without a formal hearing and formal advocacy of the interests of the affected party.

The commission feels that sterilization is an extreme procedure. Sterilization should never be performed when the person affected can understand the concept and does not consent to the procedure. Professional neutral advocates should be required to insure that individuals are not pressured to consent to the procedure.

In cases where individuals are incapable of responding or understanding the process of sterilization and reproduction extreme care should be taken to determine and defend the interests of the affected person. It is important to insure that sterilization procedures pass full legal muster and in the cases of more radical procedures review by a medical ethics board.

The fact that there are doctors performing sterilizations on disabled individuals without adequate consent and legal process speaks for a need to involve the medical community in the process of insuring that proper legal procedures are followed.