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OFFICE OF THE PRESIDENT

No. 1123.

4 September 1998

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

No. 44 of 1998: Sterilisation Act, 1998.

KANTOOR VAN DIE PRESIDENT

No. 1123.

4 September 1998

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 44 van 1998: Wet op Sterilisasie, 1998.

*(English text signed by the President.)
(Assented to 27 August 1998.)*

ACT

To provide for the right to sterilisation; to determine the circumstances under which sterilisation may be performed and, in particular, the circumstances under which sterilisation may be performed on persons incapable of consenting or incompetent to consent due to mental disability; and to provide for matters connected therewith.

PREAMBLE

RECOGNISING that the Constitution protects the rights to bodily and psychological integrity of persons which includes the right to make decisions concerning reproduction and the right to security in and control over their bodies;

RECOGNISING that both women and men have the right to be informed of and to have access to safe, effective, affordable and acceptable methods of fertility regulation; and

WHEREAS the inability to give consent should not automatically entail the loss of constitutional rights and whereas it is necessary to ensure that mentally disabled persons are able to exercise these rights as far as possible;

THEREFORE, in order to restore, protect and promote the human dignity of persons, in particular those who are incapable of consenting or who are mentally disabled, by ensuring that decisions about sterilisation are made in a manner that is responsible and considerate,

BE IT ENACTED by Parliament of the Republic of South Africa, as follows:—

Definitions

1. In this Act, unless the context indicates otherwise—
 - (i) “consent” means the consent contemplated in section 4; (viii) 5
 - (ii) “medical practitioner” means a person registered as such in terms of the Health Professions Act, 1974 (Act No. 56 of 1974); (i)
 - (iii) “Member of the Executive Council” means a member of the Executive Council responsible for health in a province; (ii)
 - (iv) “Minister” means the Minister of Health; (iv) 10
 - (v) “nurse” means a person registered as such in terms of the Nursing Act, 1978 (Act No. 50 of 1978), and who holds a qualification in psychiatry; (ix)
 - (vi) “prescribed” means prescribed by regulation made under this Act; (x)
 - (vii) “psychiatrist” means a person registered as such in terms of the Health Professions Act, 1974 (Act No. 56 of 1974); (v) 15
 - (viii) “psychologist” means a person registered as such in terms of the Health Professions Act, 1974 (Act No. 56 of 1974); (vi)

(Engelse teks deur die President geteken.)
(Goedgekeur op 27 Augustus 1998.)

WET

Om voorsiening te maak vir die reg tot sterilisasie; om die omstandighede waaronder sterilisasie uitgevoer mag word, te bepaal en, in die besonder, die omstandighede waaronder sterilisasie uitgevoer mag word op iemand wat nie in staat is om toe te stem nie of onbevoeg is om toe te stem weens verstandelike gestremdheid; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

AANHEF

IN DIE BESEF dat die Grondwet die regte tot liggaamlike en psigiese integriteit van persone beskerm wat die reg insluit om besluite te neem oor voortplanting en die reg op sekuriteit van en beheer oor die eie liggaam;

IN DIE BESEF dat beide vrouens en mans die reg het om ingelig te word oor en om toegang te hê tot veilige, doeltreffende, bekostigbare en aanvaarbare metodes van vrugbaarheidsbeheer; en

AANGESIEN die onvermoë om toestemming te gee nie outomaties die verlies van grondwetlike regte tot gevolg behoort te hê nie en aangesien dit nodig is om te verseker dat verstandelik gestremde persone sover moontlik in staat is om hul regte uit te oefen;

DERHALWE, ten einde die menswaardigheid van persone, in die besonder diegene wat nie in staat is om toe te stem nie of wat verstandelik gestremd is, te herstel, te beskerm en te bevorder, deur te verseker dat besluite oor sterilisasie op 'n verantwoordelike en oorwoë wyse geneem word,

WORD DAAR BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Woordomskrywing

1. In hierdie Wet, tensy uit die samehang anders blyk, beteken—
- 5 (i) “geneesheer” iemand wat as sodanig ingevolge die Wet op Gesondheidsbe-
roepe, 1974 (Wet No. 56 van 1974), geregistreer is; (ii)
 - (ii) “Lid van die Uitvoerende Raad” ’n lid van die Uitvoerende Raad verant-
woordelik vir gesondheid in ’n provinsie; (iii)
 - 10 (iii) “maatskaplike werker” iemand wat as sodanig ingevolge die Wet op
Maatskaplike Werk, 1978 (Wet No. 110 van 1978), geregistreer is; (ix)
 - (iv) “Minister” die Minister van Gesondheid; (iv)
 - (v) “psigiater” iemand wat as sodanig ingevolge die Wet op Gesondheidsbe-
roepe, 1974 (Wet No. 56 van 1974), geregistreer is; (vii)
 - 15 (vi) “sielkundige” iemand wat as sodanig ingevolge die Wet op Gesondheidsbe-
roepe, 1974 (Wet No. 56 van 1974), geregistreer is; (viii)
 - (vii) “sterilisasie” ’n chirurgiese operasie wat uitgevoer word ten einde die
persoon op wie dit uitgevoer word, vir voortplanting onbekwaam te maak,
maar sluit nie die verwydering van ’n gonade in nie; (x)
 - (viii) “toestemming” die toestemming beoog in artikel 4; (i)

- (ix) "social worker" means a person registered as such in terms of the Social Work Act, 1978 (Act No. 110 of 1978); (iii)
- (x) "sterilisation" means a surgical procedure performed for the purpose of making the person on whom it is performed incapable of procreation, but does not include the removal of any gonad. (vii) 5

Persons capable of consenting

2. (1) No person is prohibited from having sterilisation performed on him or her if he or she is—
- (a) capable of consenting; and
 - (b) 18 years or above. 10
- (2) A person capable of consenting may not be sterilised without his or her consent.
- (3) (a) Sterilisation may not be performed on a person who is under the age of 18 years except where failure to do so would jeopardize the person's life or seriously impair his or her physical health.
- (b) Section 3(1)(a) and (2) will apply with the necessary changes. 15

Person incapable of consenting or incompetent to consent due to severe mental disability

3. (1) Sterilisation may be performed on any person who is incapable of consenting or incompetent to consent—
- (a) upon a request to the person in charge of a hospital and with the consent of a— 20
 - (i) parent;
 - (ii) spouse;
 - (iii) guardian; or
 - (iv) curator;
 - (b) if a panel contemplated in subsection (2) after considering all relevant 25
 information, including the fact that—
 - (i) the person is 18 years of age, unless the physical health of the person is threatened; and
 - (ii) there is no other safe and effective method of contraception except 30
 sterilisation,
 concurs that sterilisation may be performed; and
 - (c) if the person is mentally disabled to such an extent that such a person is incapable of—
 - (i) making his or her own decision about contraception or sterilisation;
 - (ii) developing mentally to a sufficient degree to make an informed 35
 judgement about contraception or sterilisation; and
 - (iii) fulfilling the parental responsibility associated with giving birth.
- (2) The person in charge of a hospital contemplated in subsection (1) must upon request, as prescribed for sterilisation, convene a panel which will consist of—
- (a) a psychiatrist, or a medical practitioner if no psychiatrist is available; 40
 - (b) a psychologist or a social worker; and
 - (c) a nurse.
- (3) Where a person to be sterilised is in custodial care, no member of the panel may be an employee of the custodial institution.
- (4) If sterilisation is to be performed in a private health care facility, the members of 45 the panel may not be employees of, or have a financial interest in, that facility.
- (5) The person performing the sterilisation must ensure that the method of sterilisation used holds the least health risk to the person on whom sterilisation is performed.
- (6) Sterilisation may not be performed in terms of subsection (1) unless the person 50 suffers from a severe mental disability.
- (7) For the purposes of this section, "severe mental disability" means a range of functioning extending from partial self-maintenance under close supervision, together with limited self-protection skills in a controlled environment through limited self care

- (ix) "verpleegkundige" iemand wat as sodanig ingevolge die Wet op Verpleging, 1978 (Wet No. 50 van 1978), geregistreer is en wat 'n kwalifikasie in psigiatrie het; (v)
- 5 (x) "voorgeskrif" voorgeskryf by regulasie kragtens hierdie Wet uitgevaardig. (vi)

Persone in staat om toe te stem

2. (1) Niemand word verbied om 'n sterilisasie op hom of haar te laat uitvoer nie indien hy of sy—
- (a) in staat is om toe te stem; en
- 10 (b) 18 jaar of ouer is.
- (2) Iemand wat in staat is om toe te stem, mag nie sonder sy of haar toestemming gesteriliseer word nie.
- (3) (a) Sterilisasie mag nie uitgevoer word op 'n persoon onder die ouderdom van 18 jaar nie behalwe waar die versuim om aldus te doen die persoon se lewe in gevaar sal stel of sy of haar liggaamlike gesondheid ernstig sal benadeel.
- 15 (b) Artikel 3(1)(a) en (2) sal met die nodige veranderings van toepassing wees.

Persoon nie in staat of onbevoeg om toe te stem weens erge verstandelike gestremdheid

3. Sterilisasie kan uitgevoer word op enigiemand wat nie in staat is nie of onbevoeg
- 20 is om toe te stem—
- (a) op 'n versoek tot die persoon in beheer van 'n hospitaal en met die toestemming van 'n—
- (i) ouer;
- (ii) eggenoot;
- 25 (iii) voog; of
- (iv) kurator;
- (b) indien 'n paneel in subartikel (2) beoog na oorweging van alle tersaaklike inligting, met inbegrip van die feit dat—
- (i) die persoon 18 jaar oud is, tensy die liggaamlike gesondheid van die
- 30 persoon bedreig word; en
- (ii) daar geen ander veilige en doeltreffende metode van geboortebepkering is nie, saamstem dat sterilisasie uitgevoer mag word; en
- (c) indien die persoon in so 'n mate verstandelik gestremd is dat sodanige
- 35 persoon nie in staat is om—
- (i) sy of haar eie besluit te neem rakende geboortebepkering of sterilisasie nie;
- (ii) verstandelik in 'n voldoende mate te ontwikkel om 'n ingeligte oordeel rakende geboortebepkering of sterilisasie te fel nie; en
- 40 (iii) die ouerlike verantwoordelikheid wat met die skenk van lewe gepaard gaan, te vervul nie.
- (2) Die persoon in beheer van 'n hospitaal beoog in subartikel (1) moet op versoek, soos voorgeskryf vir sterilisasie, 'n paneel byeenroep wat bestaan uit—
- (a) 'n psigiater, of 'n geneesheer indien geen psigiater beskikbaar is nie;
- 45 (b) 'n sielkundige of 'n maatskaplike werker; en
- (c) 'n verpleegkundige.
- (3) Waar 'n persoon wat gesteriliseer staan te word in bewaringsorg is, mag geen lid van die paneel 'n werknemer van die bewaringsinstansie wees nie.
- (4) Indien sterilisasie in 'n private gesondheidsorgfasiliteit uitgevoer gaan word, mag
- 50 lede van die paneel nie werknemers wees van, of 'n finansiële belang hê in, daardie fasiliteit nie.
- (5) Die persoon wat die sterilisasie uitvoer, moet verseker dat die metode van sterilisasie wat gebruik word die kleinste gesondheidsrisiko inhou vir die persoon op wie die sterilisasie uitgevoer word.
- 55 (6) Sterilisasie mag nie ingevolge subartikel (1) uitgevoer word nie, tensy die persoon lei aan 'n erge verstandelike gestremdheid.
- (7) By die toepassing van hierdie artikel beteken "erge verstandelike gestremdheid" 'n omvang van funksionering wat strek van gedeeltelike selfonderhoud onder noukeurige toesig, tesame met beperkte selfbeskermingsvaardighede in 'n beheerde

and requiring constant aid and supervision, to severely restrained sensory and motor functioning and requiring nursing care.

Consent

4. For the purposes of this Act, "consent" means consent given freely and voluntarily without any inducement and may only be given if the person giving it has— 5
- (a) been given a clear explanation and adequate description of the—
 - (i) proposed plan of the procedure; and
 - (ii) consequences, risks and the reversible or irreversible nature of the sterilisation procedure;
 - (b) been given advice that the consent may be withdrawn any time before the 10 treatment; and
 - (c) signed the prescribed consent form.

Place where sterilisation may take place

5. (1) Sterilisation contemplated in section 3(1) may be performed only at a facility designated in writing for that purpose by the member of the Executive Council. 15
- (2) The member of the Executive Council may designate any facility in terms of subsection (1) subject to such conditions and requirements as he or she may consider necessary for achieving the objects of this Act.
- (3) The member of the Executive Council may, if the conditions or requirements contemplated in subsection 2 are not complied with, withdraw any designation under 20 this section after giving reasonable notice of the intended withdrawal to the person in charge of the facility in question.

Keeping of records

6. The person in charge of a facility referred to in section 5 or a person designated for such purpose must be notified as prescribed of every sterilisation performed in that 25 facility and must keep a record of every such sterilisation.

Delegation

7. (1) The member of the Executive Council may in writing, on such conditions as he or she may determine, delegate to the head of a provincial department of health any power conferred upon him or her under this Act. 30
- (2) The member of the Executive Council is not divested of any power delegated by him or her.

Regulations

8. The Minister may, after consultation with the members of the Executive Council, make regulations relating to any matter which he or she may consider necessary or 35 expedient to prescribe for achieving the objects of this Act.

Offences and penalties

9. Any person who contravenes or fails to comply with the provisions of this Act is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years. 40

Repeal of laws

10. This Act repeals any law relating to sterilisation which applied prior to the commencement of this Act.

Short title and commencement

11. This Act is called the Sterilisation Act, 1998, and comes into effect on a date fixed 45 by the President by proclamation in the *Gazette*.

omgewing deur beperkte selfsorg en wat konstante hulp en toesig benodig, tot erge beperkte sensoriese en motoriese funksionering en wat verpleegsorg benodig.

Toestemming

4. By die toepassing van hierdie Wet beteken “toestemming” toestemming wat
5 vrylik en vrywillig sonder enige oorrëding gegee is en dit mag slegs gegee word indien
die persoon wat dit gee—
- (a) 'n duidelike verduideliking en voldoende beskrywing van die—
 - (i) voorgestelde plan van die prosedure gegee is; en
 - (ii) gevolge, risiko's en die herroeplike of onherroeplike aard van die
10 sterilisasieprosedure gegee is;
 - (b) geadviseer is dat die toestemming te eniger tyd voor die behandeling
teruggetrek mag word;
 - (c) die voorgeskrewe toestemmingsvorm onderteken het.

Plek waar sterilisasie mag plaasvind

- 15 5. (1) Sterilisasie beoog in artikel 3(1) mag slegs uitgevoer word by 'n inrigting wat
skriftelik vir daardie doel deur die lid van die Uitvoerende Raad aangewys is.
(2) Die lid van die Uitvoerende Raad kan 'n inrigting ingevolge subartikel (1)
aanwys behoudens die voorwaardes en vereistes wat hy of sy nodig ag ten einde die
oogmerke van hierdie Wet te bereik.
- 20 (3) Die lid van die Uitvoerende Raad kan, indien nie aan die voorwaardes of
vereistes in subartikel (2) beoog, voldoen is nie, 'n aanwysing kragtens hierdie artikel
terugtrek nadat redelike kennis gegee is van die beoogde terugtrekking aan die persoon
in beheer van die betrokke inrigting.

Hou van rekords

- 25 6. Die persoon in beheer van 'n inrigting in artikel 5 bedoel of 'n persoon vir daardie
doel aangewys, moet soos voorgeskryf in kennis gestel word van elke sterilisasie wat
in daardie inrigting uitgevoer word en moet rekord hou van elke sodanige sterilisasie.

Delegering

- 30 7. (1) Die lid van die Uitvoerende Raad kan skriftelik, op die voorwaardes wat hy
of sy bepaal, enige bevoegdheid wat kragtens hierdie Wet aan hom of haar opgedra is,
delegeer aan die hoof van 'n provinsiale departement van gesondheid.
(2) Die lid van die Uitvoerende Raad word nie ontnem van enige bevoegdheid wat
deur hom of haar gedelegeer is nie.

Regulasies

- 35 8. Die Minister mag, na oorlegpleging met die lede van die Uitvoerende Raad,
regulasies uitvaardig betreffende enige aangeleentheid wat hy of sy nodig of dienstig
ag om voor te skryf ten einde die oogmerke van hierdie Wet te bereik.

Misdrywe en strawwe

- 40 9. Enigiemand wat die bepalings van hierdie Wet oortree of versuim om daaraan te
voldoen, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete of met
gevangenisstraf vir 'n tydperk van hoogstens vyf jaar.

Herroeping van wette

10. Hierdie Wet herroep enige wet oor sterilisasie wat van toepassing was voor die
inwerkingtreding van hierdie Wet.

45 Kort titel en inwerkingtreding

11. Hierdie Wet heet die Wet op Sterilisasie, 1998, en tree in werking op 'n datum
wat die President by proklamasie in die *Staatskoerant* bepaal.

