

Commissioner Rebekah Zinn
Chair, Washington State Pattern Forms Committee
VIA ELECTRONIC MAIL: zinnr@co.thurston.wa.us

Dear Ms. Zinn,

The Autistic Self Advocacy Network (ASAN) and the undersigned disability rights advocacy organizations write to you regarding your recent proposal to create court forms specific to sterilization of people under guardianship. Although we share your commitment to ensure that no individual under guardianship is illegally subjected to sterilization, we have significant concerns about your proposal. In practice, such forms may have the unintended effect of reducing court scrutiny of sterilization requests and enabling guardians to obtain authorization for such sterilizations based on an incomplete and superficial review of the circumstances. We instead recommend that the committee refocus its efforts toward training and outreach, including publication of lay-accessible educational materials on the law as it relates to disabled individuals' reproductive rights.

People with disabilities have historically faced steep opposition to our fundamental right to have children. Thousands of people with disabilities were involuntarily sterilized during the twentieth century, due to prejudice and the desire of eugenicists to eliminate us entirely.¹ In the present, some people with disabilities must fight in the courts for years both for the right to become parents and the right to take care of our own offspring.²

Washington recognized these infringements on the rights of people with disabilities and has put safeguards in place that protect people with disabilities from involuntary sterilization. The Washington Supreme Court recognized, in the 1980 case *In Re the Guardianship of Hayes*, that sterilization is legally permissible only when a court has found, using an extremely high "clear and cogent evidence" standard of proof for their evaluation, that it is absolutely necessary in order to protect the person's best interests and no alternatives exist.³ As disability rights advocacy organizations, we would note that forced sterilization can never be considered ethically permissible.

We strongly caution against laws and policies that would make it easier for doctors to sterilize people with disabilities based on the consent of parents or guardians and without the affirmative, informed consent of the person with a disability. We have reviewed the proposed forms and have significant concerns that, contrary to their original intent, they may in fact have the result of "fast-

¹ Alexandra Minna Stern, *That Time the United States Sterilized 60,000 of Its Citizens*, Huffington Post (Jan. 7, 2016 11:53PM), https://www.huffingtonpost.com/entry/sterilization-united-states_us_568f35f2e4b0c8beacf68713.

² See generally Nat'l Council on Disability, *Rocking the Cradle: Ensuring the Rights of Parents with Disabilities and Their Children* 15 (Sep. 27, 2012), <https://www.ncd.gov/publications/2012/Sep272012>.

³ See *In Re the Guardianship of Hayes*, 608 P.2d 635, 639, 640 (Wash. 1980) ("the overwhelming weight of opinion of those who have studied the problem appears to be that consent of a parent or guardian is a questionable or inadequate basis for sterilization").

tracking” sterilization requests by encouraging courts to take a “check the boxes” approach to sterilization. For example, the “Medical Report” form provides between three and six lines for such questions as: the relevant history underlying a sterilization request, the reason underlying the request, the person’s ability to care for a child, and the person’s ability to understand the decision regarding sterilization. This format encourages doctors, guardians, and judges to think of these as “short-answer” questions when in fact they are not. It is simply impossible to boil down such questions as a human being’s ability to make reproductive decisions and capacities as a potential parent into such short answers.

We also are concerned that, because these forms are directed at guardians who have already chosen to seek a court order for sterilization, they are not likely to reach guardians or doctors who are unaware of the need for such an order. Such individuals are far more likely to be reached through strategies such as proactive outreach to the medical community and ensuring that all guardianship orders include a more prominent disclaimer regarding the guardian’s inability to consent to medical interventions for the purpose of permanent sterilization.

We appreciate that the state of Washington is considering ways to prevent illegal, involuntary sterilizations of people with disabilities, which infringe on the fundamental rights of people with disabilities. We oppose the creation of court forms specific to court authorization of involuntary sterilization and recommend that you suspend the development of these forms. We urge you to instead consider initiatives that will educate parents, guardians, and doctors on the law without inadvertently reducing the degree of scrutiny that courts must apply to these cases.⁴ If you would like to reach out to us on our positions with respect to guardianship and reproductive rights, please contact Samantha Crane at ASAN, scrane@autisticadvocacy.org.

Sincerely,

Autistic Self Advocacy Network (ASAN)

National Disability Rights Network (NDRN)

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The Arc of the United States

American Association of People with Disabilities (AAPD)

American Network of Community Options and Resources (ANCOR)

⁴ We additionally support the recommendations outlined in Disability Rights Washington’s letter to you, which can be found at: <https://www.disabilityrightswa.org/2017/12/01/call-for-input-sterilization-order/>.

National Council on Independent Living (NCIL)

Bazelon Center for Mental Health Law

Disability Rights Education and Defense Fund (DREDF)

Center for Public Representation

Total Living Concept