

Eugenical Sterilization in the United States

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A. PRINCIPLES SUGGESTED FOR A STANDARD STATE LAW.

It may be safely stated that the experimental period for eugenical sterilization legislation has been passed so that it is now possible to enact a just and eugenically effective statute on this subject. The following outline sets forth the underlying principles which should guide such a law.

Persons Subject. All persons in the State who, because of degenerate or defective hereditary qualities are potential parents of socially inadequate offspring, regardless of whether such persons be in the population at large or inmates of custodial institutions, regardless also of the personality, sex, age, marital condition, race, or possessions of such person. Standards established and terms defined by the statute.

Executive Agencies Provided. State Eugenist who shall devote his entire time and attention to his office, aided by an ample corps of assistants, selected by appointment or civil service according to the customs of the particular state.

Basis of Selection: Procedure. 1. Investigation by State Eugenist upon his own initiative or upon complaints lodged or information given by an official, an organization or a citizen. 2. Opinion concerning a particular individual in reference to "potential parenthood of socially inadequate offspring" rendered after scientific investigation, by State Eugenist to Court of Record. 3. Early date set by court for hearing case. 4. Court to notify and summon interested parties. 5. Due provision for legal counsel for the defendant and for trial by jury. 6. Judgment: Order for eugenical sterilization if the contention of the State Eugenist is upheld. 7. Execution of the order under the supervision and responsibility of the State Eugenist. 8. In case of inmates of institutions, execution of order may be suspended until inmate is about to be released, allowing ample time for convalescence. 9. Provision for the study of mental, moral, physiological, social and economic effects of different types of sterilization.

Type of Operation Authorized. 1. "Surgical operation upon or medical treatment of the reproductive organs of the human male or female in consequence of which the power to procreate offspring is permanently nullified." 2. Specific type of operation or treatment in each case to be determined by the State Eugenist upon the advice of

duly qualified physicians and surgeons. 3. Due provision for safe, skillful and humane operation and treatment.

State's Motive. Purely eugenic, that is, to prevent certain degenerate human stock from reproducing its kind. Absolutely no punitive element.

Appropriations Available for Enforcing the Act. Ample appropriations for the maintenance of the activities of the State Eugenist as a permanent and effective institution.

B. FULL TEXT FOR A MODEL STATE LAW.

AN ACT to prevent the procreation of persons socially inadequate from defective inheritance, by authorizing and providing for the eugenical sterilization of certain potential parents carrying degenerate hereditary qualities.

Be It Enacted By The People Of The State of that:

Section 1. Short Title. This Act shall be known as the "Eugenical Sterilization Law."

Section 2. Definitions. For the purpose of this Act, the terms (a) **socially inadequate person**, (b) **socially inadequate classes**, (c) **heredity**, (d) **potential parent**, (e) to **procreate**, (f) **potential parent of socially inadequate offspring**, (g) **cacogenic person**, (h) **custodial institution**, (i) **inmate**, and (j) **eugenical sterilization**, are hereby defined as follows:

(a) A **socially inadequate person** is one who by his or her own effort, regardless of etiology or prognosis, fails chronically in comparison with normal persons, to maintain himself or herself as a useful member of the organized social life of the state; **provided** that the term **socially inadequate** shall not be applied to any person whose individual or social ineffectiveness is due to the normally expected exigencies of youth, old age, curable injuries, or temporary physical or mental illness, in case such ineffectiveness is adequately taken care of by the particular family in which it occurs.

(b) The **socially inadequate classes**, regardless of etiology or prognosis, are the following: (1) Feeble-minded; (2) Insane, (including the psychopathic); (3) Criminalistic (including the delinquent and wayward); (4) Epileptic; (5) Inebriate (including drug-habitues); (6) Diseased (including the tuberculous, the syphilitic, the leprous, and others with chronic, infectious and legally segre-

gable diseases); (7) Blind (including those with seriously impaired vision); (8) Deaf (including those with seriously impaired hearing); (9) Deformed (including the crippled); and (10) Dependent (including orphans, ne'er-do-wells, the homeless, tramps and paupers).

(c) **Heredity** in the human species is the transmission, through spermatozoön and ovum, of physical, physiological and psychological qualities, from parents to offspring; by extension it shall be interpreted in this Act to include also the transmission post-conceptionally and ante-natally of physiological weakness, poisons or infections from parent or parents to offspring.

(d) A **potential parent** is a person who now, or in the future course of development, may reasonably be expected to be able to procreate offspring.

(e) **To procreate** means to beget or to conceive offspring, and applies equally to males and females.

(f) A **potential parent of socially inadequate offspring** is a person who, regardless of his or her own physical, physiological or psychological personality, and of the nature of the germ-plasm of such person's co-parent, is a potential parent at least one-fourth of whose possible offspring, because of the certain inheritance from said parent of one or more inferior or degenerate physical, physiological or psychological qualities would, on the average, according to the demonstrated laws of heredity, most probably function as socially inadequate persons; or at least one-half of whose possible offspring would receive from said parent, and would carry in the germ-plasm but would not necessarily show in the personality, the genes or genes-complex for one or more inferior or degenerate physical, physiological or psychological qualities, the appearance of which quality or qualities in the personality would cause the possessor thereof to function as a socially inadequate person, under the normal environment of the state.

(g) The term **cacogenic person**, as herein used, is a purely legal expression, and shall be applied only to persons declared, under the legal procedure provided by this Act, to be potential parents of socially inadequate offspring.

(h) A **custodial institution** is a habitation which, regardless of whether its authority or support be public or private, provides (1) food and lodging, and (2) restraint, treatment, training, care or residence for one or

more socially inadequate inmates; provided that the term **custodial institution** shall not apply to a private household in which the socially inadequate member or members are close blood-kin or marriage relations to, or legally adopted by, an immediate member of the care-taking family.

(i) An **inmate** is a socially inadequate person who is a prisoner, patient, pupil, or member of, or who is otherwise held, treated, trained, cared for, or resident within a custodial institution, regardless of whether the relation of such person to such institution be voluntary or involuntary, or that of pay or charity.

(j) **Eugenical Sterilization** is a surgical operation upon or the medical treatment of the reproductive organs of the human male or female, in consequence of which the power to procreate offspring is surely and permanently nullified; provided, that as used in this Act the term **eugenical sterilization** shall imply skillful, safe and humane medical and surgical treatment of the least radical nature necessary to achieve permanent sexual sterility and the highest possible therapeutic benefits depending upon the exigencies of each particular case.

Section 3. Office of State Eugenist. There is hereby established for the State of the office of State Eugenist, the function of which shall be to protect the state against the procreation of persons socially inadequate from degenerate or defective physical, physiological or psychological inheritance.

Section 4. Qualifications of State Eugenist. The State Eugenist shall be a trained student of human heredity, and shall be skilled in the modern practice of securing and analyzing human pedigrees; and he shall be required to devote his entire time and attention to the duties of his office as herein contemplated.

Section 5. Term of Office, Appointment, and Responsibility. The State Eugenist shall be appointed by the Governor, with the consent of the Senate, shall be responsible directly to the Governor, and shall hold office until removed by death, resignation, or until his successor shall have been duly appointed.

Section 6. Seal. The Governor of the State shall cause a seal to be fashioned and made for the Office of the State Eugenist, which seal shall be duly entrusted to the State Eugenist and shall constitute the evidence of authority under this Act.

Section 7. Duties of State Eugenicist. It shall be the duty of the State Eugenicist:

(a) To conduct field-surveys seeking first-hand data concerning the hereditary constitution of all persons in the State who are socially inadequate personally or who, although normal personally, carry degenerate or defective hereditary qualities of a socially inadequating nature, and to cooperate with, to hear the complaints of, and to seek information from individuals and public and private social-welfare, charitable and scientific organizations possessing special acquaintance with and knowledge of such persons, to the end that the State shall possess equally accurate data in reference to the personal and family histories of all persons existing in the State, who are potential parents of socially inadequate offspring, regardless of whether such potential parents be members of the population at large or inmates of custodial institutions, regardless also of the personality, sex, age, marital condition, race or possessions of such persons.

(b) To examine further into the natural physical, physiological and psychological traits, the environment, the personal histories, and the family-pedigrees of all persons existing in the State, whether in the population at large or as inmates of custodial institutions, who reasonably appear to be potential parents of socially inadequate offspring, with the view to determining more definitely whether in each particular case the individual is a cacogenic person within the meaning of this Act.

(c) To maintain a roster of all public and private custodial institutions in the state, and to require from the responsible head of each such institution, a record by full names and addresses, social and medical diagnosis and other pertinent data in reference to all accessions and losses of inmates as such occur from time to time; the said State Eugenicist may require a copy of any record which the particular institution may possess in reference to the case, family or institutional histories of any inmate which the State Eugenicist may name.

(d) To follow up, so far as possible, the case-histories of persons eugenically sterilized under this Act, with special reference to their social, economic, marital and health records, and to investigate the specific effects of eugenical sterilization.

(e) To preserve as property of the State complete records of all investigations and transactions of the office of State Eugeni-

cist, and annually to render to the Governor in writing a true and complete report thereof.

(f) To perform such other duties as are enumerated elsewhere in this Act.

Section 8. Coöperation by Custodial Institutions. For the purpose of securing the facts essential to the determination required by this Act, the responsible head of any public or private custodial institution within the State shall, on demand, render promptly to the State Eugenicist all reports herein contemplated, and shall extend to said Officer and his duly appointed agents ready access to all records and inmates of the particular institution.

Section 9. Power to Administer Oaths and to Make Arrests. The State Eugenicist and his assistants appointed in writing by him for the purpose, shall have power to administer oaths, to subpoena and to examine witnesses under oath, and to make arrests.

Section 10. Opinion of State Eugenicist. If, after an investigation contemplated by this Act, the State Eugenicist is of the opinion that a particular subject of such investigation, which such subject is hereinafter called the propositus, is a potential parent of socially inadequate offspring, it shall be the duty of said State Eugenicist to present such opinion in writing, to a court of record in the County wherein the particular propositus resides, sojourns, is held or is apprehended; provided that such opinion shall be accompanied by the historical and biological evidence upon which such opinion is based, and by a petition to said court praying for the legal determination of the question of fact, whether the particular propositus is, as held in the opinion, a potential parent of socially inadequate offspring; provided that in case of apparent oversight or dereliction by the State Eugenicist, any citizen of the state over twenty-one years of age, of sound mind and respected character, may institute proceedings for the legal determination of the question in fact, whether a particular named person is, as such complaining citizen may allege, a potential parent of socially inadequate offspring, by presenting to the court of record in the county in which the particular propositus lives or sojourns, a statement duly sworn to relating the evidence upon which the particular allegation is based, and praying for a legal determination of the above-stated question of fact, whereupon within thirty days of the filing of such petition, such court shall consider the adequacy of such evidence and, in its discretion,

shall dismiss the case or shall command the State Eugenicist to make the eugenical investigation provided for by this Act in reference to the particular propositus, and to return his findings back to the court issuing such command, which findings shall be returned within ninety days of the issuing of such command and shall contain an opinion by the State Eugenicist as to whether the particular propositus is in fact a potential parent of socially inadequate offspring; **provided** that if such report presents the opinion that the particular propositus is a potential parent of **socially** inadequate offspring, the legal and eugenical processes in the case shall proceed as in other cases as provided by this Act; **provided** that if such report presents the opinion that the particular propositus is not a potential parent of socially inadequate offspring, the court may, in its discretion, dismiss the case or may order the legal and eugenical processes to proceed as in other cases provided by this Act.

Section 11. Appointment of Date for Hearing. Within ten days after the presentation of the written opinion by the State Eugenicist holding a particular propositus to be a potential parent of socially inadequate offspring, or the presentation of a negative opinion by the State Eugenicist contrarily to which opinion the court determines to proceed, it shall be the duty of the court to which such opinion is presented to appoint a time for hearing the case, which appointed time shall be within thirty days of the appointing day if the court receiving the opinion is in continuous session, and not later than the next regular session, if said court is held periodically.

Section 12. Notification of Parties Concerned. It shall be the further duty of said court to notify the propositus or the legal guardian, custodian, or next friend of said propositus, the Attorney-General of the State, and the State Eugenicist, concerning the time, place and nature of the contemplated hearing; to summon the propositus to such hearing; or if said propositus be under legal guardianship, in custody, or if, in the opinion of said court, said propositus be incapable of understanding the nature of a summons, to command the legal guardian, or custodian of said propositus, or an executive officer of said court, to present the person of said propositus before said court at the appointed time and place; to subpoena witnesses; if need be, to appoint legal counsel at the expense of the State to rep-

resent the propositus; and to institute such other processes as may be necessary according to the statutes of the state and customs of the particular court, in order to insure a prompt, just and legal decision in the matter.

Section 13. The State's Legal Counsel. In all legal actions growing out of this Act, it shall be the duty of the Attorney-General of the State, assisted by the prosecuting attorney of the county in which the particular court is seated, to represent the State.

Section 14. Determination by Jury. On demand of either party to a hearing as herein contemplated, the question of fact shall be decided by a majority vote of a jury of six, summoned and conducted in accordance with the laws of the State governing trials by jury, but in case no such demand be made, the judge presiding over the court shall decide the case.

Section 15. Judgment. If, after the case has been duly heard and tried, it is the opinion of the court or the jury, as the case may be, that the particular propositus is a potential parent of socially inadequate offspring within the meaning of this Act, it shall be the duty of said court to declare the particular propositus to be a cacogenic person, and to command the State Eugenicist to arrest, if need be, such particular cacogenic person, and to cause such person to be eugenically sterilized in a skillful, safe and humane manner, and with due regard to the possible therapeutical benefits of such treatment of operation; securing, if possible, the consent and cooperation of said cacogenic person, and, if such there be, of the legal guardian, custodian or next friend of said cacogenic person; and such court shall further command that the particular cacogenic person shall not be released from the custody of the State Eugenicist until said order has been duly executed, but that the said particular cacogenic person be not held in the custody of the State Eugenicist longer than is necessary for the consummation of the eugenical sterilization and convalescence therefrom; and said court shall further command the State Eugenicist to report back, immediately upon the release of the person sterilized, to the court issuing the said command, a sworn statement as to the identity of the person eugenically sterilized and the place, date, nature and outcome of the particular operation or treatment; **provided** that in case the said cacogenic person be an inmate of a custodial institution, the court

shall issue a supplementary order commanding the responsible head of such particular custodial institution to provide access for the State Eugenist and the physician and surgeon appointed by said State Eugenist, to the person of the particular cacogenic person in the best-equipped hospital quarters which such custodial institution affords for the consummation of the particular eugenical sterilizing operation or treatment, and to aid and co-operate in such consummation; **provided** that in case the court is convinced that the conduct or security of said cacogenic person is such that said person will not become a parent, the court may in its discretion suspend the order for eugenical sterilization during the period of such conduct and security.

Section 16. Appeals. In litigation growing out of this Act, appeals from the decision of the court of first instance shall lie as in civil trials *de novo* at law, as provided by the statutes of the State.

Section 17. Type of Eugenical Sterilization. The particular type of surgical operation or medical treatment for effecting sterilization in each particular case legally ordered in consequence of this Act shall be determined upon by the State Eugenist, after due consultation with competent medical and surgical advisors.

Section 18. Manner of Consummation. All cases of eugenical sterilization executed in consequence of this Act shall be consummated under the direct supervision and responsibility of the State Eugenist, in a skillful, safe and humane manner, with due regard to the possible therapeutic benefits to be derived therefrom, and in strict accordance with modern sanitary, hospital, medical and surgical knowledge and practice; **provided** that the contracts for the hospital, medical and surgical services involved in such consummation shall be entered into for the State by the State Eugenist, who shall determine the necessary and reasonable fees incident thereto, which fees shall be paid by the State from funds previously appropriated for said purpose; **provided** that in case the person ordered sterilized be an inmate of a custodial institution, and if in the opinion of the State Eugenist, the hospital facilities of the particular institution are inadequate, or if time ample for eugenical sterilization and convalescence does not permit the particular operation or treatment

to be consummated before the time previously set for the discharge, release or parole of the particular propositus, the order for eugenical sterilization shall not be consummated in the custodial institution, but that the responsible head of said particular custodial institution shall at the time previously set for the discharge, release or parole of the particular propositus, so discharge, release or parole said person into the custody of the State Eugenist, who shall then proceed to execute the order for the eugenical sterilization as in cases originating in the population at large.

Section 19. Liability. Neither the State Eugenist, nor any other person legally participating in the execution of the provisions of this Act, shall be liable either civilly or criminally on account of said participation.

Section 20. Illegal Destruction of Reproductive Functions. Nothing in this Act shall be construed so as to prevent the medical or surgical treatment for sound therapeutic reasons of any person in this State, by a physician or surgeon licensed by this State, which treatment may incidentally involve the nullification or destruction of the reproductive functions; **provided** that any person in this State, except as duly ordered by the courts of law as contemplated in this Act, who wilfully, and without the aforementioned therapeutical necessity, nullifies or destroys or assists in nullifying or destroying, the reproductive functions of any person, shall be guilty of a felony, and shall be punished by not less than—months' imprisonment or a fine of—dollars, or both, or by not more than—months imprisonment or a fine of—dollars, or both.

Section 21. Punishment of Responsible Head of Institution for Dereliction. The responsible head of any public or private custodial institution in the State who shall discharge, release or parole from his or her custody or care any inmate who has been duly ordered by a court of this State to be eugenically sterilized, before due consummation of such order as herein contemplated, unless, as herein provided, such particular inmate be discharged, released or paroled into the custody of the State Eugenist, shall be guilty of a misdemeanor, and shall be punished by not less than—months' imprisonment or—dollars fine, or both, or by not more than—months' imprisonment or—dollars fine, or both.

Section 22. Supremacy of this Act. All statutes or portions of statutes of this State contrary to this Act are hereby repealed.

Section 23. When Effective. This Act shall take effect immediately.

C. THE FEDERAL GOVERNMENT AND EUGENICAL STERILIZATION.

a. Principles Suggested for a Federal Statute.

Persons Subject. 1. Immigrants who are personally eligible to admission but who by the standards recommended in the model state law are potential parents of socially inadequate offspring. 2. All persons below the standards of parenthood set in the model state law who are beyond the jurisdiction of state laws, including the inhabitants of the District of Columbia, unorganized and outlying territories, Indian reservations, inmates of federal institutions, and soldiers and sailors.

Executive Agencies Provided. Federal Eugenist attached to Public Health Service or the Children's Bureau, aided by an ample corps of assistants.

Basis of Selection: Procedure. Same as for model state law, naming in place of state courts of record, Federal Courts of appropriate jurisdiction.

Type of Operation Authorized. Same as for model state law.

United States' Motive. Purely eugenic.

Appropriations Available for Enforcing the Act. Ample appropriations for the maintenance of the activities of the Federal Eugenist as a permanent and effective institution.

b. Comment.

Up to the present time, the Federal Government has not enacted any legislation bearing either directly or indirectly upon eugenical sterilization. The matter of segregating, sterilizing, or otherwise rendering non-reproductive the degenerate human strains in America is, in accordance with the spirit of our institutions, fundamentally a matter for each state to decide for itself. There is, however, a specialized field in which the Federal Government must co-operate with the several states, if the human

breeding stock in our population is to be purged of its defective parenthood.

The relation between the inheritable qualities of our immigrants and the destiny of the American nation is very close. Granting that the fecundity of native and immigrant stock will run evenly, then it is clear that from generation to generation the natural qualities of our present human parenthood will more and more assume the character of the natural qualities of immigrant parents. Thus, if the American nation desires to upbuild or even to maintain its standard of natural qualities, it must forbid the addition through immigration to our human breeding stock of persons of a lower natural hereditary constitution than that which constitutes the desired standard.

If our standard of physical, mental and moral qualities for parenthood strike more heavily against one race than another, then we should be willing to enforce laws which take on the appearance of racial discrimination but which indeed would not be such, because in every race, even the very lowest, there are some individuals who through natural merit could conform to our standards of admission.

The immigration policy of the eugenist, who has at heart the preservation, upbuilding and specialization of our better family stocks, is to base the criterion for admission of would-be immigrants primarily upon the possession of sterling natural qualities, regardless of race, language, or present social or economic condition.

It is suggested that a Federal Eugenist, attached to the Public Health Service, or to the Children's Bureau, aided by an ample corps of assistants, would constitute an effective administrative agency for sterilization under federal authority. Some of the assistants of the office of Federal Eugenist should be delegated to cooperate with the Immigration Service of the Department of Labor, and the Bureaus of Criminal Identification, and of Prisons, of the Department of Justice, and possibly with the Bureau of Education of the Department of the Interior. If the projected plan for examining the admissibility of immigrants in their native homes before their purchase of transportation, or even upon the steamships before landing, were adopted, it would be possible to pass satisfactorily upon the eugenical qualifications of the particular immigrant.

This would be effected by attaching eugenists to the medical and social staff to which would be delegated the task of determining the eugenical qualifications of each candidate for admission.

The Federal Government has exclusive jurisdiction over immigrants, and it controls interstate and foreign quarantine. It has also exclusive jurisdiction, either direct or final, over the socially inadequate, both within and not in custodial institutions, in the District of Columbia, the Indian reservations, and the territories which have not yet

been admitted to statehood. It operates and controls the twenty-four federal custodial institutions for various types of the socially inadequate. Thus a Federal law would be needed in order effectually to cooperate with the eugenical efforts of the states, should the latter generally determine upon sterilization as a means for cutting down the birth rate among degenerates. The office of Federal Eugenist attached to the Public Health Service or the Children's Bureau would constitute an appropriate executive agent of a federal sterilization statute.