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Sterilization laws in the state of Nebraska

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STERILIZATION LAWS IN THE STATE OF NEBRASKA

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INTRODUCTION

With such an encompassing title as is herein presented it would be ridiculous to assume that all problems referable to the medico-legal aspect of sterilization can be clarified. The final chapter is far from being written.

All we can hope to accomplish by this writing is the presentation of existing statutes in Nebraska today, combined with some problems that have not only arisen in adjacent states but those which the practicing physician may encounter on not too frequent an occasion in his active practice.

Existing law today is based on precedence, where there is no precedence, there may be no existing law. This is partially true in applying the medico-legal aspect of sterilization. To give an example of the perplexity of the problem there have been cases tried in courts relative to sterilization in which no clear cut decision could be arrived upon.

The types of sterilization will be named and defined with some problems that have arisen from each type.

It should be remembered that this is not a legal treatise but merely a presentation and review of the literature.

In many problems arising concerning the medico-legal aspect of sterilization no yes or no answer can be given, the courts are not that clearly defined.

NEBRASKA STATUTES

Revised statutes, Nebraska, 1943.

Volume 5, Chapter 77-89. 83-501 - 83-509

STERILIZATION OF INMATES.

83-501. Defectives in State Institutions; parole or discharge; sterilization.

No feeble minded or insane inmate or habitual criminal, physically capable of hearing or begetting offspring, shall be paroled or discharged from the institution for the feeble minded or hospital for the insane, nor paroled from the penitentiary, reformatory, industrial home, industrial schools or other such state institutions except as provided in sections 83-502 to 83-507, or by order of a court of competent jurisdiction.

83-502. Defectives; sterilization; board of examiners; number, qualifications; compensation.

The Board of Control designates five physicians from the Medical Staffs of the State Institutions under its jurisdiction to constitute a board of examiners of defectives. Three shall be appointed from the institution for the feeble minded and hospitals for the insane. Three members of the board shall constitute a quorum and every determination made by the

board shall consist of at least three members. They shall receive no compensation for their work but shall be re-embursed for their actual and necessary traveling expenses from the funds of the respective institutions. The personnel shall be changed from time to time by the Board of Control as may be found necessary.

83-503. Defective; sterilization; inmates eligible for discharge or parole; Superintendent of State Institutions to report.

The superintendants of the institutions for the feeble minded, hospitals for the insane, reformatory for men and women, industrial homes and industrial schools and warden of the penitentiary shall meet four times annually, certifying in writing to the Board of Examiners the names of all inmates, male or female who are feeble minded, insane, habitual criminals, moral degenerates or sexual perverts and who are or who will be during the next three months subject to parole or discharge.

83-504. Defectives; sterilization; castration, when authorized.

After due investigation into the innate traits, mental

and physical conditions, personal records and family traits, and histories of these inmates by the Board of Examiners, and if it is found that: 1. inmate is feeble minded or insane, or habitual criminal, moral degenerate or sex pervert; 2. inmate is, capable of bearing offspring; 3. children born by this inmate would inherit a tendency to feeble mindedness, insanity, degeneracy or criminalities; 4. such children would be a menace socially and harmful to society; 5. such an inmate shouldn't be paroled or discharged unless sterilized; then it should be a pre-requisite that they be rendered sterile and an operation to further prevent procreation shall be performed depending upon which type of operation the Board of Examiners would deem most appropriate. If any male inmate shall have been convicted for rape, incest, any crime against nature or violation of 28-901 (see following), then the Board of Examiners, if ordered by the court, shall perform an operation for castration.* If any male inmate shall have been convicted of rape or incest for a second or subsequent offense on a female under 11 years of age, the board again if ordered shall perform an operation for castration.*

* If said operation is performed, inmate may be eligible to apply for commutation of sentence within one year after said operation.

83-505. Defectives; sterilization; hearing and exams;
notice; appeals; procedure;

Notice of the time and place shall be served on inmate for hearing and exam, and also the parent or guardian of inmate. The superintendant shall arrange for presence of inmate, and latter maybe represented by consul. Evidence at hearing shall be recorded and copy furnished to inmate or guardian on demand, and a copy kept on file at the institution. If the board orders performance of the operation, it shall not be performed until 30 days hence; in the interim, the inmate or guardian may file an appeal in a district court of the canty of where the institution is located, and it may be duly tried based on previous and present findings. An appeal may be made even to the State Supreme Court.

83-506. Defectives; sterilization; operation; by whom performed.

The operation shall be performed at the institution where the inmate is located in the presence of the Board of Examiners or some member thereof, by one of the surgeons on the staff of a state institution, without charge and by some surgeon selected and paid by the husband, wife, parents, guardian or nearest kin.

83-507. Defectives; sterilization; report of operation; record.

The Board of Examiners, or the member in whose presence such sterilization operation was performed, together with the surgeon or surgeons who performed the operation, shall make a written statement showing date, time and place such operation was performed, which shall be duly signed and acknowledged and sworn to jointly before a notary public or other qualified person. The statement shall be kept at the Board of Control and shall be opened to inspection by the public.

83-508. Defectives; sterilization; Attorney General and County Attorney's duties.

The Attorney General and County Attorney involved shall assist the Board of Control in carrying out 83-501 to 83-509.

83-509. Defectives; sterilization; enforcement; duty of the Board of Examiners; violation and penalty.

The Board of Examiners shall faithfully execute and enforce the provisions of sections 83-501 to 83-508 and failure to do so shall result in forfeiture of office. In addition, they may be fined for any such failure of not more than \$2,000.00 or confined in the County Jail not less than three

months nor more than six months.

42-102. Parties; minimum age; disqualifications.

At the time of marriage, the male must be 18 years and up, the female 16 years and up. No person afflicted with a venereal disease shall marry in this State. No person adjudged an inbecile, feeble minded, afflicted with hereditary epilepsy or hereditary insanity shall marry in this State until after he or she has submitted to an operation for sterilization.

28-406. "Maiming and Disfiguring", defined; penalty.

Whoever shall willfully, unlawfully and purposely cut or bite the nose, lip or lips, ear or ears, or cut out or disable the tongue, put out an eye, slit the nose, ear or lip, cut or disable any limb or member of any person, with intent to murder, kill, maim or disfigure such person shall be imprisoned in the penitentiary not more than 20 years or less than one year.

THE HISTORY OF STERILIZATION LEGISLATION

Needless to say, in the early days, sterilization for

eugenic or contraceptive purposes was not a natural thought in the minds of the American people. The first legislation on the subject introduced in Michigan in 1897 failed to pass. In 1899, Dr. Sharp began to put into practice the operative technique he had developed while performing extra-legal vasectomies on inmates of the Indiana State Institution. The Pennsylvania Legislature approved a bill on the subject in 1905, but it subsequently was vetoed by the Governor.

The World's first sterilization law was passed in 1907 in Indiana. It was eugenic in purpose and related to inmates of State Institutions who were confirmed criminals, idiots, imbeciles or rapists. This Indiana Law was subsequently found to be unconstitutional by the State Supreme Court in 1921, but it did mark the beginning of the movement in the United States. In 1910, the forementioned statute had been passed by the State Legislation of Washington, California and Connecticut. Fourteen more states added laws within the next ten years; ten others, during the 20's; and in the 30's four additional States and Puerto Rico passed laws on the subject. It is interesting to note that from the advent of the first law in 1907 up to the last in 1937, the status of existing legislation constantly changed. Old laws were repealed, amended or found to be unconstitutional. New laws were in-

acted and others fell into disuse. Enforcement often varied with the change of Governors. There was the added confusion of the legislature trying to improve the genetic quality of the population by statute. It was really not until 1927 when the Virginia sterilization statute was held constitutional by a United States Supreme Court decision that the legality of sterilization statutes were becoming a part of our every day life.

SUMMARY:

It can be readily seen that from its inception, the idea of sterilization to improve the human race has not met with universal accord. Some States are slow to adopt laws, others cautious, some negativistic. There can be no question concerning the delicacy of the matter.

TREND OF STERILIZATION IN THE UNITED STATES

There are many aspects of this topic, some of which are conceivably controversial, but I shall limit myself to the present consideration of the trend of the law in so far as is recognized as the propriety of permitting or advocating the intentional sterilization of certain human beings. As a result, the consideration will be limited to the sealed science aspect as it has applied in the last few years.

Most of the states at the present time that have laws that are applicable to sterilization are derived from what is known as "Common Law". In common law, there is no authority for the rights for equal sterilization of any human being, at least without his consent. This means that in order to legally sterilize a person, it becomes necessary that there be legislative and statutory enactments. These enactments are subject to interpretations by the court as to their constitutional validity as well as their application.

This approaches the question of legal sterilization by attempting to establish sterilization as a punishment for a crime has caused wide spread misunderstanding and raised many legal controversies over the constitutionality and validity of legislative enactments.

This was particularly true with respect to "sex crimes".

It might also be said here that punishment or the fear of punishment has not reduced the incidence of sex crimes.

Psychiatrists believe as do many judges that stress should be placed upon the general security of society and the adjustment and cure of the criminal. Thus, it is being recognized that sex offenders in order that they may if possible be "cured" of their mental illness and for the protection of society, should receive some specialized consideration in the medical legal sphere. The latter may be called the punitive approach. The purpose being to overcome the inadequacy of a term of imprisonment. Having completed his prison sentence, the former prisoner is returned to society irrespective of his mental or physical condition even though he may now be more of a menace than he was before incarceration. It can be seen where this type of criminal in an insane asylum or in a penal institution can cause many fold problems detracting greatly from the possibilities of care, treatment and even rehabilitation of the criminal to society. It is for these reasons that another statutory approach to the problem of combating the increase in sex crimes has been sterilization designed to reduce the number of mental defectives including certain types of sex offenders with whom society must otherwise contend in the future.

In both the Federal and the State Constitution, there are various prohibitions and limitations upon the exercise of the police power by the State, among them prohibition against the infliction of "any cruel and unusual punishment". Promotion of the general welfare has been held to be more important than individual rights and liberties and for that reason, the modern statutes are more readily sustained. It is also to be noted that all criminal tendencies are not inheritable.

Another constitutional guarantee is that every citizen is entitled to equal protection of the law, which creates a problem of classification. Some would question why persons with hereditary syphilis and perhaps pulmonary consumption are not included within the scope of statutes providing for sterilization of feeble minded, epileptics, etc. This is the difficulty encountered when the statute only applies to those within public institutions. This may be met by the argument that a person outside an institution could eventually be committed.

A Nebraska statute was framed in such a way that an inmate of an institution could not be paroled or discharged without being sterilized if they were defectives or probable potential parents of an inadequate offspring.

There is an interesting anecdote referring to the bill passed by the Pennsylvania legislature in 1905 which quotes as follows

"You may recall that when Judge Pennypacker became governor of the state, he incurred the ire of a newspaper correspondent by treating him usually in a very cavalier fashion. The result was, they made it a point to picture him always as an object of ridicule with his farmer's boots and stringy goatee."

At the end of his term, he was invited to attend the newspaper dinner at the end of the legislature. The dinner has taken more modern form and in more recent years, has a so called "grid-iron club" of Harrisburg.

When Pennypacker was called on to speak, he began in his characteristic cracked, high-pitched voice to defend his administration, but he had hardly begun when the assembly newsmen began to "cat-call", whistle and boo in the hard hearted manner they show their victims on such occasions: Pennypacker was not the least taken aback but after some minutes of pandemonium, he raised his arms for silence and then squeaked out in his funny voice, "Gentlemen, gentlemen! You forget, you owe me a vote of thanks. Didn't I veto the bill for the castration of idiots?"

This brought down the house and assured him a respectful hearing thereon.

SUMMARY:

It becomes clear that there are no sharply defined laws

legalizing sterilization except as clearly delineated in the statutes of the particular state involved, and these will vary from state to state. Even where laws are defined, there may be more than one interpretation of the same law.

A special law covering sex crimes is advocated. It is felt that this type of criminal be placed in a separate class, because when his debt to society is paid, what is to prevent him from continuing?

The Federal Government has disapproved of what they consider "cruel and unusual punishment" in respect to sterilization. By the definition of the constitution, every person is endowed with certain inalienable rights..... The question of sterilization on a hereditary basis is even more confusing. Who, in the final analysis shall say this disease is inherited and this disease is not?

STERILIZATION LEGISLATION IN THE SUPREME COURT:

In spite of all the cases which have arisen concerning sterilization laws in state courts, there have been only two cases decided by the United States Supreme Court.

1. Buck versus Bell, 1927. In this case, the United States Supreme Court considered the constitutionality of the Virginia Statute which provided for sexual sterilization of any inmate of a state institution whenever it was considered to be in the best interests of the patient and society.

2. Skinner versus Oklahoma, 1942. Here, the defendant appealed from a sentence ordering him to be sterilized under authority of the Oklahoma codes which provided for sterilization of an habitual criminal. The term was defined as one who had been thrice convicted of a felony. The matter involved robbery which is a felony and embezzlement which is not. It was on this latter point that the United States Supreme Court felt that discrimination was present and declared that the statute was unconstitutional.

CONSTITUTIONALITY OF STERILIZATION STATUTES:

State statutes have been enforced since the beginning of the 20th century.

The Nebraska Statutes have never been challenged (up to 1950). The first time the validity of such laws came before the United States Supreme Court was in Buck versus Bell.

The pre-requisites for sterilization are: 1. Inmate of a State Asylum, 2. The subject if discharged from the asylum and not sterilized would be a menace to society, since if capable of procreation, the subject might bear children who would become enemies or dependants of the State, and 3. If subject rendered incapable of producing offspring, he or she might be discharged with safety and become self supporting.

The Supreme Court by, opinion of Justice Oliver Wendell Holmes cited Jacobsen versus Massachusetts stating that "The principal that sustains compulsory vaccination is broad enough to cover cutting fallopian tubes". The decision was that since the operation promoted subject's welfare as well as that of society without detrimenting person's health, there was not valid constitutional objections.

Since this time only four sterilization laws have been declared unconstitutional, and these on grounds that were unrelated to the authority of the State to sterilize for the promotion of public welfare.

Perhaps they deprive the person the right to life, liberty and the pursuit of happiness; but Courts have held these

rights subordinate to those of public welfare.

Another objection is that the statutes are class legislation because most statutes provide only for the sterilization of inmates of State Institutions and disregard those with mental deficiencies.

As to the fact that sterilization may be cruel and unusual punishment, most courts have held it invalid because it is for the purpose of eugenics or therapeutics or both.

SUMMARY:

On one point regarding sterilization is there no question. This involves the compulsory sterilization of inmates discharged from state institutions for the insane. In this point public welfare attains precedence over individual rights.

STERILIZATION OF HABITUAL CRIMINALS

There has been much controversy here as to which is the greater factor, heredity or environment. The courts have overruled habitual criminal sterilization laws. The United States Supreme Court has ruled on such an act (Skinner versus Oklahoma). A distinction is made between the sex crime and the habitual criminal.

HABITUAL CRIMINAL STERILIZATION ACT OF OKLAHOMA

This defines an habitual criminal to mean a person who has been convicted of two or more crimes to final judgement of the commission of the crimes amounting to felony involving moral turpitude. To wit: Skinner versus State; Buck versus Bell; Nichol versus Hendricks and Davis versus Barry.

STERILIZATION STATUTES IN KANSAS

Sterilization statutes in Kansas are essentially the same as in Nebraska and there has been no essential change in their statutes. Sterilization in Kansas is on the decline and no such procedure has been performed since 1950.

As of 1950, 43,719 men and women in the United States have been sterilized pursuant to sterilization laws. 20,914 (almost 50%) were classified as mentally ill; 21,191 were

classified as mentally deficient or feeble minded and 16,014 were in other categories.

It appears that sterilization laws in Kansas are a "Dead Statute".

Kansas psychiatrists are generally opposed to sterilization in any form except where reproductive organs are diseased and must be removed for that reason.

Kansas has ceased to sterilize patients in state institutions as a result of:

- a) Medical advances indicating the futility of sterilization as a therapeutic device for mental patients;
- b) Change of personnel and philosophy in state institutions;
- c) Change of philosophy in thinking on the part of the State Board of Examiners.

DUE PROCESS OF LAW

Generally the consideration and procedure of due process involves such things as the right to notice of a public hearing and the right to an appeal.

In Davis versus Barry (216 FED. 413 S. D., Iowa, 1914) the Federal District Court of Iowa declared the Iowa law in question violated due process clause of the 14th amendment in that the hearing was a private one and the first time the

accused knew of the proceedings was when he was told that he was to be sterilized. The same was held true in Williams versus Smith (190, Indiana 526, 131 M. E., 1921) and in Brewer versus Valk (204 NC. 186, 167 S. E., 639, 1933)

CRUEL AND UNUSUAL PUNISHMENT

In ancient times removal of the procreative organs had been considered punishment for certain sexual crimes. Moving from the darker ages into the more modern era such mutilation was considered cruel and unusual punishment and was outlawed along with burning at the stake. Many eugenists, however, appearing before State Legislatures advocated sterilization for eugenic purposes and pointed out the simplicity and painlessness of the sterilization operation using modern techniques. Some legislative bodies believed it no longer cruel and unusual but that sterilization would now be a suitable punishment for certain crimes. As a result, punitive provisions were added to some eugenic sterilization laws which accounts for the confusion found in judicial consideration of the constitutionality of eugenic sterilization statutes.

Some of the first sterilization laws listed in the courts were challenged on the basis of cruel and unusual punishment. Under an Iowa Statute passed in 1913, any inmate

of a State Penal Institution twice convicted of a felony could be sterilized. In 1914, The United States District Court for the District of Iowa held that sterilization was a cruel and unusual punishment. Comparing the two previously mentioned laws, the court stated that the same shame, humiliation, degradation and mental torture were involved in both penalties. A similar ruling invalidated the Nevada Law in 1918.

The two cases decided in 1918, one in New York and the other in Michigan for the distinction between eugenic and punitive purposes of the respective sterilization laws were clearly drawn. The New York Courts stated that the operation on the feeble minded is in no sense in the nature of a penalty and therefore, whether it is unusual and cruel is not involved. The case in Michigan was tried and decision rendered along the same general lines. It was in the latter decision that a law for compulsory sterilization was first compared legally to a compulsive vaccination law giving us a preview as to how the courts were beginning to regard sterilization legislation. Earlier, the Supreme Court of Washington had ruled that sterilization was not a cruel and unusual punishment.

There still remains a doubt in some minds as to whether a sterilization operation ever fulfilled the definition of a punishment since it relieves the person concerned of the pos-

sibility of undesired offspring and hence, removes one of the restraints of illicit relations. The operation merely cuts off procreation; it does not destroy the ability to perform the sexual act. For this simple reason, it would be a very poor punishment for the habitual sexual offender.

EQUAL PROTECTION OF THE LAWS

In 1913 on one of the first court appeals concerning sterilization prevention, a New Jersey law was held invalid because it denied the plaintiff equal protection of the law and that the law applied only to inmates of state institutions and not for the population at large. The rationale behind this case is that inmates of state institutions are deprived of equal protection of the law by a form of class legislation. Because the law excludes those that should naturally be included within the class, namely those not in state institutions.

SUMMARY:

In the beginning, sterilization was considered to be a cruel and unusual punishment. Eugenists were first to "break the ice" regarding passing of sterilization laws. After "the foot was in the door", legislation laws regarding sterilization

of criminals were passed.

Needless to say, the above did not meet with universal approval. Nor is there agreement regarding the final law. The habitual criminal who has been sterilized and who is again exposed to society is still free to perpetrate his crimes.

TYPES OF STERILIZATION

The practice of sterilization in the United States began over 50 years ago. Yet in the last 50 years, the United States has seen the sterilization movement developed to the point where 33 States and Territories at one time or another have passed laws on the subject. Before the end of the 19th century, sterilization was considered impractical because the only method known at that time was castration which caused undesirable changes in the sex characteristics and which was considered too radical an operation for the end in view. But in the last ten years, the method of sterilization has been devised called vasectomy. The female counterpart of this operation is called salpingectomy. The former operation was developed by Dr. Harry C. Sharp of the Indiana State Reformatory and the latter was begun by a Frenchman and further developed by a Swiss Doctor.

Sterilization operations can be used to accomplish a variety of purposes and can be conveniently categorized into four classes:

1. Therapeutic - An operation performed in order to safeguard the personal health or life of an individual.
2. Contraceptive - Performed in individual cases as permanent method of birth control in order to limit the size of a family or to regulate population when over-

Population seems a threat.

3. Punitive - This classification is employed by the state to punish those convicted of certain crimes.
4. Eugenic - When performed, often on a compulsory basis to those who suffer from ailments regarded as hereditary in the hope that the operation would prevent the birth of children with similar characteristics, or at least save the state the expense of caring for the offspring of the mentally or physically unfit people.

Most statutes (including Nebraska) provide for operations only for vasectomy and salpingectomy. These operations have been provided not to endanger life or affect the future health of the person, nor do they prevent normal sex relations. Some states provide for castration and oophrectomy, or at least do not prohibit such operations.

LEGAL LIABILITY MAY ARISE FROM DOING NON-THERAPEUTIC

STERILIZATION.

Type problem: X, a married college professor, is too absorbed in research on *Drosophila* life cycle to spare time for progeny. Otherwise he is an ordinary fellow of sound mind. He voluntarily submits to vasectomy done by surgeon Y, so will not become a parent through unanticipated precreation.

The operation is skillfully and successfully performed. Later X, relents, grieves of his incapacity and sues wife for making him sterile. Can he recover damages?

Type problem: C, a healthy woman, wife of B, dreads childbirth and has surgeon Y, sterilize her without informing husband. B, is incensed when he discovers he has no possibility of heirs. He sues Y, contending that C's, consent was void because non-therapeutic sterilization is against public policy. Can B recover damages?

The first inquiry is whether non-therapeutic sterilization is illegal. Castration alters personality and physical constitution, that its performance even with the consent, constitutes crime of mayhem under common law. Sterilization procedures such as vasectomy and salpingectomy do not have such consequences, they do not impair hormone balance, alter personality, render subject unfit to fight, or less competent to earn a livelihood. No English or American Statutes denounce sterilization. However, in the operation, there is wounding for an asocial purpose, breaking of the skin, severance of an organ, and permanent destruction of a socially useful bodily function.

No right to consent to infliction of death. No one has the right to the consent to the infliction upon himself of death, or of any injury likely to cause death, in any case (except therapeutic surgery), or to consent to the infliction upon himself of bodily harm amounting to maim for any purpose injurious to the public. In some states, the courts decree that non-therapeutic sterilization constitutes maim, and that consent is void and the subject be given a right of action in tort as for a battery. The elements of criminal assault and battery are present, the surgeon intends not only touching but the final consequences produced by destroying reproductive functions and the act has no justification. If the operation couldn't be made to avoid consent on the ground of assault, it could be done so on grounds of public policy. Here we have asocial conduct, not performed to advance any valid primary interest, intentional in character and full of risk of physical injury to the subject, as well as to the public interest in maintaining reproductive capacity, so why should society consider consent justification.

Non-therapeutic sterilization may collide with the public policy of the particular states in reference to birthcontrol, for the operation is a final form of contraception (In Connecticut, sterilization constitutes a crime. Connecticut general statutes, 1930).

No other state has such a statute, but in many, there is anti-birthcontrol legislation denouncing sale or publicity of contraceptive devices. Nebraska is included in the ones for drastic suppression.

In those states forbidding birthcontrol, non-therapeutic sterilization would seem clearly contrary to public policy. Even in states taking a benevolent view toward contraception. It may be held that sterilization is an unreasonable form of contraception and in violation of social interest in maintenance of birth rate.

Sterilization on Medical or Eugenic grounds is quite different. Many states (see Nebraska Statutes) have enacted legislation authorizing sterilization of the feeble minded or insane after due hearing and authorization by a competent board. Even where no statutes exist, it is legal to sterilize persons on sound medical grounds. Presence of disease or disability reasonably requiring the operation, coupled with bona fied surgical interference is enough to purge the transaction of illegality.

Christenson versus Thorn (192 - Minnesota - 123, 255 N. W. 620, 1934) In this case, the court held it was not against public policy for a surgeon to sterilize a husband in order to protect the health of the wife against the risk of pregnancy.

which her physical condition made undesirable. The vasectomy failed, the wife conceived and survived. Husband sued surgeon, it was held.

In states where non-therapeutic sterilization is held contrary to public policy, there is still a second question as to whether courts will use the doctrine of *Pari delicto* (equal in fault or guilt) to defeat the right of action. If the state has a public policy against birthcontrol, and is one of the jurisdiction which gives a right of action for non-therapeutic abortion, it is likely to give a right of action to the patient who has consented to a non-therapeutic sterilization. If the right of action is refused to the wife because of *Volenti non fit injuria* (person who consents cannot complain about injury) or *pari delicto*, can the husband sue the surgeon for destruction of his chance for heirship? Does the husband have separate rights or does he stand in his wife's shoes?

At common law, any tort to the wife which invaded consortium (union or lawful marriage) gave the husband an independent cause of action not barred by his wife's limitations applicable to her right, nor abated by her death. Since injury to wife was primary and to husband secondary, the courts held that if a defense such as contributory negligence barred the wife, it cut off the husband's right of action also.

But when a surgeon intentionally destroys procreative powers of a woman, he knows to be married, he knows he does the same to the husband, and two interests are involved. The surgeon's conduct is of course, willful. There is a change in attitude in other cases where defendants conduct is intentional rather than negligence. In *Flandermeier versus Cooper*, (85 - Ohio Statute 327); wife recovered damages against the druggist who with full knowledge of the facts and inspite of her repeated protests, continued to sell morphine to her husband until by the use of it, he eventually became insane.

Is the interest of the husband in procreation a part of consortium or an independant right? Does consortium include the procreative aspect of intercourses or only the social? Several jurisdictions since the passage of married woman's emancipation act no longer recognize husband tort rights for violation of consortium, but the majority rule is otherwise. The wife can recover damages for impairment of her sexual intercourse by defendants negligence injury. *Golden versus Green Paper Company* (44 Rhode Island 226, 116 Atlantic 579, 1922), held that a husband couldn't recover damages for impairment of his wife's capacity for sexual intercourse as part of consortium. Othe r cases do intimate that a jury may consider this item in assessing damages.

These cases contain no satisfactory discussion as to both pleasure and parenthood interest being involved where chance of intercourse is destroyed.

In the case of a woman who has been previously sterilized or rendered pregnant by act of another, so that at marriage, she can have intercourse but not procreate, her failure to apprise intended husband of the fact is a fraud which intitles him to annulment.

Persistence of a husband, for two years after marriage, using contraceptives at all times in having intercourse, under repeated refusal ever to have natural intentions, violates the marriage contracts.

A spouse who resorts to final contraception by submitting to non-therapeutic sterilization is guilty of breach of marriage contract. Further, if the surgeon knows the subject is married, he is liable for unjustifiable interference with the marriage contract. It appears that anyone who induces the woman to submit to surgery commits a tort and the surgeon by his pre-operative encouragement can be charged with affirmatively inducing submission.

Courts have allowed the woman herself to recover damages against one who has negligently destroyed her reproductive capacity (Potts versus Guthrey, 282 Pennsylvania 200, 127 ATL. 605, 1905),

wife sued defendant for negligence resulting in emasculating her husband and sought to recover damages for destruction of her interests in procreation. Here the wife's right had to be primary, for she had no derivative rights of consortium at common law. Majority held that wife could not recover, resting on the fact that damages were too remote, the dissenting judge stressed principally his insistence that the wife had a primary interest which was invaded.

At this time, it appears that the surgeon incurs a definite risk of civil liability in tort for doing a non-therapeutic sterilization. Before he performs such a procedure, he should consider whether any medical justification exists. Because the woman had several children and the family too poor to give proper care to the future offsprings, constitutes sociological ground only, and should be left for legislative sanction. Courts should not bring such cases under the head of therapeutic justification by a process of stretching medical indicatives into mere fiction. As with abortion, the surgeon will do well to have an independent physician make an examination to verify medical propriety of procedure, and require husband and wife to sign consent for which shows that the material facts and medical grounds for surgery were fully disclosed prior to operation.

Christenson versus Thornby. An analogy was drawn between sterilization and abortion, since this is the first time such a case came up in a court of law. It was found that in states having statutory prohibitions against abortions, an exception was made when the operation was done to save human life. In two states which by penal code have prohibited sterilization an exception was made where medical necessity required the operation. In those states having no statutory prohibition against sterilization, by the modern methods, there would be no question of the operation being against public policy, and the general rule of tort law should apply and the consent of the party should be a complete defense against civil liability on the part of the surgeon, provided operation was performed without negligence. Where the operation was clearly for medical reasons, the policy is different than that for no medical reasons. Aside from the states that prohibit it, no judicial or legislative announcement of public policy against therapeutic sterilization can be found.

SUMMARY:

The case problems proposed revolve around several points-

- a) Vasectomy and salpingectomy do not alter personality, hormone balance, or effect the competence of an individual

to earn a livelihood.

- b) In some states, they consider non-therapeutic sterilization as a maim (see section regarding Nebraska statutes) and the surgeon is liable.
- c) In some states non-therapeutic sterilization violates the state law regarding birth control, and would be against public policy and a right of action would be given to the patient if suit were brought.

Regarding the action of a surgeon in a non-therapeutic sterilization, whether the injury was to the patient or spouse, if he knows his patient to be married, his action is defined as willful and he is liable. If he does not know the marital status, he is guilty of negligence and this may be worse.

Can a husband collect damages secondarily from the surgeon as a result of the sterilization of his spouse? Well, no he can't but the court is entitled to estimate damages from this in the suit.

When the surgeon is confronted with a problem of a non-therapeutic sterilization, his only concern should be regarding the fact if any medical justification exists. If there isn't, don't do it!

CRIMINAL LIABILITY

An operation for sterilization would clearly result in criminal liability in many cases. Death resulting from such a cause, if there was no justification, would constitute homicide. Gross negligence, general criminal intent, the fact of being engaged in another felony might be sufficient to supply the element of intent. The main consideration being that of causation and death resulting. Such an operation might result in mayhem or maiming, this would be true in the case of castration because this changes the physical character of the individual.

In both mayhem and homicide, even consent of the person castrated would not serve to excuse the physician, or consent in this case does not operate to prevent criminal liability. (People versus Clough, 17 Wendell 351, 31 AM. D. E. C. 303) Stephen, in his history of English criminal law states: "No one has the right to consent to the infliction upon himself of death or any other injury likely to cause death, except in cases of necessary medical operation from which death might result, or to consent to the infliction upon himself of bodily harm amounting to a maim, for any purpose injurious to the public". This rule has been generally followed in the United States. No case has been found in common law

where a physician was held criminally liable for performing a castration operation with the patient's consent, never the less, criminal liability would seem to be certain in such a case in view of the gist and scope of the crime of mayhem and the attitude of the law toward the effect of consent in such cases.

What happens when these principals of law are applied to sterilization (vasectomy and salpingectomy)? These are different from the cruel and despoiling operations known to the common law. Under common law, these operations could hardly be called mayhem, unless the courts incorporated into the definition of mayhem an operation preventing further procreation.

If consent of the person were given, it is probable that under present day statutes, that there would be no liability for mayhem, for consent given would usually warrant to conclusion that malice, a necessary element of the crime was not present in the mind of the physician. This would not necessarily follow for malice on the part of the operator may exist concurrently with consent on the part of the patient.

The Iowa Statute has a direct penal provision - "Except as authorized by this act (the act refers to the sterilization of the unfit in State Institutions) every person who shall perform, encourage, or assist in, or otherwise promote the performance of either the operation (vasectomy, salpingectomy)

for the purpose of destroying the powers of procreation, unless performance of such operation is a medical necessity shall be guilty of a misdemeanor.

Even though the physician is not guilty of mayhem, under settled rules of criminal law, if the operation were performed without the patient's consent, it would constitute a criminal assault likewise if the patient submitted to the operation but was incapable of giving his legal consent. If consent can be given, there would be no liability for assault and battery unless of course the act amounted to a breach of peace, (Commonwealth versus Collberg 119 Mass. 350, 20 AM. REP. 328, 1876) which would be improbable.

SUMMARY:

A surgeon performing a sterilization operation is criminally liable. If death should result, he would be guilty of homicide. The main consideration is causation. Even consent does not excuse the criminal liability. The Iowa Statutes clearly define that unless a sterilization operation is a medical necessity, the surgeon is guilty of a misdemeanor.

CIVIL LIABILITY

The question of Civil liability of the physician for a privately performed sterilization operation presents an equally interesting problem. The question is not so difficult where the plaintiff has given his or her consent as to where it has been performed by force and violence constituting assault and battery under the general principals of the law of torts.

Although many such sterilization operations have been performed, not a single case has been recorded in which a person who gave his or her consent has brought suit against the physician (up to 1930).

In one case, a bilateral ovariectomy operation was performed against her instructions. She was single, engaged to be married and upon discovery of the operation, broke her engagement and sued the physician. The court practically instructed the jury to bring in a verdict for the plaintiff, (case was in England). In a similar case in this country, a plaintiff recovered on an instruction that if the operation that was performed, was different than the one consented to, there could be recovery. Where no consent is found, there is no legal problem for if the operation is performed on a person without the patient's consent, expressed or implied, it is unlawful.

Let us look at cases in which the person has submitted to an operation but unable to give legal consent, as in the case of a minor or married woman whose proper consent was not obtained. Imagine that a married woman, to remove the dread of pregnancy, goes to a physician and is sterilized without notifying her husband. When the husband finds out, he sues the M. D. The few cases considering the point as to the necessity of obtaining the husband's consent* agree that if the wife's consent is obtained, the consent of the husband is not necessary, provided that she is capable of giving her consent.**

* *Burroughs versus Cricton*, 48: App. C. D. C. 596, 602, 4 ALR

** *Pratt versus Davis*, 118 Ill. App. 161, 224, Ill 300, 7 LRA
CMS.

Two cases* assuming that husband's consent is necessary, hold that by placing wife in doctor's care, husband implied consent to such operations as may be found necessary or expedient. No case has been found questioning the right of the husband to have an operation performed on himself without consent of his wife (up to 1930).

Suppose that a boy or girl in the early teens visits the doctor and solicits him to perform operation and local doctor does so. It would appear that recovery will be granted independent of negligence where parents consent was not obtained.** Unless the situation presented an emergency or the fact that the laws of some states allow minors to contract for necessities.*** The general agreement of consent based on the theory that the operation given without consent is an assault and that a minor, like an incompetent, can only give consent through parents or guardian.

Suppose before marriage, the wife is sterilized by a private operation and she fails to reveal to her husband the fact at the time of marriage. He petitions for annulment on the grounds of fraud. In the case concerned (Turner versus Avery, 92 New Jersey EQ. 473, 113 ATL. 710-1921) the court

*Pratt vs Davis; McClellan vs Adams, 1a Pick (Mass) 333, 31
Au Dec 140, 1837

**Browning vs Hoffman 90 W. Va., 568, 111 S.E. 492 (1922)

*** Bishop vs Shirley 211, N.W. 75, (Mich) 1926.

granted the annulment saying - "Some women are congenitally, others traumatically barren". The former may never disclose the fact until after a fruitless marriage. When a woman knows that she has been made barren by a surgical operation, she is under legal duty to disclose the fact to her husband to be, so if then, he marries her, he will be consenting to the situation.

Suppose sterilization operation were performed the day following marriage. This would not constitute grounds for divorce even in those states which recognize impotency as a ground, for as has been pointed out, (Turner versus Avery, supra) impotency imports a total want of the power of procreation and only as necessarily incident thereto of conceptive power.

The law of the subject of sexual sterilization seems to be more than causal importance to legal and medical professions.

SUMMARY:

Regarding civil liability there is no question when consent has been given. When consent has not been given, it constitutes assault and battery.

If the wife consents to a sterilization operation, and

her consent is legal, the husband's consent is not deemed necessary .

If a minor is involved, the only thing that will save the surgeon is if the case is a necessity and legal consent cannot be obtained in time. These are few and far between.

EUGENIC STERILIZATION

Sterilization laws have been attacked as inflicting cruel and unusual punishment, as being in violation of due process of law and as depriving subject of the equal protection of the law afforded by the constitution. A leading case involving constitutionality of sterilization is Buck versus Bell involving an 18 year old patient committed to State Colony for epileptics and feeble minded in Virginia. She was the daughter of a feeble minded mother and the mother of an illegitimate feeble minded child. After a full hearing, sterilization was ordered (salpingectomy), the Virginia Statute stated that the health of the patient and welfare of society may be promoted in certain cases of sterilization. The constitutionality of the Virginia Statute was upheld by the United States Supreme Court in an opinion by Justice Oliver Wendell Holmes who stated, "Three generations of imbeciles are enough".

CONTRACEPTIVE STERILIZATION

Regarding the above, there is no such prohibited statute in the state of Pennsylvania. A few States make it a misdemeanor to assist in or perform in an operation preventing procreation unless said operation is a medical necessity.

There is a statute against publishing, advertising or circulating any secret drugs, medicine, recipe or instrument to be used by the female to prevent contraception. This act does not prevent the sale of contraceptives, provided the articles are not publicised or exhibited.

Regarding minors, no operation could be performed without first obtaining consent of the parent or guardian. Even with the consent of the parent, it is questionable whether civil liability would not be imposed upon a surgeon for the contraceptive sterilization of a minor child for the reason that it would be unnecessary interference with the child's right of personality.

Regarding the spouse - if we were concerned with sterilization as a surgical necessity and the husband were in full possession of his faculties so as to give his consent, his wife's consent would not be necessary. Also if the surgical necessity prevails, the wife would be as much entitled to determine whether she should submit herself to an operation as the husband with respect to himself.*

Can one spouse give a valid and effective consent binding the other spouse? In British Columbia, a woman entered the hospital for delivery of her child. When labor became

*Markijohn vs Decker No 77 Apr. 1937, Alleglary Co.

difficult, the husband signed a permission for a Cesarian section and authorized sterilization if felt to be necessary. At operation, numerous fibroids were found in the uterus, the largest one being orange in size. Both tubes were subsequently tied. Upon learning of the nature of the operation, the wife sued the surgeon for an operation performed without her consent. The plaintiff was deprived of fulfillment of one of the great powers and privileges of her life. The question here is, where is the necessity for an immediate decision? Where is the urgency? There is no evidence that at the time of operation were there tumors dangerous to her life or health. They might constitute a hazard in the event of a further pregnancy.

If it were necessary in the sense that it would be unreasonable to postpone the operation until a later date, the surgeon would have that authority. (Marshall versus Curry, 1933; 3 D. L. R. 260)

Suppose the consent is obtained from the spouse on whom the operation is performed, but not the other, does non-consenting spouse have the right of action against the surgeon for non-therapeutic contraceptive sterilization? In such a case tried in Hamilton, Ontario, the justice stated that, "The relationship between husband and wife is of the most in-

timate nature and I am of the opinion that anything interfering with this relationship shall only be undertaken with the consent of both parties".

In Philadelphia, a husband attempted to get a divorce on the grounds that at the time of marriage, his wife was impotent or incapable of procreation. Several years prior to marriage, wife had submitted to an operation in which her ovaries, tubes and uterus were removed. The divorce was denied because it was felt that sterility or inability to procreate is not independant grounds for divorce where party complained against was capable of copulation. Where physical conditions present at the time of marriage prevent sexual intercourse and party refuses to undergo minor operation to correct the defect, a divorce may be granted (Direct quotation from William Shakespeare, "Love begins three spans from the heart".).

SUMMARY:

A conclusive answer cannot be given as to whether a non-consenting spouse has a cause of action against the surgeon. To be on the safe side, get the consent of both the husband and the wife.

The main point revolves around the matter of urgency, in addition to consent. If a threat to life is present and

sterilization offers a cure, even without consent it will probably hold up in a court of law.

THERAPEUTIC STERILIZATION

There is no doubt as to the legality of therapeutic sterilization where medical necessity requires it. The simpler operation is performed upon the man.* Even here all difficulties are not eliminated. The consent must be genuine and not obtained by fraud or deceit. A good form would read as follows " I, Jane Doe, of Blackacker, Pennsylvania having been advised by John Jones, M. D. that I have pulmonary tuberculosis and that it would be dangerous to my life to become pregnant, request, authorize and direct John Jones, M. D. of the Mercy Hospital to sever my fallopian tubes from the uterus so that conception cannot take place. I fully understand and realize that after this operation, I can never bear children. And I further release John Jones, M. D., his heirs, executors, administrators and assignors and Mercy Hospital from all claims, demands, actions and damages whatsoever arising out of or resulting from the operation."

In witness whereof, I herein set my hand and seal this _____
_____ day of _____ 19_____

(SEAL)

Sworn to and subscribed before me, the undersigned authority,
this _____ day of _____ of 19_____

I, Robert Doe, husband of Jane Doe, have read the above, authorization and direction of my wife and join with my wife therein, and I further release John Jones, M. D., heirs, executors, administrators and assignees, and Mercy Hospital from all claims, demands, actions and damages whatsoever arising out of or resulting from the operation.

In witness whereof, I have here unto set my hand and seal this _____ day of _____ 19 _____.

(SEAL)

Sworn to and subscribed before me, the undersigned authorities this _____ day of _____ 19 _____.

Even when the consent is obtained for the operation, legal difficulties are sometimes encountered (Christenson versus Thornby 192 Minnesota.).

Apart from any consent, there are those therapeutic sterilizations which are unanticipated but which become necessary in the course of a surgical operation in order to preserve the patient's life.

In a case arising in Quebec, the patient was rushed to the hospital for an attack of acute appendicitis, and when

the husband was notified of the diagnosis and that surgery was required states, "Well if she must be operated on, I want her to be operated on at once and for all". Nothing was said about any operation involving the ovaries. On opening the abdomen, it was found that not only the appendix was diseased but also the ovaries and they would have to be sacrificed. When the husband had become aware of what had been done, he brought action for damages, alleging that the surgeon had removed his wife's ovaries without his or her consent. The ruling judge found there was some evidence of consent, and took occasion to deal with rights and duties of a surgeon in the absence of consent. He stated that the medical testimony showed that the operation complained of was urgently necessary in the interest of the patient. With the condition which the surgeon, and medical testimony that removal of the ovaries was for the welfare of the patient, the surgeon was held not to be liable in the suit for damages.*

ANALYSIS OF EXISTING STERILIZATION LEGISLATION

In analyzing the 28 laws now in effect (see charts) certain patterns are evident. 23 states have compulsory sterilization (operation can be performed without consent of the patient or guardian; Nebraska included). Only two laws re-

quire consent (Minnesota and Vermont) and three have provisions for both voluntary and compulsory sterilization (Maine, North Carolina and South Dakota). In most states, the law applies exclusively to inmates of state institutions (see chart I). However, ten states make provision for those outside the state's care (Delaware, Idaho, Iowa, Michigan, North Carolina, Oregon, Puerto Rico, South Dakota, Utah and Vermont). Specific coverage varies from state to state (see chart I). Although every statute now in operation allows for sterilization of both the mentally ill and mentally deficient, several laws also permit sterilization of other types (hereditary criminals and syphilitics). All the laws are professedly eugenic, and those of California and Nebraska currently provide for punitive sterilization.

Of the 32 states and one territory which at one time or another have adopted sterilization laws, five have rendered their statutes ineffectual without enacting new ones (see chart II). New York, New Jersey and Washington repealed acts found unconstitutional by their respective courts. Nevada's law, while never repealed, was found unconstitutional. An advisory opinion of the State Supreme Court in 1935 cast such a doubt on the constitutionality of Alabama law that no operations have been performed since.

Enforcement of the remaining 21 state laws varies considerably.

DECLINE OF COMPULSORY STERILIZATION MOVEMENT (See chart III)

During the last fifteen years, eugenic sterilization in the United States has been on the decline. This decline is not immediately attributable to any one cause, although several causes suggest themselves as possibilities.

I American Neurological Association Report.

One of the main factors in the decline of sterilization was the report of this committee headed by Doctor A. Myerson, State Psychiatrist. After probing deeply into many aspects of the situation including the history and laws, main arguments for and against sterilization, inheritance of mental disease, genetics, eugenics, neurological diseases, crime, twins, genius and eugenics, the committee realized the following conclusions:

- 1) They recommended there be no compulsory sterilization.
- 2) Any sterilization program should be applicable not only to the patient in the state institutions, but also to those in private institutions and the public at large.

3) Sterilization be practiced selectively, only within certain well defined limits. Sterilization was regarded as permissible in the treatment of neurological diseases of its definitely hereditary nature, familial feeble mindedness, dementia praecox, manic depressive states, and epilepsy where attacks are frequent enough to cause social problems.

II Sterilization Legislation in Nazi Germany.

The abuse of sterilization legislation in Nazi Germany was a tremendous factor in turning the public opinion against the whole concept of compulsory state action.

III New Scientific Studies.

The re-examination of earlier beliefs about heredity led many doctors to adopt new positions regarding sterilization.

IV Religious Influence.

V Changed Legal Thinking ie Skinner versus Oklahoma.

CONCLUSION:

In this paper we attempted to present -

- 1 - Nebraska Statutes as they apply to sterilization, which for the most part concern defectives in state institutions.
- 2 - A discussion of the history and trend of sterilization in the United States.
- 3 - Sterilization legislation in the United States, including the decisions rendered on the two cases brought before the United States Supreme Court.
- 4 - The types of sterilization are enumerated and defined -
 - Therapeutic
 - Contraceptive
 - Punitive
 - Eugenic
- 5 - Some legal problems arising from non-therapeutic sterilization.
- 6 - Criminal and civil liability on the part of the physician.
- 7 - Eugenic, contraceptive and therapeutic sterilization problems, with special reference to a handy form to have signed by both parties with respect to therapeutic sterilization. And lastly -
- 8 - An analysis of existing sterilization legislation with three charts showing a decline of compulsory sterilization.

APPENDIX

CHART I

CLASS OF INDIVIDUALS TO WHICH STERILIZATION LAWS APPLY

State or Territory	Inmates State Insti- tutions	Outside State Insti- tutions	Mentally Ill	Ment- ally Defi- cient	Epilep- tic	Crimi- nals	Others
Arizona	x		x	x	x		
California	x		x	x		x	x
Connecticut	x		x	x			
Delaware	x	x	x	x	x	x	
Georgia	x		x	x		x	x
Idaho	x	x	x	x	x	x	x
Indiana	x		x	x	x		
Iowa	x	x	x	x		x	x
Kansas	x		x	x	x	x	
Maine	x		x	x			
Michigan	x		x	x	x		x
Minnesota	x		x	x			
Mississippi	x		x	x	x		
Montana	x		x	x	x		
Nebraska	x		x	x	x	x	
New Hamp- shire	x		x	x	x		
No. Carolina	x	x	x	x	x		
No. Dakota	x		x	x	x	x	x
Oklahoma	x		x	x	x	x	
Oregon	x	x	x	x	x	x	x
So. Carolina	x		x	x	x		
So. Dakota	x	x	x	x			
Utah	x	x	x	x	x	x	
Vermont	x	x	x	x			
Virginia	x		x	x	x		
West Vir- ginia	x		x	x	x		
Wisconsin	x		x	x	x	x	
Puerto Rico	x	x	x	x	x		

CHART II

LEGAL STATUS, RATES OF ENFORCEMENT AND APPLICABILITY OF STERILIZATION LAWS

State or Territory*	Rate of Enforcement (or Legal Status)**	Compulsory (C) Voluntary (V)	Punitive (P) Eugenic (E)	Right of Appeal
Alabama	Unconstitutional			
Arizona	Low	C		Yes
California	High	C	E+P	Yes
Connecticut	Low	C	E	
Delaware	Low	C	E	
Georgia	High	C	E	Yes
Idaho	Low	C	E	Yes
Indiana	Medium	C	E	Yes
Iowa	Medium	C	E	Yes
Kansas	Low	C	E	
Maine	Low	V+C	E	Yes
Michigan	Medium	C	E	Yes
Minnesota	Low	V	E	
Mississippi	Low	C	E	Yes
Montana	Low	C	E	Yes
Nebraska	Low	C	E+P	Yes
Nevada	Unconstitutional	C		
New Hampshire	Low	C	E	Yes
New Jersey	Unconstitutional & Repealed			
New York	"			
No. Carolina	High	V+C	E	Yes
No. Dakota	Low	C	E	Yes
Oklahoma	Low	C	E	Yes
Oregon	Low	C	E	Yes
So. Carolina	Low	C	E	Yes
So. Dakota	Low	V+C	E	
Utah	Low	C	E	Yes
Vermont	Low	V	E	
Virginia	High			Yes
Washington	Unconstitutional & Repealed	C		

CHART II CONTINUED

West Virginia	Low	C	E	Yes
Wisconsin	Low	C	E	
Puerto Rico	Low	C	E	Yes

*Where State is not listed, there is either no law or its status and applicability could not be determined in detail.

**Average number of cases annually from 1946-1956.

Low = less than 50/year

Medium = 50-100/year

High = over 100/year

CHART III

NUMBER OF STERILIZATIONS PER ANNUM

State	1946	1947	1948	1949	1950	1951	1952	1953	1954	1955
Arizona				1						1
California	480	401	326	381	275	150	39	23	27	25
Connecticut		6	8	10	2	3	5	5	2	3
Delaware	29	15	34	19	13	7	33	4		
Georgia	68	24	94	167	226	200	279	246	207	291
Idaho							5	8	4	2
Indiana	192	89	77	49	71	60	37	55	85	94
Iowa	45	70	127	165	113	178	70	85	72	47
Kansas	71	29	18		24					
Maine	9	3	3	3	6	4	5	8	17	26
Michigan	75	117	131	88	72	65	81	103	71	61
Minnesota	2	1	4	8	12	15	16	13	10	9
Mississippi	19	11	3							
Montana	15	6	5	8		3	2		2	
Nebraska	13	7	20	16	19	19	37	27	23	15
New Hampshire	9	6	11	14	17	23	18	21	8	4
No. Carolina	105	139	186	249	295	375	326	270	300	289
No. Dakota	29	17	33	23	23	42	22	37		16
Oklahoma							2			1
Oregon	49	30	43	32	60	42	72	59	25	28
So. Carolina			4	7	12	10	3	7	8	30
So. Dakota	24	46	12	3	5	4	4	8	6	2
Utah	64	58	16	4	34	30	46	16	13	9
Vermont	10		1		1					
Virginia	152	122	134	215	204	207	153	169	171	111
West Virginia									15	33
Wisconsin	52	35	46	28	42	22	11	22	14	
Totals	1512	1242	1336	1500	1526	1459	1267	1180	1079	1067

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