

## Chapter 436

### 1961 REPLACEMENT PART

(1963 reprint)

## Sterilization For Social Protection

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### CROSS REFERENCES

Juveniles, medical treatment by order of court, 419.511	436.020	State agencies, general provisions relating to, Ch. 182	436.110
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**436.010 Definitions.** As used in this chapter, "board" means the State Board of Eugenics.

**436.020 State Board of Eugenics; members; secretary.** (1) There hereby is established a State Board of Eugenics.

(2) The board shall be composed of the State Board of Health, the Superintendent of the Oregon State Hospital, the Superintendent of the Eastern Oregon State Hospital, the Superintendent of the F. H. Dammasch State Hospital, the Superintendent of the Oregon Fairview Home, the Superintendent of the Oregon State Correctional Institution and the Warden of the Oregon State Penitentiary.

(3) The State Health Officer shall serve as the secretary of the board.

[Amended by 1955 c.556 §1; 1955 c.660 §29]

**436.030 Periodic reports to board by heads of institutions and State Health Officer.** The State Health Officer and the superintendents of the following named institutions shall report to the board quarterly, on the first of January, April, July and October, all persons who are feeble-minded, insane, habitual criminals, incurable syphilitics, moral degenerates or sexual perverts, and who are, or in their opinion will likely become, a menace to society:

- (1) Oregon State Hospital.
- (2) Eastern Oregon State Hospital.
- (3) Oregon Fairview Home.
- (4) Oregon State Penitentiary.
- (5) MacLaren School for Boys.
- (6) Hillcrest School of Oregon.
- (7) F. H. Dammasch State Hospital.
- (8) Oregon State Correctional Institution.

[Amended by 1955 c.651 §11; 1955 c.660 §30; 1961 c.173 §1]

**436.040 Procedure for examination of persons convicted of certain crimes.** Whenever any person is convicted of the crime of rape, incest, sodomy, contributing to the delinquency of a minor by sexual act or act of sexual perversion, or the crime against nature, or any other crime specified in ORS 167.040, or of attempting to commit any of those crimes, the clerk of the court shall forthwith transmit a certified copy of the record of the conviction of such person to the board. The judge before whom such person was convicted may order such person to be examined by the board, and may defer sentence until it is finally determined

whether an operation will be performed upon such person.

**436.050 Examination and sterilization order.** The board shall examine into the innate traits, the mental and physical conditions, the personal records and the family traits and histories of all persons reported under ORS 436.030 and 436.040, so far as the same can be ascertained. If in the judgment of a majority of the board procreation by such person would produce children having an inherited tendency to feeble-mindedness, insanity, criminality or degeneracy, or who would probably become social menaces or wards of the state, and there is no probability that the condition of the person investigated and examined will improve to such an extent as to avoid such consequences, then the board shall make an order embodying its conclusions with reference to such person in said respects and specifying such type of sterilization as may be deemed by the board best suited to the condition of the person and most likely to produce the beneficial results in the respects specified in this section.

[Amended by 1961 c.173 §2]

**436.060 Judicial powers of the board.** For the purposes of ORS 436.050, the board may subpoena witnesses and any member of the board may administer an oath to any witness whom it is desired to examine in such proceeding. The subpoena shall be issued by the board and served in the same manner and with the same effect as subpoenas in criminal cases in the circuit court.

**436.070 Sterilization to be protective, not punitive, measure.** The investigation, findings and orders of the board under ORS 436.050 and 436.080 shall be made with the purpose in view of securing a betterment of the physical, mental, neural or psychic condition of the person, or to protect society from the acts of such person, or from the menace of procreation by such person, and not in any manner as a punitive measure.

**436.080 Records of findings and orders.** After fully inquiring into the condition of each person reported, the board shall make separate written findings and conclusions for each person into whose condition it has examined, including its findings, conclusions and order thereon as provided in ORS 436.050. These shall be preserved in the records of the board and a copy thereof shall be

furnished to the official who reported the case.

**436.090 Service of copy of order on persons affected.** If an operation is deemed necessary by the board for any person investigated under ORS 436.050, then a copy of the order of the board recommending an operation shall be served forthwith on:

(1) The person investigated or

(2) In case of an insane or feeble-minded person, on his legal guardian or if he has no legal guardian, on his nearest known kin or personal friend in this state or if he has no known kin or personal friend in this state, on his custodian guardian.

**436.100 Operation with consent of persons concerned.** (1) If any person, whose condition has been examined and reported upon by the board, as provided in this chapter, consents in writing to have the operation specified in the order of the board performed, the operation shall thereupon be performed upon such person by or under the direction of the superintendent of the institution in which he is confined, if such person is an inmate of any of the state institutions mentioned in ORS 436.030, or if he is not an inmate of any of those institutions, the operation shall be performed by or under the direction of the State Health Officer.

(2) All operations shall be performed with due regard for the physical condition of the person upon whom it is performed and in a safe and humane manner.

(3) If the person to be operated upon is feeble-minded or insane, the consent under subsection (1) of this section shall be construed to mean not only the written consent of the person to be operated upon but, in addition thereto, the written consent of one of the following, in the order indicated:

(a) His legal guardian.

(b) His nearest known kin or personal friend in this state, if he has no legal guardian.

(c) His custodian guardian, if he has neither a legal guardian nor known kin or personal friend in this state.

**436.110 Procedure for appeal from order requiring an operation; failure to appeal deemed consent to operation.** (1) If consent to the performance of an operation is not given by the proper person as provided in this chapter, the person investigated may appeal to the circuit court of the county in which he resides.

(2) The appeal shall be taken within 30 days from the date a copy of the order was served upon him, by serving a written notice of appeal upon the secretary or any member of the board and by filing a copy of such notice and proof of such service thereof with the clerk of the circuit court, whereupon the court will be deemed to have acquired jurisdiction, and to have control of all subsequent proceedings. The board, through its secretary, or other officer having charge of its records and files, within 15 days thereafter, or such further time as the court or judge thereof may allow, shall file a copy of its findings, conclusions and the order appealed from with the clerk of the court. Thereupon the clerk shall docket the appeal, and it shall be heard and determined by the court as soon thereafter as practicable.

(3) Upon failure to take an appeal from any order of the board in the manner and within the time provided in subsection (2) of this section, the order shall then be deemed valid, enforceable and conclusive upon all persons, and the order shall not thereafter be brought into question. Failure to take the appeal shall be conclusively deemed the equivalent of consent to the performing of an operation as required by the order, as though consent had been expressly given as provided in ORS 436.100.

**436.120 Court procedure on appeal; issues; parties; representation; trial record.**

(1) The issue raised by an appeal under ORS 436.110 shall be whether the findings and conclusions of the board shall be affirmed by the court. The appeal shall be tried as a special proceeding in the same manner as a civil action at law in which the state is the defendant and the person taking an appeal is the plaintiff.

(2) Each party has the same rights as to production of evidence.

(3) In all cases the district attorney of the county where such proceedings are tried shall appear and defend on behalf of the state.

(4) If the plaintiff has no attorney and he is unable to secure one, the court shall appoint an attorney from the membership of the bar of the county to conduct his case in circuit court, and upon appeal to the Supreme Court, if taken. The attorney shall be compensated by the state, upon order of the court.

(5) The circuit court shall have the testimony fully reported at the expense of the state.

**436.130 Appeal to Supreme Court; costs paid by state where party unable to pay.**

(1) Either party to the proceedings under ORS 436.120 may take an appeal from the circuit court to the Supreme Court in the same manner and within the same time, and with like effect, as appeals in other civil actions are taken. Such cases shall be tried in the Supreme Court in the same manner as other appeals in actions at law.

(2) If the plaintiff is represented by an attorney appointed by the court, as provided in ORS 436.120 and, in the opinion of the court, is financially unable to meet his part of the expense of an appeal, the plaintiff's actual and necessary expense of such appeal and prosecution thereof to final decree by the Supreme Court shall be paid by the state upon order of the circuit court.

**436.140 Expenses of proceedings; compensation of members of board.** (1) Except as otherwise provided in this chapter, the state shall be liable only for the actual trav-

eling expenses of the members of the board incurred in the performance of their duties, and the actual and necessary expense incident to the investigations of the board on appeal therefrom under this chapter.

(2) The members of the board shall serve without compensation.

**436.150 Interference with selection of physician or religious practices.** Nothing in this chapter shall be construed to authorize the board, or its representatives, or the State Health Officer, or his representatives, or the superintendents of any of the institutions mentioned in ORS 436.030, or their representatives, to interfere in any manner with:

(1) The individual's right to select the physician of his choice, if such physician is, in the judgment of the board, competent to perform the operation.

(2) The practice of any person whose religion treats or administers to the sick or suffering by purely spiritual means, if such practice, treatment or administration does not in any way interfere with the operation of this chapter and the carrying out of its purposes.

#### CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.  
Done at Salem, Oregon,  
on December 1, 1961.

Sam R. Haley  
Legislative Counsel