

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 Hospital and Training Center, the Superintendent of the F. H. Dammasch State Hospital, the Superintendent of the Fairview Hospital and Training Center, 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436.030 [Amended by 1955 c.651 §11; 1955 c.660 §30; 1961 c.173 §1; repealed by 1965 c.264 §12]

436.040 [Repealed by 1965 c.264 §1 (436.041 enacted in lieu of 436.040)]

436.041 Notice of proposed sterilization to person affected or to other proper persons. The board shall cause written notice signed by the chairman or secretary of the board setting forth the time and place where the board will hear and consider the matter of the sterilization of the person named in the notice. The notice shall state in clear and concise language the reason why it appears that such person should be examined for the purpose of sterilization, the type of sterilization recommended, and shall direct that the persons upon whom such notice is served shall appear and show cause, if any he has, why an order of sterilization should not be entered by the board. The original of the notice shall remain on file with the board and a copy of such notice certified by the chairman or secretary of the board as being a true copy of the original shall be delivered to the person to be examined or shall be served by registered mail not less than 20 days prior to the time of hearing specified in the notice and, except for counsel on the proper persons as designated in ORS 436.090 as for service of an order.

[1965 c.264 §2 (enacted in lieu of 436.040)]

436.050 Examination and sterilization order. (1) 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 examined

by the board for purposes of sterilization, 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 mental retardation or mental illness, 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.

(2) If the person to be examined is mentally retarded or mentally ill and the proper person as specified in subsection (2) of ORS 436.090, excluding counsel, does not appear at the time the board hears and considers the case of the person to be examined or if such person does appear and in the opinion of the board such person may be mentally retarded or mentally ill the board may, nevertheless, proceed and enter such order as it deems proper.

[Amended by 1961 c.173 §2; 1965 c.264 §3; part renumbered 436.055]

436.055 Appointment of counsel for person examined; expenses. (1) In all instances where the board enters an order under the circumstances and conditions set forth in subsection (2) of ORS 436.050, the board subsequent to entry of the order shall file a petition in the circuit court of the county wherein the person to be examined resides or is confined for appointment of counsel to represent such person, if he has no attorney, in all proceedings had pursuant to the provisions of this chapter including final determination on appeal. The circuit court shall appoint counsel for such person.

(2) Upon completion of all services by counsel, including any appeal, the counsel shall submit to the circuit court an affidavit containing an accurate statement of all reasonable expenses paid or incurred in connection with such services including reasonable fees for expert witnesses, supported by appropriate receipts or vouchers. The court shall thereupon enter an order directing payment to counsel of the amount of the expenses, or such portion thereof as may be approved by the court, together with such fee as the

court may deem reasonable. All expenses shall be paid by the state.

(3) Nothing in this chapter shall prevent a person from retaining counsel of his own choice who, regardless of whether counsel has already been appointed, may be substituted as attorney of record upon filing notice with the court and may be compensated pursuant to the provisions of this section.

[Formerly part of 436.050]

436.060 [Repealed by 1965 c.264 §4 (436.061 enacted in lieu of 436.060)]

436.061 Subpena of witnesses and records; administration of oaths. The board may subpoena witnesses and shall subpoena and compel the attendance of such witnesses as the person examined may reasonably designate and shall produce or require the production of any book or paper relating to the matter under investigation at any such proceeding. Any member of the board may administer an oath to any witness whom it is desired to examine. 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.

[1965 c.264 §5 (enacted in lieu of 436.060)]

436.070 Sterilization to be protective, not punitive, measure. The investigation, findings and orders of the board under ORS 436.050, 436.055 and 436.080 shall be made with the purpose in view of protecting society from the menace of procreation by such person, and not in any manner as a punitive measure.

[Amended by 1965 c.264 §6]

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 and 436.055. 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 and 436.055, then a copy of the order of the board recommending an operation shall be forthwith served personally or by registered mail on:

(1) The person investigated, or

(2) In case of a person who is mentally ill or mentally retarded, on the person investigated, his attorney and if within this state his legal guardian or if he has no legal guardian, on his spouse, if known, or his nearest known kin or personal friend in this state or if he has no known spouse, kin or personal friend in this state, on his custodian guardian.

[Amended by 1965 c.264 §7]

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 Oregon State Hospital, Eastern Oregon Hospital and Training Center, Fairview Hospital and Training Center, Oregon State Penitentiary, MacLaren School for Boys, Hillcrest School of Oregon, F. H. Dammasch State Hospital, Oregon State Correctional Institution or any other like institution, 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 mentally ill or mentally retarded, 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 spouse, if known, or 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, known spouse nor known kin or personal friend in this state.

(4) No consent of a mentally ill or mentally retarded person to have the operation, specified in the order of the board, performed shall be valid when any of the conditions, set forth in subsection (2) of ORS 436.050 requiring appointment of counsel,

exist unless counsel has been appointed for such person as provided by this chapter.

[Amended by 1965 c.264 §8]

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 as provided in ORS 436.090, 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.

[Amended by 1965 c.264 §9]

436.120 Court procedure on appeal; issues; parties; counsel; 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 is not mentally ill or not mentally retarded and 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.

[Amended by 1965 c.264 §10]

436.130 Appeal to Supreme Court. 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.

[Amended by 1965 c.264 §11]

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 traveling 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 November 15, 1965.

Sam R. Haley
Legislative Counsel

