

§ 1. AMENDMENT.] Section 375b3 of the Supplement to the Compiled Laws of North Dakota is hereby amended and re-enacted to read as follows:

§ 375b3. The said State Publication and Printing Commission is authorized to appoint a State Printer who shall be Secretary to the Commission. The person so appointed must be a practical expert printer who must have had experience as an estimator of printing. He shall perform all the duties now required of the State Printer and such other duties as may be assigned to him by the State Publication and Printing Commission and shall maintain his office in the State Capitol. When requested by any county auditor or board of county commissioners, he shall be required to figure any legal notice or publication and his decision as to the proper fee for such publication shall be binding and final, subject to review by the courts. He may be removed by the Commission with or without cause.

§ 2. All Acts or parts of Acts in conflict herewith are hereby expressly repealed.

Approved March 7, 1927.

STERILIZATION

CHAPTER 263

(S. B. No. 136—Kretschmar)

STERILIZATION OF FEEBLEMINDED, INSANE, ETC.

An Act to Prevent the Procreation of Feeble-minded, Insane, Epileptic, Habitual Criminals, Moral Degenerates and Sexual Perverts, Who May Be Inmates of State Institutions, Authorizing and Providing for the Sterilization of Such Persons and Providing for Appeals to the District Court in Certain Cases; and Repealing Sections 11429 to 11438 Inclusive of the Compiled Laws of North Dakota for 1913.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. It shall be the duty of the superintendent or head of each State Institution in the State of North Dakota, including the State Penitentiary, the State Hospital for the Insane, the State Training School, and the State Hospital for the Feeble-minded to report quarterly to the Board of Examiners herein provided for, all feeble-minded, insane, epileptic, habitual criminals, moral degenerates and sexual perverts, who are potential to producing off-spring, who, because of inheritance of inferior or antisocial traits, would probably become a social menace or wards of the State.

§ 2. For the purpose of carrying into effect the provisions of this Act, there is hereby created a Board of Examiners to consist of three competent physicians and surgeons who shall be

appointed by the State Board of Administration upon recommendations made by the State Medical Board, each of whom shall serve during the pleasure of said Board of Administration. Such Board shall appoint one of its members as chairman and one as secretary.

§ 3. It shall be the duty of such Board of Examiners to examine into the innate traits, the mental and physical conditions, the personal records and the family traits and history of all persons reported so far as the same can be ascertained; and for this purpose, said Board shall have the power to summon and examine witnesses and hold a hearing as hereinafter provided; and if, in the judgment of the entire board, procreation by any such person would produce children with an inherited tendency to feeble-mindedness, insanity, epilepsy, criminality or degeneracy, and there is no probability that the condition of such person so examined will improve to such an extent as to render procreation by any such person advisable, or if the physical or mental condition of any such person will be substantially improved thereby, then it shall be the duty of said Board after such examination and hearing to make an order requiring such person to be sterilized.

§ 4. Each inmate so examined shall, before any order is made adjudging him to be a proper subject for sterilization, be entitled to a hearing before such Board upon reasonable notice, and shall be entitled in his own behalf, or by anyone appearing for him, to offer evidence, either in the nature of expert testimony or otherwise, for the purpose of showing that he is not a proper subject for sterilization under the provisions of this Act. Such notice of hearing shall be in writing and shall be served upon such inmate personally in all cases, and in cases of insane and feeble-minded persons, upon their legal guardian, if any, and if none, upon their nearest kin residing within the state of North Dakota, and in case of a minor, upon his parents or guardian.

§ 5. The purpose of said examination, findings and order of said Board shall be for the betterment of the physical, mental, neural, or psychic condition of the inmate, or to protect society from the menace of procreation by said inmate, and not in any manner as a punitive measure; and no person shall be sterilized under the authority of this Act except that such operation shall be found to be necessary to improve the physical, mental, neural, or psychic condition of the inmate, or to prevent such inmate from producing off-spring that would probably become a menace to society, or wards of the state.

§ 6. After completing such examination and hearing, said Board shall make separate written findings, for each of the inmates so examined, and the same shall be preserved in the records

of said Board and a copy thereof shall be furnished to the superintendent or head of the institution in which the inmate is confined, and if an operation is deemed necessary by said Board, then a copy of the order of said Board shall forthwith be served on the inmate, and in case said inmate is an insane or feeble-minded person, upon his legal guardian, if any, and if none, then upon his nearest kin within the State of North Dakota, and in case such inmate is a minor, then upon his parents or guardian.

§ 7. Any such inmate desiring to appeal from the order of said Board, or in case the inmate is under guardianship or is a minor, then the guardian of said inmate or the parents of such minor, as the case may be, may take an appeal to the District Court of the County in which the Institution where the inmate is confined, is located. Notice of appeal shall be filed with the Secretary of said Board within 15 days after the date when the notice of said Board's order is served upon the inmate, or his guardian, and said notice of appeal shall stay proceedings of said Board on said matter until the same is heard and determined on said appeal; provided further, that no sterilization operation shall be performed upon any inmate until the time for appeal from the order of the Board has expired.

§ 8. Upon an appeal being taken, the Secretary of said Board where the notice of appeal is filed, must within fifteen days thereafter, or such further time as the Court or the judge thereof may allow, transmit a certified copy of the notice of appeal and transcript of the proceedings, findings and order of the board, to the clerk of the court appealed to. The trial on appeal shall be de novo as provided by the Statutes of the State for the trials of actions in equity. Upon such appeal if the inmate be without sufficient financial means to employ an attorney then the court shall appoint an attorney to represent the said inmate, and such attorney shall be compensated upon order of the court as in case of indigent defendants, and it shall be the duty of the State's Attorney of the county wherein such trial is had to represent the said Board.

§ 9. If the court shall affirm the findings of said Board, said court shall enter a judgment, adjudging that the order of said Board shall be carried out as herein provided; if the court fails to affirm the decision of said Board appealed from, then said order shall be null and void and of no further effect.

§ 10. Upon the receipt of the order from said Board of Examiners, the superintendent or head of the Institution to which it is directed shall, after the time for appeal has expired, or in case

an appeal upon the entering of a judgment affirming the order of the Board, and it is hereby made his lawful duty to perform, or cause to be performed such surgical operation for the sterilization of the inmate named therein as may be specified in the order of the Board of Examiners, provided, that such operation shall not under any circumstances be by castration or ovariectomy except when organs are diseased. All such operations shall be performed with due regard for the physical condition of the inmate and in a safe and humane manner.

§ 11. No surgeon performing the operation provided for in the preceding sections shall be held criminally liable therefor or civilly liable for any loss or damage on account thereof, except in case of negligence in the performance of such operation.

§ 12. The criminals who shall come within the operation of this law shall be those who are moral degenerates and sexual perverts or those who are addicted to the practice of sodomy or the crime against nature, or to other gross, bestial and perverted sexual habits and practices prohibited by Statute.

§ 13. The provisions of this Act shall apply to both male and female inmates of any of the institutions designated therein.

§ 14. As compensation for their services as members of said Board of Examiners, each of them shall be entitled to a per diem of \$10.00 per day while in the actual performance of their duties and actual necessary expenses to be paid out of the funds of the institution where the services are performed upon the approval of the Board of Administration.

§ 15. The Board of Examiners shall keep all files and records in any proceeding had under the provisions of this Act together with full minutes of all meetings of such Board, and for that purpose the secretary of the Board of Examiners shall be the custodian of all records and files pertaining to proceedings had by such Board.

§ 16. It shall be the duty of the Chief Medical Officer of any institution in which any sterilized inmates are confined to make careful observations of each of such inmates, particularly with the view of ascertaining the effect of such operation upon the moral, mental and physical condition of such sterilized persons and shall annually make a written report to the Board of Examiners on each of such persons, and keep a copy thereof on file with the records of such institution.

§ 17. That Sections 11429 to 11438 inclusive of the Compiled Laws of North Dakota for 1913, be and the same are hereby repealed.

Approved March 3, 1927.