

MAINE STATE LEGISLATURE

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N I N E T I E T H L E G I S L A T U R E

Legislative Document

No. 528

S. P. 295

In Senate, February 6, 1941.

Taken from table on motion by Sen. Bishop of Sagadahoc and on further motion by Sen. Bishop referred to Committee on Judiciary and 1000 copies ordered printed. Sent down for concurrence.

ROYDEN V. BROWN, Secretary.

Presented by Senator Bishop of Sagadahoc.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-ONE

AN ACT Creating a State Board of Eugenics.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. State board. A state board of eugenics, hereby, is created. Said board shall consist of the superintendent of the Augusta State Hospital, the superintendent of the Bangor State Hospital, and the superintendent of the Pownal state school. This board shall elect one of its own members as its secretary who shall keep the records of the proceedings of the board. None shall receive any salary or fees, but shall be paid their actual traveling expenses.

Sec. 2. Reports of defective. Whenever information, in writing, is given to said board that any person living in this state is feeble-minded, insane, syphilitic, habitual criminal, moral degenerate, or a sexual pervert, and thereby is a menace to society, all of whom hereinafter are denominated "defectives", by (1) the father, mother, husband, wife, brother, sister, child or next of kin of the alleged defective, (2) any of the following persons resident in the county where the alleged defective is resident or is found: the municipal officers of the city or town where the defective is resident or is found, or the county attorney, or the sheriff of the county, said board shall cause a copy of said information, attested by its secretary, to be served

in hand upon the alleged defective, fixing a time and a place within the county where the alleged defective is found, not less than 10 days subsequent to such service, for the hearing upon said information before the board.

Sec. 3. Hearing. Said alleged defective shall have the right to appear personally before said board and to be represented by counsel at such hearing. He shall have the right to have witnesses subpoenaed and to introduce such evidence in regard to the matter at issue as the board shall deem material and proper.

Sec. 4. Examination and hearing. It shall be the duty of the board, at the time and place named in the notice aforesaid, with such continuances from time to time and from place to place as the board may determine, to hear and consider the evidence offered and to examine into the innate traits, the mental and physical conditions, the personal records and family traits, and history of the alleged defective, in so far as the same can be obtained.

Sec. 5. Witnesses. Any member of said board shall have authority, and power to issue subpoenas and to cause the service of the same by any officer authorized by law to serve civil processes. Any member shall have authority to administer an oath to witnesses before it.

Sec. 6. Contempt. Should a witness who has been duly served with a subpoena refuse to appear as directed thereby, or refuse to answer any proper question, the board shall report such refusal to the probate court within the county where the refusal occurs. Any judge of the probate court of the state may issue a *ca-pias* to apprehend and bring such delinquent before him and may proceed as provided in section 122 of chapter 96 of the revised statutes.

Sec. 7. Order for sterilization. If in the judgment of a majority of said board procreation by such persons would produce a child or children having an inherited tendency to feeble-mindedness, syphilis, insanity, epilepsy, criminality, or degeneracy, and there is no probability that the condition of such person so investigated and examined will improve to such an extent as to avoid such consequences, then it shall be the duty of such board to make an order embodying its conclusions with reference to such person in said respects and specifying such a type of sterilization as may be deemed by said board best suited to the condition of said person and most likely to produce the beneficial results in the respects specified in this section.

Sec. 8. Findings. After fully inquiring into the condition of each of

such alleged defectives said board shall make separate written findings and conclusions for each of the alleged defectives into whose condition it has examined, including its findings, conclusions, and order thereon as herein provided, and the same shall be preserved in the records of said board and a copy thereof shall be furnished to the official who reported the case.

Sec. 9. Service of order. If an operation is deemed necessary by said board for such alleged defective so investigated, then a copy of the order of said board recommending such operation shall be served forthwith on said alleged defective, or, in the case of an insane or feeble-minded person, upon his legal guardian, and if such alleged defective has no legal guardian, then upon his nearest known kin, or personal friend, within the state, and if such person has no known kin or personal friend within the state, then the board shall cause application to be made to the probate court of the county in which such person resides or may be found, for the appointment of some suitable person to act as guardian of the alleged defective reported upon during and for the purposes of the proceedings under this act, to defend the rights and interest of the said defective; and the court shall, by proper order, appoint some suitable person to act as guardian for said purposes who shall be paid from any funds in the state treasury not otherwise appropriated, a fee, but not exceeding \$25, as may be determined by the judge of said court, for his services under said appointment. Such guardian may be removed or discharged at any time by said court, or the judge thereof in vacation, and a new guardian appointed and substituted in his place.

Sec. 10. Purpose and objects sought. Said investigation, findings, and orders of said board shall be made with the purpose in view of securing a betterment of the physical, mental, neural or physical condition of the alleged defective, to protect society from the acts of such defective, or from the menace of procreation of such defective, and not in any manner as a punitive measure.

Sec. 11. Consent to operation. If any person whose condition has been examined and reported upon by said board, as hereinbefore provided, shall consent in writing to have the operation performed as specified in the order of said board, such operation shall be performed by or under the direction of the state board of eugenics. All such 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.

Sec. 12. "Consent" defined. In case the person to be operated upon be feeble-minded or insane, the consent hereinbefore mentioned in section 11

shall be construed to mean the written consent of such person's legal guardian, or if such person has no legal guardian, then the written consent of such person's nearest known kin or personal friend within the state of Maine, or if such person be insane, or feeble-minded, and has neither legal guardian nor known kin or personal friend within the state of Maine, then the written consent of the guardian appointed by the court for such person as provided in this act.

Sec. 13. Absence of consent. If any such person shall not consent, within 20 days from the service of such order upon him, to the performance of such operation, said board of eugenics, through its secretary, within 15 days thereafter, or such further time as the court may allow, shall file a transcript of its proceedings, and of its said findings, conclusions, and order with reference to said person, with the register of the probate court of the county in which such person resides, or may be found.

Sec. 14. Appearance. Upon the filing of such findings, conclusions, and order, the register of the probate court shall issue a summons directed to such person and deliver the same to the sheriff or to any of his deputies, together with a copy of such order prepared and certified by him, and it shall be the duty of said officer to forthwith serve said summons and copy of order upon said person therein named, who shall be required, within 20 days after such service upon him, to enter his appearance in writing with the register of the probate court in such case, or by appearing in person before said clerk, who shall thereupon enter the appearance of such person in such proceedings. If he be an insane or feeble-minded person such appearance may be made by his guardian, if he have one; if not, then by his nearest of kin, or near friend. If he be confined in an institution, facility shall be furnished him for making such appearance.

Sec. 15. Court procedure. The issue thereby raised shall be whether the findings and conclusions of said board shall be affirmed by the court, and shall be tried in the superior court of such county as in equity in which the state shall be the plaintiff and the person so summoned shall be the defendant. Each party shall have the same rights as to production of evidence and the case shall be tried in the same manner as any other civil action. In all such cases the county attorney of the county where such proceedings are tried shall appear and prosecute such action on behalf of the state. If the defendant has no attorney and he is unable to secure one, the court shall appoint an attorney from the membership of the bar of said county to conduct his defense, and appeal, if any be taken as hereinafter provided, and such attorney shall be compensated by the state, upon

order of the court. Upon the request of either party to such proceeding all questions of fact shall be tried by a jury and the court in every instance shall have the testimony fully reported at the expense of the state.

Sec. 16. Judgment. If the findings and conclusions of the state board of eugenics shall be affirmed by the court, the defendant shall be immediately placed in custody by the sheriff of said county, and may be admitted to bail by the court, who shall fix the amount of such bail, and if not so admitted to bail, shall be held until the operation provided in such findings be performed.

Sec. 17. Appeal. Either party to said proceedings may take an appeal from the superior court to the supreme court of this state in the same manner and within the same time and with like effect as appeals in other civil actions are taken and such case shall take the same course as other appeals. If the defendant be represented by an attorney appointed by the court, and, in the opinion of the court, is financially unable to meet his part of the expense of an appeal, the defendant'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 said superior court, same to be paid out of the general funds of the state not otherwise appropriated.

Sec. 18. Selection of physician. Nothing in this act shall be construed to empower or authorize the state board of eugenics or its representatives to interfere in any manner with the individual's right to select the physician of his choice; provided, that such physician is in the judgment of the state board of eugenics competent to perform such operation.

Sec. 19. Fee. A physician or surgeon, who is not in the employ of the state, shall receive a reasonable compensation for an operation performed hereunder, which compensation shall be paid from any funds in the state treasury not otherwise appropriated.

Sec. 20. Application of this act. The provisions of this act shall not apply to the inmates either of the Augusta State Hospital, the Bangor State Hospital, or the Pownal state school.