
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: AB 1007 **Hearing Date:** June 29, 2021
Author: Carrillo
Version: May 24, 2021
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Forced or Involuntary Sterilization Compensation Program*

HISTORY

Source: California Latinas for Reproductive Justice

Prior Legislation: AB 3052 (Carrillo), held in Assm. Approps. Comm., 2020
AB 1764 (Carrillo), held in Assm. Approps. Comm., 2019
SB 1190 (Skinner), held in Assm. Approps. Comm. 2018
AB 1135 (Jackson), Ch. 558, Stats. 2014

Support: A New Path; Access Reproductive Justice; Alliance of Californians for Community Empowerment Action; Alliance for Humane Biotechnology; American Association of Regional Center Agencies; Asian Americans Advancing Justice – California; Association of University Women – California; Black Women Birthing Justice; BreastFeedLA; Buen Vecino; Business & Professional Women of Nevada County; California Coalition for Women Prisoners; California Immigrant Policy Center; California Nurse-Midwives Association; California Pan-Ethnic Health Network; California Physicians Alliance; California Prison Focus; California Public Defenders Association; California United for a Responsible Budget; California Women’s Law Center; Center for Genetics Society; Center for Reproductive Rights; Citizens for Choice; Courage California; Crime Survivors for Safety and Justice; Critical Resistance; Dignity and Power Now; Disability Rights California; Disability Rights Education and Defense Fund; Dolores Huerta Foundation; Ella Baker Center for Human Rights; Empowering Pacific Islander Communities; End Solitary Santa Cruz County; Fair Chance Project; Fairview Families and Friends Inc.; Felony Murder Elimination Project; Feminist Majority Foundation; Forward Impact; Fresno Barrios Unidos; Friends Committee on Legislation of California; Guerrilla Food not Bombs; Having our Say Coalition; If/When/How: Lawyering for Reproductive Justice; Initiate Justice; Justice in Aging; Kern County Participatory Defense; Latino Coalition for a Healthy California; League of Women Voters of California; Legal Aid Society of San Mateo County; Legal Services for Prisoners with Children; Life on Earth Art; Medical Students for Choice; National Association of Social Workers – California Chapter; National Black Women’s HIV/AIDS Network, Inc.; National Center for Youth Law; NARAL Pro-Choice California; National Health Law Program; No Justice Under Capitalism; Plan C; Planned Parenthood Affiliates of California; Positive Women’s Network – USA; Pro-Choice Alliance for Responsible Research; Public Health Justice Collective; Religious Coalition for Reproductive Choice California; Represent Justice; Reproductive Health

Access Project; Re:store Justice; Root & Rebound; San Francisco Bay View National Newspaper; San Francisco Public Defender; Starting Over Inc.; State Council on Developmental Disabilities; Time for Change Foundation; Training in Early Abortion for Comprehensive Healthcare; Transitions Clinic Network; Truth and Reconciliation Committee of Neighborhood Unitarian Universalist Church; URGE: Unite for Reproductive & Gender Equity; Uncommon Law; Western Center on Law and Poverty; Women's Foundation California; Women of Reform Judaism; Young Women's Freedom Center

Opposition: None known

Assembly Floor Vote: 79 - 0

PURPOSE

The purpose of this bill is to establish the Forced or Involuntary Sterilization Compensation Program to be administered by the California Victim Compensation Board.

Existing law states that a person sentenced to imprisonment in the state prison or in county jail is under the protection of the law, and any injury to the person not authorized by law is punishable in the same manner as if the inmate were not convicted or sentenced. (Pen. Code, § 2650.)

Existing law makes it unlawful to use any cruel, corporal or unusual punishment in prisons, or to inflict any treatment or allow any lack of care which would injure or impair the health of the confined person. (Pen. Code, § 2652.)

Existing law prohibits sterilization for the purpose of birth control of an individual under the control of the California Department of Corrections and Rehabilitation (CDCR) or a county correctional facility, except as specified. (Pen. Code, § 3440.)

Existing law requires CDCR to only provide medical services for inmates which are based on medical necessity and supported by outcome data as effective medical care. (Cal. Code Regs., tit. 15, § 3350, subd. (a).)

Existing law establishes the California Victims Compensation Claims Board ("board") to operate the California Victim Compensation Program (CalVCP). (Gov. Code, §§ 13950 *et. seq.*)

This bill establishes the Forced or Involuntary Sterilization Compensation Program, to be administered by the California Victim Compensation Board.

This bill states that the purpose of the program is to provide victim compensation to the following:

- Any survivor of state-sponsored sterilization conducted pursuant to eugenics laws that existed in California between 1909 and 1979; and,
- Any survivor of coercive sterilization performed on an individual under the custody and control of CDCR after 1979.

This bill provides the following definitions:

- “Board” means the California Victim Compensation Board;
- “Program” means the Forced or Involuntary Sterilization Compensation Program;
- “Start date of the program” means the date the program becomes operative as provided;
- “Qualified recipient” means an individual who is eligible for victim compensation by meeting the specified requirements of eligibility.

This bill states that eligibility as a survivor of eugenics sterilization requires an individual to meet all of the following requirements:

- The individual was sterilized pursuant to eugenics laws that existed in the State of California between 1909 and 1979;
- The individual is alive as of the start date of the program; and,
- The individual was sterilized while the individual was at a facility under the control of the State Department of State Hospitals or the State Department of Developmental Services, including any of the following institutions:
 - Agnews Developmental Center, formerly known as Agnews State Mental Hospital;
 - Atascadero State Hospital;
 - Camarillo State Hospital and Developmental Center;
 - DeWitt State Hospital;
 - Fairview Developmental Center, formerly known as Fairview State Hospital;
 - Mendocino State Hospital;
 - Modesto State Hospital;
 - Napa State Hospital, formerly known as Napa State Asylum for the Insane;
 - Metropolitan State Hospital, formerly known as Norwalk State Hospital;
 - Frank D. Lanterman State Hospital and Developmental Center, formerly known as Pacific State Hospital or Pacific Colony;
 - Patton State Hospital, formerly known as Southern California State Asylum for the Insane and Inebriates;
 - Porterville Developmental Center, formerly known as Porterville State Hospital;
 - Sonoma Developmental Center, formerly known as Sonoma State Hospital, Sonoma State Home, or California Home for the Care and Training of the Feeble Minded; and,

- Stockton Developmental Center, formerly known as Stockton State Hospital.

This bill states that eligibility as a survivor of coerced sterilization of imprisoned populations requires an individual to meet all of the following requirements:

- The individual was sterilized while under the custody and control of CDCR and imprisoned in a state prison or reentry facility, community correctional facility, county jail, or any other institution in which they were involuntarily confined or detained under a civil or criminal statute;
- The sterilization was not required for the immediate preservation of the individual's life in an emergency medical situation;
- The sterilization was not the consequence of a chemical sterilization program administered to convicted sex offenders;
- The individual's sterilization meets any of the following requirements:
 - The individual was sterilized for a purpose that was not medically necessary, as determined by contemporaneous standards of evidence-based medicine;
 - The individual was sterilized for the purpose of birth control; or,
 - The individual was sterilized without demonstrated informed consent, as provided.
- The sterilization was performed by means that are otherwise prohibited by law or regulation.

This bill requires the board to do all of the following to implement the program and oversee an appeals process:

- Conduct outreach to locate qualified recipients and notify them of the process by which to apply for victim compensation, as specified. CDCR shall post notice of the program, qualifications, claim process in all California parole and probation office, as well as in state prison yards in an area accessible to the prison population.
- Review and verify all applications for victim compensation;
 - Consult the HIPAA-compliant eugenic sterilization database at the University of Michigan, and records of specified agencies, and may consult records of the State Archives to verify the identity of an individual claiming to have been sterilized pursuant to eugenics laws during the period of 1919 to 1952;
 - Consult the records of DSH and DDS to verify the identity of an individual claiming to have been sterilized pursuant to eugenics laws during the period of 1953 to 1979. The State Department of State Hospitals and the State Department of Developmental Services shall make every reasonable effort to locate and share with the board records that will help the board verify claims of individuals sterilized in state institutions from 1953 to 1979, inclusive;
 - Consult the records obtained, collected, and considered within the state audit into coercive sterilizations in California women's prisons to verify the identity of

- individuals under the custody and control of the Department of Corrections and Rehabilitation who were coercively sterilized during labor and delivery within the scope and timeframe considered by the audit;
- Consult with the Federal Receiver for Inmate Medical Services and CDCR to identify individuals who were coercively sterilized while under the custody and control of CDCR;
 - Consult the records of CDCR and its contracting medical facilities or providers, as necessary, to verify the identity of an individual claiming to have been coercively sterilized while under the custody and control of CDCR. CDCR shall make every reasonable effort to locate and share with the board records that will help the board verify claims of individuals sterilized while under state custody and control; and,
 - Allow a claimant to submit evidence that proves the claimant either was sterilized during the period of 1919 to 1979, inclusive, or was coercively sterilized while under the custody and control of the Department of Corrections and Rehabilitation after 1979. The board shall evaluate this evidence by a preponderance of the evidence standard to determine whether it is more likely than not that the claimant is a qualified recipient. The claimant's submission of evidence does not relieve the board of its responsibility to verify an individual's identity by consulting the resources described above.
- Include an area on the application for a claimant to voluntarily report demographic information about gender, race, ethnicity, disability, age, sexual orientation, and gender identity;
 - Affirmatively identify and disclose coercive sterilizations that occurred in California prisons:
 - Identify qualified recipients who were sterilized while in the custody and control of CDCR after 1979 and who have not personally or through an agent filed a claim for compensation;
 - Upon identifying a qualified recipient, the board shall consult with other state and federal agencies and departments to determine contact information for the individual for purposes of disclosing the sterilization. The board shall consult with additional entities;
 - Develop a culturally competent and technologically appropriate mechanism of disclosing the sterilization and available compensation to qualified recipients, as specified;
 - Develop a culturally competent and technologically appropriate mechanism of disclosing the sterilization and available compensation to qualified recipients, as specified;
 - Contact the municipal health agency responsible for communicating possible exposure to communicable diseases in that qualified recipient's geographic area when developing the notification protocol, as specified; and,

- Include notice of the availability of compensation and how to submit a claim in any notification protocol.

This bill requires the board shall maintain the confidentiality of any information received from the DHS and the DSS.

This bill states that the board does not have discretion to deny compensation to any claimant who is a qualified recipient.

This bill requires the board to annually submit a report to the Legislature that includes the number of applications submitted, the number of applications approved, the number of applications denied, and the number of claimants paid, the number of appeals submitted the result of those appeals, and the total amount paid in compensation. The report shall also include data on demographic information of the applicants, as well as data on outreach methods or processes used by the board to reach potential claimants.

This bill requires the board to keep confidential any record pertaining to either an individual's application for compensation or the board's verification of the application, but allows disclosure of aggregate claimant information.

This bill requires the board's report to be available to the public and states that public disclosure of aggregated information in the report is not a violation of the confidentiality provisions in this bill.

This bill requires the board to develop and implement procedures to receive and process applications for victims compensation no later than six months after the start of the program.

This bill states that the board shall implement the outreach plan required under this bill beginning six months after the start date of the program.

This bill states that these provisions shall become operative only upon an appropriation of not less than \$7,500,000 in the annual Budget Act or other statute, collectively appropriated to the board, the DSH, the DDS, and CDCR for the purposes of its implementation. Upon appropriation, the board and departments shall each post a notice on their internet websites informing the public of the date on which the program became operative.

This bill provides that an individual seeking victim compensation pursuant to the program shall submit an application to the board beginning six months after the start date of the program and no later than two years and six months after the start date of the program.

This bill states that an individual incarcerated or otherwise under the control of CDCR at the time of filing the application need not exhaust administrative remedies before submitting an application for, or receiving, victim compensation and shall not be disqualified from receiving compensation based on the individual's incarcerated status.

This bill requires the board to screen the application and accompanying documentation for completeness, and if it determines the application is incomplete, it shall notify the claimant in writing not later than 30 calendar days following the screening. The notification shall specify the additional documentation required to complete the application and the claimant shall have 60 calendar days from receipt of the notification to submit the required documentation. If the

additional documentation is not received within 60 days, the application will be closed and the claimant may submit a new application to be reviewed without prejudice.

This bill states that the board shall not consider an application or otherwise act on it until the board determines the application is complete with all of the required documentation.

This bill provides that the claimant may file an appeal with the board after receiving an adverse claim decision and specifies the procedure for the appeal.

This bill requires the board to award victim compensation to a qualified recipient based on a payment schedule with an initial payment within 60 days of approval and final payment after the exhaustion of all appeals, but no later than two years and nine months after the start of the program when all eligible applicants have been determined.

This bill allows a recipient to assign his or her compensation to a trust established for his or her benefit and to designate a beneficiary for his or her compensation.

This bill requires markers or plaques to be placed at designated sites that acknowledge the wrongful sterilization of persons under eugenics policies and of people in California's women's prisons.

This bill states that a payment made to a qualified recipient shall not be considered taxable income for state tax purposes, or income or resources for determining eligibility for benefits or assistance under any state or local means-tested program; community property for the purpose of determining property rights, and exempts payments from collection from various kinds of debt, such as child support and court-ordered fines and fees.

This bill makes various Legislative findings and declarations related to California's Eugenics Sterilization laws and the involuntary sterilization that occurred in California's prisons and hospitals.

COMMENTS

1. Need for This Bill

According to the author of this bill:

In 1909, California authorized the involuntary sterilization of people who were institutionalized that were deemed "unfit for reproduction." The state went on to administer the most aggressive eugenic sterilization program in the United States, sterilizing more than 20,000 people nationwide. Research indicates that the majority of sterilizations affected women, girls, and Latinas.

Though the state's eugenic law was repealed in 1979, a later state audit revealed 144 people were sterilized during labor and delivery without proper consent while incarcerated in California women's prisons from 2006 to 2010. An additional 100 women were involuntarily sterilized in prison during labor and delivery dating back to the late 1990s, as well as a small number of forced sterilizations performed during other surgeries.

Current law prohibits the sterilization of people incarcerated in county jails and state prison facilities for the purpose of birth control, and offers additional protections to prevent coercion surrounding non-medically necessary sterilizations outside the scope of birth control.

Recently, both North Carolina (2013) and Virginia (2015) provided compensation for survivors of eugenic sterilization. Although monetary compensation cannot adequately address the suffrage endured by sterilization horrific past and effort to deter future eugenic abuses.

2. California Eugenics Laws

California was the second state to pass eugenics laws in 1909; the first was Indiana making it legal to sterilize the “feeble-minded.” (Abate, *State's little-known history of shameful science / California's role in Nazis' goal of 'purification'*, SF Gate (Mar. 10, 2003) <<https://www.sfgate.com/business/article/State-s-little-known-history-of-shameful-science-2663925.php>> [as of June 17, 2021].) California’s eugenics law was repealed in 1979.

In an NPR interview, University of Michigan professor Alex Stern stated:

It's very important to take that terminology with many historic grains of salt. If we go back in time and look at what the terms meant, it often meant people who were not conforming to societal norms, people who were poor, people who lacked education, perhaps didn't speak sufficient English to make it through school, and so on.

But what it meant for those who were enacting the law were people who were determined to have poor IQs, people with certain psychiatric disorders. But generally, often the way it was used was much more as a catch-all category - so people who just didn't fit, kind of like the misfits of society, so to speak. That's the way they looked at them.

Looking back on it, I would say that those who were institutionalized - because many more people were institutionalized than actually sterilized - was because maybe they had a psychiatric condition and they were sent to an institution as was the policy at the time in the mid-20th century. ...

But for the most part, this program of eugenics ... the idea of sterilization was to eradicate certain genes from the population.

(NPR, *On A 'Eugenics Registry,' A Record of California's Thousands of Sterilizations* (Dec. 18, 2016).)

This bill would create a mechanism for California to compensate those who were subject to state-sponsored sterilization.

3. Sterilization of Female Inmates

In 2014, sterilization of female inmates for purposes of birth control was prohibited. (Pen. Code, § 3440.)

The Joint Legislative Audit Committee asked the California State Auditor to review female inmate sterilizations at CDCR facilities. The Auditor conducted an audit of female inmate sterilizations occurring between fiscal years 2005–06 and 2012–13. (See *Sterilization of Female Inmates, Some Inmates Were Sterilized Unlawfully, and Safeguards Designed to Limit Occurrences of the Procedure Failed*, California State Auditor Report 2013-120 (June 2014) available at: <https://www.auditor.ca.gov/pdfs/reports/2013-120.pdf>.)

The Auditor’s office mainly focused on bilateral tubal ligations, which is not a medically necessary procedure, and whose sole purpose is to sterilize a woman. The focus was not on other procedures, such as hysterectomies, which are intended to treat cancer or address other health problems but which also result in sterilization. From fiscal year 2005–06 through 2012–13, data from the Receiver’s Office show that 794 female inmates had various procedures that could have resulted in sterilization, out of those the Auditor determined that 144 of these inmates underwent a bilateral tubal ligation. (*Id.* at p. 13.)

State regulations impose certain requirements that must be met before such a procedure is performed. The Auditor found that the state entities responsible for providing medical care to these inmates—CDCR and the Receiver’s Office—sometimes failed to ensure that inmates’ consent for sterilization was lawfully obtained. (*Id.* at p. 19.)

This bill would such inmates to file a claim for compensation. It would also provide the same recourse for female county inmates who were sterilized without proper consent.

4. California Victim Compensation Program

The victim compensation program was created in 1965, the first such program in the country. The board provides compensation for victims of violent crime. It reimburses eligible victims for many crime-related expenses, such as counseling and medical fees. Funding for the board comes from restitution fines and penalty assessments paid by criminal offenders, as well as federal matching funds. (See the California Victim Compensation Board’s website <<http://www.vcgcb.ca.gov/board/>> [as of June 17, 2021].)

This bill would establish the Forced or Involuntary Sterilization Compensation Program to be administered by the California Victim Compensation Board to provide victim compensation to any survivor of state-sponsored sterilization conducted pursuant to eugenics laws that existed in the State of California between 1909 and 1979 and any survivor of coercive sterilization performed on an individual under the custody and control of CDCR or a county facility after 1979. The bill defines who is a qualified recipient and timelines of applications, payments, and appeals. The program is only to become operative upon an appropriation of not less than \$7,500,000 in the annual budget act or other statute.

5. Argument in Support

According to California Latinas for Reproductive Justice, the sponsor of this bill:

Although these laws were repealed in 1979, a subsequent state audit revealed that at least an additional 144 people were sterilized during labor and delivery without required consents and authorization in California's women's prisons between 2006 and 2010. Sixty-five percent of forced sterilization survivors captured in the state audit described themselves as Black, Hispanic, Mexican, or other. Many of the people identified by the audit were never notified of the harm that was done to them. Research also indicates that there may be an additional involuntary prison sterilizations dating back to the late 1990s.

With AB 1007, California will become the third state to compensate survivors of forced sterilizations under eugenics laws, following North Carolina (2013) and Virginia (2015). It will also become the first state to compensate survivors of involuntary sterilizations performed outside of formal eugenic laws. Enactment of this bill would send a powerful message around the country that forced sterilizations will not be tolerated in carceral settings, including prisons, detention centers, and institutions.

-- END --