Old Habits Die Hard: Past and Current Issues with Eugenics and Forcible Sterilizations in California

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**Introduction**

In 2010, Kimberly Jeffery was pregnant and incarcerated at Valley State Prison for a parole violation. At a prenatal checkup, Jeffrey was pressured to undergo a tubal ligation. She refused. When she arrived at the hospital to give birth, she was pressured to accept the procedure once again. Jeffery refused once again. After just giving birth, and while sedated and strapped to a surgical table, doctors continued to pressure her to accept this sterilization procedure. In an interview with The Center for Investigative Reporting (CIR), she describes entire process as making her feel like she was less than human.

Although personal autonomy has been clearly established in American jurisprudence, for some, the American ideals of freedom and personal autonomy are still tainted with paternalistic and eugenic beliefs. In June 2014, after an investigation and an audit, it was revealed that 144 women were sterilized without legal consent while incarcerated in California penal institutions between 2005 and 2013. While Jeffery is not among these women, her story is another reminder of California’s long and sordid relationship with eugenics.

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2 *Id.*; The Mayo Clinic defines tubal ligation, also known as “having your tubes tied” or tubal sterilization, as “a type of permanent birth control. During a tubal ligation, the fallopian tubes are cut or blocked to permanently prevent pregnancy.” *Tests and Procedures: Tubal Ligation*, THE MAYO CLINIC, [http://www.mayoclinic.org/tests-procedures/tubal-ligation/basics/definition/prc-20020231](http://www.mayoclinic.org/tests-procedures/tubal-ligation/basics/definition/prc-20020231) (last visited Aug. 9, 2014).
3 Johnson, *supra* note 1.
4 *Id.*
5 *Id.*
6 *Id.*
7 *Id.*
The idea of America as a melting pot is completely at odds with the eugenic movement that emerged during the late nineteenth and early twentieth centuries.11 While Nazi Germany brought the eugenic movement to center stage during World War II, it is originally an American construct.12 During the twentieth century, states repeatedly passed sterilization laws in the attempt better society by preventing those deemed “unfit”13 from reproducing.14 These state sterilization programs focused on a wide range of individuals, from the feebleminded15 to habitual criminals.16 Supporters of eugenics believed that by sterilizing certain individuals, America’s social problems would be cured.17 By the late 1970s, over 60,000 Americans had undergone involuntary sterilizations.18

California was the leader of the eugenics movement.19 California performed 20,108 sterilizations, more than three times as many sterilizations as the next three states combined.20 California eugenicists consistently saw their support for the laws as humane and good public policy.21 While other states faced legal challenges to their sterilization laws throughout the first three decades of the twentieth century, California’s laws went largely unchallenged for nearly

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12 Id. at 275.
13 Individuals who were singled out as “unfit” by eugenicists included minorities, dependents, the poor, delinquents, mentally ill, and the mentally deficient. Johnson, supra note 1.
15 “According to Arthur Estabrook, the feebleminded “included anyone ‘who is so weak mentally that he or she is unable to maintain himself or herself in the ordinary community at large.’” PAUL A. LOMBARDO, THREE GENERATIONS, NO IMBECILES: EUGENICS, THE SUPREME COURT, AND BUCK V. BELL 5 (2008).
16 West, supra note 14, at 302.
17 Id. at 303.
19 Alexandra Minna Stern, Sterilized in the Name of Public Health: Race, Immigration, and Reproductive Control in Modern California, 95 AM. J. PUB. HEALTH 1128, 1130 (2005).
20 Virginia ranked number two with 8,300 sterilizations. North Carolina ranked number three, with 6,851 sterilizations. Michigan ranked number four, with 3,786 sterilizations. LOMBARDO, supra note 15, at 294.
21 Johnson, supra note 1.
fifty years. In fact, they were reworked and broadened over the years, remaining in effect until 1979.

In 1927, the federal government finally addressed state compulsory sterilization laws. In one of the most egregious opinions ever written by the United States Supreme Court, an eight-to-one majority upheld the constitutionality of Virginia’s sterilization law. Fifteen years later, the Court struck down a statute allowing for compulsory sterilization of habitual criminals. By the 1970s, most of the thirty-two states that enacted sterilization laws had repealed them. Nevertheless, as of 2004, seven states still had laws that allow for compulsory sterilizations, and only five states have issued apologies to the victims of the sterilization laws.

While other states have been able to successfully move past their history with eugenics by acknowledging and redressing the harm caused, the issue of forcible sterilizations lingers in California. As the California legislature deals with a new breed of eugenic policies that emerged in the state penal system, is enough being done to address California’s reliance on forcible sterilizations?

This Comment will discuss the challenges California has had with the eugenics movement and forcible sterilizations. Although the laws were repealed over three decades ago and regulations were established to give individuals more autonomy, sterilizations and eugenic ideologies continued with little reprieve.

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23 Stern, supra note 19, at 1130.
25 Id.
26 Id.
27 Id. at 863; LOMBARDO, supra note 15, at 294.
28 Id. at 889; see also West, supra note 14, at 303.
29 Stern, supra note 19, at 1136.
This Comment consists of five parts. Part I discusses the emergence of eugenics and the sterilization laws in the United States, focusing in greater length on California’s adaptation of the movement. Part II explores the formal end of state eugenic programs and how they managed to remain in California. Part III examines the current sterilization practices undertaken in California prisons over the past decade. Part IV looks at the measures the California legislature is taking to deal with the violations to the fundamental rights of inmates. Part V considers how California has redressed past harms and how it should move forward, proposing compensation for victims even if they do not have any legal recourse for it. Additionally, this comment proposes additional ways California should deal with its moral obligation and embrace its history for the victims and its citizens.

I. History of Eugenics

A. Origins

The eugenics movement succeeded in the early twentieth century in large part due to the significant social and economic changes in the late nineteenth century. In the years following the Civil War, the United States began to industrialize. With this industrialization came modern problems that increased societal pressures. Originally, Social Darwinism’s “survival of the fittest” theory tried to explain away social inequalities. This concept no longer seemed applicable as the birthrate of the wealthy and powerful began to decline, while the working class began to out-reproduce them. Individuals who noticed this shift as a threat began to apply

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32 West, supra note 14, at 305.
33 Id.; Simmonds, supra note 8, at 272.
34 Allen, supra note 31.
35 Id.
science to what they viewed as a tremendous societal problem.\textsuperscript{36} Eugenics, a new science of social engineering, was born.\textsuperscript{37}

The eugenics movement developed from the early work of geneticist Gregor Mendel.\textsuperscript{38} Issues with crime, poverty, and overcrowding in urban areas needed solutions.\textsuperscript{39} Among the most radical was to sterilize those deemed to be unfit.\textsuperscript{40} Relying on theories of genetic inheritance, eugenicists believed that social ills such as criminality and infectious diseases were hereditary.\textsuperscript{41} Eugenicists argued that these defective individuals were a burden on the state, and by not allowing them to reproduce the state could save significant resources.\textsuperscript{42} The ultimate goal of the eugenics movement was to preserve the human race by preventing these genetically unfit individuals from reproducing and passing along their undesirable traits.\textsuperscript{43} With this mindset, eugenics began to take hold in the late nineteenth and early twentieth century.\textsuperscript{44}

The first sterilization law was passed in Indiana in 1907,\textsuperscript{45} but the first law of this kind was actually proposed decades earlier.\textsuperscript{46} In 1887, the superintendent of a Cincinnati Sanitarium proposed sterilization laws for its inmates.\textsuperscript{47} In 1893, F.E. Daniel, a Texan doctor who recommended castration for gay men, proposed sterilization laws in Texas under a eugenic

\textsuperscript{36} Id.
\textsuperscript{37} Id.
\textsuperscript{38} Simmonds, supra note 8, at 272.
\textsuperscript{39} Id.
\textsuperscript{40} Id.
\textsuperscript{41} West, supra note 14, at 305.
\textsuperscript{42} Allen, supra note 31.
\textsuperscript{43} Simmonds, supra note 8, at 272.
\textsuperscript{44} West, supra note 14, at 306.
\textsuperscript{45} NANCY ORDOVER, AMERICAN EUGENICS: RACE, QUEER ANATOMY, AND THE SCIENCE OF NATIONALISM 133 (2003).
\textsuperscript{46} Id.
\textsuperscript{47} Id.
rationale.\textsuperscript{48} It was only after the eugenics movement began to flourish that the nation’s first sterilization law could pass.\textsuperscript{49}

The eugenics movement in the United States culminated in the late 1930s.\textsuperscript{50} By 1921, 2,248 people had been sterilized in California alone, which accounted for over eighty percent of the total cases nationwide.\textsuperscript{51} By 1932, twenty-seven states had sterilization laws, and over 3,900 individuals had been sterilized.\textsuperscript{52} Eventually, thirty-two states enacted compulsory sterilization laws.\textsuperscript{53} Utah was the only state that regarded illegal sterilizations as a felony.\textsuperscript{54} While the laws were not always universally accepted, after the U.S. Supreme Court weighed in on the constitutionality and validity of sterilization laws in 1927, issues surrounding these laws subsided.\textsuperscript{55}

As sterilization laws continued to be enacted in the United States, their success seemed to be rooted in public policy reasoning.\textsuperscript{56} Many proponents of sterilization laws denied the notion that the laws were based on race and class biases, even though the statistics show that minorities and the poor were sterilized at much higher rates.\textsuperscript{57} Henry Laughlin, the “eugenics expert” of the U.S. Congress in the 1920s, sincerely believed that a state had as much right in deciding reproductive rights of individuals as the individuals themselves.\textsuperscript{58} He believed that it was the

\textsuperscript{48} Id.
\textsuperscript{49} Id.
\textsuperscript{50} Simmonds, supra note 8, at 274.
\textsuperscript{51} Stern, supra note 19, at 1129.
\textsuperscript{52} Id.
\textsuperscript{53} Johnson, supra note 1.
\textsuperscript{54} ORDOVER, supra note 45, at 134.
\textsuperscript{55} West, supra note 14, at 307.
\textsuperscript{56} ORDOVER, supra note 45, at 134.
\textsuperscript{57} Id.
\textsuperscript{58} Id.
responsibility of the state to encourage procreation of “fit” individuals and deny reproductive rights to the “potential parents of hereditary degenerates.”

Nancy Ordover, in her book *American Eugenics*, gives several reasons why eugenics and sterilization laws became so popular in the early twentieth century. First, some of the wealthy and powerful families in the United States wanted to ensure purity of race, but veiled this concern under the guise of the betterment of society as a whole. Second, sterilizations were also viewed as punitive, punishing individuals who were criminals or those who became burdens on the state. In this same vein lived the idea of paternalism, where the educated and influential did not believe all individuals were capable of making decisions for themselves, or that they should even be trusted with such important decisions that affect society. Lastly, as the focus shifted from institutionalized and incarcerated individuals, sterilization laws evolved to reflect the “preoccupation with the morality and sexuality of low-income women.” It was believed that sexually deviant women would breed sexually deviant women and thus needed to be sterilized. Conversely, men who were incarcerated were sterilized to rid them of their destructive traits in order to rehabilitate them.

**B. California Eugenics**

Of the states that enacted sterilization laws, California’s were arguably the most far reaching and appalling. During the turn of the twentieth century, California particularly saw a

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59 Id.
60 Id. at 133.
61 Id.
62 Id.
63 Id.
64 Id.
65 California, supra note 10
66 Id.
67 West, supra note 14, at 307.
huge influx of migrants.\textsuperscript{68} After the first sterilization law was passed in 1909 to deal with societal changes, sterilizations occurred steadily until 1950.\textsuperscript{69} California led the nation in sterilizations, followed by Virginia and Indiana.\textsuperscript{70} By 1979, over 20,000 people were sterilized under California’s eugenic sterilization laws.\textsuperscript{71} This accounted for over a third of all sterilizations in the United States.\textsuperscript{72}

The eugenics program in California was more than just about hereditary control.\textsuperscript{73} It was also about social control.\textsuperscript{74} The laws sought to deprive certain people who were thought to be a burden on the state of their ability to reproduce.\textsuperscript{75} While the origins of the laws were eugenic in nature, by the end the focus had shifted to help curb welfare dependence, overpopulation, and illegitimacy.\textsuperscript{76} Instead of describing the laws as punishment, the laws were designed and implemented to save the state money.\textsuperscript{77} By creating laws that were framed as preventive, they were much more widely accepted within the state.\textsuperscript{78} California’s laws were so effective that historians claim Nazi Germany sought the advice of state eugenic leaders for their sterilization program in the 1930s.\textsuperscript{79}

\textit{1. 1909 Law}

By the early 1900s, an increasing number of individuals were being committed to state hospitals in California.\textsuperscript{80} Medical professionals believed that the high rate of mentally ill individuals in the state was the result of other states and countries producing defectives and

\begin{itemize}
\item \textsuperscript{68} \textit{California, supra} note 10.
\item \textsuperscript{69} \textit{Id.}
\item \textsuperscript{70} \textit{PENCE, supra} note 11, at 276.
\item \textsuperscript{71} \textit{LOMBARDO, supra} note 15, at 294.
\item \textsuperscript{72} \textit{Id.}
\item \textsuperscript{73} Bartolone, \textit{supra} note 30.
\item \textsuperscript{74} \textit{Id.}
\item \textsuperscript{75} \textit{Id.}
\item \textsuperscript{76} \textit{California, supra} note 10.
\item \textsuperscript{77} Stern, \textit{supra} note 19, at 1130; see Simmonds, \textit{supra} note 8, at 273.
\item \textsuperscript{78} Stern, \textit{supra} note 19, at 1130.
\item \textsuperscript{79} Johnson, \textit{supra} note 1.
\item \textsuperscript{80} West, \textit{supra} note 14, at 308.
\end{itemize}
sending them to California.\textsuperscript{81} Regardless of the reasons, a high commitment rate meant housing wards were completely overcrowded.\textsuperscript{82}

Consequently, California became the second state to pass a sterilization law when Dr. Frederick Winslow Hatch spearheaded the Asexualization Act in 1909.\textsuperscript{83} This was the first of three laws passed in California that allowed for the sterilization of individuals who were institutionalized or incarcerated.\textsuperscript{84} Doctors believed that those individuals deemed “insane” lacked a moral compass, and needed to be confined and sterilized.\textsuperscript{85} The law allowed medical superintendents of institutions and prisons to “asexualize a patient if it would improve his or her physical, mental, or moral condition.”\textsuperscript{86} The law focused mainly on individuals who had mental disorders, those who were incarcerated for repeat offenses, or those incarcerated for life.\textsuperscript{87} The theory behind the sterilization law was that society would be rid of the danger an insane individual posed on it, allowing them to be released into society while making more room within institutions for those that needed care.\textsuperscript{88}

To legally sterilize someone, the approval of two of the following three individuals was needed: superintendent of the institution, the state hospital, and the secretary of the State Board of Health.\textsuperscript{89} Individuals could also be sterilized by obtaining consent from the nearest relative.\textsuperscript{90} The individual’s own consent was not required.\textsuperscript{91}

\begin{flushleft}
\textsuperscript{81} Id. at 308-309.
\textsuperscript{82} Id. at 309.
\textsuperscript{83} LOMBARDO, supra note 15, at 294; see also Simmonds, supra note 8, at 273.
\textsuperscript{84} California, supra note 10.
\textsuperscript{85} West, supra note 14, at 308.
\textsuperscript{86} Stern, supra note 19, at 1129.
\textsuperscript{87} West, supra note 14; see also California, supra note 10.
\textsuperscript{88} Id. at 307, 310.
\textsuperscript{89} California, supra note 10.
\textsuperscript{90} Simmonds, supra note 8, at 207.
\textsuperscript{91} California, supra note 10.
\end{flushleft}
2. 1913 and 1917 Statutes

The 1909 Asexualization Act was soon criticized as being too narrow in scope.\(^{92}\) Thus, the law was repealed in 1913 and replaced with another statute.\(^{93}\) It established new guidelines that broadened who could be sterilized.\(^{94}\) After the 1913 statute was passed, any individual who was incarcerated or institutionalized could conceivably be sterilized, with or without his or her consent.\(^{95}\) The law also established the State Lunacy Commission.\(^{96}\) This body had the sole power to authorize sterilizations.\(^{97}\)

Four years later, the statute was changed once again to expand its scope even further.\(^{98}\) After the 1913 statute was amended, anyone deemed unfit, including those with a sexually transmitted disease or any individual who was “afflicted with hereditary insanity or incurable chronic mania or dementia” could be sterilized.\(^{99}\) It allowed institutions to sterilize individuals who were normal but who pushed the social norms of the time.\(^{100}\)

The 1917 statute made sterilization a condition of discharge, so although some individuals did consent, it was still considered coercive.\(^{101}\) Further, patients were not allowed to challenge a sterilization order or pursue legal action against the doctors.\(^{102}\) The 1913 and 1917 statutes allowed California to singlehandedly increase the number of individuals who were sterilized in the United States into the 1920s while the movement declined in other states.\(^{103}\) After 1921, the rate of sterilization drastically rose to thirteen sterilizations for every 100,000

\(^{92}\) West, supra note 14, at 310.
\(^{93}\) Simmonds, supra note 8, at 274.
\(^{94}\) California, supra note 10.
\(^{95}\) West, supra note 14, at 310.
\(^{96}\) California, supra note 10.
\(^{97}\) Id.
\(^{98}\) Id.; see also Simmonds, supra note 8, at 274.
\(^{99}\) West, supra note 14, at 310; see also Stern, supra note 19, at 1129.
\(^{100}\) West, supra note 14, at 310.
\(^{101}\) Id.; see also California, supra note 10.
\(^{102}\) California, supra note 10; see Stern, supra note 19, at 1129.
\(^{103}\) REILLY, supra note 18, at 71.
residents, versus the twelve sterilizations per year under the 1909 law.\textsuperscript{104}

\textbf{C. The United States Supreme Court}

\begin{quote}
\textit{“I wrote and delivered a decision upholding the constitutionality of a state law for sterilizing imbeciles the other day – and felt I was getting near to the first principle of real reform.”}

\textit{– Oliver Wendell Holmes, Jr., 1927}\textsuperscript{105}
\end{quote}

A 1924 Virginia law was the first sterilization law to be adjudicated by the United States Supreme Court in 1927.\textsuperscript{106} In an eight-to-one decision written by Justice Oliver Wendell Holmes, the Court affirmed the constitutionality of a Virginia law that allowed for the sterilization of inmates “inflicted with hereditary forms of insanity that are recurrent, idiocy, imbecility, feeblemindedness or epilepsy.”\textsuperscript{107} \textit{Buck v. Bell} concerned a young white woman who was raped by her guardian’s nephew.\textsuperscript{108} Buck was never viewed as a victim of sexual assault; she was seen as an unfortunate offspring of a mother “who led a life of immorality, prostitution, and untruthfulness.”\textsuperscript{109} At the time, rape was considered an indicator of immorality of the victim.\textsuperscript{110} It was believe that this immorality was passed onto Buck from her biological mother and it caused some mental impairment.\textsuperscript{111} Thus, the guardian family had her committed to a mental institution.\textsuperscript{112} While Buck was institutionalized, the family agreed to have her sterilized.\textsuperscript{113} Arguably, it was done only to save their family’s reputation.\textsuperscript{114} The Court upheld

\begin{footnotes}
\footnotetext[104]{\textit{California}, supra note 10.}
\footnotetext[105]{\textit{Reilly}, supra note 18, at 88.}
\footnotetext[106]{\textit{Ordover}, supra note 45, at 135.}
\footnotetext[107]{\textit{Id.}, quoting from \textsc{David Smith and K. Ray Nelson, The Sterilization of Carrie Buck} 226 (1989); see \textit{Buck v. Bell} 274 U.S. 200 (1927).}
\footnotetext[108]{\textit{Ordover}, supra note 45, at 135.}
\footnotetext[109]{\textit{Id.}}
\footnotetext[110]{\textit{Id.}}
\footnotetext[111]{\textit{Id.}}
\footnotetext[112]{\textit{Id.}}
\footnotetext[113]{\textit{Id.}}
\footnotetext[114]{\textit{Lombardo}, supra note 15, at x.}
\end{footnotes}
the state’s right to sterilize Buck because she was deemed to be socially and biologically inadequate.\footnote{ORDOVER, supra note 45, at 135.}

Justice Holmes buttressed his argument by relying on \textit{Jacobson v. Massachusetts}.\footnote{Jacobson v. Massachusetts 197 U.S. 11 (1905); Justice Holmes extended the \textit{Jacobson v. Massachusetts} holding which upheld the authority of the states to enforce compulsory vaccination laws stating, “the principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes.” Buck, 274 U.S. at 207.} He argued that sterilization was like vaccination, where public health issues outweigh individual rights.\footnote{Stern, supra note 19, at 1130.} In one of the most abhorrent opinions of the Supreme Court, Justice Holmes wrote:

\begin{quote}
It is better for the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind…[t]hree generations of imbeciles are enough.\footnote{Buck, 274 U.S. at 207.}
\end{quote}

\section*{D. Eugenics Into the 1930s}

\textit{Buck v. Bell} helped shift the demographics of individuals targeted under the sterilization laws.\footnote{ORDOVER, supra note 45, at 135.} Supported by the Court’s decision and eugenic propaganda, sterilization procedures rose dramatically in California the 1930s.\footnote{Stern, supra note 19, at 1131.} Under California’s sterilization laws, a broad range of men and women were sterilized.\footnote{WEST, supra note 14, at 310.} Most sterilizations were compulsory or done with the consent of family members.\footnote{\textit{Id.} at 311.} In addition to individuals who were considered mentally ill or criminal, physicians also sterilized alcoholics, “simpletons,” and women who had more children than the state believed she could care for.\footnote{\textit{Id.} at 310.} It also became common for families to institutionalize rebellious teenagers and young adults.\footnote{\textit{Id.}} Many young girls were institutionalized and subsequently sterilized at the behest of family members.\footnote{\textit{Id.} at 312.} Patient records from the 1920s...
concluded that “a notable percentage of young patients were typed as masturbators or incest perpetrators if male and as promiscuous – even nymphomaniacal – or having borne a child out of wedlock if female.”¹²⁶

Although it is difficult to establish conclusively what kinds of individuals were sterilized due to the lack of detail in patient records, foreign-born individuals and women were more heavily targeted.¹²⁷ According to the Human Betterment Foundation, an organization established in 1929 by sociologist Paul Popenoe and philanthropist Ezra S. Gosney, there was a significant shift in demographics between 1928 and 1932.¹²⁸ Popenoe and Gosney conducted a survey and co-authored *Sterilization for Human Betterment: A Summary of Results of 6000 Operations in California, 1909–1929 of Sterilizations*.¹²⁹ The study concluded that thirty-one percent of males and thirty-nine percent of females sterilized in CA were foreign-born.¹³⁰ The study also determined that women were becoming primary targets for sterilization instead of males.¹³¹ By the end of 1927, fifty-three percent of all individuals who underwent sterilization procedures were males.¹³² However, this number dropped to thirty-three percent by 1932.¹³³ During those same years the number of institutionalized women and girls who were sterilized jumped from forty-seven to sixty-seven percent.¹³⁴ Many of the women sterilized during this time were institutionalized for no other reason than being feebleminded or unfit.¹³⁵

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¹²⁶ Stern, supra note 19, at 1130.
¹²⁷ Id.
¹²⁸ ORDOVER, supra note 45, at 135.
¹²⁹ Stern, supra note 19, at 1129–1130.
¹³⁰ West, supra note 14, at 311.
¹³¹ ORDOVER, supra note 45, at 135.
¹³² Id.
¹³³ Id.
¹³⁴ Id.
¹³⁵ Id. at 136.
Proponents of sterilization also wanted to expand the scope of the laws to include individuals in the private sphere.\textsuperscript{136} As the 1917 law was written, it did not specify if doctors in private practice were protected if they performed sterilizations.\textsuperscript{137} In the 1930s, a judge dismissed a case regarding the constitutionality of sterilizations without patient consent in private practice.\textsuperscript{138} This implied that it was legal to sterilize a patient in the private sphere without their consent as long as a guardian requested the procedure.\textsuperscript{139} By expanding the authority of who could conduct sterilizations, it significantly increased the scope and power of the law.\textsuperscript{140} By the early 1940s, over 15,000 individuals had been sterilized in California.\textsuperscript{141}

E. Public support

The eugenic movement in California was so successful because it was fueled by public support.\textsuperscript{142} According to a 1937 Forbes Magazine survey, sixty-six percent of Californians approved of involuntary sterilizations.\textsuperscript{143} Fred Hogue, a eugenics proponent, ran a column in the Los Angeles Times Sunday magazine called \textit{Social Eugenics}.\textsuperscript{144} In this column, Hogue preached that eugenics, and especially sterilization procedures, were critical to protect public health.\textsuperscript{145} Eugenics was even taught in California’s public schools.\textsuperscript{146}

\begin{footnotes}
\item[136] Stern, supra note 19, at 1130.
\item[137] California, supra note 10.
\item[138] Id.
\item[139] Id.
\item[140] Id.
\item[141] Id.
\item[142] Id.
\item[143] West, supra note 14, at 312.
\item[144] California, supra note 10.
\item[145] Id.
\item[144] Fred Hogue, \textit{Social Eugenics}, LOS ANGELES TIMES SUNDAY MAGAZINE, March 9, 1941, 27; see also Stern, supra note 19, at 1130.
\item[145] Id.
\item[146] California, supra note 10.
\end{footnotes}
II: The Decline of Eugenics

The eugenic movement began to change after World War II. The war reinvented the monstrous consequences of eugenics. Across the board, the number of sterilization procedures declined, even though laws remained in place in many states well into the 1960s and 1970s.

In 1942, the Supreme Court decided Skinner v. Oklahoma, and addressed the constitutionality of a 1935 sterilization law in Oklahoma. Under Oklahoma’s law, if a person committed three or more crimes of moral turpitude and were then incarcerated, they could legally be sterilized. The Court held that government-imposed forced sterilizations violated an individual’s fundamental right to procreate. “We are dealing here with legislation which involves one of the basic civil rights of man.” “Marriage and procreation are fundamental to the very existence and survival of the race.” Since it was violative of equal protection laws, the Oklahoma statute was deemed unconstitutional.

The Court made it clear that any attempt to impose involuntary sterilizations upon another would be met with strict scrutiny. However, the majority did not overrule Buck v. Bell. In their view, the laws concerning the feebleminded did not contain the same constitutional questions, highlighting the Court’s reluctance to give fundamental rights to a group considered unworthy to receive them. The Court even used Buck v. Bell in 1973 to established constitutional limitations of rights to privacy under the fourteenth amendment in Roe.

147 West, supra note 14, at 314; see Simmonds, supra note 8, at 275.
148 Simmonds, supra note 8, at 275.
149 West, supra note 14, at 314.
151 West, supra note 14, at 314.
153 Skinner, 316 U.S. at 541.
154 Id.
155 CHEMERINSKY, supra note 143, at 834.
156 Id. at 835.
157 West, supra note 14, at 314.
158 Silver, supra note 21, at 869-870.
v. Wade. Nonetheless, even though Buck v. Bell has not been overturned, American jurisprudence continued to evolve to unequivocally support the belief that compulsory sterilization laws violate an individual’s constitutional right to privacy.

A. California Law Repealed in 1979

Art Torres, a former California state senator, helped write the legislation that ended California’s sterilization laws in 1979. Torres first became aware of the sterilization laws in 1975, when a group of Latina women filed a class-action lawsuit again the Women’s Hospital at the University of Southern California/Los Angeles County General Hospital. These women were forced into tubal ligations after undergoing cesarean deliveries because doctors believed they fit the stereotype of Mexican women as “hyperbreeders.” They alleged their civil and constitutional reproductive rights were violated since they were victims of unwanted, irreversible, and unnecessary surgeries. This case highlights the culmination of the sterilization laws in California and how engrained eugenics had become in arguments seeking to protect public resources. For example, there was a dramatic increase in the late 1960s; some hospitals saw a 470 percent increase in elective tubal ligations and 151 percent increase in post-delivery tubal ligations, with little evidence of patient consent.

Torres claimed that the law was outdated and the criteria used to approve a sterilization order had no real basis in modern medicine or science. This was not just a bill to overturn an obsolete law, but highlighted an attempt for California to learn about and try to shift away from

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159 Id. at 863.
160 Id.
161 Cohen & Bonifield, supra note 22.
162 Stern, supra note 19, at 1128.
163 Id. at 1135.
164 Id. at 1134-1135.
165 Id. at 1130.
166 Id. at 1134.
167 Id. at 1128.
its dark history with eugenics.\textsuperscript{168} The bill to repeal the sterilization laws was unanimously approved.\textsuperscript{169}

\textbf{III. Modern Forms of Californian Eugenics}

Although state involuntary sterilization laws have been deemed unconstitutional, it was not that easy to uproot eugenic policies and actions from California.\textsuperscript{170} Eugenics took on a new form in the 1990s to control a woman’s right to procreate.\textsuperscript{171} This focus shifted primarily to indigent women.\textsuperscript{172} Some methods the state used to control these women included, but was not limited to, restricting the number of children women on welfare could have in order to get state support, and forcing contraceptives as a term of probation.\textsuperscript{173} This modern mutation of eugenics impinged on a women’s fundamental right to privacy.\textsuperscript{174} As these new policies were implemented in the public sphere, sterilization procedures sprouted up once again within the walls of the California prison system.

\textbf{A. Center for Investigative Reporting Discovery}

Recent investigations uncovered that sterilization procedures were still being forced on women incarcerated in California prisons.\textsuperscript{175} In 2008, Justice Now, a legal advocacy group, received a letter acknowledging that two prisons offered sterilizations to women.\textsuperscript{176} Nothing changed until 2010, when public records requests were filed.\textsuperscript{177} In June 2013, after receiving

\textsuperscript{168} Id.
\textsuperscript{169} Id.
\textsuperscript{170} Simmonds, supra note 8, at 276.
\textsuperscript{171} Id. at 293.
\textsuperscript{172} Id. at 276.
\textsuperscript{173} Id. at 276-277.
\textsuperscript{174} Id. at 293.
\textsuperscript{175} Id.
\textsuperscript{176} Johnson, supra note 1.
\textsuperscript{177} Id.
reports of abuse, CIR conducted an investigation.\textsuperscript{178} It found that medical professionals sterilized hundreds of female inmates without meeting required patient consent or state approvals to do so.\textsuperscript{179} The investigation determined that over 140 women had tubal ligations between 2006 and 2010, and at a minimum one hundred more since the late 1990s.\textsuperscript{180} Even worse, Justice Now believed that prison sterilizations had been occurring for at least the past two decades.\textsuperscript{181}

A 1999 memo further revealed that revised medical care procedures for incarcerated postpartum women included tubal ligations as part of their obstetric care.\textsuperscript{182} Without regard to regulation procedures, the medical staff at several California state prisons were illegally authorizing tubal ligations for women, a coercive practice that robbed women of their reproductive rights.\textsuperscript{183} This was in direct conflict with existing regulations that describes these procedures as being medically unnecessary.\textsuperscript{184} CIR reports released in 2013 and 2014 regarding the sterilization of female inmates led the push to uncover the abuses and to pass legislation to ensure existing regulations were modified and followed.\textsuperscript{185}

\begin{itemize}
\item \textsuperscript{178} Id.; Corey G. Johnson, \textit{Female Prison Inmates Sterilized Illegally, California Audit Conforms}, CENTER FOR INVESTIGATIVE REPORTING (Jun. 19, 2014), \url{http://cironline.org/reports/female-prison-inmates-sterilized-illegally-california-audit-confirms-6471}.
\item \textsuperscript{179} Johnson, supra note 1.
\item \textsuperscript{180} Id.
\item \textsuperscript{181} Johnson, supra note 178.
\item \textsuperscript{182} Lara Flynn, \textit{Assembly Committee on Health. Inmates: Sterilization}, CALIFORNIA LEGISLATIVE INFORMATION 3 (June 24, 2014), \url{http://leginfo.legislature.ca.gov} (quick search “1135”; click on “SB-1135”; click on “Bill Analysis”; click on “06/20/14- Assembly Health”).
\item \textsuperscript{183} Id.
\item \textsuperscript{184} Id.
\item \textsuperscript{185} Senate Committee on Health. \textit{Inmates: Sterilization}, CALIFORNIA LEGISLATIVE INFORMATION 3 (Mar. 28, 2014) \url{http://leginfo.legislature.ca.gov} (quick search “1135”; click on “SB-1135”; click on “Bill Analysis”; click on “03/28/14- Senate Health”) [hereinafter Senate Committee on Health]
\end{itemize}
B. California Audit

In June 2014, Elaine Howle, the California State Auditor, released a report regarding the sterilization of female prison inmates that occurred between 2005 and 2013.\footnote{Howle, supra note 9, at 1.} Senator Hannah-Beth Jackson (D-Santa Barbara) requested the audit after learning about CIR’s investigation.\footnote{Johnson, supra note 178.}

The audit report criticized federal and state oversight in the California female prison system.\footnote{Id.} Unauthorized sterilizations of incarcerated women seemed to be facilitated by a combination of bureaucratic inconsistency, overcrowding, and inhumane practices.\footnote{Alex Stern and Tony Platt, Sterilization Abuse in State Prisons: Time to Break With California’s Long Eugenic Patterns, HUFFINGTON POST (July 22, 2013, 6:12 PM), http://www.huffingtonpost.com/alex-stern/sterilization-california-prisons_b_3631287.html.} The report focused on female inmates who underwent tubal ligations, a procedure classified as an excluded service under California Code of Regulations (CCR), Title 15.\footnote{Howle, supra note 9, at 14.} Almost all of the 144 sterilization procedures that occurred during the audit period were done without the patients consent, making them illegal.\footnote{Johnson, supra note 178.} All 144 women from the report had been previously incarcerated.\footnote{Id.} Former inmates and victim advocates alleged that medical providers coerced these women into medically unnecessary procedures and targeted inmates who seemed likely to have a high recidivism rate along with significant numbers of children.\footnote{Id.}

Senator Jackson described the audit report as “alarming” and raising serious concerns about actually obtaining reliable consent in a prison environment.\footnote{Id.} Further, soliciting approval
during labor is innately coercive because the pain a woman experiences during childbirth can drastically affect her ability to give proper informed consent. 195

The California Department of Corrections and Rehabilitation (CDCR) oversees California’s prison population. 196 In 2001, a lawsuit alleged that CDCR was providing constitutionally inadequate medical care to its inmates. 197 U.S. District Judge Thelton Henderson ruled that the system’s health care was so abysmal it violated the Eight Amendment’s ban on cruel and unusual punishment. 198 A year later, an agreement was reached that instructed CDCR to provide better medical care to its inmates. 199 By 2005, it was clear that CDCR could not provide adequate medical care. 200 Since 2006, the California Correctional Health Care Services (Receiver’s Office) has been solely responsible for providing medical care to inmates, while CDCR handles the custody of inmates as they receive medical care. 201

Although this change was implemented to make sure inmates received at least constitutionally adequate prison medical care, there were still significant gaps in the system. 202 First, the Receiver’s Office claimed that it had no legal duty to make sure prison employees were complying with the consent laws outlined in Title 22. 203 They even asserted they only became aware of the sterilization procedures in 2010 after Justice Now vocalized concerns. 204 Second, medical professionals were often contracted by CDCR or the Receiver’s Office to perform

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195 Dorothy Roberts, a University of Pennsylvania law professor, has argued that courts have determined that soliciting approval during labor is innately coercive because the pain a woman experiences during childbirth can seriously affect her ability to give informed consent. Johnson, supra note 1.
196 Howle, supra note 9, at 7.
197 Id.
198 Johnson, supra note 1.
199 Howle, supra note 9, at 8.
200 Id.
201 Id. at 7.
202 Id. at 8.
203 Johnson, supra note 178.
204 Howle, supra note 9, at 3.
procedures.\textsuperscript{205} Since they were outside contractors, many claimed they were also unaware of existing regulations for sterilization procedures.\textsuperscript{206}

The Receiver’s Office had to lawfully follow CCR, Title 15 and Title 22 to obtain legal, informed consent for sterilization procedures.\textsuperscript{207} CCR, Title 15, specifies requirements related to prison medical care.\textsuperscript{208} Under Title 15, certain medical procedures are considered excluded, meaning they will improve on their own without medical intervention.\textsuperscript{209} If an excluded service is deemed to be necessary, the Receiver’s Office and a prison committee must approve the procedure.\textsuperscript{210} Currently, tubal ligations are defined under Title 15 as an excluded medical procedure.\textsuperscript{211} CCR, Title 22, specifies how informed consent must be obtained from prison inmates for a sterilization procedure.\textsuperscript{212} Among other things, Title 22 specifies a minimum age, mandates a waiting period between patient consent and procedure, and outlines how to obtain proper patient consent.\textsuperscript{213}

The Receiver’s Office did have policies and procedures in place to ensure open communication between the patient and physician.\textsuperscript{214} One procedure medical staff had to follow was to summarize the informed consent process taken with the patient.\textsuperscript{215} This was done not for

\textsuperscript{206} Id.
\textsuperscript{207} Id.
\textsuperscript{208} Id.
\textsuperscript{209} Medical and Dental Treatment/Service Exclusions. 15 CCR §3350.1 [hereinafter §3350.1]; see also Howle, supra note 9, at 9.
\textsuperscript{210} Howle, supra note 9, at 9.
\textsuperscript{211} Id.
\textsuperscript{212} Criteria for the Performance of Sterilization. 22 CCR §70707.1 [hereinafter §70707.1]; see also id. at 12.
\textsuperscript{213} Howle, supra note 9, at 12.
\textsuperscript{214} Id. at 13
\textsuperscript{215} Id.
the benefit of the patient, but to insulate doctors and the Receiver’s Office from false claims of battery or unprofessional conduct.\textsuperscript{216}

\textbf{C. Results of the Audit}

During the eight-year audit period, sterilization procedures were performed without meeting the legal requirements established by CCR, Title 15 and Title 22 to obtain an inmate’s informed consent.\textsuperscript{217} The audit report concluded that even though CDCR and Receiver’s Office did not actually perform the medical procedures, they were still responsible to make sure regulations were followed and proper consent was received from inmates.\textsuperscript{218}

Based on the auditor’s review, there were times an inmate did sign a consent form, \textbf{but} it was impossible to determine the quality of counseling inmates received about the procedure due to poor patient records.\textsuperscript{219} Further, the review uncovered two major types of deficiencies.\textsuperscript{220} First, thirty-nine of the 144 inmates were sterilized without obtaining lawful patient consent.\textsuperscript{221} For these patients, there was no evidence that the patient’s physician signed the consent form.\textsuperscript{222} The physician’s signature guarantees that the waiting period was satisfied and the patient is mentally competent to understand the purpose and effects of such a procedure.\textsuperscript{223} Since the physician is the last step in the informed consent process, it is a vitally important step, allowing a patient one last opportunity to withdraw her consent from the procedure.\textsuperscript{224} Without the physician’s signature, previous patient consent is not considered lawful under state

\footnotesize{\textsuperscript{216} Id.  \\
\textsuperscript{217} Id. at 19.  \\
\textsuperscript{218} Howle, supra note 9, at 2.  \\
\textsuperscript{219} Id.  \\
\textsuperscript{220} Id. at 1.  \\
\textsuperscript{221} Id. at 19.  \\
\textsuperscript{222} Id. at 1-2.  \\
\textsuperscript{223} Id. at 19.  \\
\textsuperscript{224} Id.\normalsize}
regulations.\textsuperscript{225} Second, for twenty-seven of the thirty-nine inmates, waiting periods \textbf{were} violated between when the inmate initially consented until the procedure occurred.\textsuperscript{226} The waiting period indicates “the patient must consent at least thirty days before the sterilization, but not more than 180 days.”\textsuperscript{227}

Additionally, the audit report found that the Receiver’s Office failed to adequately supervise medical staff under its purview to ensure they were complying with existing state regulations.\textsuperscript{228} This problem was considered systemic, since all but one of the 144 inmates who were sterilized during the audit period lacked the necessary approvals.\textsuperscript{229}

Some prison officials argued that the surgeries performed gave incarcerated women the same options as women on the outside.\textsuperscript{230} Supporters argued that recidivism rates are higher for indigent women because the health care they receive in the prison system is superior to what is available to them outside of prison.\textsuperscript{231}

When some officials discovered that tubal ligations were restricted years earlier, they believed the regulations were unfair to women.\textsuperscript{232} Dr. Heinrich, one of the doctors who requested over two-thirds of the sterilizations that occurred during the audit period, stated he only offered tubal ligations to women who had a history of cesareans births, since the scar tissue created risks for future pregnancies.\textsuperscript{233} This was fallacious.\textsuperscript{234} It was uncovered that Dr. Heinrich believed that the cost of sterilizing inmates was marginal “compared to what you save in welfare paying

\begin{thebibliography}{99}
\bibitem{225} Id. at 20.
\bibitem{226} Id.
\bibitem{227} §70707.1, supra note 212.
\bibitem{228} Flynn, supra note 182, at 5.
\bibitem{229} Id.
\bibitem{230} Johnson, supra note 1.
\bibitem{231} Id.
\bibitem{232} Id.
\bibitem{233} Id.; see also Johnson, supra note 178.
\bibitem{234} Id.
\end{thebibliography}
for these unwanted children – as they procreated more.” This sentiment is eerily similar to early eugenic proponents, sparking a need for legislative guidance.

IV. SB 1135: Addressing the Issue of Sterilizations in Prisons

“If you want total security, go to prison. There you’re fed, clothed, given medical care and so on. The only thing lacking... is freedom.”
- Dwight D. Eisenhower

Almost in conjunction with the release of the State Auditor’s report, Senate Bill No. 1135 (SB 1135) was introduced in the California Assembly on February 20, 2014 to address inmate sterilizations. Spearheaded by Senator Jackson, SB 1135 was written with the help of prior female inmates who were pushed to undergo sterilization procedures while incarcerated. The bill’s primary purpose is to prohibit sterilization solely for the purpose of birth control of an incarcerated person in California. SB 1135 was proposed due to existing laws containing safeguards that were not followed.

Existing regulations limit the medical services inmates receive to medically necessary care. Further, the regulations explicitly exclude certain medical procedures, for example, tubal ligations, unless the inmate’s physician prescribes it and the appropriate review committee approves it. Nevertheless, former inmates told CIR that prison medical staff coerced women into receiving sterilization procedures.

235 Id.
239 Senate Committee on Health, supra note 185, at 1.
240 Id.
241 Id.
242 Id.
243 Johnson, supra note 238.
Justice Now, the sponsor of SB 1135, stated that “sterilization of an individual for birth control purposes in the prison environment mimics the long-since discredited coercive sterilization patterns of women of color and women living in poverty.” 244 Other supporters of the bill see these sterilization procedures as coercive tactics that are a complete breach of an individual’s right to informed consent. 245

SB 1135 passed unanimously as amended in the Assembly Committee on Health, the Assembly Floor, and the Senate Floor. 246 On September 25, 2014, Governor Brown approved SB 1135. 247 As chaptered by the Secretary of State, SB 1135 amended the California Penal Code, adding a Chapter 6 to Title 2 of Part 3, i relating to female inmates. 248

SB 1135 created several modifications to this section of the California Penal Code. 249 The amendment restricts sterilization procedures only when the procedure is needed to save the individual’s life during a medical emergency, or if it will treat a diagnosed condition. 250 Further, in order to use sterilization procedures to treat a diagnosed condition, other less invasive procedures need to be attempted first. 251 If those procedures fail or are unsuccessful, a second physician will need to be consulted to determine the viability of using sterilization as a medical need. 252 Lastly, the patient must be counseled on the effects that sterilization can have on her

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244 Senate Committee on Health, supra note 185, at 4.
245 Id.
246 Flynn, supra note 182, at 1; see also SB 1135, supra note 237.
247 SB 1135, supra note 237.
249 Id.
250 Flynn, supra note 182, at 1.
251 Id.
252 Id.
health and consent must be obtained.\textsuperscript{253} If a sterilization procedure is performed, physiological consultation and medical follow-ups are required.\textsuperscript{254} 

SB 1135 now requires training sessions for staff on existing laws and regulations regarding female reproductive care.\textsuperscript{255} A detailed report of all sterilizations that do take place must be submitted to the state to guarantee that this new legislation is being implemented.\textsuperscript{256} Opponents of the bill, such as the American Congress of Obstetricians and Gynecologists, did not support the bill as currently written.\textsuperscript{257} They argued that inmates who do want sterilizations for birth control purposes would not be able to receive them.\textsuperscript{258} However, the advantages of SB 1135 vastly outweighed any opposition.

V. Recommendations

A. Audit Recommendations

The auditor had numerous recommendations for the Receiver’s Office.\textsuperscript{259} First, the Receiver’s Office should begin reporting to the California Department of Public Health and the Medical Board of California to educate themselves and to ensure they can adequately and lawfully obtain informed consent from inmates.\textsuperscript{260} Second, the auditor recommends additional training for medical staff regarding how to obtain proper informed consent.\textsuperscript{261} Lastly, in order for the Receiver’s Office to maintain adequate oversight and allow it to comply with existing regulations, the report recommended they develop a plan by August 2014.\textsuperscript{262} This plan should provide checklists for medical staff to guarantee medical procedures are following the correct

\textsuperscript{253} Id.
\textsuperscript{254} Law As Amended, supra note 248.
\textsuperscript{255} California Bill, supra note 205.
\textsuperscript{256} Id.
\textsuperscript{257} Johnson, supra note 238.
\textsuperscript{258} Id.
\textsuperscript{259} Johnson, supra note 1.
\textsuperscript{260} Howle, supra note 9, at 31-32.
\textsuperscript{261} Johnson, supra note 1.
\textsuperscript{262} As of February 2015, it is unclear whether the Receiver’s Office met the auditor’s deadline recommendation.
Most importantly, the plan should establish a method where inmates can have witness of their choosing present when consenting to a sterilization procedure, as required by law under Title 22. Although the Receiver’s Office disagreed with the audit report, it stated it would comply with the recommendations. Until the time they can comply with all requirements under Title 22, the Receiver’s Office must discontinue obtaining inmate consent and allow the hospital to obtain consent.

B. Possible Sanctions

SB 1135 is extremely significant since it is the first time in decades that state officials truly recognized and addressed California’s issue with eugenic practices. Unfortunately, there are no significant repercussions or penalties included in SB 1135 for the individuals who do not follow the new regulations. Even though SB 1135 passed, lawmakers should closely monitor the new regulations. If significant violations continue to occur, an amendment should be proposed to include sanctions and harsher penalties for violators of the law. This will ensure California continues to move away from paternalistic views that keep allowing officials to violate citizen’s fundamental rights.

C. Compensation

Although California has made significant steps in the recent months, it still has a long way to go. Due to the complete violation of thousands of individual’s fundamental rights to procreate, California has a moral obligation to compensate past and current victims. If the

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\(^{263}\) Howle, supra note 9, at 32.

\(^{264}\) Id.

\(^{265}\) Johnson, supra note 178.

\(^{266}\) Id.

\(^{267}\) Howle, supra note 9, at 33.

\(^{268}\) West, supra note 14, at 316.
victims are expected to initiate legal action to receive compensation, many will encounter serious barriers.\textsuperscript{269}

Victims sterilized under California’s past compulsory sterilization laws will encounter two issues.\textsuperscript{270} First, California has repealed its sterilization laws.\textsuperscript{271} Consequently, most victims will lack standing to sue for the violations to their constitutional rights.\textsuperscript{272} Second, statute of limitations may bar claims by victims in California,\textsuperscript{273} since most sterilizations in the state were done prior to the 1970s before the law was repealed.\textsuperscript{274} Current sterilization victims could face monetary and emotional barriers if they attempt to pursue legal action to receive compensation.

Further, although it is very difficult to know how many individuals are still alive that were affected by the compulsory sterilization laws, California should encourage all victims to come forward.\textsuperscript{275} The audit report did identify 144 individuals who currently faced constitutional violations, but there could also be hundreds more whom are unidentified.\textsuperscript{276}

Many victims face shame and embarrassment for what was done to them.\textsuperscript{277} Accordingly, California should guarantee the confidentiality of the victim’s identities and not allow it to become public record.\textsuperscript{278} Compensating all victims will provide them with meaningful assistance.\textsuperscript{279} By providing monetary compensation and other services, California

\textsuperscript{269}Silver, supra note 21, at 885.
\textsuperscript{270}Id.
\textsuperscript{271}West, supra note 14, at 316.
\textsuperscript{272}Silver, supra note 21, at 885.
\textsuperscript{273}Id.
\textsuperscript{274}West, supra note 14, at 319.
\textsuperscript{275}Id.
\textsuperscript{276}Howle, supra note 9, at 1.
\textsuperscript{277}Johnson, supra note 1.
\textsuperscript{278}Id. at 314.
\textsuperscript{279}Id. at 317.
can demonstrate it takes violations of human rights seriously. \textsuperscript{280} It is in the state’s best interest to use its resources to properly redress the harm it caused.

**D. Responding to the Victims**

Senator Torres recently stated that part of the issue in properly responding to victims is that the state legislature was not even aware there was a eugenics movement in California. \textsuperscript{281} In 2003, California finally began to recognize its history in the eugenics movement, especially after the revelation of forced sterilizations in the California prison system. \textsuperscript{282}

In 2003, the California State Senate held hearings to learn about California’s history with forcible sterilizations. \textsuperscript{283} The California Senate Select Committee on Genetics, Genetic Technologies and Public Policy created the Senate Concurrent Resolution. \textsuperscript{284} This resolution formally acknowledged California’s role in the eugenics movement of the twentieth century. \textsuperscript{285}

California's participation in the eugenics movement and resolves to express its regret in that participation, to honor all individuals, and to urge every citizen of the state to become familiar with the history of the eugenics movement, in the hope that a more educated and tolerant populace will reject any similar abhorrent pseudoscientific movement should one arise in the future. \textsuperscript{286}

Additionally, California’s then-governor Gray Davis apologized. \textsuperscript{287} He did so hours after a lecture by Professor Paul Lombardo where he discussed the state’s sterilization laws. \textsuperscript{288} Some critics believed the apology was insincere since it came without promises to redress any harms, \textsuperscript{289} and none of the individuals victimized by the laws were present. \textsuperscript{290}

\begin{footnotes}
\footnote{280} \textit{Id.} at 326.
\footnote{281} Cohen & Bonifield, \textit{supra} note 22.
\footnote{282} \textit{Id.; see} West, \textit{supra} note 14, at 316.
\footnote{283} Johnson, \textit{supra} note 1.
\footnote{284} Simmonds, \textit{supra} note 8, at 275.
\footnote{285} \textit{Id.} at 276.
\footnote{286} \textit{Id.}
\footnote{287} California, \textit{supra} note 10.
\footnote{288} West, \textit{supra} note 14, at 315-316.
\footnote{289} Silver, \textit{supra} note 21, at 888.
\footnote{290} West, \textit{supra} note 14, at 315-316.
\end{footnotes}
Adopting SB 1135 is a momentous step in acknowledging the current flaws in the regulations. However, Governor Jerry Brown should formally apologize to the women who were pushed to accept sterilization procedures for the benefit of the state, acknowledge the state’s complicit role, and provide redress.

E. Educating the Public

California’s history with forcible sterilization is hardly acknowledged. How can we expect to see a change in sentiment if the public is not even aware of how systemic the problem is? Just as educators taught eugenics in the public school system in the early twentieth century, this part of California’s history should be taught and talked about.

Furthermore, California should hold an exhibition to highlight the state’s eugenic history. California held its first ever exhibition in 2005 for one month. Its purpose was to educate the public over concerns that this part of California’s history remained virtually unknown. Holding another calculated exhibition will give the public a look into part of our history that is very important to learn from so the same mistakes are not repeated again. An informed public will help keep government officials accountable and hopefully allow for more transparency.

Finally, lawmakers should consider establishing a memorial for the more than 20,000 victims of forced sterilizations. A lasting public commemoration of this dark time in California’s history will help serve as a constant reminder and act as a permanent apology to the victims.

291 California, supra note 10.
292 Id.
Conclusion

The history of eugenics and involuntary sterilizations regrettably proves that there was a time where society put its own needs in front of personal liberties. It would be easier to regard this part of our history as stories of a bygone era that are no longer a threat. The better option is to embrace our history and acknowledges that mistakes were made. Despite the passage of SB 1135, California should make reparations to past victims and ensure that eugenic practice do not continue into the future. By proactively facing victims and educating the public about its dark history, we can collectively guard against the kind of flawed thinking that stripped sixty thousands individuals of one of our most well protected and fundamental rights.

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1 SB 1135 reads as follows, “SECTION 1. It is the intent of the Legislature in enacting this act to prevent sterilization abuse of vulnerable populations, to ensure safeguards against sterilization abuse within the coercive environment of prison and jail, and to positively affirm that all people should have the right to fully self-determine their reproductive lives free from coercion, violence, or threat of force.

SEC. 2. Chapter 6 (commencing with Section 3440) is added to Title 2 of Part 3 of the Penal Code, to read:

CHAPTER 6. Sterilization of Inmates

3440. (a) Sterilization for the purpose of birth control, including, but not limited to, during labor and delivery, of an individual under the control of the department or a county and imprisoned in the state prison or a reentry facility, community correctional facility, county jail, or any other institution in which an individual is involuntarily confined or detained under a civil or criminal statute, is prohibited.

(b) Sterilization of an individual under the control of the department or a county and imprisoned in the state prison or a reentry facility, community correctional facility, county jail, or any other institution in which an individual is involuntarily confined or detained under a civil or criminal statute, through tubal ligation, hysterectomy, oophorectomy, salpingectomy, or any other means rendering an individual permanently incapable of reproducing, is prohibited except in either of the following circumstances:

(1) The procedure is required for the immediate preservation of the individual’s life in an emergency medical situation.

(2) The sterilizing procedure is medically necessary, as determined by contemporary standards of evidence-based medicine, to treat a diagnosed condition, and all of the following requirements are satisfied:

(A) Less invasive measures to address the medical need are nonexistent, are refused by the individual, or are first attempted and deemed unsuccessful by the individual, in consultation with his or her medical provider.
(B) A second physician independent of, and not employed by, but authorized to provide services to individuals in the custody of, and to receive payment for those services from, the department or county department overseeing the confinement of the individual conducts an in-person consultation with the individual and confirms the need for a medical intervention resulting in sterilization to address the medical need.

(C) Patient consent is obtained after the individual is made aware of the full and permanent impact the procedure will have on his or her reproductive capacity, that future medical treatment while under the control of the department or county will not be withheld should the individual refuse consent to the procedure, and the side effects of the procedure.

(c) If a sterilization procedure is performed pursuant to paragraph (1) or (2) of subdivision (b), presterilization and poststerilization psychological consultation and medical followup, including providing relevant hormone therapy to address surgical menopause, shall be made available to the individual sterilized while under the control of the department or the county.

(d) The department and all county jails or other institutions of confinement shall do both of the following:

(1) Publish an annual report of sterilizations performed, disaggregated by race, age, medical justification, and method of sterilization.

(2) Provide notification to all individuals under their custody and to all employees who are involved in providing health care services of their rights and responsibilities under this section.

(e) An employee of the department or of a county jail or other institution of confinement who reports the sterilization of an individual performed in violation of this section is entitled to the protection available under subparagraphs (A) and (B) of paragraph (2) of subdivision (a) of Section 6129, or under the California Whistleblower Protection Act (Article 3 (commencing with Section 8547) of Chapter 6.5 of Division 1 of Title 2 of the Government Code) or the Whistleblower Protection Act (Article 10 (commencing with Section 9149.20) of Chapter 1.5 of Part 1 of Division 2 of Title 2 of the Government Code).

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.” Law as Amended, supra note 236.