

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2021-2022 Regular Session**

AB 1007 (Carrillo)  
Version: July 1, 2021  
Hearing Date: July 13, 2021  
Fiscal: Yes  
Urgency: No  
JT

**DIGEST**

This bill creates a program to compensate survivors of forced or involuntary sterilization by state officials. However, by the time this Committee hears it, the bill may be outdated. AB 137 (Committee on Budget, 2021) contains identical provisions and, as of the writing of this analysis, is awaiting the Governor's signature. As a budget trailer bill, AB 137 will take effect immediately.

**EXECUTIVE SUMMARY**

"[T]he concept of a white, blond-haired, blue-eyed master Nordic race didn't originate with Hitler. The idea was created in the United States, and cultivated in California, decades before Hitler came to power. California eugenicists played an important, although little-known, role in the American eugenics movement's campaign for ethnic cleansing."<sup>1</sup> From 1909 to 1979 an estimated 20,000 people deemed undesirable by state officials were involuntarily sterilized. It is estimated that more than 350 survive today. Additionally, a 2014 California State Auditor report found, over the course of an eight-year period in the 2000s, numerous cases of female inmate sterilization in California's state prison system for which proper informed consent was not obtained. The author estimates there are roughly 250 survivors of coercive prison sterilizations.

This bill would establish the Forced or Involuntary Sterilization Compensation Program (program), to be administered by the California Victim Compensation Board (board), to provide compensation to (1) any survivor of state-sponsored sterilization conducted pursuant to eugenics laws that existed in California between 1909 and 1979, and (2) any survivor of coercive sterilization performed on an individual under the custody and control of the Department of Corrections and Rehabilitation after 1979.

The bill is sponsored by California Latinas for Reproductive Justice and is supported by a vast array of organizations. There is no opposition. It passed the Senate Public Safety Committee 5-0.

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<sup>1</sup> Edwin Black, *Eugenics and the Nazis -- the California connection* (Nov. 9, 2003) SF Gate <https://www.sfgate.com/opinion/article/Eugenics-and-the-Nazis-the-California-2549771.php>.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) 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.)<sup>2</sup>
- 2) 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. (§ 2652.)
- 3) 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. (§ 3440.)
- 4) Requires CDCR to only provide medical services for inmates that are based on medical necessity and supported by outcome data as effective medical care. (Cal. Code Regs., tit. 15 § 3350(a).)
- 5) Establishes board to operate the California Victim Compensation Program and tasks the board with the administration of claims of erroneously convicted persons. (§ 4900 Gov. Code § 13950 et seq.)

This bill:

- 1) Makes Legislative findings and declarations about California's eugenics laws and sterilization program. Expresses the Legislature's profound regret over the state's past role in coercive sterilizations of people in women's prisons and the injustice done to the people in those prisons and their families and communities.
- 2) Establishes the program to be administered by the board.
- 3) Defines:
  - a) "Qualified recipient" as:
    - i) An individual who was sterilized pursuant to eugenics laws that existed in the California between 1909 and 1979; the individual was sterilized while they were a patient at a specified state institution; and the individual is alive as of the start date of the program; or,
    - ii) An individual who was sterilized while under the custody and control of the Department of Corrections and Rehabilitation, county jail, or any other

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<sup>2</sup> All further section references are to the Penal Code unless otherwise indicated.

- institution in which they were involuntarily confined or detained under a civil or criminal statute; the sterilization was not medically necessary to preserve the person's life or was not pursuant to a chemical sterilization program administered to convicted sex offenders; and the sterilization meets one of several other circumstances, including sterilization that was not medically necessary, or performed for purposes of birth control, or performed without demonstrated informed consent.
- 4) Requires CDCR to post notice of the program, qualifications, and claim process in all parole and probation offices, as well as in all state prison yards.
  - 5) Requires the board to do the following to implement the program:
    - a) Develop an outreach plan within six months of enactment, and conduct outreach to locate qualified recipients, as specified.
    - b) Develop and implement procedures to review and process applications within six months of enactment.
    - c) Review and verify all applications for victim compensation.
    - d) Consult the eugenic sterilization database at the University of Michigan, and records of specified agencies, including the State Department of State Hospitals (DSH), the State Department of Developmental Services (DDS), CDCR, to verify the identity of an individual claiming to have been sterilized pursuant to eugenics laws or while under the custody of CDCR.
    - e) Disclose coercive sterilizations that occurred in California prisons.
    - f) Oversee an appeal process.
  - 6) Requires DSH and DDS to share data with the board pertaining to individuals sterilized in state institutions.
  - 7) Requires the board to use a preponderance of the evidence standard to determine whether it is more likely than not that the applicant is a qualified recipient.
  - 8) Prohibits the board from denying compensation to any claimant who is a qualified recipient.
  - 9) Requires the board to keep confidential any record pertaining to either an individual's application for victim compensation or the board's verification of the application, but allows disclosure of aggregate claimant information.
  - 10) 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 and 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.

- 11) States that the bill's provisions only become operative only upon an appropriation of \$7.5 million to the board, DSH, DDS, and CDCR for the purposes of implementing the bill.
- 12) Requires the board to hold any appropriated funds in a separate account, and only those funds can be used for the purpose of implementing the program.
- 13) States that an individual seeking compensation under the program must 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 its start date.
- 14) Establishes a payment schedule for qualified applicants with initial payment within 60 days of approval and final payment after the filing window when all eligible applicants have been determined.
- 15) Allows a recipient to assign compensation to a trust and designate a beneficiary.
- 16) Provides 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.

## COMMENTS

### 1. Background

#### *a. California's history of Eugenics*

Eugenics first became popular "around the turn of the last century when scientific thinkers, notably Sir Francis Galton, cousin of evolutionist Charles Darwin, began arguing that allowing the unfit to have children might weaken the human herd and should be controlled by law."<sup>3</sup> Eugenacists theorized that "they could improve the human species through selective breeding, which meant preventing habitual criminals, inmates of insane asylums and sexual deviants from having kids."<sup>4</sup>

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<sup>3</sup> Tom Abate, *State's little-known history of shameful science / California's role in Nazis' goal of 'purification'*, (Mar. 10, 2003) SF Gate <https://www.sfgate.com/business/article/State-s-little-known-history-of-shameful-science-2663925.php>.

<sup>4</sup> *Id.*

In 1909, California became the second state, after Indiana, to pass a eugenics law, making it legal for state officials to “asexualize” those considered feeble-minded, prisoners exhibiting sexual or moral perversions, and anyone with more than three criminal convictions. “[M]inority groups, the poor, the disabled, the mentally ill and criminals were singled out as inferior and sterilized to prevent them from spreading their genes.”<sup>5</sup> An *SF Gate* article described an expert’s recounting of the history of this law:

As [University of Virginia bioethicist Paul Lombardo] explained, by using the term “asexualization” instead of “sterilization,” California’s law went beyond ordering vasectomies in men or tubal ligations in women. California made it legal to castrate a man or remove the ovaries from a woman, permanently preventing reproduction.

Lombardo said California’s asexualization statute passed unanimously in the state Assembly, drew only one dissenting vote in the state Senate and was signed into law by Gov. James M. Gillett in 1909.

It was amended at least twice, in 1913 and 1917, to shift the focus of California’s eugenics program away from the castration of prisoners and toward the sterilization of insane asylum inmates.

“If you look at the numbers of people from 1909 through 1950 sterilized in California, it’s something on the order of 19,000, evenly split between men and women,” Lombardo said. “My guess would be most of those were not castration but were vasectomies or tubal ligations, which are a lot cheaper, faster and safer.”<sup>6</sup>

California’s eugenics law was not repealed until 1979.<sup>7</sup> According to the author, it is estimated that there are 383 survivors of sterilization pursuant to these laws.

*b. Involuntary sterilizations in California prisons*

In 2014, the California State Auditor released an audit of female inmate sterilizations that occurred in the state prison system’s medical facilities between fiscal years 2005–06

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<sup>5</sup> Corey G. Johnson, *Female inmates sterilized in California prisons without approval* (Jul. 7, 2013)

<https://revealnews.org/article/female-inmates-sterilized-in-california-prisons-without-approval/>.

<sup>6</sup> *State’s little-known history of shameful science / California’s role in Nazis’ goal of ‘purification’, supra*, fn. 3.

<sup>7</sup> In *Buck v. Bell* (1927) 274 U.S. 200, one of the worst decisions in the United States Supreme Court history, the Court upheld a Virginia statute permitting sterilization of individuals with intellectual disabilities. The Court later held unconstitutional an Oklahoma law permitting compulsory sterilization of “habitual criminals.” (*Skinner v. State of Oklahoma, ex rel. Williamson* (1942) 316 U.S. 535.) *Buck v. Bell* has not been overturned.

and 2012–13.<sup>8</sup> During that period, 794 female inmates underwent various procedures that could have resulted in sterilization.<sup>9</sup> Of these, 144 were sterilized through bilateral tubal ligation, which is not medically necessary and is solely used for female sterilization.<sup>10</sup> The Auditor found that the state entities responsible for providing medical care to these 144 inmates – CDCR and the California Correctional Health Care Services – failed to ensure that inmates’ informed consent for sterilization was lawfully obtained in at least 39 cases.<sup>11</sup>

However, the Auditor’s office stated, “we have concerns about whether the female inmates undergoing bilateral tubal ligations received adequate counseling about their decision to be sterilized.”<sup>12</sup> Additionally, the office was “unable to conclude whether inmates received educational materials, whether prison medical staff answered inmates’ questions, or whether these staff provided the inmates with all of the necessary information to make such a sensitive and life-changing decision as sterilization.”<sup>13</sup> Finally, the Auditor’s office found that officials “failed to ensure that the prison medical staff under its direction followed state regulations requiring specific approvals for bilateral tubal ligation procedures.”<sup>14</sup>

Indeed, former inmates and prisoner advocates have reported that prison medical staff coerced women who received sterilizations, targeting those deemed likely to return to prison in the future – a chilling echo of California’s eugenics history.<sup>15</sup> In response to these reports and in recognition of the inherently coercive nature of the prison system, the Legislature adopted AB 1135 (Jackson, Ch. 558, Stats. 2014), which prohibits sterilization for the purpose of birth control of an individual under the control of the CDCR. (*See* § 3440.)

According to the author, there are an estimated 244 survivors of illegal prison sterilization. The bill’s findings and declarations note that the Legislature has expressed its profound regret over the state’s role in the eugenics movement as the most aggressive eugenics sterilizer in the country. The bill expresses the Legislature’s profound regret over the state’s past role in coercive sterilizations of people in women’s prisons and the injustice done to the people in those prisons and their families and communities.

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<sup>8</sup> *Sterilization of Female Inmates, Some Inmates Were Sterilized Unlawfully, and Safeguards Designed to Limit Occurrences of the Procedure Failed* (June 2014) <https://www.auditor.ca.gov/pdfs/reports/2013-120.pdf>.

<sup>9</sup> *Id.* at 35.

<sup>10</sup> *Id.* at 19.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 2.

<sup>13</sup> *Id.* at 3.

<sup>14</sup> *Id.*

<sup>15</sup> *Female inmates sterilized in California prisons without approval, supra*, fn. 5.

## 2. Compensation program for victims of forced or involuntary sterilizations

This bill would establish the Forced or Involuntary Sterilization Compensation Program, to be administered by the board for the purpose of providing victim compensation to survivors of state-sponsored sterilization conducted pursuant to eugenics laws that existed in California between 1909 and 1979 and to survivors of coercive sterilization performed in prisons after 1979.

A survivor of eugenics laws qualifies for compensation if: (1) they were sterilized pursuant to eugenics laws that existed in the California between 1909 and 1979; (2) the individual was sterilized while they were a patient at a specified state institution; and (3) the individual is alive as of the start date of the program. The bill provides that the program becomes operative when an appropriation of at least \$7.5 million is made to implement the bill's provisions. This appropriation for this amount was made in the Budget Act of 2021, which was signed into law June 28, 2021.<sup>16</sup>

Survivors of coercive sterilization in prisons after 1970 qualify if they show: (1) they were sterilized while under the custody and control of the CDCR, county jail, or any other institution in which they were involuntarily confined or detained under a civil or criminal statute; (2) the sterilization was not medically necessary to preserve the person's life, (3) the sterilization was not pursuant to a chemical sterilization program administered to convicted sex offenders; and (4) the sterilization meets any of the following circumstances:

- The sterilization that was not medically necessary based on contemporaneous standards of evidence-based medicine.
- The sterilization was performed for purposes of birth control.
- The sterilization was performed without demonstrated informed consent, as specified.
- The sterilization was performed by means that are otherwise prohibited by law.

Thus, a person could be eligible for compensation even if they demonstrated informed consent. This is consistent with the policy established in SB 1135, which prohibits any medically unnecessary sterilization procedures in prisons, including sterilization for the purpose of birth control, regardless of whether informed consent was technically obtained. Supporters of that bill argued the inherently coercive nature of the prison system raises the question of whether true consent can be achieved in such conditions.<sup>17</sup>

To implement the program, the bill requires the board to do the following:

- Develop an outreach plan within six months of enactment, and conduct outreach to locate qualified recipients, as specified.

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<sup>16</sup> AB 128 (Ting) Ch. 21, Stats. 2021.

<sup>17</sup> See Assem. Health Comm. Analysis of SB 1135, as amended Jun. 24, 2014, p. 6.

- Develop and implement procedures to review and process applications within six months of enactment.
- 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, including the DSH, DSS, and CDCR, to verify the identity of an individual claiming to have been sterilized pursuant to eugenics laws or while under the custody of CDCR.
- Maintain the confidentiality of any information received from DSH and DSS.
- Affirmatively identify and disclose coercive sterilizations that occurred in California prisons.
- Oversee an appeal process.

Once the program has been operational for six months, a two-year window will open in which applications may be submitted. The bill would require the board to keep confidential records pertaining to a person's application for victim compensation or the board's verification of the application. Qualified claimants will receive payments in two waves. Funds appropriated for compensation purposes must be used only for purposes of implementing the program. At the outset, the board must halve the total funds and divide it by the number of anticipated claimants. Based on that figure, equal payments will be made to qualified claimants within 60 days of approval of their applications. At the close of the two-year window and after all appeals have been exhausted, all qualified recipients would receive equal shares of the remaining balance of funds. These payments would be exempt from, among other things, being considered taxable income for state tax purposes or being subject to enforcement of a money judgment, as specified.

The author states: "AB 1007 will rightfully compensate people who were involuntarily sterilized under California's previous eugenics law and in women's state prisons after 1979, by creating the Forced Sterilization Compensation Program."

### 3. 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.

4. By the time the bill is heard in this Committee, it may not reflect the current state of the law

While the policy goals embodied in this bill are righteous, by the time this Committee hears the bill, it may be a functional nullity because virtually identical provisions may have already become existing law through the budget process. The Budget Act of 2021 appropriates \$7,500,000 for the Forced or Involuntary Sterilization Compensation Program. A budget trailer bill, AB 137 (Committee on Budget, 2021) was recently amended to include, among other things, all of the provisions of AB 1007. The bill was passed by both houses and sent to the Governor July 5, 2021. As a budget trailer bill, AB 137 would take effect immediately upon being signed by the Governor. (*See* Cal. Const. art. IV, § 12(e).) As of the writing of this analysis, the bill is awaiting his signature.

The author has indicated that, assuming AB 137 is signed into law, AB 1007 could be used for any necessary technical changes to the program. To do so, the bill would need to be gut-and-amended to reflect the soon-to-be-current state of the law. And, of course, unless an urgency clause is added, any such clean-up would not go into effect until January 1, 2022 – which would roughly coincide with the first wave of compensation payments. Arguably, any clean-up changes would be better implemented through additional trailer bills that become effective immediately and only require a majority vote.

### SUPPORT

California Latinas for Reproductive Justice (sponsor)

A New Path

Access Reproductive Justice

ACT for Women and Girls

Alliance for Humane Biotechnology

Alliance of Californians for Community Empowerment Action

American Association of University Women - California

API Equality - LA

Asian Americans Advancing Justice - California

Association of Regional Center Agencies

Black Women Birthing Justice

BreastfeedLA

Buen Vecino  
Business & Professional Women of Nevada County  
CASHPCR  
California Catholic Conference  
California Coalition for Women Prisoners  
California Federation of Teachers AFL-CIO  
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  
Californians United for a Responsible Budget  
Center for Community Action & Environmental Justice  
Center for Genetics and 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  
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  
NARAL Pro-choice California  
National Association of Social Workers, California Chapter  
National Black Women's HIV/AIDS Network, Inc.  
National Center for Youth Law  
National Health Law Program  
National Women's Health Network  
Neighborhood Church  
Neighborhood Unitarian Universalist Church  
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  
Re:Store Justice  
Reentry Council of the City and County of San Francisco  
Religious Coalition for Reproductive Choice California  
Represent Justice  
Reproductive Health Access Project  
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  
UC Berkeley's Underground Scholars Initiative  
Uncommon Law  
Urge: Unite for Reproductive & Gender Equity  
US Prostitutes Collective  
Western Center on Law & Poverty, Inc.  
Women of Reform Judaism  
Women's Foundation California  
Young Women's Freedom Center

**OPPOSITION**

None known

**RELATED LEGISLATION**

Pending Legislation: AB 137 (Committee on Budget, 2021) contains identical provisions and, as of the writing of this analysis, is awaiting the Governor's signature. As a budget trailer bill, it will take effect immediately.

Prior Legislation:

AB 3052 (Carrillo, 2020) was substantially similar to this bill. It was held in the Assembly Appropriations Committee.

AB 1764 (Carrillo, 2019) was substantially similar to this bill. It was held in the Assembly Appropriations Committee.

SB 1190 (Skinner, 2018) would have established the Eugenics Sterilization Compensation Program to provide compensation for those who were forcibly sterilized under California's eugenic laws while in a state hospital or developmental center. It was held in the Assembly Appropriations Committee.

AB 1135 (Jackson, Ch. 558, Stats. 2014). *See* Comments 1 and 2.

**PRIOR VOTES:**

Senate Public Safety Committee (Ayes 5, Noes 0)  
Assembly Floor (Ayes 79, Noes 0)  
Assembly Appropriations Committee (Ayes 16, Noes 0)  
Assembly Judiciary Committee (Ayes 11, Noes 0)  
Assembly Public Safety Committee (Ayes 8, Noes 0)

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