
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 1190 **Hearing Date:** April 17, 2018
Author: Skinner
Version: April 3, 2018
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Eugenics Sterilization Compensation Program*

HISTORY

Source: California Latinas for Reproductive Justice
Disability Rights Education and Defense Fund

Prior Legislation: SB 1135 (Jackson), Ch. 558, Stats. 2014
SR 20 (Alpert), enrolled 2003
SB 881 (Butler), Ch. 363, Stats. 1913
Ch. 720, Stats. 1909

Support: ACCESS Women's Health Justice; Alliance for Humane Biotechnology; American Civil Liberties Union of California; American Public Health Association – Sexual and Reproductive Health Section; Black Women for Wellness; California Immigrant Policy Center; California Nurse-Midwives Association; California Voices for Progress; Center for Genetics and Society; Center for Reproductive Rights; Center on Reproductive Rights and Justice at Berkeley Law; Central Valley Immigrant Integration Collaborative; Do No Harm Coalition; Giffords Law Center to Prevent Gun Violence; Having Our Say Coalition; Ibis Reproductive Health; If/When/How; Los Angeles Center for Law and Justice; National Health Law Program; National Organization for Women – Hollywood Chapter; National Women's Health Network; Nevada County Citizens for Choice; Our Bodies Ourselves; Physicians for Reproductive Health; Pro-Choice Alliance for Responsible Research; Public Health Justice Collective; World Institute on Disability; former Senator Deborah Ortiz; numerous private individuals

Opposition: None known

PURPOSE

The purpose of this bill is to establish the Eugenics Sterilization Compensation Program to be implemented by the Victims Compensation Board for the purpose of providing victim compensation to any survivor of state-sponsored sterilization conducted pursuant to eugenics laws that existed in the State of California between 1909 and 1979.

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

Existing law authorizes the board to reimburse for pecuniary loss for the following types of losses pursuant to specified limits:

- Medical or medical-related expenses incurred by the victim for services provided by a licensed medical provider;
- Out-patient psychiatric, psychological or other mental health counseling-related expenses incurred by the victim or derivative victim, including peer counseling services provided by a rape crisis center;
- Compensation equal to the loss of income or loss of support, or both, that a victim or derivative victim incurs as a direct result of the victim's injury or the victim's death;
- Cash payment to, or on behalf of, the victim for job retraining or similar employment-oriented services;
- The expense of installing or increasing residential security, not to exceed \$1,000;
- The expense of renovating or retrofitting a victim's residence or a vehicle to make them accessible or operational, if it is medically necessary;
- Relocation expenses up to \$2,000 if the expenses are determined by law enforcement to be necessary for the victim's personal safety, or by a mental health treatment provider to be necessary for the emotional well-being of the victim;
- Funeral or burial expenses;
- Costs related to clean the scene of the crime; and,
- Veterinary services. (Gov. Code, § 13957, subd. (a).)

Existing law limits the total award to or on behalf of each victim to \$35,000, except that this amount may be increased up to \$70,000 if federal funds for that increase are available. (Gov. Code, § 13957, subd. (b).)

Existing law provides that an application for compensation shall be filed with the board in the manner determined by the board. (Gov. Code, § 13952, subd. (a).)

Existing law provides that any person who, having been convicted of any crime against the state amounting to a felony and imprisoned in the state prison for that conviction, is granted a pardon by the Governor for the reason that the crime with which he or she was charged was either not committed at all or, if committed, was not committed by him or her, or who, being innocent of the crime with which he or she was charged for either of the foregoing reasons, shall have served the term or any part thereof for which he or she was imprisoned, may, as specified, present a claim against the state to the board for the pecuniary injury sustained by him or her through the erroneous conviction and imprisonment. (Pen. Code, § 4900.)

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

Existing law something about developmentally disabled consent

This bill establishes the Eugenics Sterilization Compensation Program, to be implemented by the California Victim Compensation Board (Board) for the purpose of providing victim compensation to any survivor of state-sponsored sterilization conducted pursuant to eugenics laws that existed in California between 1909 and 1979.

This bill defines “qualified recipient” to mean an individual who is eligible for victim compensation by meeting all of the following requirements:

- The individual was sterilized pursuant to eugenics laws that existed in California between 1909 and 1979;
- The individual was sterilized while he or she was a patient at any of the following institutions: Agnews State Hospital, Atascadero State Hospital, Camarillo State Hospital, DeWitt State Hospital, Mendocino State Hospital, Modesto State Hospital, Napa State Hospital, Norwalk State Hospital, Pacific Colony, Patton State Hospital, Sonoma State Home, Stockton State Hospital; and,
- The individual is alive as of January 1, 2019.

This bill requires the Board, in consultation with community-based organizations, to do all of the following to implement the program:

- Conduct outreach to locate any qualified recipient and notify him or her of the process to apply for victim compensation, as specified;
- Review and verify applications for victim compensation;
- Consult records of the State Archives to verify the identity of any individual claiming he or she was sterilized during the between the period of 1919 to 1952;
- Consult the records of the State Department of State Hospitals (DSH) and the State Department of Developmental Services (DDS) to verify the identity of any individual claiming he or she was sterilized during the period of 1953 to 1979;
- Include an area on the application for a claimant to voluntarily report demographic information about gender, race, ethnicity, disability, sexual orientation, and gender identity; and,
- Oversee the appeal process.

This bill requires the Board to annually submit a report to the Legislature including 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.

This bill states that the report shall also include specified data on claimants' demographic information, as voluntarily provided on the claimant's application form, in aggregated form, as well as data about the age a claimant was sterilized and the hospital where sterilization occurred, as verified by the DSH or DDS.

This bill requires the report to include data on outreach methods or processes used by the Board to reach potential claimants.

This bill requires the Board to develop and implement procedures to receive and process applications for victim compensation under this program no later than June 30, 2019.

This bill appropriates an unspecified amount from the General Fund to the Board for the purposes of paying victim compensation to qualified recipients as defined by the provisions of this bill as follows:

- At least 90 percent of the amount shall be used for the purpose of paying victim compensation to qualified recipients; and,
- Up to 10 percent of the amount may be used for the purpose of administering and implementing the program.

This bill states that all applications seeking victim compensation pursuant to the Eugenics Sterilization Compensation Program must be submitted between July 1, 2019 and July 1, 2021.

This bill requires the Board to screen the application and accompanying documentation for completeness and notify the claimant that the application is not complete and what additional documentation is needed. The claimant shall have 60 calendar days from the receipt of the notification to submit the required documentation. If the required documentation is not received within 60 calendar days, the application will be closed and the claimant may submit a new application.

This bill specifies that the Board shall not consider an application or otherwise act on it until the application is complete with all required documentation.

This bill provides that a claimant may file an appeal with the Board within 30 days of an adverse claim decision and requires the Board to make a determination within 30 days of the date of appeal and notify the claimant of the decision.

This bill sets up the following payment schedule for awarding victim compensation:

- An initial payment must be received by a qualified recipient within 60 days of the Board's determination; and,
- After exhaustion of all appeals arising from the denial of an individual's application, but by no later than October 1, 2021, the Board shall send a final payment to all qualified recipients.

This bill provides that the initial payment shall be calculated by dividing the funds appropriated by the anticipated number of qualified recipients as determined by the Board and then dividing that dollar amount in half.

This bill provides that the final payment shall be calculated by dividing the remaining balance of funds appropriated by the total number of qualified recipients.

This bill states that a qualified recipient may assign his or her victim compensation to a trust established for his or her benefit.

This bill requires the Board to include a provision on the application that a claimant is authorized to designate a beneficiary for his or her victim compensation.

This bill states that if the claimant did not name a beneficiary, the victim compensation shall remain with the Board for expenditure as authorized.

This bill states that an application may be made by an individual's legally authorized representative if the individual satisfies the criteria for a qualified recipient.

This bill requires DSH and DDS, in consultation with stakeholders, to establish markers or plaques at designated sites that acknowledge the compulsory sterilization of thousands of people.

This bill requires the Board develop, in consultation with stakeholders, a traveling historical exhibit and other educational opportunities about eugenics laws that existed in the State of California between 1909 and 1979 and the far-reaching impact they had on California residents.

This bill requires the Board to keep confidential and not disclose to the public any record pertaining to either an individual's application for victim compensation the board's verification of the application, including, but not limited to, claimant names and demographic information submitted on the application.

This bill states that, notwithstanding any law, the payment made to a qualified recipient pursuant to the provisions of this bill shall not be considered any of the following:

- Taxable income for state tax purposes;
- Income or resources for purposes of determining the eligibility for, or amount of, any benefits or assistance under any state or local means-tested program;
- Income or resources in determining the eligibility for, or the amount of, any federal public benefits as provided by the Treatment of Certain Payments in Eugenics Compensation Act (42 U.S.C. Sec. 18501); and,
- Community property for the purpose of determining property rights under the Family Code and Probate Code.

This bill states that, notwithstanding any other law, the payment made to a qualified recipient pursuant to the provisions of this bill shall not be subject to the following:

- Enforcement of a money judgment under state law; or,
- A money judgment in favor of the State Department of Health Care Services for any period of time in which federal law or guidance has not been issued by the federal Centers for

Medicare and Medicaid Services requiring the department to recover funds from the payments pursuant to this chapter for reimbursement of qualifying Medi-Cal expenditures, as specified.

This bill makes various Legislative findings and declarations related to California's Eugenics Sterilization laws.

COMMENTS

1. Need for This Bill

According to the author of this bill:

Eugenic sterilization programs are now recognized as a major human rights abuse. In 2003, Governor Davis, Attorney General Lockyer and the State Senate separately apologized for California's eugenic sterilization program. Their apologies, however, were not accompanied by any redress. This bill would provide monetary compensation to remaining survivors who were sterilized involuntarily by the State of California. Although compensation cannot adequately address the harm suffered by sterilization survivors, it is a material acknowledgement of the wrong done to them by the state.

2. Purpose and History of CalVCP

The victim compensation program was created in 1965, the first such program in the country. The board provides compensation for victims of violent crime. It reimburses eligible victims for many crime-related expenses, such as counseling and medical fees. Funding for the board comes from restitution fines and penalty assessments paid by criminal offenders, as well as federal matching funds. (See the California Victim Compensation Board's website <<http://www.vcgcb.ca.gov/board/>> [as of Apr. 4, 2018].)

This bill would establish the Eugenics Sterilization Compensation Program to be administered by the California Victim Compensation Board to provide victim compensation to any survivor of state-sponsored sterilization conducted pursuant to eugenics laws that existed in the State of California between 1909 and 1979. The bill defines who is a qualified recipient and requires that all applications must be submitted between July 1, 2019 and July 1, 2021. Funding for the program would be provided as an appropriation from the General Fund.

Several other states, as well as Congress, have also established compensation programs for victims of forced sterilization. (<http://www.pbs.org/independentlens/blog/unwanted-sterilization-and-eugenics-programs-in-the-united-states/> [as of Apr. 4, 2018].)

3. History of California Eugenic Sterilization Program

California was the second state to pass eugenics laws in 1909; the first was Indiana making it legal to sterilize the "feeble-minded." (Abate, *State's little-known history of shameful science / California's role in Nazis' goal of 'purification'*, SF Gate (Mar. 10, 2003) <<https://www.sfgate.com/business/article/State-s-little-known-history-of-shameful-science-2663925.php>> [as of Apr. 4, 2018].) California's eugenics law was repealed in 1979.

In an SF Gate article from 2003, University of Virginia bioethicist Paul Lombardo, who testified before the Senate Select Committee on Genetics on March 11, 2003, gave the following background on California's Eugenic Sterilization Program:

Eugenicists thought they could improve the human species through selective breeding, which meant preventing habitual criminals, inmates of insane asylums and sexual deviants from having kids.

....

As he explained it, it was 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.

After Indiana passed a pioneering statute allowing state officials to sterilize those deemed unfit to breed, California enacted an even stricter eugenics law. California made 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.

As 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."

Abate, *State's little-known history of shameful science / California's role in Nazis' goal of 'purification'*, SF Gate (Mar. 10, 2003) <<https://www.sfgate.com/business/article/State-s-little-known-history-of-shameful-science-2663925.php>> [as of Apr. 4, 2018].)

According to data collected by Alexandra Stern, Ph.D., as of 2016, there were an estimated 831 individuals who could qualify for compensation under the program created by this bill. (Stern, *California's Sterilization Survivors: An Estimate and Call for Redress*, *American Journal of Public Health* (Dec. 2016) <<https://ajph.aphapublications.org/doi/10.2105/AJPH.2016.303489>> [as of Apr. 5, 2018].)

4. Argument in Support

The National Women's Health Network writes in support:

This bill will be the first effort to provide redress to people involuntarily sterilized under state eugenics laws. While the state acknowledged this historical wrong in 2003 through Governor Davis' and Attorney General Lockyer's apologies and a Senate Resolution, this bill will provide a material acknowledgment of this injustice by compensating sterilization survivors.

SB 1190 will also raise public awareness about this chapter in California's history through markers or plaques at designated sites and educational activities about California's eugenics laws. These elements will help people understand the far-reaching impact the laws had on state residents, and, in particular, people classified as having disabilities and members of historically marginalized racial and ethnic groups. This law disproportionately affected women and Latinas.

With SB 1190, California will become the third state in the nation to compensate survivors of coerced sterilizations under state eugenics laws, following North Carolina (2013) and Virginia (2015). Given California's history as the state that sterilized the largest number of people under such laws (20,000 to 60,000 people nationally), enacting this bill is a vital acknowledgment of the harm inflicted on a large population.

-- END --