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Following in North Carolina's Footsteps: California's Challenge in Compensating its Victims of Compulsory Sterilization

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**FOLLOWING IN NORTH CAROLINA'S
FOOTSTEPS: CALIFORNIA'S CHALLENGE IN
COMPENSATING ITS VICTIMS OF
COMPULSORY STERILIZATION**

Katherine A. West*

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INTRODUCTION

In the 1940s, physicians at the Sonoma State Hospital sterilized Charlie Follett, a fourteen-year-old boy placed in

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the institution because his parents were alcoholics and unable to care for him.¹ Neither hospital officials nor physicians informed Follett of the procedure he was to undergo.² Even worse, Follett did not consent to the operation.³ According to a CNN interview with Follett, a hospital official brought Follett into the hospital, told him to lie down on an operating table, and gave him a shot to “deaden [his] nerves.”⁴ Follett next remembered hearing a “snip, snip”—the sound of him being sterilized.⁵ In May 2012, Follett passed away, sixty-seven years after his sterilization operation; he had no remaining family.⁶

Follett was but one of an estimated 20,108 Californians involuntarily sterilized by the state of California under its eugenic sterilization law.⁷ To this date, California has not provided health care services or compensation to its victims of sterilization. State representatives simply issued apologies in 2003 expressing the state’s “profound regret.”⁸

California is not alone in its history of eugenic sterilization. Beginning in 1907, the United States sterilized roughly 60,000 individuals without their consent.⁹ Thirty-two states in total passed eugenic sterilization laws in an attempt to rid the nation of defectives unfit to reproduce and to promote “human betterment.”¹⁰ These state sterilization

1. Elizabeth Cohen & John Bonifield, *California’s Dark Legacy of Forced Sterilizations*, CNN HEALTH, <http://www.cnn.com/2012/03/15/health/california-forced-sterilizations/index.html> (last updated Mar. 15, 2012).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. John Bonifield, *No Money to Bury Man Sterilized by Force*, CNN HEALTH (Apr. 11, 2012, 10:16 AM), <http://thechart.blogs.cnn.com/2012/04/11/no-money-to-bury-man-sterilized-by-force/>. I would like to dedicate this Comment to Charlie Follett who passed away March 28, 2012 shortly after I started writing this piece. While I never met Follett, his story was a huge inspiration for me in writing this piece.

7. EUGENIC STERILIZATION app. 1 at 118 (Jonas Robitscher, ed., 1973).

8. S. Con. Res. 47, 2003–2004 Leg., Reg. Sess. (Cal. 2003); see also Michael G. Silver, Note, *Eugenics and Compulsory Sterilization Laws: Providing Redress for the Victims of a Shameful Era in United States History*, 72 GEO. WASH. L. REV. 862, 887 (2004).

9. PHILIP R. REILLY, *THE SURGICAL SOLUTION: A HISTORY OF INVOLUNTARY STERILIZATION IN THE UNITED STATES* 94 (1991).

10. Alexandra Minna Stern, *Sterilized in the Name of Public Health: Race, Immigration, and Reproductive Control in Modern California*, 95 AM. J. PUB. HEALTH 1128, 1129, 1130 (2005); see also George Sabagh & Robert B. Edgerton,

programs authorized the involuntary sterilization of individuals labeled feebleminded,¹¹ promiscuous and insane, and targeted those with epilepsy, alcoholism, and syphilis.¹² Proponents of sterilization argued that sterilizing these individuals would cure America's social ills.¹³ State-run sterilization programs continued into the 1970s, with some states maintaining their sterilization laws on the books into the 1980s.¹⁴ Currently, few states have taken action to redress the harm their sterilization victims suffered.¹⁵ Only seven states, including California, have issued apologies recognizing the wrong suffered by their sterilization victims.¹⁶ The remainder of the nation's victims remain unrecognized.

North Carolina and its eugenics program recently entered the national spotlight with talks of compensating its estimated 1500 to 2000 living victims.¹⁷ In January 2012, the North Carolina Governor's Eugenic Compensation Task Force proposed that the North Carolina legislature compensate each living victim with a \$50,000 lump sum.¹⁸ In addition, the Task Force recommended that the state offer mental health services for living victims and fund a traveling North Carolina Eugenics Exhibit.¹⁹ In June 2012, the North Carolina state legislature considered the Task Force's recommendations.²⁰ The North Carolina House of

Sterilized Mental Defectives Look at Eugenic Sterilization, 9 EUGENICS Q. 213, 213 (1962).

11. According to Massachusetts physician Walter Fernald, the feebleminded consisted of "the simply backward boy or girl but little below the normal standard of intelligence to the profound idiot, a helpless, speechless, disgusting burden, with every degree of deficiency between these extremes." PAUL A. LOMBARDO, *THREE GENERATIONS, NO IMBECILES: EUGENICS, THE SUPREME COURT, AND BUCK V. BELL* 15 (2008).

12. *Id.* at 35.

13. Silver, *supra* note 8, at 864.

14. *Id.* at 863.

15. *See infra* Part II.B.

16. LOMBARDO, *supra* note 11, at 263–65.

17. Wade Rawlins, *North Carolina Sterilization Survivors Closer to Compensation*, REUTERS (June 5, 2012 7:08 PM), <http://www.reuters.com/article/2012/06/05/us-usa-northcarolina-eugenics-idUSBRE8541EB20120605>.

18. THE GOVERNOR'S TASK FORCE TO DETERMINE THE METHOD OF COMP. FOR VICTIMS OF N.C.'S EUGENICS BD., FINAL REPORT TO THE GOVERNOR OF THE STATE OF NORTH CAROLINA 2 (2012), available at <http://www.sterilizationvictims.nc.gov/documents/FinalReport-GovernorsEugenicsCompensationTaskForce.pdf> [hereinafter FINAL REPORT].

19. *Id.*

20. Rawlins, *supra* note 17.

Representatives approved the legislation; however, the state senate rejected the Task Force's compensation plan.²¹ Had North Carolina adopted these measures, it would have been the first state to compensate its victims of forcible sterilization.

While North Carolina contemplated compensating its sterilization victims, eyes turned toward California, the most egregious offender in the nation's shameful eugenic past.²² California performed one-third of the total sterilization operations in the nation, more than twice as many sterilizations as its "nearest rivals."²³ Will California follow North Carolina's example and consider compensating its living victims?

In this Comment, I discuss the challenges California faces in compensating its sterilization victims. Unlike North Carolina whose numbers of sterilizations rose after 1950,²⁴ California's sterilization program died down after 1952,²⁵ meaning a large number of California's victims are most likely no longer living. In addition, the state will face challenges locating victims and encouraging them to come forward in spite of the shame they may feel.

Part I of this Comment explores the background of the nation's eugenics history, focusing particularly on California's sterilization program. Part II discusses the end of the state eugenic programs and outlines state measures taken to redress victims. Part III analyzes the case for compensation, exploring why states should consider compensating victims of involuntary sterilization. In addition, Part III discusses North Carolina's approach to the issue. Part IV analyzes California's challenges in compensating its victims, looking specifically at the number of possible living victims and the difficulties the state will face in locating them. Lastly, Part V examines California's options and moral obligations, proposing that California should compensate its sterilization victims regardless of how few may be alive and the difficulties

21. Carrie Gann, Courtney Hutchison & Susan James, *North Carolina Senate Denies Funds for Sterilization Victims*, ABC NEWS (June 22, 2012), <http://abcnews.go.com/Health/WomensHealth/north-carolina-senate-blocks-compensation-sterilization-victims-eugenics/story?id=16628515#.UGczilE2eeY>.

22. Cohen & Bonifield, *supra* note 1.

23. Stern, *supra* note 10, at 1128, 1130.

24. *See* FINAL REPORT, *supra* note 18, at 6.

25. Stern, *supra* note 10, at 1132.

the state faces locating victims. I further propose that California should commission a task force to determine the amount of money and type of services it should provide survivors.

I. HISTORY OF EUGENICS

A. *Eugenics*

The eugenics movement arose in the early twentieth century from motives reflecting then-current assumptions about genetics and its relationship to the nation's social problems.²⁶ In the years following the Civil War, the United States underwent a period of rapid industrialization and increased mechanization of agriculture.²⁷ With this growth came a massive migration to the nation's cities.²⁸ This influx of workers and immigrants to the nation's cities brought with it a host of social problems, including poor housing conditions, low wages, crime, and labor unrest.²⁹ Traditional methods of aiding the urban poor, including charity, social work, and religious institutions proved little help.³⁰

During this time, scientists found what they believed to be the source of human social problems: genetics.³¹ Based on Mendel's theories of inheritance, scientists held that certain characteristics such as criminality, promiscuity, feeble-mindedness,³² insanity, and infectious diseases were hereditary.³³ According to eugenics proponents, preventing individuals carrying such "defective" genes from reproducing could cure society's ills.³⁴ Sterilizing these individuals could

26. Silver, *supra* note 8, at 864.

27. Garland E. Allen, *Social Origins of Eugenics*, EUGENCSARCHIVE.ORG, <http://www.eugenicsarchive.org/html/eugenics/essay1text.html> (last visited Jan. 30, 2013).

28. *Id.*

29. *Id.*

30. *Id.*; *see also* Silver, *supra* note 8, at 865.

31. Allen, *supra* note 27.

32. In his book, *FEEBLE-MINDEDNESS: ITS CAUSES AND CONSEQUENCES*, Henry H. Goddard "defined feeble-mindedness as, 'a state of mental defect existing from birth or from an early age and due to incomplete or abnormal development in consequence of which, the person affected is incapable of performing his duties as a member of society in the position of life to which he was born.'" LOMBARDO, *supra* note 11, at 40.

33. LOMBARDO, *supra* note 11, at 33–34.

34. Allen, *supra* note 27.

save the nation thousands of dollars by eliminating the need for the state to care for these “defective” individuals.³⁵

Eugenics took hold in the United States in the early twentieth century.³⁶ In 1907, Indiana passed the nation’s first eugenic sterilization law.³⁷ In the years that followed, Washington, Connecticut, and New Jersey, among others, followed Indiana’s lead.³⁸ By the time the United States entered World War II, thirty out of forty-eight states had compulsory sterilization laws.³⁹ These laws varied in effect and application from state to state. Regardless of this, each state law sterilized individuals without their consent in the name of eliminating “defective” genes.

Eugenics, however, was not exclusive to the United States. During the 1920s and 1930s, Canada, Denmark, Sweden, Norway, Mexico, Finland, France, and Japan enacted sterilization laws.⁴⁰ More notoriously, Nazi Germany enacted its eugenic sterilization law in 1933.⁴¹ Similar to the United States, these countries enacted their sterilization programs as a means to prevent procreation by feebleminded and/or insane persons, as well as other “defectives.”⁴²

State sterilization laws did not go unchallenged. Various state courts addressed victims’ challenges to state sterilization laws.⁴³ In 1927, the United States Supreme Court weighed in on the issue.⁴⁴ In the landmark case *Buck v. Bell*,⁴⁵ Carrie Buck challenged the state of Virginia’s compulsory sterilization law.⁴⁶ Buck argued that the law

35. *See id.*

36. Silver, *supra* note 8, at 862.

37. *Id.* at 866. Under Indiana’s sterilization law, surgeons had discretion “to perform such operation[s] for the prevention of procreation as shall be decided safest and most effective.” LOMBARDO, *supra* note 11, at 25.

38. LOMBARDO, *supra* note 11, at 294.

39. *Id.* at 293.

40. REILLY, *supra* note 9, at 103.

41. *Id.* at 106. Germany’s sterilization law permitted special courts to approve the sterilization of individuals “about whom, in ‘the experience of medical science, it may be expected with great probability that their offspring may suffer severe physical damage.’” *Id.* at 107.

42. *See id.* at 103–07.

43. *See* LOMBARDO, *supra* note 11, at 25–29.

44. Silver, *supra* note 8, at 862.

45. *Buck v. Bell*, 274 U.S. 200 (1927).

46. The state of Virginia institutionalized Buck, labeling her a deviant and promiscuous after she gave birth to an illegitimate daughter. Buck became pregnant after an older relative raped her. Silver, *supra* note 8, at 866 n.33.

violated her Fourteenth Amendment rights to substantive due process and equal protection of the laws.⁴⁷ In an opinion by Justice Holmes, an eight-justice majority upheld the state's compulsory sterilization law,⁴⁸ holding that the state had an interest in preventing the feeble-minded from burdening the state.⁴⁹ The years following the Supreme Court's decision in *Buck* saw an increase in the passage and revision of sterilization laws.⁵⁰ Approximately twenty states passed sterilization laws, many very similar to Virginia's law.⁵¹ While the Court's decision is not the sole explanation for the passage of these laws,⁵² the Court's validation of Virginia's sterilization law "erased any doubts about the constitutionality of eugenics-based sterilization laws."⁵³

B. California Eugenics

Of the thirty-two states that enacted sterilization laws and programs, California's sterilization program stands out as particularly egregious.⁵⁴ From 1909 to around 1963, California sterilized an estimated 20,000 individuals; roughly one-third of the total number of individuals sterilized in the United States.⁵⁵ In comparison to its *nearest rivals*, Virginia⁵⁶ and North Carolina,⁵⁷ California carried out more than twice as many sterilizations.⁵⁸

In 1909, California became the third state in the nation to enact a eugenic sterilization law.⁵⁹ The state's sterilization law permitted medical superintendents of state hospitals, the Sonoma State Home for the Feeble-minded, and prisons to

47. *Id.* at 866.

48. *Id.*

49. *Id.* In addition, the Supreme Court utilized a public health rationale to justify its decision. In doing this, Justice Holmes relied on a 1905 Supreme Court decision that upheld a Massachusetts compulsory smallpox vaccination law. *Id.*

50. REILLY, *supra* note 9, at 88.

51. Silver, *supra* note 8, at 867.

52. REILLY, *supra* note 9, at 89. The increased passage of state sterilization laws can also be attributed to increased support from physician groups and published medical articles on the topic. *Id.*

53. Silver, *supra* note 8, at 867.

54. Stern, *supra* note 10, at 1130.

55. *Id.* at 1128.

56. Virginia sterilized approximately 8,000 individuals. *Id.* at 1130.

57. North Carolina sterilized approximately 7,600 individuals. *Id.*

58. *Id.*

59. LOMBARDO, *supra* note 11, at 294.

“asexualize” a patient or inmate if the procedure would improve the individual’s “physical, moral, or mental condition.”⁶⁰

The California Legislature enacted its sterilization statute in response to rising commitment rates of those deemed insane and overcrowding in state hospitals.⁶¹ According to Richard W. Fox, a professor in American intellectual and cultural history, in the early 1900s, the insane consisted of those deemed to lack a certain type of social adaptation and a “certain kind of conduct” such that the individual was rendered “incapable of getting along in the community.”⁶² Unlike the mentally ill who could get along in society, the insane were considered “‘defectives’ in need of confinement and in many cases sterilization.”⁶³

Between the 1870s and 1920s, California had the highest rate of insane commitments in the United States.⁶⁴ Medical authorities in the late 1800s attributed this rate to the state’s emphasis on committing all those who “‘sought’ it,” as well as the state’s environment.⁶⁵ More specifically, medical authorities felt that “‘the shock of transplantation, separation from family and friends, disappointments, disastrous enterprises, sudden reverses of fortune, intemperance, fast living, and an unsettled condition of life’” caused individuals to suffer from mental disorders.⁶⁶ By the 1900s, medical authorities no longer blamed California’s high insanity rate on the state; rather, medical authorities blamed

60. Stern, *supra* note 10, at 1129; *see also* WENDY KLINE, BUILDING A BETTER RACE: GENDER, SEXUALITY, AND EUGENICS FROM THE TURN OF THE CENTURY TO THE BABY BOOM 50 (2001) (discussing the state’s adoption of the 1909 statute).

61. RICHARD W. FOX, SO FAR DISORDERED IN MIND: INSANITY IN CALIFORNIA, 1870–1930, at 30–31 (1978).

62. *Id.* at 167. In the early 1900s, the medical world considered insanity an extreme form of mental illness. “Mentally ill” referred to individuals suffering from a wide range of “mild” disorders “that were compatible with a respectable place in society.” *Id.* According to nationally prominent psychiatrist William A. White, Superintendent of the Government Hospital for the Insane in Washington, D.C., “‘the word ‘insanity’ . . . is not a medical term at all, but a social term which defines a certain kind of socially inefficient conduct.’” *Id.* at 168.

63. *Id.* at 167.

64. *Id.* at 18.

65. *Id.* at 20.

66. *Id.* at 21 (quoting G.A. Shurtleff, *The Insane, and Why So Many*, 3 CAL. ST. BD. HEALTH 1875, at 65).

other states and countries for producing the defectives and attributed California's high insanity commitment rate to California's "generous willingness to care for all those who broke down after arrival."⁶⁷

Regardless of the reason for California's high insanity commitment rate, the asylum system was in a state of crisis by the second decade of the twentieth century.⁶⁸ According to Fox, by 1912, many hospital wards, each designed to care for forty patients at one time, were housing one hundred and twenty patients.⁶⁹ In addition, the Sonoma State Home for the Feebleminded was operating at full capacity with eleven hundred residents and one hundred individuals on the waiting list.⁷⁰ Believing that the public and legislature would not support building additional facilities, hospital superintendents began pushing for alternative proposals to reduce the population of insane hospitals.⁷¹ The state enacted deportation, parole, and probation programs.⁷² Nonetheless, these programs had a small effect on decreasing overcrowding.⁷³

In 1909, Dr. Frederick Winslow Hatch, head of the State Commission on Lunacy, pushed through the legislature a bill calling for the sterilization of hospital patients and prison inmates.⁷⁴ For hospital superintendents and physicians, "the only 'danger' that most insane persons presented to the outside community was that they might 'leave behind them . . . progeny to carry on the tainted and unhappy stream of heredity.'"⁷⁵ Unlike other programs, sterilization offered a cost-effective and efficient means of ridding society of this "danger," allowing for the release of these individuals from institutions and creating additional space for those in need of care.⁷⁶

67. *Id.* at 24.

68. *Id.* at 26.

69. *Id.*

70. KLINE, *supra* note 60, at 50.

71. FOX, *supra* note 61, at 26.

72. *Id.*

73. *Id.*

74. See Paul Popenoe, *The Progress of Eugenic Sterilization*, 25 J. HEREDITY 19, 20 (1934), reprinted in COLLEGE OF LAW FACULTY PUBLICATIONS 19, 20 (2009), available at http://digitalarchive.gsu.edu/cgi/viewcontent.cgi?article=1040&context=col_facpub.

75. FOX, *supra* note 61, at 28.

76. See *id.*

Soon after the statute's enactment, the Board of Charities and Corrections criticized the law as "'not broad enough in scope' and without 'adequate legal protection.'"⁷⁷ As a result, the California legislature repealed and replaced the statute in 1913.⁷⁸ Under the 1913 statute, "any inmate of the Sonoma State Home may, upon order of the Lunacy Commission, be asexualized [sterilized] whether with or without the consent of the patient."⁷⁹ In 1917, the legislature cast the law's net even wider, expanding the statute to include all those "'afflicted with hereditary insanity or incurable chronic mania or dementia."⁸⁰ In addition, the statute applied to "all those suffering from perversion or marked departures from normal mentality or from disease of a syphilitic nature."⁸¹ According to Wendy Kline, a history professor at the University of Cincinnati, the inclusion of syphilis in the state's sterilization statute allowed state hospitals and asylums to sterilize individuals, including infected prostitutes, who tested "[mentally] normal."⁸²

Under these statutes, California sterilized men and women, aged twenty to forty,⁸³ for various reasons. In addition to sterilizing men and women considered mentally ill or feebleminded, state hospital physicians sterilized those classified as alcoholics, paupers, "simpletons," and "fools."⁸⁴ According to Alexandra Minna Stern, a professor in the history of medicine, anonymous patient records dating from the 1920s show hundreds of individuals in their late teens and early twenties who were sterilized for schizophrenia, epilepsy, manic depression, psychosis, feeblemindedness, or mental deficiency.⁸⁵ A significant number of these individuals were males sterilized for masturbating or incest, and females who were sterilized for being "promiscuous" or immoral, or for

77. KLINE, *supra* note 60, at 50.

78. *Id.*

79. *Id.*

80. *Id.*; Stern, *supra* note 10, at 1129.

81. KLINE, *supra* note 60, at 50 (emphasis omitted).

82. *Id.* at 51.

83. According to Stern, the age of sterilization victims varied depending on sex, institution, and marital status. However, the bulk of those sterilized were between the ages of twenty and forty. Stern, *supra* note 10, at 1131. As shown by Charlie Follet's story, California sterilized some victims during their teens. See Cohen & Bonifield, *supra* note 1.

84. FOX, *supra* note 61, at 37.

85. Stern, *supra* note 10, at 1131.

having borne a child out of wedlock.⁸⁶ In addition, state hospitals singled out women who had more children than they could care for.

Under its sterilization laws, California sterilized a significant number of foreign-born individuals and African-Americans.⁸⁷ In their 1938 study of California sterilizations, Paul Popenoe and E.S. Gosney noted that foreign-born individuals constituted thirty-nine percent of all men sterilized and thirty-one percent of all women sterilized.⁸⁸ The immigrant groups most represented included individuals from Scandinavia, Britain, Italy, Russia, Poland, and Germany.⁸⁹ In addition, Popenoe and Gosney's records indicate medical superintendents operated on African-Americans at rates that exceeded their population.⁹⁰ Although African-Americans over age twenty-one constituted one and a half percent of the state's population in 1930, they comprised four percent of the state's total population sterilized.⁹¹

Even though the majority of sterilizations in California were compulsory (i.e., done with little or no consent from the victim), not all sterilizations were compelled by the state.⁹² Parents and families played a role in committing to institutions and consenting to the sterilization of victims.⁹³ In their 1929 study of California's sterilizations, Popenoe and Gosney reported that although not required by law, state institutions customarily obtained the written consent of the patient's nearest relative prior to sterilizing a patient.⁹⁴ Popenoe and Gosney observed, "not in one case out of ten, perhaps not in one case out of twenty, [was an] operation . . . performed without the written approval of the near relatives, if there were any."⁹⁵ Kline confirms this in her book,

86. *Id.*

87. See PAUL POPENOE & E.S. GOSNEY, TWENTY-EIGHT YEARS OF STERILIZATION IN CALIFORNIA 9 (1938); Stern, *supra* note 10, at 1131.

88. Stern, *supra* note 10, at 1131.

89. *Id.*

90. *Id.*; see POPENOE & GOSNEY, *supra* note 87, at 10.

91. POPENOE & GOSNEY, *supra* note 87, at 10; Stern, *supra* note 10, at 1131.

92. See KLINE, *supra* note 60, at 58.

93. *Id.*

94. E.S. GOSNEY & PAUL POPENOE, STERILIZATION FOR HUMAN BETTERMENT: A SUMMARY OF RESULTS OF 6,000 OPERATIONS IN CALIFORNIA, 1909-1929, at 35 (1930).

95. *Id.* at 36.

reporting that between 1922 and 1925 the superintendent received consent to operate from a family member in eighty-eight percent of the cases.⁹⁶ In addition, Kline notes that parents, out of fear or resignation, often requested the commitment of their rebellious teenagers.⁹⁷ According to a study conducted by Mary Odem, Los Angeles juvenile court records indicate that parents initiated almost half the girls' sterilization cases that came before the court.⁹⁸

In the early years of its sterilization program, California sterilized few individuals. The program picked up speed starting in 1925.⁹⁹ At the end of 1920, approximately 2558 individuals had been sterilized in California—"more than two-thirds of them in insane hospitals. . . [and] less than one-third in homes for the feebleminded."¹⁰⁰ In their 1938 study of the California sterilization program, Paul Popenoe and E.S. Gosney reported that as of January 1, 1937, California had sterilized 11,484 patients.¹⁰¹ By 1942, more than 15,000 individuals had been sterilized.¹⁰²

In the 1950s, California's sterilization program significantly declined.¹⁰³ According to Stern, the number of individuals sterilized declined starting in 1952, due to a revision in California's eugenics statute that inserted administrative requirements for physicians and safeguards for patients.¹⁰⁴ This revision, coupled with another 1953 bill, deleted all references to "syphilis . . . and sexual perversion;

96. KLINE, *supra* note 60, at 58.

97. *Id.* at 57.

98. *Id.*

99. See ALEXANDRA MINNA STERN, EUGENIC NATION: FAULTS AND FRONTIERS OF BETTER BREEDING IN MODERN AMERICA 108 (2005).

100. FOX, *supra* note 61, at 27.

101. POPENOE & GOSNEY, *supra* note 87, at 3.

102. STERN, *supra* note 99, at 108.

103. Stern, *supra* note 10, at 1132.

104. *Id.* George Sabagh and Robert B. Edgerton noted that in 1962, before a patient could be sterilized, four sets of individuals had to approve the operation or grant their permission:

1) the patient, or some person, usually a social worker, who has to sign an affidavit that he explained the meaning of the operation to the patient; 2) the father, mother, and any other guardians of the patient; 3) the superintendent of the hospital; 4) the director of the Department of Mental Hygiene.

Sabagh & Edgerton, *supra* note 10, at 217.

If, after one month, there were no legal objections made to the operation, the director could authorize the superintendent to perform the operation. *Id.*

instituted more demanding processes of notice, hearing, and appeal; and removed the terms 'idiots' and 'fools' from the law."¹⁰⁵ These modifications made the process more of an "ordeal," and as a result, deterred many physicians from requesting sterilization orders.¹⁰⁶ Despite these modifications to the law, sterilization surgeries continued sporadically at every state institution into the 1970s.¹⁰⁷ In 1979, the California legislature repealed its sterilization law.¹⁰⁸

II. THE END OF STATE-SPONSORED EUGENICS

A. *The Decline of State Sterilization Programs*

Similar to California, the majority of state sterilization programs declined in the years following World War II.¹⁰⁹ According to Phillip R. Reilly, author of *The Surgical Solution*, a number of events in the 1940s and 1950s forced the nation's sterilization movement into decline.¹¹⁰ The onset of World War II constituted the main contributing factor.¹¹¹ From 1942 to 1946, the nation enlisted every available surgeon in the armed forces.¹¹² Those surgeons not enlisted had little time to devote to sterilization with busy medical practices at home.¹¹³

The United State Supreme Court's decision in *Skinner v. Oklahoma* may have also contributed to the decline in

105. Stern, *supra* note 10, at 1132.

106. *Id.*

107. *Id.*

108. LOMBARDO, *supra* note 11, at 294.

109. *See id.* at 241.

110. REILLY, *supra* note 9, at 128. Among these factors was the Catholic Church's outspoken opposition to involuntary sterilization. According to Phillip C. Reilly's book THE SURGICAL SOLUTION, the Catholic Church was long opposed to eugenic and voluntary sterilization. During the 1950s, however, the Church participated in the public debate concerning whether voluntary sterilization was permissible as a means of limiting family size. In 1953, Pope Pius XII "condemned eugenic sterilization and described the prohibition of marriage by persons with hereditary taints as 'morally contestable.'" *Id.* at 129-30.

111. *Id.* at 128.

112. *Id.* In Reilly's article, *Involuntary Sterilization in the United States: A Surgical Solution*, he reported that between 1942 and 1946, surgeons performed half as many sterilization operations annually as they had performed annually during the 1930s. Philip R. Reilly, *Involuntary Sterilization in the United States: A Surgical Solution*, 62 Q. REV. BIOLOGY 153, 165 (1987).

113. REILLY, *supra* note 9, at 128.

sterilization procedures.¹¹⁴ In *Skinner*,¹¹⁵ the Court addressed the constitutionality of Oklahoma's Habitual Criminal Sterilization Act.¹¹⁶ Under the 1935 law, any person convicted of three felonies "involving moral turpitude" and thereafter confined to an Oklahoma penal institution may be subject to sterilization.¹¹⁷ In a majority opinion, the Supreme Court held the state law unconstitutional on grounds that the law only applied to a certain class of persons convicted of criminal felonies.¹¹⁸ While the Court's decision did not overrule *Buck v. Bell*, it did send "a warning that class legislation would be carefully examined."¹¹⁹

Despite these developments, several states increased their rate of sterilization surgeries post-World War II.¹²⁰ North Carolina, Georgia, and Virginia expanded their state sterilization programs.¹²¹ According to Professor Paul Lombardo, North Carolina sterilized more than 3500 individuals between 1949 and 1959, while Georgia sterilized almost 2500 and Virginia roughly 1885.¹²² North Carolina, as well as Iowa and Oregon, continued to sterilize victims into the 1970s.¹²³

114. *Id.* at 130.

115. *Skinner v. Oklahoma*, 316 U.S. 535 (1942). The state of Oklahoma convicted Skinner of three felonies on three separate occasions. In 1926, Skinner pled guilty to stealing chickens. He served eleven months in Oklahoma's Granite Reformatory. Several years later, Skinner pled guilty to armed robbery. In 1936, the state of Oklahoma convicted Skinner for a third robbery offense. As a result, Skinner faced sterilization under the state's Habitual Criminal Sterilization Act. VICTORIA F. NOURSE, IN RECKLESS HANDS: *SKINNER V. OKLAHOMA AND THE NEAR TRIUMPH OF AMERICAN EUGENICS* 91–92 (2008); see *Skinner*, 316 U.S. at 537.

116. See NOURSE, *supra* note 115, at 139–40.

117. REILLY, *supra* note 9, at 130. Under the statute, the state attorney general had the power to institute proceedings to have a prisoner rendered sterile. *Id.*

118. *Id.* The Oklahoma law excluded persons convicted of several kinds of felonies, including income tax evasion, embezzlement, and political offenses. The Court held that this unequal application of the law failed to withstand strict scrutiny under the Equal Protection Clause of the Fourteenth Amendment. *Id.*; see *Skinner*, 316 U.S. at 541–42.

119. REILLY, *supra* note 9, at 128. According to Paul Lombardo, *Skinner* did not "lessen the impact of sterilization laws." LOMBARDO, *supra* note 11, at 233. Many states continued sterilizing individuals despite the Court's ruling. See *id.*

120. LOMBARDO, *supra* note 11, at 242.

121. REILLY, *supra* note 9, at 137–38.

122. LOMBARDO, *supra* note 11, at 242.

123. REILLY, *supra* note 112, at 167.

Although many state sterilization programs declined in the years following World War II, many states maintained their involuntary sterilization laws on the books into the 1960s.¹²⁴ In 1961, twenty-eight states had eugenic sterilization laws on the books.¹²⁵ Between 1961 and 1976, five states repealed their sterilization laws, while six states amended their laws.¹²⁶ One state, West Virginia, adopted its first involuntary sterilization law.¹²⁷ In 1979, California repealed its sterilization law.¹²⁸ As of 2004, seven states still had statutes allowing for the involuntary sterilization of individuals.¹²⁹

B. Redressing Harm

Despite the repeal of most state sterilization laws, only a few states have taken steps to redress the harm suffered by sterilization victims. Beginning in the early 2000s, policymakers began acknowledging victims' suffering by formally apologizing to the victims of their state sterilization programs.¹³⁰ In May 2002, Virginia became the first state to apologize officially for its eugenic sterilization program.¹³¹ Virginia Governor Mark Warner issued the apology on the seventy-fifth anniversary of the Supreme Court's decision in *Buck v. Bell*.¹³² Following Virginia's apology, governors in Oregon, South Carolina, and North Carolina issued similar apologies to victims of their respective state sterilization programs.¹³³

In 2003, California followed suit. On March 11, 2003, Professor Paul Lombardo gave a presentation to the California Senate Select Committee on Genetics, Genetic Technology, and Public Policy during which he discussed the state's sterilization program.¹³⁴ Within hours of Lombardo's

124. *Id.* at 166.

125. *Id.*

126. *Id.*

127. *Id.*

128. LOMBARDO, *supra* note 11, at 294.

129. Silver, *supra* note 8, at 863.

130. *Id.* at 886.

131. LOMBARDO, *supra* note 11, at 262.

132. *Id.*

133. *Id.* at 263. In 2007, Indiana and Georgia joined these states and issued apologies to victims of their state sterilization programs. *Id.* at 264–65.

134. *Id.* at 264.

lecture, California Governor Gray Davis and Attorney General Bill Lockyer issued public apologies to California's estimated 20,108 sterilization victims.¹³⁵ Excluded from these announcements was the presence of survivors and disability groups.¹³⁶

In September 2003, the California General Assembly adopted California Senate Concurrent Resolution No. 47 expressing the legislature's profound regret and repudiating the state's sterilization program.¹³⁷ In addition, the State Senate Genetics Committee held a follow-up hearing; however, the hearing primarily focused on California's sterilization policy and the question of reparations.¹³⁸ Despite these efforts, the state government did not pursue the matter further.¹³⁹

III. THE CASE FOR COMPENSATION

A. *States' Moral Obligation*

While some states have apologized for their sterilization programs, an apology is not enough to redress the harm done to and suffered by sterilization victims. Because of California and thirty-one other states' actions, 60,000 individuals were stripped of their fundamental right to privacy, which encompasses the right to reproduce.¹⁴⁰ States have a moral obligation to compensate victims for the harm they suffered.

Currently, victims face legal obstacles in obtaining relief through the judicial system.¹⁴¹ Most states have repealed their state sterilization laws, while others have amended them, meaning victims may lack standing to sue the states

135. See Ralph Brave & Kathryn Syla, *Exhibiting Eugenics: Response and Resistance to a Hidden History*, 29 PUB. HISTORIAN 33, 37 (2007). In relevant part, Davis's apology stated, "To the victims and their families of this past injustice, the people of California are deeply sorry for the suffering you endured over the years. Our hearts are heavy for the pain caused by eugenics. It was a sad and regrettable chapter in the state's history . . ." Silver, *supra* note 8, at 887.

136. Silver, *supra* note 8, at 888.

137. S. Con. Res. 47, 2003–2004 Leg., Reg. Sess. (Cal. 2003); LOMBARDO, *supra* note 11, at 264.

138. Brave & Syla, *supra* note 135, at 37 n.13.

139. *Id.*

140. Silver, *supra* note 8, at 884.

141. *Id.*

for violations of their constitutional rights.¹⁴² Furthermore, statutes of limitations in many states bar sterilization victims from asserting claims.¹⁴³ Because victims lack a legal avenue to redress their harm, their only means of redress is through their state government.

State governments have a moral obligation to redress the harm suffered by victims at the hands of the state. In 1988, the federal government offered \$20,000 in reparations per victim for the “material and intangible” damages suffered by Japanese Americans interned during World War II.¹⁴⁴ States should adopt similar measures and compensate sterilization victims for the harm they have suffered. Compensating sterilization victims will allow states to provide victims with meaningful assistance.¹⁴⁵ More importantly, it will allow states to let their citizens know that they are willing to pay for their mistakes and will not “tolerate bureaucracies that trample on basic human rights.”¹⁴⁶ As civil litigator Areva Martin stated in a recent interview with CNN, the reparations provided for Japanese Americans is the “floor” for compensating victims of sterilization.¹⁴⁷

B. North Carolina's Movement to Compensate Victims

Following its state issued apology in December 2002, North Carolina's state governor created a Gubernatorial Commission to investigate the state's eugenic sterilization program and to propose recommendations.¹⁴⁸ However, the Commission's recommendations sat untouched until 2008 when the North Carolina House of Representatives appointed a study committee.¹⁴⁹ This House committee's

142. *Id.* at 885.

143. *Id.* at 886.

144. Tuneen E. Chisolm, Comment, *Sweep Around Your Own Front Door: Examining the Argument for Legislative African American Reparations*, 147 U. PA. L. REV. 677, 714 (1999).

145. FINAL REPORT, *supra* note 18, at app. I-2.

146. *Id.* at app. I-3.

147. *Anderson Cooper 360°: Eugenics in America*, YOUTUBE (CNN television broadcast Dec. 27, 2011), <http://www.youtube.com/watch?v=P4Gk2ju0A4c>.

148. THE GOVERNOR'S TASK FORCE TO DETERMINE THE METHOD OF COMP. FOR VICTIMS OF N.C.'S EUGENICS BD., PRELIMINARY REPORT TO THE GOVERNOR OF THE STATE OF NORTH CAROLINA 6 (Aug. 1, 2011), http://www.sterilizationvictims.nc.gov/documents/preliminary_report.pdf [hereinafter PRELIMINARY REPORT].

149. *Id.*

recommendations included a proposal for compensating surviving victims each with \$20,000.¹⁵⁰ The proposed funding, however, did not pass through the legislature.¹⁵¹ In 2010, Governor Beverly Perdue created the North Carolina Justice for Sterilization Victims Foundation to help identify sterilization victims and to staff a new Gubernatorial Task Force.¹⁵² The Task Force's primary duty was to recommend methods or forms of compensation to individuals involuntarily sterilized by the state.¹⁵³

In January 2012, the Task Force issued its final report to the Governor recommending that the state take several actions.¹⁵⁴ Most importantly, the Task Force recommended the state compensate surviving victims each with \$50,000.¹⁵⁵ Under the Task Force's plan, the state would make these financial damages available only to living victims and would not make compensation available to the estates of deceased victims.¹⁵⁶ In order to receive compensation, victims would be required to come forward within three years of the legislation's enactment.¹⁵⁷ In addition to compensation, the Task Force recommended that North Carolina provide mental health services for living victims, provide funding for the traveling North Carolina Eugenics Exhibit, and expand the North Carolina Justice for Sterilization Victims Foundation.¹⁵⁸

In June 2012, the North Carolina Senate rejected the Task Force's recommendations.¹⁵⁹ Had the legislature passed the bill, North Carolina would have become the first state to compensate its sterilization victims.¹⁶⁰

150. *Id.*

151. *Id.*

152. *Id.*

153. *See id.* at 1.

154. FINAL REPORT, *supra* note 18, at 2.

155. *Id.*

156. *Id.* at 1.

157. *See id.* at 11.

158. *Id.* at 2.

159. Gann, Hutchison & James, *supra* note 21. In early June, the North Carolina House of Representatives approved the Task Force's recommendation, passing the bill by an 86-31 vote. Rawlins, *supra* note 17.

160. Rawlins, *supra* note 17.

IV. CALIFORNIA'S CHALLENGE

In following in North Carolina's footsteps, California will face challenges in identifying and locating the living victims among the estimated 20,108 individuals sterilized by the state. Overcoming these challenges will be especially difficult for the state, whose sterilization program died down beginning in 1952.¹⁶¹ Currently, it is unknown how many of the state's sterilization victims are alive; however, it is speculated that a majority of the state's victims are no longer living.¹⁶² Those that are living are most likely elderly.

North Carolina, on the other hand, estimates that between 1500 and 2000 of its estimated 7600 sterilization victims are currently living.¹⁶³ Unlike California, North Carolina sterilized the majority of its victims post-World War II.¹⁶⁴ Because of this, North Carolina may be able to compensate more victims than California.

A. *Estimated Number of Living Sterilization Victims*

While California may not know how many of its sterilization victims are currently living, I have taken steps to answer this question. According to the calculations that I ran with the help of Santa Clara University Professor Katherine Saxton, Ph.D., and Max Deschamps, between 225 and 497 men and women sterilized by the state of California are alive as of 2012.¹⁶⁵

I calculated this estimate using Julius Paul's state-by-state survey¹⁶⁶ of the annual sterilization operations,

161. See Stern, *supra* note 10, at 1132.

162. See PRELIMINARY REPORT, *supra* note 148, at app. B-7.

163. FINAL REPORT, *supra* note 18, at 1.

164. PRELIMINARY REPORT, *supra* note 148, at app. B-7.

165. I must thank Professor Katherine Saxton, Ph.D., a professor in Biology at Santa Clara University, for making this estimation possible. Without her expertise and help, I would not have known where to start, let alone how to calculate these numbers. I must also thank Max Deschamps, whose computer expertise and math skills were invaluable in helping me set up the equations and generating the numbers. I sincerely thank you both for your time, help, and dedication.

166. In the 1960s, Julius Paul assembled data on sterilization operations from "existing state records, institutional reports, and surveys of officials in all the states." According to Paul, accurate totals were extremely elusive. However, Paul's study is most likely the "most thorough and systematic state-by-state investigation of sterilization practices since the 1930s." LOMBARDO, *supra* note 11, at 293. Julius Paul's study is contained in Appendix 1 in

specifically those performed in California between 1943 and 1963.¹⁶⁷ According to Paul's report, California sterilized an estimated 3555 men and women during this twenty-year period.¹⁶⁸ Paul's data solely includes the annual number of sterilization operations performed and does not include data on the gender, age, race, or individual characteristics of those sterilized.¹⁶⁹ Because I did not have this additional information, I assumed in estimating the number of living victims that California sterilized these individuals at age thirty, the reported average age of sterilization for both men and women according to Popenoe and Gosney.¹⁷⁰

To compute the number of sterilization victims living in 2012, I utilized the Cohort Life Tables for Social Security Area by Year of Birth and Sex prepared by the Social Security Administration.¹⁷¹ The Social Security Administration's study presented cohort life tables by sex for births in decennial years 1900 through 2100.¹⁷² These cohort life tables represent the "mortality experience over the entire lifetime of a cohort of persons born during a relatively short period, usually one year."¹⁷³ In essence, these tables provide data on probability of death within a group each year starting from the year of birth.¹⁷⁴ In performing my analysis, I solely relied on the tables for the decennial years 1910, 1920, and 1930. Victims sterilized at age thirty between 1943 and 1963 would

EUGENIC STERILIZATION. EUGENIC STERILIZATION, *supra* note 7, at app. 1 at 118–19.

167. EUGENIC STERILIZATION, *supra* note 7, at app. 1 at 118. The estimation above does not include data on victims sterilized pre-1943 and post-1963. *Id.* Victims sterilized prior to 1943, if sterilized at age 30, would be close to, if not older than 100 years old, and would most likely no longer be living. While Alexandra Minna Stern postulates that sterilizations in California occurred in small numbers into the 1970s, I did not have available any data estimating these numbers to include in my estimations. Stern, *supra* note 10, at 1132. Because of this, my estimation may underestimate the number of victims currently living.

168. *See* EUGENIC STERILIZATION, *supra* note 7, at app. 1 at 118.

169. *See id.*

170. POPENOE & GOSNEY, *supra* note 87, at 6.

171. FELICITIE C. BELL & MICHAEL L. MILLER, SOC. SEC. ADMIN., LIFE TABLES FOR THE UNITED STATES SOCIAL SECURITY AREA 1900–2100: ACTUARIAL STUDY NO. 120 (2005), available at http://www.ssa.gov/oact/NOTES/pdf_studies/study120.pdf.

172. *Id.*

173. *Id.* at 1.

174. JAY WEINSTEIN & VIJAYAN K. PILLAI, DEMOGRAPHY: THE SCIENCE OF POPULATION 285 (2001).

have been born between 1910 and 1930; therefore, the applicable tables ranged between 1910 and 1930.

Because the study only presented tables every ten years and my data consisted of annual sterilizations, I applied decennial data to sterilizations performed five years prior to and five years following the decennial year. For example, for victims sterilized between 1945 and 1954, I utilized the 1920 cohort life table being that the average age of sterilization was thirty.

The cohort life tables provide the probability of death during each year of life.¹⁷⁵ Utilizing this data, I calculated the probability of victims surviving from one birthday to the next for each year from age thirty to the year 2012.¹⁷⁶ I then multiplied this survival probability by the annual number of sterilizations to compute the number of possible surviving victims in 2012.¹⁷⁷ Utilizing the male life table data, I estimated that 225 sterilization victims are living today. This number, however, constitutes an underestimation because the mortality rate among men is generally higher than among women.¹⁷⁸ Using the probability of death for females starting at age thirty, I recalculated the number of survivors, estimating that 497 sterilization victims are alive as of 2012. Conversely, this number is an overestimate because the mortality rate among women is generally lower than among men.¹⁷⁹

B. Challenge in Identifying and Locating Living Victims

California will face challenges in identifying these estimated 225 to 497 living victims. To identify these individuals, the state will need to search through fifty-nine boxes in the basement of the California Institute of Technology (Caltech).¹⁸⁰ These boxes contain thousands of

175. On the cohort life table, the probability of death during each year of life is represented by q_x . BELL & MILLER, *supra* note 171, at 1.

176. To calculate the probability of surviving one year to the next, I simply subtracted 1.0 from the probability of death (q_x) (i.e. the probability of not surviving).

177. See generally WEINSTEIN & PILLAI, *supra* note 174, at 283.

178. See *id.* at 185.

179. *Id.*

180. Mike Anton, *Forced Sterilization Once Seen as Path to a Better World: Decades of Files on Mental Patients Reveal How a Group of Noted Californians Hoped to Influence the Fate of the Human Race*, L.A. TIMES, July 16, 2003.

documents that tell the stories of California's sterilization victims.¹⁸¹ Among the records at Caltech are the archives of the Human Betterment Foundation.¹⁸² The Foundation, which promoted sterilization from 1926 to 1942, collected data on sterilizations in California and nationwide.¹⁸³ To search through these and any other available records would take a significant amount of time, labor, and money.

After identifying the sterilization victims, the state would face additional challenges determining whom among the victims is currently alive and where they are located. Attempts to locate these victims may be made more challenging by the deinstitutionalization of state mental hospitals.¹⁸⁴ In the late 1950s, deinstitutionalization of state mental hospitals began in response to the drain on state budgets caused by housing patients.¹⁸⁵ The federal government became involved in the late 1960s and 1970s, instituting a full-scale nationwide policy.¹⁸⁶ California began its policy of deinstitutionalization in 1969; since then, the state has closed five of its twelve mental institutions.¹⁸⁷

Because of these policies, hospitals and institutions discharged significant numbers of patients into the community.¹⁸⁸ Patients affected by these policies have faced challenges in finding new homes and care.¹⁸⁹ According to the Kaiser Commission on Medicaid and the Uninsured, the Reagan Administration's cuts to federal support of public

181. *Id.*

182. *Id.*

183. *Id.*

184. See *California Faces Hurdles as More State Mental Institutions Close*, CALIFORNIA HEALTHLINE (Mar. 6, 2008), <http://www.californiahealthline.org/articles/2008/3/6/california-faces-hurdles-as-more-state-mental-institutions-close.aspx?p=1> [hereinafter CALIFORNIA HEALTHLINE].

185. See CHRIS KOYANAGI, KAISER COMM'N ON MEDICAID & THE UNINSURED, LEARNING FROM HISTORY: DEINSTITUTIONALIZATION OF PEOPLE WITH MENTAL ILLNESS AS A PRECURSOR TO LONG-TERM CARE REFORM 4 (2007), available at http://www.nami.org/Template.cfm?Section=About_the_Issue&Template=/ContentManagement/ContentDisplay.cfm&ContentID=137545. Governors and state legislature were motivated by high costs. According to the Kaiser Commission on Medicaid and the Uninsured, "State hospitals (despite appalling conditions) required a 300-percent increase in spending over a 10-year period, and were a substantial drain on state budgets." *Id.*

186. *Id.*

187. CALIFORNIA HEALTHLINE, *supra* note 184.

188. See KOYANAGI, *supra* note 185, at 6-7.

189. CALIFORNIA HEALTHLINE, *supra* note 184.

housing left many individuals with serious mental illnesses on the streets.¹⁹⁰ Consequently, deinstitutionalized individuals with serious mental illnesses represented at least a quarter of the nation's homeless population.¹⁹¹ With so many deinstitutionalized individuals on the streets, including those sterilized under state laws, locating victims may be more challenging.

For California, this may pose a smaller hurdle in locating victims than for other states. In California, state hospitals and institutions released the majority of institutionalized individuals within one year of being committed.¹⁹² The state primarily sterilized patients able to return home and to their communities.¹⁹³ According to Popenoe and Gosney, sterilization victims were “a picked lot, selected for sterilization because they [were] not likely to remain long in the hospital, . . . they therefore need[ed] the operation as a protection to themselves and their families, to society, and to posterity.”¹⁹⁴ While most sterilization victims were released into the community, some long-term patients were sterilized. As a result, some victims may have suffered under the state's deinstitutionalization program and may be more difficult to locate. Consequently, this may increase the time and cost of locating victims.

V. CALIFORNIA'S OPTIONS AND MORAL OBLIGATIONS

Because of the time associated with and cost of organizing a state-run program for identifying and locating victims, California should encourage victims seeking compensation to come forward. To do this, the state should create a task force similar to the North Carolina Justice for Sterilization Victims Foundation. This task force will be responsible for implementing a comprehensive outreach program, including targeted media and grassroots field outreach, “aimed at informing [sterilization] victims . . . about the availability of compensation.”¹⁹⁵ The task force should utilize mainstream media sources, including newspapers,

190. KOYANAGI, *supra* note 185, at 8.

191. *Id.*

192. POPENOE & GOSNEY, *supra* note 87, at 5.

193. *Id.*

194. *Id.* at 6.

195. FINAL REPORT, *supra* note 18, at 10.

television, billboards, radio, and social media.¹⁹⁶ While these sources may reach a number of victims, they may not be sufficient to reach all victims, many who may be “elderly, disabled or otherwise cut off from mainstream media.”¹⁹⁷ Similar to North Carolina, the task force should consider reaching out to churches, senior centers, health professionals, and other grassroots organizations.¹⁹⁸

While self-identification may be the best means for California to identify individuals qualified for compensation, the state may face challenges in encouraging victims to come forward. Some victims may not come forward because of the shame and/or pain they feel and associate with their operation. A 1961 study performed by Robert Edgerton, a psychiatric anthropologist, and his colleague George Sabagh, revealed an overwhelming amount of shame and devastation felt by victims.¹⁹⁹ Edgerton and Sabagh interviewed forty individuals sterilized and later discharged from the Pacific State Hospital in an attempt to test the popular assumption that sterilized patients accepted their operations as beneficial.²⁰⁰ Their results showed that over two-thirds of the patients disapproved of their sterilization operation.²⁰¹ Some patients disapproved because they felt it prevented them from “passing as normal, particularly if [they were] contemplating marriage to a normal person.”²⁰² Others disapproved because it prevented them from “assuming the normal roles of motherhood and fatherhood.”²⁰³

More than disapproval, the interviews revealed a range of emotions associated with the operation, including punishment, humiliation, mortification, and degradation.²⁰⁴ One man told Edgerton and Sabagh that he objected to his sterilization operation because it “makes a man weak, and what woman would want a weak man.”²⁰⁵ According to one woman, hospital officials told her they were going to remove

196. *See id.*

197. *See id.* at 10, app. I-4.

198. *Id.*

199. *See Sabagh & Edgerton, supra* note 10, at 217.

200. Anton, *supra* note 180.

201. Sabagh & Edgerton, *supra* note 10, at 217.

202. *Id.* at 218.

203. *Id.*

204. *Id.* at 220, 222.

205. *Id.* at 218.

her appendix.²⁰⁶ She did not know why the state sterilized her, but expressed concern that it was for punishment or because something was wrong with her mind.²⁰⁷ Another woman told Edgerton and Sabagh that her marriage proposal failed because she did not want to admit to the prospective groom's parents that she had been sterilized.²⁰⁸ According to Edgerton, who has kept in contact with those subjects still living, the pain of these victims' sterilizations remains today.²⁰⁹ For these victims and for the many others still living, this pain and even shame may prevent them from coming forward.

In order to encourage victims to overcome their shame and/or pain, California should assure victims that the state would keep victims' identities and stories confidential. Similar to North Carolina, California should classify all records as "not public records," since many records are patient files or reports that list the names of victims.²¹⁰ This will allow victims to remain anonymous to the public and protect those victims who have not shared their operation with loved ones and friends.²¹¹ Furthermore, California should assure all victims that patient files and other records coming under Health Insurance Portability and Accountability Act (HIPAA) laws are confidential, and as such, their contents will not be revealed.²¹²

In addition to spearheading a comprehensive outreach program, the state's task force should assume responsibility for identifying, verifying, and certifying victims.²¹³ North Carolina has found the verification process especially complicated because the state's records do not always contain "complete or accurate names, addresses and other identifying information."²¹⁴ The state has had to research into victims' names and other information to confirm an individual is a victim.²¹⁵ California will most likely face similar challenges.

206. *Id.* at 220.

207. *Id.*

208. *Id.* at 219.

209. *See Anton, supra* note 180.

210. *See FINAL REPORT, supra* note 18, at app. B-8.

211. *See id.*

212. *See id.*

213. *See id.* at 10.

214. *Id.*

215. *Id.*

Utilizing a task force similar to the foundation established by North Carolina will assist California in addressing this obstacle.

More important than reaching out to victims and verifying their identities, California must decide how much it will compensate victims and the means by which it will accomplish this. To determine the amount, the state should enlist a task force to propose recommendations. In making its recommendations, the task force may take into consideration the federal government's compensation program for victims of Japanese interment, as well as North Carolina's preliminary and final recommendations. While the North Carolina state senate did not pass the proposed legislation to compensate each sterilization victim with \$50,000,²¹⁶ the state's proposed legislation and the Task Force's recommendations may guide California in reaching its own decision.

Finally, California should consider offering mental health services for victims. North Carolina's victims have reported that "they have suffered a lifetime of psychological disorders from the forced sterilizations they endured as children or young adults."²¹⁷ California's victims may too suffer from psychological disorders because of their sterilizations. Providing mental health services, such as counseling, victim support groups, and other outpatient mental health services, will assist victims in seeking out meaningful assistance.²¹⁸

Compensation and funding for mental health services may not be popular among California constituents, especially because of the state's current budget crisis.²¹⁹ Many citizens may be unable to justify spending millions on compensating sterilization victims when California is already cutting essential services.²²⁰ However, there will never be a good time to redress the harms suffered by sterilization victims and the victims have already waited far too long.²²¹

216. Rawlins, *supra* note 17.

217. FINAL REPORT, *supra* note 18, at 12.

218. *See id.*

219. *See id.* at 2 (noting that compensating and funding mental health services in North Carolina may not be popular due to budgetary concerns).

220. *See id.*

221. *Id.*

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Despite the costly and time-consuming challenges California may face in identifying and locating surviving sterilization victims, the state has a moral obligation to compensate its sterilization victims, regardless of how few may be alive. While no amount of money can ever pay for the harm done to and suffered by these individuals, financial compensation will provide assistance for victims and serve as a means for the state to take responsibility for its wrongs.²²² By doing this, California will send a clear message to its citizens that such violations of basic human rights are intolerable and unjust.²²³ The state should enact a compensation program immediately before there are no remaining victims.

222. *See id.* at 1, app. I-2.

223. *See id.* at app. I-3.