

DEFENSE AGAINST STERILIZATION ABUSE BILL LEGISLATIVE BACKGROUND

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WHEREAS, the forced, coerced and uninformed sterilization of women of color and poor women, particularly around the time of childbirth, has been a problem in the United States for more than a hundred years. Between 1907, when the first compulsory sterilization law passed in the U.S., and 1945, over 45,000 people were involuntarily sterilized in the United States, the great majority of these people were poor women, who were primarily women of color.¹ Examples include:

- From hospital records and interviews, a Native American doctor determined that twenty five percent of Native American women had been sterilized without informed consent.² In contrast, government numbers, specifically the General Accounting Office, approximated 5 percent of total Native women were sterilized between 1973 and 1976.³
- In the 1970's, hospitals in varied geographic locations, such as the Sunflower City hospital in Mississippi, Boston City Hospital, and Los Angeles County hospital were exposed for the sterilization abuse of Black women.⁴
- Poor Puerto Rican women were sterilized without their informed consent on a massive scale. In addition, while the government failed to provide information and access to other contraceptives, it made tubal ligations available for free or very little cost starting as early as 1937.⁵ More than 35 percent of Puerto Rican women of child-bearing age had been sterilized by the 1970's.⁶ In 1982, 40 percent of married women were sterilized.⁷
- Hundreds of Mexican-American women were sterilized without their consent at the University of Southern California- Los Angeles County Medical Center in the early 70's.⁸ Some doctors performed the sterilizations without the women's knowledge.⁹ Even more troubling, doctors did the procedure even after the patient had refused it.¹⁰

¹ Rosalind P. Petchesky, *Abortion and Woman's Choice: The State, Sexuality, and Reproductive Freedom* 86 (2d ed. 1990); see also Richard Lindgren & Nadine Taub, *The Law of Sex Discrimination* 412 (1988) (*Id.* at 127).

³ *Id.* at 126.

⁴ DOROTHY ROBERTS, *KILLING THE BLACK BODY* at 91

⁵ LORETTA J. ROSS ET AL., *POLICING THE NATIONAL BODY: RACE, GENDER, AND CRIMINALIZATION* 220 (Jael Silliman & Anannya Bhattacharjee eds., 2002).

⁶ SILLIMAN ET AL., at 166.

⁷ Alice E. Colon-Warren and Idsa Alegria-Ortega, *Shattering the Illusion of Development*. FEMINIST REVIEW. Summer, 1998, 106.

⁸ See, e.g., SILLIMAN ET AL. at 222; Angela Hooton, *A Broader Vision of the Reproductive Rights Movement: Fusing Mainstream and Latina Feminism*, 13 JOURNAL OF GENDER, SOCIAL POLICY & THE LAW. 59, 70 (2005)

⁹ SILLIMAN ET AL., at 222

¹⁰ *Id.*

WHEREAS, California has a history of coerced and forced sterilizations of women of color. In 1929, California legalized mandatory sterilizations. Paul Lombardo, Associate Professor and Director of the Program of Law and Medicine at the Center for Biomedical Ethics at the University of Virginia, estimated that a third of sterilizations nationwide were performed in California yet little is known about them.¹¹ The policy remained for the next 35 years.

WHEREAS, informed medical consent results from communication between a client and provider confirming that the client has made an informed and voluntary choice to use or receive a medical method or procedure.¹² Informed consent can only be obtained after the client has been given full information about the nature of the medical procedure, its associated risks and benefits, and other alternatives.¹³ Voluntary consent cannot be obtained by means of inducement, force, fraud, deceit, duress, bias, or other forms of coercion or misrepresentation.¹⁴ In keeping with this understanding of informed consent, a focus of the early civil right movement was the removal of eugenic policies using coercive tactics targeting people of color, impoverished communities, and institutionalized people for sterilization, and the adoption of special precautions to guard against coercion in performance of sterilization. As such, numerous federal and state regulations and case law have evolved to prohibit sterilization for the purpose of birth control in coercive settings, such as prisons and jails-controlled institutional settings disproportionately detaining poor people of color and other marginalized populations.

WHEREAS, decisions from the Supreme Court all the way down to state trial courts have contributed to a public policy banning the performance of sterilization procedures on people in prison. In the landmark case *Skinner v. Oklahoma*, 62 S.Ct. 1110 (U.S. 1942), the United States Supreme Court held that sterilization could not be imposed as a punishment for a crime, and permitted the federal government to intervene in state policy and prohibit the sterilization of people in prison in all jurisdictions. *Relf v. Weinberger*, 565 F.2d 722 (D.C. Cir. 1977) barred federal funds from being used to coercively sterilize vulnerable populations and resulted the creation of 42 CFR 50.201-206, federal regulations expressly intended to prohibit the sterilization of people in prison for the purpose of birth control when federal funding even partially supports health services. Reflecting California's own sordid history with eugenics as sterilization, its court of appeals commented in *Jessin v. Shasta County*, 274 Cal.App.2d 737, 745 (Cal. App. 1969) that, "...this state forbids the performance of a sterilization operation upon an inmate, either with or without his consent, unless it is clearly shown that the life of the patient is in grave danger and may be lost because of a failure to perform such operation."

11 Paul Feist, *Davis Apologizes for State's Sterilization Program*, SAN FRANCISCO CHRONICLE, Mar. 12, 2003, at A20.

12 Definition of "Informed Consent" provided by EngenderHealth (formerly, The Association for Voluntary Surgical Contraception), an international organization active in contraception, HIV and AIDS, gender equity, obstetric fistula, sterilization, and other sexual and reproductive health (SRH) issues in dozens of developing countries around the world. Definition available online at: <http://www.engenderhealth.org/our-work/family-planning/informed-choice.php>

13 *Id.*

14 *Id.*

WHEREAS, In 1977, the federal government adopted regulations recognized as an early victory for the civil rights movement, which intended to protect against coercive sterilization of the poor, people of color, and institutionalized or imprisoned people. This legislation included a prohibition of sterilization of people for the purpose of birth control in coercive settings such as prisons. See 42 CFR 50.201-206.

In 2003, Governor Gray Davis issued an official apology for California's contribution to eugenic history.¹⁵ Also in 2003, the California Legislature passed Senate Resolution No. 20, expressing "its profound regret over the state's past role in the eugenics movement and the injustice done to thousands of California men and women;" and resolving, "That the Senate urges every citizen of the state to become familiar with the history of the eugenics movement, in the hope that a more educated and tolerant populace will reject any similar abhorrent pseudoscientific movement should it arise in the future."

WHEREAS, despite federal prohibitions and California legislative intent to guard against eugenics, between 2006 and 2010, over 100 people imprisoned in women's prisons under control of the California Department of Corrections and Rehabilitation were sterilized during labor and delivery. Attention was not taken to ensure the informed consent to sterilizations, to guard against coercive sterilizations, or to address the coercive nature of the prison environment. In addition, while the State prohibited the provision of information about and access to other contraceptives, it sterilized over 100 people during childbirth.

WHEREAS, California law prohibits the provision of non-medically-necessary medical care to people in prison. This prohibition bars provision of comprehensive reproductive healthcare/counseling and access to contraceptives to people imprisoned by the California Department of Corrections and Rehabilitation. By law, people in California's prisons are not allowed access to non-permanent, non-surgical alternatives to sterilization such as condoms or birth control pills for the purpose of contraception.¹⁶ Moreover, people in prison do not have free choice of medical providers. While confined by the State, people in prison may only request consultation with a physician of their choice if they pay for all medical and security costs associated with the consultation.¹⁷ Access to secondary medical advice or treatment is effectively barred due to cost. Sterilization of an individual during labor and delivery in this environment mimics the disreputable coercive sterilization patterns of Puerto Rican women in the 20th Century.

WHEREAS, in 2005 the medical delivery system of the California Department of Corrections and Rehabilitation was placed under receivership by Judge Thelton Henderson because the Department had failed to remedy the constitutional violations complained of in *Plata v. Schwarzenegger* in the three years since the Settlement Agreement. Four years into the receivership, the current receiver still complained that "[h]ealth care within CDCR consists of episodic and often untimely encounters between

¹⁵ *Id.*

¹⁶ See 15 CCR §3350.

¹⁷ 15 CCR §3354(c).

patients and clinicians who, given the lack of reliable patient information and support systems, are placed in a responsive position with no incentives or feedback loops to encourage good medical practices.”¹⁸ Such a medical delivery system cannot be relied upon to provide respectful and appropriate medical care, especially to vulnerable and marginalized populations.

WHEREAS, to prevent future abuses and to promote fiscal responsibility and increased access to comprehensive, informed, and consensual reproductive care for all populations, further clarity is needed around the legal requirements for all forms of sterilization within the California Department of Corrections and Rehabilitation.

¹⁸ CAL. PRISON HEALTH CARE RECEIVERSHIP CORP., ACHIEVING A CONSTITUTIONAL LEVEL OF MEDICAL CARE IN CALIFORNIA’S PRISONS: THE FEDERAL RECEIVER’S DRAFT STRATEGIC PLAN 15 (March 11, 2008) at i-ii.