

North Carolina One Step Closer to Compensating Victims of its Eugenics Program

by Jennifer K. Wagner

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Almost a year ago, North Carolina Governor Bev Purdue set up a [Task Force](#) charged with determining how the state should compensate victims of its eugenics program. The [Final Report](#) (pdf) by that Task Force was submitted to the Governor on January 27, 2012. If the state legislature takes action to implement the Task Force's recommendations, North Carolina will become the first state (of the 32 states that had eugenics programs) to compensate the victims of its involuntary sterilization program.

Background of NC's Eugenics Program. Charmaine S. Fuller Cooper, Executive Director of NC Justice for Sterilization Victims Foundation [presented](#) (pdf) the Task Force in April 2011 with the history of NC's eugenics program, explaining that North Carolina adopted its first sterilization law in 1919, its second in 1929, and its third in 1933. North Carolina did not abolish its eugenics board until 1977. The involuntary sterilization law, however, was not repealed until 2003. Don Akin, State Center for Health Statistics, [presented](#) (pdf) the Task Force with estimates of how many of the >7,500 individuals sterilized through the program were expected to still be alive, calculating roughly 40% of the victims (~2,900 victims) would have survived to the year 2010, but placing a "realistic" estimate at 1,500-2,000 surviving victims.¹ Former North Carolina Governor Mike Easley issued formal apology for the program in 2002.

NC's Task Force Recommendations. [Preliminary recommendations](#) (pdf) reported in August 2011 included lump sum financial payments that were to be exempt from state taxes; provision of mental health services; funding for a traveling eugenics exhibit; and continuation of funding for the NC Justice for Sterilization Victims Foundation. Since that time, the Task Force has been considering, among other details, what amount would be appropriate compensation.

The [Final Recommendations](#) (pdf) indicate that each victim should be compensated with a lump sum payment of \$50,000 and requires the living victims to come forward within three years to be eligible for compensation. The Task Force considered, but ultimately decided against, allowing the estates of non-surviving victims to be compensated as well. The final report recommends mental health services like counseling and outpatient care. Additionally the final report emphasizes the importance of public education as a means to prevent these abuses from occurring again and, accordingly, recommends a permanent memorial to the victims of the Eugenics Board and a traveling exhibit. The Task Force's final report concludes with an optimistic call on the NC legislature to pass the recommendations this year.

Looking Beyond North Carolina. An estimated 60,000 individuals nationwide were involuntarily sterilized as part of the eugenics programs.² As scholars such as Michael Silver have previously explained, [Buck v. Bell - the infamous 1927 Supreme Court case that upheld Virginia's compulsory sterilization law](#) – has never been directly overturned (although the Virginia law upheld in *Buck v. Bell* was itself repealed in 1974), and its precedent as well as other obstacles (e.g. long expired statutes of limitation) have prevented victims from obtaining redress through the courts. At least two legal scholars noted that even in 2002 (on the 75th anniversary of *Buck v. Bell*), eight states still had involuntary sterilization statutes on the books (Arkansas, Delaware, Georgia, Idaho, Mississippi, North Carolina, Vermont, and Virginia).³ The anniversary did, however, help prompt governors of California, North Carolina, Oregon, South Carolina, and Virginia to offer official apologies,⁴ and, as previously mentioned, motivated North Carolina to repeal its own sterilization law in 2003.

In California, [where more than a third of the nation's sterilizations occurred](#), a Senate Resolution was issued in 2003 apologizing for the program. California, however, [has not yet made any attempts to provide compensation or to identify victims](#).⁵ In Oregon, where [the last compulsory sterilization was conducted in 1981](#), it has been [reported](#) by the *Eugene Register-Guard* on July 31, 2002 that the state destroyed or misplaced records of the ~2,600 sterilizations it performed. Without such records, the state may face difficulties identifying victims and calculating the financial, mental health, and educational resources needed, should Oregon choose to follow the NC Task Force's lead. We will all need to stay tuned to see whether the NC legislature takes action on the Task Force's recommendations and whether other states follow suit.

¹It is notable that while [popular press](#) describes most victims as having been poor, black women deemed unfit parents, the program was more nuanced. Don Akin's source data included in his [presentation](#) to the Task Force (see Slides 8 and 9) contained data showing that (a) of the 7528 victims, 6418 were women and (b) through June 1968, 4315 of the victims were White. It is only upon viewing the figures by decade that one sees a racial disparity – as the only period when "Nonwhite" victims outnumbered "White" victims was the 1960-1968 period. The [Preliminary Report](#) (pdf) submitted by the Task Force in August 2011 noted similarly that 85% of the victims were female and roughly 40% of the victims were "Non-whites" (see page 8). The disproportionate victimization of black women is reported to have occurred in the late 1960s. See, e.g. Michael Silver, *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)

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³ Michael Silver, *Eugenics and Compulsory Sterilization Laws: Providing Redress for the Victims of a Shameful Era in United States History*, 72 *Geo. Wash. L. Rev.* 862 (2004) (at FN13) and Jana Leslie-Miller, *From Bell to Bell: Responsible Reproduction in the Twentieth Century*, 8 *Md. J. Contemp. Legal Issues* 123, 136-37 (1997) (at FN82) citing "Ark. Code Ann. § 20-49-101 et seq. (Michie 1987); Del. Code Ann. tit. 16 § 5702-5716 (1974); Ga. Code Ann. § 31-20-1 to 31-20-6 (Michie 1996); Idaho Code § 39-3902 to 39-3910 (1947); Miss. Code Ann. § 41-45-1

(1947); N.C. § 7-35-36 (1943); Vt. Stat. Ann. § 8705 (1959); Va. Code Ann. § 54.1-2974 to 54.1-2980 (1950).” But note the Vermont statute had been deemed inapplicable when the procedures were proposed for eugenic purposes by *In Re Marcia R.*, 136 Vt. 47, 383 A.2d 630 (1978); portions of the Arkansas statute were repealed in 2009; portions of the Delaware statute were stricken in 2006; portions of the Idaho statute were rewritten in 2003; the North Carolina statute was repealed in 2003; the Mississippi statute was repealed in 2008; and Virginia permits sterilization of adults incapable of providing informed consent pursuant to Va. Code Ann. §54.1-2976. There is proposed legislation in Georgia.

⁴ See, e.g., Michael Silver, *Eugenics and Compulsory Sterilization Laws: Providing Redress for the Victims of a Shameful Era in United States History*, 72 *Geo. Wash. L. Rev.* 862, 886 (2004).

⁵See, e.g., Kris Pickrell, *The Life Penalty – Sterilizing California*, CBS 13, November 10, 2011, available at <http://sacramento.cbslocal.com/2011/11/10/the-life-penalty-sterilizing-california/> last accessed 1/28/2012