

Punishment and Parenthood: Coerced Sterilization in the Criminal Legal
System

Veronica Campanie
Georgetown University
Spring 2025

I. Introduction

When Kelli Dillon was 24, doctors at a women's correctional facility in California sterilized her without her consent. During what she thought was a biopsy to check for ovarian cancer, Kelli's physicians took it upon themselves to decide she would never have children.¹³⁷ The surgical team did not tell her she had been sterilized, so it was years before Kelli discovered the truth. This horrific case of malpractice seems unthinkable in the era of modern medicine and consent laws, but it occurred in 2001, nearly 75 years after the Supreme Court upheld the constitutionality of involuntary sterilization in *Buck v. Bell*. Far from being a relic of the past, forced sterilization persists today in various forms, even rebranded as a way for incarcerated individuals to reduce their prison time. Proponents of these practices suggest that voluntary sterilization is a humane alternative to prison for certain offenders. However, this view is based on several flawed assumptions about consent and voluntariness. I argue that the "option" of sterilization for incarcerated individuals is both unethical and unconstitutional. Its inherently coercive nature violates the principles of informed consent, disproportionately impacts marginalized groups historically targeted by eugenics, and infringes on fundamental rights to bodily autonomy and procreation.

II. Reproductive Injustice in the Past and Present

The specter of forced sterilization has haunted American history for over a century, and investigations have shown that the practice has persisted even in recent years. The Court's 1927 decision in *Buck v. Bell* determined that the sterilization of

¹³⁷ Ray Levy Uyeda, "How Organizers Are Fighting an American Legacy of Forced Sterilization," YES! Magazine, 2021, <https://www.yesmagazine.org/social-justice/2021/02/08/united-states-forced-sterilization-women>.

people with mental disabilities was permissible to “prevent those who are manifestly unfit from continuing their kind.”¹³⁸ This ruling epitomized the nation’s growing eugenics movement, which advocated sterilization and genetic modification to “breed out” undesirable traits in the human race. Later decisions, such as *Skinner v. Oklahoma*, changed course by prohibiting states from forcibly sterilizing individuals convicted of certain crimes, and *Griswold v. Connecticut* protected the use of contraceptives by married couples. These cases set important precedents for broader reproductive autonomy but failed to eliminate forced sterilization. The state of California alone has involuntarily sterilized more than 20,000 people over the past century, and a 2013 investigation revealed that approximately 150 incarcerated women in California were sterilized without consent between 2006 and 2010.¹³⁹ Moreover, as recently as 2020, at least five women received involuntary hysterectomies at immigration detention centers in Georgia.¹⁴⁰ Estimating the total number of people who have been forcibly sterilized in the United States is challenging, as many victims remain silent and physicians often choose not to record the procedures. Still, some estimates indicate that as many as 70,000 Americans were forcibly sterilized during the 20th century, while others suggest that the true number is between 100,000 and 150,000.¹⁴¹ Despite progress in legal protections, forced sterilization—and the ideologies fueling it—exist well into the twenty-first century.

Although forced sterilization is widely regarded as unethical, no such consensus exists about the sterilization of incarcerated people in exchange for reduced sentences or

¹³⁸ *Buck v. Bell*, 274 U.S. 200 (1927).

¹³⁹ Corey G. Johnson, “Female Inmates Sterilized in California Prisons without Approval,” *Reveal*, July 7, 2013, <http://revealnews.org/article/female-inmates-sterilized-in-california-prisons-without-approval/>.

¹⁴⁰ Jose Olivares and John Washington, “Whistleblower: ICE Prison Does Hysterectomies at High Rates,” *September 15, 2020*, <https://theintercept.com/2020/09/15/hysterectomies-ice-irwin-whistleblower/>.

¹⁴¹ Uyeda, “How Organizers Are Fighting an American Legacy of Forced Sterilization.”

parole. As of 2024, 11 states have approved laws allowing for the castration of certain sex offenders.¹⁴² In these states, sterilization is either offered as a way to shorten prison time, mandated as a condition of release, or imposed as a standalone punishment. This paper focuses specifically on cases where incarcerated individuals can “opt” for sterilization as a means of avoiding further incarceration. For example, Texas law requires incarcerated people to provide total informed consent for castration under all circumstances, and in Georgia, offenders must provide written consent to treatment.¹⁴³ As I will argue later, the legitimacy of such consent processes is questionable at best. Still, they are upheld by state laws as a valid option for those facing prison time. While these agreements are often framed as targeted responses to sex crimes, that is not always the reality. In 2017, a Tennessee judge issued a standing order offering incarcerated individuals who had used drugs a 30-day sentence reduction for undergoing a sterilization procedure.¹⁴⁴ There are numerous other examples, such as prosecutors requiring sterilizations for women in plea deal negotiations in 2015, and a Virginia man opting for a vasectomy in exchange for a lighter sentence in a child endangerment case.¹⁴⁵ Sterilization “options” for incarcerated people extend beyond crimes of sexual violence, touching on broader issues of parenthood, childcare, and personal responsibility.

¹⁴² Jesus Mesa, “Here Are the States That Allow Chemical Castration as Punishment,” *Newsweek*, June 4, 2024, <https://www.newsweek.com/louisiana-chemical-castration-surgical-law-child-sex-offenders-1908158>.

¹⁴³ Charles L. Scott and Trent Holmberg, “Castration of Sex Offenders: Prisoners’ Rights versus Public Safety,” *The Journal of the American Academy of Psychiatry and the Law* 31, no. 4 (2003): 504–5.

¹⁴⁴ Elise B Adams, “Voluntary Sterilization of Inmates for Reduced Prison Sentences,” *Duke Journal of Gender Law and Policy* 26, no. 23 (2018): 23.

¹⁴⁵ Sheila Burke, “Attorneys: Sterilizations Were Part of Plea Deal Talks,” *AP News*, March 28, 2015, <https://apnews.com/general-news-824ffb7d2ed84849b5d87c41cdf8cof7>.

III. Coerced consent and constitutional rights violations

As sterilization is a medical intervention, federal and state laws require physicians to obtain informed consent from patients before performing the procedure. The doctrine of informed consent is meant to protect patients and prevent malpractice, typically requiring that patients receive sufficient information about a procedure, are competent to make medical decisions, and are not subject to coercion.¹⁴⁶ Many states have codified medical informed consent into statutory law, and physicians' lack of adherence to the statute can lead to negligence charges. Federally funded programs such as Medicare are mandated to obtain informed consent from patients prior to sterilization, specifying that consent must be "knowingly and voluntarily" given.¹⁴⁷ Informed consent is widely recognized as both a legal requirement and a cornerstone of medical ethics. Unfortunately, violations of the doctrine, particularly regarding sterilization, are prevalent, both historically and in current medical practices. Merely signing a consent form does not constitute true informed consent, but many victims of coerced sterilization believe that they have no claim to medical malpractice or reparations because they "signed a piece of paper."¹⁴⁸ In order for consent to be valid, physicians must adhere to specific guidelines, ensuring that patients are fully informed about their decisions and not subjected to external pressure.

Due to its inherently coercive nature, the "option" of sterilization for incarcerated individuals can never satisfy the requirements of informed consent. Coercion is

¹⁴⁶ J. L. Bernat, "Informed Consent," *Muscle & Nerve* 24, no. 5 (May 2001): 614–21, <https://doi.org/10.1002/mus.1046>.

¹⁴⁷ "42 CFR Part 50 Subpart B -- Sterilization of Persons in Federally Assisted Family Planning Projects," <https://www.ecfr.gov/current/title-42/part-50/subpart-B>.

¹⁴⁸ Shefali Luthra, "California Promised Reparations to Survivors of Forced Sterilization. Few People Have Gotten Them.," *The 19th*, 2023, <https://19thnews.org/2023/09/california-forced-sterilization-incarceration-reparations/>.

commonly defined as compelling or inducing an individual to engage in certain conduct, as well as threats of serious harm or physical restraint.¹⁴⁹ Under this definition, “voluntary” sterilizations in prison are explicitly coercive—prisoners know that declining the procedure could result in years of confinement. Defendants are unlikely to question sterilization conditions out of fear of serving a longer jail sentence, which means that these court orders and decisions are rarely appealed.¹⁵⁰ The “voluntariness” standard of informed consent is clearly violated when incarcerated people are afraid to refuse the procedure. Referencing Judge Benningfield, the Tennessee judge who had offered a 30-day sentence reduction in exchange for sterilization, one scholar commented that the order “effectively gives inmates an ultimatum: either stay incarcerated, a restraint on personal freedom or become sterilized, a restraint on personal autonomy.”¹⁵¹ Simply put, when someone faces a choice between sterilization and prison time, that choice is not made freely. Even in the absence of explicit offers or threats, prisons remain highly coercive environments. Christina Cordero, one of the women forcibly sterilized by doctors in California, explained that the OB-GYN at her facility repeatedly pressured her to agree to a tubal ligation. “As soon as he found out I had five kids, he suggested that I look into getting it done,” Cordero recalled. “He made me feel like a bad mother if I didn’t do it.”¹⁵² Weaponizing motherhood against incarcerated women is a common tactic to shame them into agreeing to sterilization. The power imbalance between prisoners and prison officials makes incarcerated people uniquely vulnerable to coercion. In all of these situations, obtaining informed consent is impossible.

¹⁴⁹ “Definition: Coercion from 18 USC § 1591(e)(2),” Legal Information Institute, n.d.

¹⁵⁰ Adams, “Voluntary Sterilization of Inmates for Reduced Prison Sentences,” 31.

¹⁵¹ Adams, 33.

¹⁵² Johnson, “Female Inmates Sterilized in California Prisons without Approval.”

Performing sterilizations on incarcerated individuals without informed consent infringes on their fundamental rights to bodily autonomy and procreation. The landmark 1942 case *Skinner v. Oklahoma* established procreation as a fundamental right, specifically emphasizing protections against involuntary sterilization for those convicted of a crime.¹⁵³ Similarly, the Supreme Court’s decision in *Eisenstadt v. Baird* identified the right against government intrusion “into matters so fundamentally affecting a person as the decision whether to bear or beget a child.”¹⁵⁴ These cases outlined individuals’ rights to bodily autonomy and further established that the Court must apply strict scrutiny “when the state curtails the exercise of a fundamental right, such as the right to have children.”¹⁵⁵ Strict scrutiny requires the state to demonstrate that its actions were narrowly tailored to further a compelling government interest and were the “least restrictive means” to further that interest.¹⁵⁶ Sterilization as an alternative to incarceration fails to meet this standard. First, it is not always narrowly tailored. For example, in the case of the Virginia man convicted of child endangerment, sterilization does not address the specific circumstances of his crime—after being sterilized, he could have very well continued to endanger one of his existing children. Second, his crime was unrelated to sexual violence, so the state cannot claim a compelling interest in preventing sex crimes. The only relevant state interest in this case would be preventing convicted criminals from reproducing, which ventures into the field of eugenics. Third, sterilization is in no way the “least restrictive means” to prevent various crimes from occurring. Judge Benningfield in Tennessee, for instance, justified

¹⁵³ *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942).

¹⁵⁴ *Eisenstadt v. Baird*, 405 U.S. 438 (1972).

¹⁵⁵ *Skinner v. Oklahoma*.

¹⁵⁶ “Definition: Strict Scrutiny,” Legal Information Institute, n.d., https://www.law.cornell.edu/wex/strict_scrutiny.

reducing births among drug users by referencing the number of children born with symptoms of addiction or neglected due to a parent's drug use.¹⁵⁷ Other possible solutions, such as drug treatment facilities or harm reduction programs, would have been much less restrictive and more narrowly tailored to the state's interest. Moreover, even if courts were to apply a lesser standard of review, such as the "Turner test" established in *Turner v. Safley*, these sterilizations would still be unconstitutional. *Turner* required that prisoners retain "those [constitutional] rights that are not inconsistent with his status as a prisoner or with ... legitimate penological objectives."¹⁵⁸ The right to procreation—or at the very least, the right against involuntary sterilization—does not conflict with one's status as a prisoner. There is no appropriate justification for allowing coerced sterilizations to occur. As the Court warned in *Turner*, "prison walls do not form a barrier separating prison inmates from the protections of the Constitution."¹⁵⁹

IV. Sterilization as a form of eugenics

Furthermore, sterilization policies disproportionately affect racial minorities, immigrants, and low-income populations—groups that have been historically targeted by eugenics practices. In the mid-twentieth century, activist Fannie Lou Hamer coined the term "Mississippi Appendectomy" to describe the egregiously large number of forced hysterectomies occurring in the deep South.¹⁶⁰ Thousands of poor Black women seeking medical treatment at hospitals were sterilized, causing profound physical, mental, and community-level harm. In California, the *Madrigal v. Quilligan* lawsuit exposed one

¹⁵⁷ Adams, "Voluntary Sterilization of Inmates for Reduced Prison Sentences," 25.

¹⁵⁸ *Turner v. Safley*, 482 U.S. 78, 84 (1987).

¹⁵⁹ *Turner v. Safley*.

¹⁶⁰ Uyeda, "How Organizers Are Fighting an American Legacy of Forced Sterilization."

Los Angeles hospital's systematic coerced sterilization of Mexican-American women throughout the 1960s and 70s. The logic behind these sterilizations, and the broader eugenics movement, was that certain populations should be prevented from having children in order to avoid passing on "undesirable" genetic traits to their offspring. This same logic endures today, as courts and medical professionals rationalize coerced sterilizations as cutting costs that the state would have wasted on welfare, "paying for these unwanted children."¹⁶¹ Assuming certain people are incapable of raising and caring for their children, and that those children would only be a drain on government resources, is precisely the sentiment employed by eugenics enthusiasts a hundred years ago. Marginalized groups, especially those targeted by over-policing, harsh sentencing laws, and racial discrimination, have consistently borne the brunt of the harm inflicted by eugenics policies. The forced hysterectomies at Georgia detention centers in 2020 were all performed on poor immigrant women, and the majority of the women sterilized during California's 2006-2010 investigation were Black and Latina. Vulnerable populations are more likely to be seen as sexually deviant and incapable of personal responsibility, and they have fewer safeguards against medical malpractice and systemic legal abuse. Due to racial and class bias in the criminal legal system, these sterilization "options" are likely to be directed to communities of color and low-income defendants, while wealthy, white Americans are spared from ever facing such choices.

Allowing the sterilization of incarcerated individuals creates a dangerous precedent, as ambiguous consent can easily devolve into forced sterilization and even eugenics. In such cases, those in power make broad decisions about who should reproduce based on their own flawed judgment. Judge Benningfield reported

¹⁶¹ Johnson, "Female Inmates Sterilized in California Prisons without Approval."

attempting to “fix” his county’s drug crisis by stopping drug users from procreating, just as courts have historically attempted to “fix” poverty by preventing poor people from having children. Some supporters of prison sterilization procedures admit that informed consent in these situations is unattainable, but argue that the procedures are justified anyway because people who commit crimes lose claim to their bodily autonomy.¹⁶² Beyond the medical, ethical, and legal flaws in this argument, it assumes that the criminal legal system will appropriately identify and punish “criminals” one hundred percent of the time. Being convicted of a crime should not erase a person’s constitutional protections, particularly given the fundamental flaws in the criminal legal system. Additionally, sterilization is weaponized as a tool of eugenics even outside of the prison-industrial complex. Organizations like Project Prevention offer current and former drug users \$300 to get sterilized or use long-acting birth control.¹⁶³ Their mission depends on the portrayal of minority and poor women as irresponsible sexual deviants. “I’m not saying they are dogs, but they are not acting any more responsibly than a dog in heat,” Project Prevention’s founder remarked in a promotional video.¹⁶⁴ The implication of this statement is that these women, like dangerous animals, cannot continue to breed—motherhood must be reserved for those who will contribute to a productive society. The moralistic rhetoric of eugenics advocates has remained remarkably consistent over time: vilifying poor mothers and framing incarcerated

¹⁶² Thomas Douglas et al., “Coercion, Incarceration, and Chemical Castration: An Argument From Autonomy,” *Journal of Bioethical Inquiry* 10, no. 3 (2013): 393–405, <https://doi.org/10.1007/s11673-013-9465-4>.

¹⁶³ “Project Prevention: Mothers and Children Speak Out,” <https://www.opensocietyfoundations.org/voices/project-prevention-mothers-and-children-speak-out>.

¹⁶⁴ Erika Derkas, “The Organization Formerly Known as Crack: Project Prevention and the Privatized Assault on Reproductive Wellbeing,” *Race, Gender & Class* 19, no. 3/4 (2012): 184.

people as unwilling to stay out of jail is a narrative that has been echoed throughout history.

V. Conclusion

In the decades following the Supreme Court's decision in *Buck v. Bell*, forced sterilization became socially reprehensible and legally impermissible, to a certain extent. Policies allowing incarcerated people to opt for sterilization in exchange for reduced sentences fundamentally contradict the key principles of informed and voluntary consent, presenting ethical and legal issues. Moral judgments about what some individuals "deserve" do not outweigh violating informed consent rules and infringing on protected constitutional rights. Twenty years after Kelli Dillon was forcibly sterilized, she explained that the government's actions were essentially about control.¹⁶⁵ "This is not just about the control of one's body," she cautioned. "This is about people who are trying to control and determine the worth of a human life, and that is dangerous."

¹⁶⁵ Uyeda, "How Organizers Are Fighting an American Legacy of Forced Sterilization."

Bibliography

“42 CFR Part 50 Subpart B -- Sterilization of Persons in Federally Assisted Family Planning Projects.” Accessed December 15, 2024.

<https://www.ecfr.gov/current/title-42/part-50/subpart-B>.

Adams, Elise B. “Voluntary Sterilization of Inmates for Reduced Prison Sentences.”

Duke Journal of Gender Law and Policy 26, no. 23 (2018): 23–44.

Bernat, J. L. “Informed Consent.” *Muscle & Nerve* 24, no. 5 (May 2001): 614–21.

<https://doi.org/10.1002/mus.1046>.

Burke, Sheila. “Attorneys: Sterilizations Were Part of Plea Deal Talks.” AP News, March 28, 2015.

<https://apnews.com/general-news-824ffb7d2ed84849b5d87c41cdf8cof7>.

Derkas, Erika. “The Organization Formerly Known as Crack: Project Prevention and the Privatized Assault on Reproductive Wellbeing.” *Race, Gender & Class* 19, no. 3/4 (2012): 179–95.

Douglas, Thomas, Pieter Bonte, Farah Focquaert, Katrien Devolder, and Sigrid Sterckx.

“Coercion, Incarceration, and Chemical Castration: An Argument From Autonomy.” *Journal of Bioethical Inquiry* 10, no. 3 (2013): 393–405.

<https://doi.org/10.1007/s11673-013-9465-4>.

Johnson, Corey G. “Female Inmates Sterilized in California Prisons without Approval.” *Reveal*, July 7, 2013.

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

Legal Information Institute. “Definition: Coercion from 18 USC § 1591(e)(2),” n.d.

<https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&i>

frame=true&def_id=18-USC-826895778-1007944208&term_occur=999&term_
src=.

Legal Information Institute. “Definition: Strict Scrutiny,” n.d.

https://www.law.cornell.edu/wex/strict_scrutiny.

Luthra, Shefali. “California Promised Reparations to Survivors of Forced Sterilization.

Few People Have Gotten Them.” *The 19th*, September 5, 2023.

<https://19thnews.org/2023/09/california-forced-sterilization-incarceration-reparations/>.

Mesa, Jesus. “Here Are the States That Allow Chemical Castration as Punishment.”

Newsweek, June 4, 2024.

<https://www.newsweek.com/louisiana-chemical-castration-surgical-law-child-sex-offenders-1908158>.

Olivares, Jose, and John Washington. “Whistleblower: ICE Prison Does Hysterectomies at High Rates,” *September 15, 2020*.

<https://theintercept.com/2020/09/15/hysterectomies-ice-irwin-whistleblower/>.

“Project Prevention: Mothers and Children Speak Out.” Accessed December 15, 2024.

<https://www.opensocietyfoundations.org/voices/project-prevention-mothers-and-children-speak-out>.

Scott, Charles L., and Trent Holmberg. “Castration of Sex Offenders: Prisoners’ Rights versus Public Safety.” *The Journal of the American Academy of Psychiatry and the Law* 31, no. 4 (2003): 502–9.

Uyeda, Ray Levy. “How Organizers Are Fighting an American Legacy of Forced Sterilization.” *YES! Magazine*, 2021.

<https://www.yesmagazine.org/social-justice/2021/02/08/united-states-forced-sterilization-women>.