

Chapter 18

“If you stick a knife in my back nine inches and pull it out six inches, there’s no progress. If you pull it all the way out, that’s not progress. Progress is healing the wound that the blow made.” –Malcolm X.¹

INTRODUCTION AND GENERAL STRUCTURAL RECOMMENDATIONS

Introduction

The chapters comprising this part of the report set forth policy recommendations that are tailored to the harms discussed in Chapters 1 through 13. The Task Force’s intent in formulating these recommendations has been to ensure “[s]pecial [c]onsideration for African Americans [w]ho are descendants of [p]ersons [e]nslaved in the United States.”² In the Task Force’s view, adoption and implementation of these recommendations are crucial to effectuating AB 3121’s purpose and beginning the long-overdue process of providing true reparations for African Americans.

As the Legislature recognized in AB 3121,³ and as Chapters 1 through 13 of this report document, while the enslavement of Africans was our nation’s “original sin,” emancipation did not bring an end to the atrocities and deprivations visited upon African Americans. Through lynching and other terror, including the Black Codes, Jim Crow laws, disenfranchisement, segregation, discrimination, exclusion, and neglect in every facet of life, government at all levels has perpetuated the legacy of slavery. By all measures, from health to wealth, African Americans as a group, and especially descendants of those enslaved, live with the persistent consequences of this legacy—consequences that include a shorter life expectancy and a vast wealth gap, borne of stolen labor, political disenfranchisement, mass incarceration, destruction of African American families, inadequate and biased health care, limited education and employment opportunities, property deprivation, environmental harms, and decimation of cultural institutions.⁴ Mass

¹ Malcolm X, <https://www.facebook.com/theshabazzcenter/videos/if-you-stick-a-knife-in-my-back-9-inches-and-pull-it-out-6-inches-thats-not-prog/10159147606541532/> (last checked Mar. 21, 2023) (quoted in Darrity Jr. & Mullen, *Defining Reparations* (June 1, 2021) p. 22, <https://oag.ca.gov/system/files/media/task-force-agenda6-060121.pdf> (last checked Mar. 21, 2023).

² Assem. Bill No. 3121 (2019-2020 Reg. Sess.).

³ Among the findings of the Legislature, AB 3121 recognizes that:

Following the abolition of slavery, the United States government at the federal, state, and local levels continued to perpetuate, condone, and often profit from practices that continued to brutalize and disadvantage African Americans, including sharecropping, convict leasing, Jim Crow laws, redlining, unequal education, and disproportionate treatment at the hands of the criminal justice system. As a result of the historic and continued discrimination, African Americans continue to suffer debilitating economic, educational, and health hardships....

Gov. Code § 8301(a)(5)-(6).

⁴ For more detailed discussion and documentation, see Chapters 1 through 13.

enslavement may have ended, but the badges and incidents of slavery have not. Descendants of those who were enslaved have uniquely carried the weight of the harms and atrocities visited upon their ancestors, as trauma and loss have passed from generation to generation.

The harms African Americans have experienced have not been incidental or accidental—they have been by design. They are the result of a vast web of discriminatory laws, regulations, and policies enacted by government. These laws and policies have enabled government officials and private individuals and entities to perpetuate the legacy of slavery by subjecting African Americans as a group to discrimination, exclusion, neglect, and violence in every facet of American life. To this point, there has been no countervailing comprehensive effort to disrupt and dismantle institutionalized racism, stop the harm, and address the specific injuries caused to descendants⁵ and the larger African American community. AB 3121 calls for this to change.

AB 3121 invokes the international standards of remedy for wrongs and injuries caused by the state. The UN Principles on Reparations recognize that true reparations cannot be made without fulfillment of *all five* of the international standard’s required pillars: (1) Restitution; (2) Compensation; (3) Rehabilitation; (4) Satisfaction; and (5) Guarantee of Non-Repetition.⁶ In developing its policy recommendations below and in the chapters that follow, the Task Force followed the UN Principles on Reparations. Specifically, the Task Force recommended to the Legislature a slate of policies that are needed both to cease and to redress the harms delineated in Chapters 1 through 13. These recommended changes or substantially similar measures must be implemented in some form in order for any California reparatory effort to be able to satisfy the requirements of international reparations framework’s requirements that there be both “rehabilitation” and “guarantees of non-repetition.” Further, a number of the policies recommended in the following chapters are also intended to provide restitution to augment the Task Force’s recommendations for restitution and compensation set forth in Chapter 17 of this report.

In making its recommendations, consonant with the statute and in recognition that the legacy of slavery weighs most heavily on those most directly harmed, the Task Force has given special consideration to those African Americans who are descendants of persons enslaved in the United States.⁷ However, also in line with the language of AB 3121, and the extensive testimony and other evidence submitted to it, the Task Force has considered the impact of historic and ongoing discrimination on the larger community of African Americans living in California.⁸ The UN

⁵ As used throughout this report, the term “descendants” refers to “African American descendants of a Chattel enslaved person, or descendants of a free Black person living in the United States prior to the end of the 19th Century,” in accordance with the Motion approved by the Task Force on March 29, 2022. See Meeting Minutes, March 29, 2022 Meeting of the AB 3121 Task Force Study to Study and Develop Reparations Proposals for African Americans, available at <<https://oag.ca.gov/system/files/media/task-force-meeting-minutes-032922-033022.pdf>>.

⁶ See Chapter 14 for fuller discussion of the international law framework for reparations.

⁷ Assem. Bill No. 3121 (2019-2020 Reg. Sess.).

⁸ Among its dictates, AB 3121 has directed the Task Force to consider to “[h]ow California laws and policies that continue to disproportionately and negatively affect African Americans as a group and perpetuate the lingering material and psychosocial effects of slavery can be eliminated,” as well as how the resulting “injuries ... can be

Principles on Reparation similarly take an expansive view of what it means to be a “victim.” The term includes “persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law.”⁹ The term has been interpreted to include “not only the person who was the direct target of the violation, but any person affected by it directly or indirectly.”¹⁰

As this report has documented, little of slavery’s legacy has receded. To be African American in America today is to be part of a collective that bears the badges and incidents of slavery and suffers the “lingering material and psychosocial effects of slavery” and the injuries that their perpetuation cause.¹¹ While recommending that *monetary* reparations be limited to the eligible class, the Task Force recognizes that the five pillars of reparations and AB 3121 require that it also endeavor to ensure cumulative harms of the past four centuries do not continue to be visited upon “living African Americans and on society in California and the United States.”¹²

The Task Force therefore grappled with the appropriate scope of its policy recommendations, considering AB 3121’s mandate, the international standards for reparations, practical aspects of implementation, and the anticipated impact of recommended policies. Following testimony and public comment in hearings held over the span of two years, extensive original research, analysis, and deliberation, the Task Force believes it has struck the appropriate balance: Every one of the Task Force’s recommendations is intended to benefit descendants and a substantial number are intended to benefit descendants *exclusively*. At the same time, many recommendations cannot be implemented only for descendants and must instead be framed to benefit the larger community of African American Californians, or even all Californians. The Task Force has determined, in its judgment, that the scope of each recommendation matches what is needed to bring repair to all those who have endured the harms outlined in this report and to ensure that the Guarantee of Non-Repetition for those harms is fully realized.

The enormity of the task before California and the nation cannot be overstated. The policies recommended here, while wide-ranging, are not exhaustive—they are only a start. The harms to be repaired have been more than 400 years in the making. Their undoing will require ceaseless vigilance and a commitment to continually learn and meet the challenges ahead. Their undoing will also require what the Legislature courageously did not mask in enacting AB 3121—that

reversed, and how to provide appropriate policies, programs, projects, and recommendations for the purpose of reversing the injuries.” Gov. Code § 8301.1(b)(3)(C)-(D).

⁹ United Nations General Assembly, [*Adopted Resolution 60/147: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*](#), (March 21, 2006) p.5.

¹⁰ International Commission of Jurists, [*The Right to a Remedy and Reparation for Gross Human Rights Violations: A Practitioners’ Guide*](#) (Revised Edition, 2018) p. 34.

¹¹ Gov. Code, §§ 8301, subd. (b)(3).

¹² Gov. Code, §§ 8301, subd. (b)(1)(C).

being the explicit consideration of race in redressing the harms perpetrated on generations of African Americans in California and the nation.

As one expert testified before the Task Force, California has become a “Don’t Say Black”¹³ state because of Proposition 209, which the Task Force recommends be repealed. The perpetuation of “color blind” thinking, rather than advancing social justice, has allowed injustice to fester and entrench. The system of oppression that centers on race, and which has dehumanized and brutalized on the basis of race, thrives when the basic fact underlying the system is denied. Similarly, as Pulitzer Prize winning journalist, and Task Force expert witness Isabel Wilkerson wrote in her groundbreaking book, *Caste*, “in America, race is the primary tool and the visible decoy, the front man, for caste.”¹⁴

Time and again, the Task Force was confronted with the stark reality that policies and programs that have not been specifically directed to stop and repair the harm that continues to be done to African Americans have actually benefited non-African Americans while exacerbating the harm to African Americans.¹⁵ Channeling the voices of the hundreds of individuals who testified or offered public comment in Task Force meetings, who wrote letters and e-mails, and who participated in community listening sessions, the Task Force urges California’s Legislature to bring an end to the ongoing harms and atrocities endured by *African Americans*. This time *must* be different.

General Structural Policy Recommendations

The policy recommendations set forth in this chapter are not limited to one set of harms or another. The Task Force has formulated these policies to address reparatory needs that cut across the areas of harm documented in Chapters 1-13 of this report. A first order need, and thus the Task Force’s first recommendation, is for a fully funded independent agency dedicated to advancing all of the recommendations contained in this report. Additional recommendations set forth in this Chapter are intended to advance reparations more broadly by removing critical structural barriers to change and ensuring that future legislative and agency action does not repeat the mistakes of the past. These general structural recommendations would, if implemented, create an environment in which the collective recommendations of this report could set California on the path to once and for all eradicating the badges and incidents of slavery. These proposals, detailed below, are to:

- Create and Fund the California American Freedman Affairs Agency
- Repeal Proposition 209
- Mandate Effective Racial Impact Analyses of New Enactments
- Require Agency Transparency

¹³ Testimony of Dr. Margaret Fortune to the Task Force (Mar. 3, 2023), <https://oag.ca.gov/ab3121/meetings/032023>, <https://www.youtube.com/watch?v=0TW0kCGMqdo> (last checked Mar. 21, 2023).

¹⁴ ADD CITE to *Caste*.

¹⁵ CITE to discussion in Part I, and also Chapter 33

- Make Legislative Findings and Build Legislative Records that Reflect the Historic and Present State of Pervasive Structural Barriers and Discrimination Against African Americans and Supports Reparative Enactments
- Transmit AB 3121 Task Force Report to the President and Congress

A. Create and Fund the California American Freedman Affairs Agency

As documented in Chapters 1 through 13, government agencies at all levels, including California's state-level governmental agencies, have been complicit in the atrocities committed against African Americans in California and across the country. And throughout the history of the state and the nation, government programs designed to benefit the general public either intentionally or incidentally excluded or minimized the benefits flowing to African Americans, especially those descended from enslaved people. When African Americans are not an exclusive focus of reparative policies and programs, they invariably end up at the back of the line and receive disproportionately fewer benefits than others.

To ensure that this time is different, and that there will be focus on efforts flowing from this report, the Task Force recommends that the Legislature create an agency that is dedicated to the implementation and success of the recommendations of this report. Complex new functions will be needed to implement the Task Force's recommended reparations scheme, including determinations of eligibility and disbursement of payments and administration of new programs that are part of the monetary component of the Task Force's recommendations.

In addition, as discussed below, the Task Force recommends that the Legislature provide the agency with an oversight role to ensure that existing state agencies properly implement the Legislative enactments resulting from the Task Force's recommendations where those recommendations fall within the scope of those existing agencies' authority. Finally, there will be some instances where the agency will have to provide direct services to fill in gaps or augment existing services, to ensure that the needs of those eligible for its services are fully met without bias or delay.

For these reasons, the Task Force recommends that the Legislature establish the California American Freedmen Affairs Agency (Agency), the mission of which will be to support the implementation of the Legislature's actions in response to this report, including to provide perpetual special consideration to descendants of persons of African descent who were enslaved in the United States, as described in AB 3121.

The Task Force also believes that it is essential for the Legislature to fully fund and staff the Agency to carry out its mission and obligations, and these resources should be allocated and authorized in perpetuity. The Task Force recommends that the Agency be headquartered in Sacramento, and have satellite offices all around the state to ensure that descendants and others

eligible for the services provided by the Agency are able to obtain services and support wherever they may reside.

In order to perform critical functions and services through the identified branches or offices, the Agency should include the following:

- 1) A genealogy branch to support potential reparations claimants by providing access to expert genealogical research to confirm reparations eligibility.
- 2) An office of strategic communications/media affairs to assist the descendant community, the media, and the greater public to understand the vital work performed by the Agency as it serves the descendant community and provides streamlined access to information and services.
- 3) A community support branch to improve accessibility, transparency, and public trust in California's reparations program and its claims process.
- 4) An office of immediate relief to provide expedited assistance with the reparations claims process.
- 5) A business affairs office to: (a) provide ongoing education and assistance related to a potential new state Freedmen's Savings & Trust Bank; (b) support entrepreneurialism and financial literacy; (c) provide business grants and assistance with procuring business licenses; (d) train and hire unhoused descendants in housing construction and related trades with apprenticeship programs; and (e) establish public-private reparative justice-oriented partnerships. (See Chapter 27, pp. ____, for the text of the Task Force's recommendation to fund African American banks.)
- 6) An office of the chief financial officer to provide policy leadership in strategic planning, budgeting, and financial management at the Agency. The officer's duties would include: (a) processing claims for direct compensation in the five atrocity areas; (b) conducting internal audits for management purposes, to evaluate the efficiency, economy, effectiveness, financial aspects, or other features of the Agency, its branches, and programs; (c) conducting external audits for contract or grant administration; (d) assisting in the establishment of a state-sponsored or state-chartered Freedmen's Savings & Trust Bank to service the descendant community; and (e) potentially collaborating with 501(c)(4) organizations where beneficial to the goals and purpose of the Agency. This office would also administer the compensation fund(s) that the Task Force recommends be created by the Legislature, for all those eligible to receive compensation.
- 7) A creative, cultural, and intellectual affairs branch to address the disruption of cultural centers in the name of redevelopment, and to address the history of censorship of descendant-produced media and arts. The duties of this branch should include: (a) building, restoring, and maintaining American Freedmen/African American/Descendant cultural/historical sites, creative centers, public displays, and monuments; (b) advocating for and monitoring removal of harmful relics; (c) supporting knowledge production and

archival research with community archives and repositories; (d) supporting legacy families; (e) providing support for descendants in the arts, entertainment, and sports industries, including identifying and removing barriers to advancement into leadership and decision-making positions in these industries; (f) supporting descendants in news publications, arts (including film, radio, television, art, podcasting, and new media), and lifestyle activities; and (g) supporting parity in sports participation, coaching, management, and ownership.

- 8) A data research and collection branch to identify and analyze trends in past, current, and potential future badges and incidents of chattel slavery, and to advise the Governor, Legislature, and other state and local governmental entities as to policy changes designed to heal and repair the descendant community from these badges and incidents.
- 9) A civic engagement/self-determination branch to support ongoing education on African American history and political engagement, and to support civic engagement, political participation, and self-determination among the descendant community.
- 10) An office of general counsel to provide legal advice, counsel, and services to the Agency and its officials, and to ensure that the Agency's programs are administered in accordance with applicable legislative authority. The office would also advise the head of the Agency on legislative, legal, and regulatory initiatives and serve as an external liaison on legal matters with other state agencies and other entities.

Where not made directly responsible by the Legislature for implementing recommendations of this report, the Agency would be authorized to engage in oversight and monitoring of those state agencies tasked with engaging in direct implementation of recommendations already falling within the scope of their existing authority. The oversight and monitoring should include at least the following:

- 1) An education branch to provide oversight and monitoring of the payment of tuition to the state's community colleges, California State University schools, and University of California schools for California residents who are descendants, and to ensure that existing state educational agencies eliminate descendants' barriers to higher education, and build infrastructure for the operation of new Freedmen schools, colleges, and universities. The education branch would also provide oversight and monitoring of educational grants and otherwise support education initiatives focused on Freedmen.
- 2) A social services and family affairs branch to provide oversight of state agencies' efforts to identify and mitigate the ways that current and previous policies implemented by existing agencies have damaged and destabilized descendant families. The Agency's oversight would include: (a) monitoring of existing state agencies' recruitment and training of descendants in industries that assist descendant seniors, such as healthcare systems; (b) providing housing advocates and housing attorneys to assist with housing and homelessness; (c) providing financial and social support services for housing

unhoused relatives; (d) developing a hotline to report harms related to housing; (e) providing financial support services to support descendant homeownership; (f) ensuring treatment for trauma and family healing services to strengthen the family unity; and (g) providing descendant-informed mental health and stress resiliency services, financial planning services, career planning, and civil and family court services.

- 3) With regard to medical services provided or funded by the state, a medical services oversight branch to monitor the state's efforts to provide technical assistance for community wellness centers¹⁶ in local descendant communities across the state to: (a) decrease state-sanctioned health harms, including, but not limited to mental, physical and public health harms and neglect; (b) mental health stigma; (c) teach stress reduction and resilience tools; (d) create communal spaces; (e) support cultural and racial socialization to support mental health; (f) provide community-defined evidence and promising practices prevention and early intervention mental health programs; and (g) offer mental health and health screening and referrals.
- 4) A labor and employment branch to oversee and monitor labor and employment discrimination and benefits claims involving the descendant community handled by other state-level complaint investigation and adjudication agencies.
- 5) A development branch, to provide oversight and monitoring of state-sponsored and funded infrastructure development, to ensure that descendants receive a proportionate share of the development of housing (e.g., subdivisions, multi-family, mixed used), business/commercial districts, and towns/cities. In addition to Allensworth, African American towns such as Teviston, Fairmead, Cookseyville, Bowles Colored Colony, South Dos Palos, and Sunny Acres all existed in California's Central Valley, and should receive the same investment from the state.
- 6) A legal affairs branch, to: (a) provide oversight and monitoring of state agencies that provide legal services to descendants, including in criminal cases, and oversight and monitoring of state entities that receive, document, and investigate civil rights violations and hate crimes, and ensure that such entities provide a hotline and database for the descendant community; (b) advocate for civil and criminal justice reforms, including, but not limited to, youth and adult decarceration programs, abolition, housing and houselessness legal services; and (c) monitor provision of civil legal services and providing such services, including free arbitration and mediation services and other forms of conciliation courts, to the extent needed to close the justice gap.
- 7) A strategic partnerships branch, to oversee and monitor the state's collaboration with community-based organizations (CBOs) and other relevant organizations, and to oversee and audit state funds disbursed to identified CBOs and other relevant stakeholders to ensure that said funding is directed toward eligible individuals or entities.

B. Repeal Proposition 209

¹⁶ See Chapter 20, Proposal to Establish and Fund Community Wellness Centers in African American Communities

California voters passed Proposition 209, now enshrined in California’s constitution, in 1996. The measure bars the state from “discriminat[ing] against or grant[ing] preferential treatment on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, and public contracting.”

Since its passage, Proposition 209 has had far-reaching impact on efforts to remediate entrenched systemic anti-Black bias and discrimination. The area of public contracting provides one example. The Equal Justice Society commissioned a study to determine the impact of Proposition 209 in the sphere of public contracting. The study concluded that between \$1 billion and \$1.1 billion in contract dollars were lost annually by businesses owned by women and people of color due to Proposition 209.¹⁷ With respect to education and the end of race-conscious admissions at the University of California, admissions declined for applicants from underrepresented groups, including African Americans, at every campus.¹⁸ In the area of public employment, the evidence is mixed with less harmful impact shown in some areas, but with disparities persisting in areas such as hiring and promotion to senior positions.¹⁹ More broadly, Proposition 209 is widely viewed as an impediment to the adoption of remedial measures.²⁰ The chilling effect has been far-reaching.

In November 2020, Proposition 16 appeared on the general election ballot asking California voters to amend the California Constitution to repeal Proposition 209. However, Proposition 16 failed to achieve enough support to pass, and Proposition 209 remains in effect.²¹

In recognition of the systemic discrimination faced by the African American community and the barriers to justice and repair imposed by Proposition 209, the Task Force recommends that the Legislature take steps within its authority to seek the repeal Proposition 209. This effort must continue until California’s constitution has been cleansed of this or any other measure rooted in racism.

C. Mandate Effective Racial Impact Analyses

For too long, the country and state have taken a “head in the sand” approach to the pernicious impact of racism on all types of decision-making. Outside of limited contexts, courts in particular have prevented a more nuanced look at the impact of racism, instead requiring proof of intent to discriminate when presented with evidence of discriminatory impact. The result is persistent, ever more entrenched racial disparities that result in African Americans experiencing the worst outcomes while paradoxically being denied justice by the courts.

¹⁷ Lohrentz, [The Impact of Proposition 209 on California’s MWBEs](#) (Jan. 2015) Equal Justice Society (as of Dec. 1, 2022).

¹⁸ [The Impact of Proposition 209 In California](#) (Sept. 4, 2020) University of California Academic Affairs (as of Dec. 1, 2022).

¹⁹ **Add back in cite that was inadvertently cut.**

²⁰ For a discussion of harms associated with Proposition 209, see Chapter 10, page 347, and Chapter 13, page 466.

²¹ Associated Press, [Prop 16 California Affirmative Action Measure Trailing](#) (Nov. 4, 2020) CBS Broadcasting Inc. (as of Dec. 1, 2022).

To address this, the Task Force recommends that the Legislature require that the racial impact of laws, policies, and ordinances from the local to the state level be identified and addressed prior to enactment, and that implementation be carefully monitored and measured in order to assess real-world results. Where those results demonstrate negative racial impact has resulted, the law, policy or ordinance should be required to be rescinded and re-promulgated.

The Task Force’s recommendation builds on the recognition that racism is a public health emergency, with major impacts to African Americans in California.²² Recognizing the pernicious impact of racism in this manner is intended to “spur changes across all sectors of government—including criminal justice, education, health care, housing, transportation, budgets and taxes, economic development and social services.”²³ Numerous municipalities and states have taken the step of formally recognizing racism as a public health emergency.²⁴

At the state level in California, Senate Concurrent Resolution No. 17 (2021), declared California’s observance of March 21, 2021, as the International Day for the Elimination of Racial Discrimination. In the resolution, “the Legislature declare[d] racism to be a public health crisis and [committed to] actively participate in the dismantling of racism[.]”²⁵ In 2020, Senator Dr. Richard Pan introduced Senate Bill (SB) 17, which would have declared racism to be a public health crisis and would have created a Racial Equity Commission, but did not pass.²⁶

On September 13, 2022, Governor Newsom issued Executive Order N-16-22, which: (1) established the state’s first Racial Equity Commission, developed with Senator Pan and organizations that sponsored SB 17; and (2) directed state agencies and departments to take additional actions to address disparities for historically underserved and marginalized communities by implementing equity analyses and considerations in their mission, policies, and practices.²⁷ The Racial Equity Commission, which is staffed by the Governor’s Office of Planning and Research, is required to develop resources, best practices, and tools for furthering racial equity and develop a statewide Racial Equity Framework; provide technical assistance, upon request by a state agency, on implementing strategies for racial equity consistent with the framework; engage and collaborate with policy experts and community members to conduct analyses and develop tools; and prepare an annual report, with the first completed on or after December 1, 2025, but no later than April 1, 2026, and annually thereafter.²⁸

²² Chapters 1 through 13 document many of these impacts.

²³ Vestal, Pew, *Racism Is a Public Health Crisis, Say Cities and Counties* (Jun 15, 2020), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2020/06/15/racism-is-a-public-health-crisis-say-cities-and-counties> (as of Apr. 12, 2023).

²⁴ See, e.g., Harvard T.H. Chan School of Public Health, Why declaring racism a public health crisis matters, <https://www.hsph.harvard.edu/news/hsph-in-the-news/racism-public-health-crisis-bassett/> (as of Apr. 12, 2023) (noting growing number of municipalities and states that had “highlighted racism as a public health crisis” and explaining value of such declarations); American Public Health Association, Racism is a Public Health Crisis, <https://www.apha.org/topics-and-issues/health-equity/racism-and-health/racism-declarations> (as of Apr. 12, 2023).

²⁵ *Sen. Conc. Res. No. 17* (2021-2022 Reg. Sess.) as chaptered Apr. 30, 2021.

²⁶ *Sen. Bill No. 17* (2021-2022 Reg. Sess.).

²⁷ Governor’s Exec. Order N-16-22 (Sep. 13, 2022).

²⁸ *Ibid.*

To ensure that future laws and policies do not perpetuate the state’s history of discrimination against African Americans, and to ensure that there is a long-term and ongoing commitment to remedying and avoiding the harms caused by the history and trauma of state-sponsored discrimination against African Americans across all sectors, the Task Force recommends that the Legislature require comprehensive racial impact analyses of legislative and executive actions at the state and local levels.

Racial impact statements are tools for lawmakers to evaluate potential disparate impacts of proposed legislation prior to adoption and implementation.²⁹ Similar to fiscal or environmental impact statements, a racial impact statement enables policy decision-makers to anticipate and address racial or ethnic disparities arising from implicit bias and systemic racism and discrimination.³⁰ Requiring such a statement also assists in the consideration of alternative policies to accomplish the goals of proposed legislation without causing or contributing to avoidable racial and ethnic disparities.³¹

This recommendation for a requirement of racial impact statements encompasses all proposed legislation, budget proposals, proposed regulations, and bidden contracts, and is intended to include, but not be limited to, governmental agencies at all levels, including cities, counties, school districts and boards (including charter schools), special districts, and each state or local agency, board, or commission.

The Task Force urges that, in furtherance of this effort, the Legislature take steps within its authority to require a racial impact analysis for all future legislation, including potential amendments to the California Constitution. The Task Force recommends the Legislature create a process and provide funding for the appropriate agency or office³² to conduct racial impact analyses of all bills while they are in committee. The Task Force also recommends that the Legislature require the analyses to be submitted in writing and include specific findings of the impact proposed legislation will likely have on African Americans. Similar assessments should also be made by any state agency involved in the rulemaking process. Also, the Task Force recommends that the racial impact analyses continue after enactment of legislation, with the

²⁹ Porter, [Racial Impact Statements](#) (June 16, 2021) The Sentencing Project (as of Dec. 1, 2022).

³⁰ Hunter, et al., [How to Use the Racial Impact Statement Tool to Eliminate Disparities and Disproportionality](#) (Sept. 2, 2013) State Interagency Team Workgroup to Eliminate Disparities & Disproportionality, Beyond the Bench Conference (as of Dec. 1, 2022).

³¹ *Ibid.*

³² “The Legislative Analyst’s Office (LAO) has provided fiscal and policy advice to the Legislature for 75 years. It is known for its fiscal and programmatic expertise and nonpartisan analyses of the state budget.” ([About the LAO \(ca.gov\)](#).) The LAO has also provided an assessment of the racial disparities in California’s Child Welfare System to a legislative committee. ([Initial Analysis and Key Questions: Racial Disproportionalities and Disparities in California’s Child Welfare System](#) (March 9, 2022).) Because of its expertise in conducting impact analysis of legislation, the LAO may be the appropriate agency or office to conduct racial impact analysis of legislation. Another agency or body that may be appropriate for conducting racial equity analysis of proposed legislation, regulations, or policies is the Racial Equity Commission (Commission). Governor Newsom issued Executive Order N-16-22, which established the Commission. One of the responsibilities of the Commission is to “engage and collaborate with policy experts and community members to conduct analyses.” Conducting racial impact analyses of proposed policies, legislation, and regulations fits within the Commission’s designated responsibilities.

requirement that data be gathered to empirically establish the racial impact of implemented policies.

The Task Force further recommends that the Legislature establish a process for amending a policy, law, or regulation if data verifies a disparate impact on African Americans. California has a history of enacting laws that even if not affirmatively discriminatory on their face, have had the impact of fostering or permitting discrimination against African Americans.³³ Although current laws do not explicitly discriminate against African Americans, many have been used in a discriminatory manner. For example, zoning ordinances, licensing laws, fire and safety codes, and anti-nuisance provisions have been used to discriminate against Black business owners and their Black customers.³⁴ With this proposal, the Task Force seeks to ensure that both existing laws which have a disproportionate impact on African Americans and those that *could* be enacted in the future are addressed during the legislative process rather than leaving those issues for the judicial process, which is skewed against African Americans in the first place.

The Task Force further recommends that the Legislature enact legislation requiring the Governor to conduct racial impact analyses for California’s annual budget and any proposed agency regulations. The legislation would require the Governor to submit a written report of the analysis to the Legislature along with its budget proposal and proposed regulation.

The Task Force also recommends that the Legislature enact legislation requiring General Contractors who participate in the state government requests for proposal (“RFP”) process to include disparate impact analyses in their bids related to public safety and housing.

D. Agency Transparency

Members of the public in their public comments and other communications with the Task Force have repeatedly raised concerns about responsiveness and transparency related to the treatment and disposition of complaints from African Americans raising civil rights concerns.

Responding to the concerns raised, the Task Force recommends that the Legislature direct the Civil Rights Department and the Department of Education to collect anonymized data for all complaints transmitted to each respective agency, including the following: (1) the race, gender, age, and other critical demographic information of complainants, (2) a description of each complaint received; (3) any action taken by the agency in response to the complaints received and the timeline for such action; and (4) the disposition of the complaints. The Task Force further recommends that this data be published on the agencies’ websites and transmitted to the California American Freedman Affairs Agency for the Agency to create and publish dashboards that allow the public to view the collected data.

³³ See, e.g., *People v. Hall* (1854) 4 Cal. 399, 399 (1854) (holding that California statutes that prohibited Black people from testifying against white people in court also precluded Chinese people from testifying against white people).

³⁴ [cite]

The Task Force urges the Civil Rights Department and the Department of Education, as well as any other state agency similarly situated, to recommit their focus to reviewing and efficiently and effectively redressing the concerns of individuals filing complaints with them as required by law.

E. Make Legislative Findings and Build Legislative Records that Reflect the Historic and Present State of Pervasive Structural Barriers and Discrimination Against African Americans and Supports Reparative Enactments

When enacting the Task Force's recommendations, the Legislature should (1) declare the State's compelling and statewide interest in remedying the longstanding and ongoing harm caused by chattel slavery and the badges and incidents of slavery, as documented by the Task Force's report and any other supplemental findings the Legislature finds necessary; (2) where applicable, identify the specific harms caused by chattel slavery and its legacy that the statute seeks to remedy and explain how the government was involved in such discrimination; and (3) for those provisions that may be subject to strict scrutiny, demonstrate that the policies involved have been narrowly tailored to remedy that harm.

F. Transmit AB 3121 Task Force Report to the President and Congress

The Task Force recommends that the Legislature transmit the Task Force's final report and its findings to the President and Congress, with a recommendation that the federal government create a Reparations Commission for African Americans through statute or executive action. Further, the Task Force recommends that the Legislature urge the federal government to match the breadth and comprehensiveness of the Task Force's final report and its findings—or accept the Task Force's findings without the need for further study—and commit to full and effective reparations under international law, in line with the Task Force's recommendations.