

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

SCR 113 (Smallwood-Cuevas)  
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Hearing Date: February 26, 2024  
Fiscal: No  
Urgency: No  
AWM

**SUBJECT**

Human rights violations and crimes against humanity on African slaves and their descendants

**DIGEST**

This resolution acknowledges the harms and atrocities committed by representatives of the State of California who promoted, facilitated, enforced, and permitted the institution of chattel slavery and the legacy of ongoing badges and incidents of slavery that form the systemic structures of discrimination; accepts the State's responsibility for all of these harms and atrocities; and affirms the State's role in protecting the descendants of enslaved people as well as their civil, political, and socio-cultural rights.

This resolution is sponsored by the author. The Committee has not received timely support or opposition to this resolution.

**SUMMARY**

This resolution:

- 1) May be cited as the "Acknowledgement of Gross Human Rights Violations and Crimes Against Humanity on African Slaves and their Descendants."
- 2) Declares that:
  - a) The State of California – its executive, judicial, and legislative branches – denied African Americans their fundamental liberties and denied their humanity throughout the state's history, from before the Civil War to the present.
  - b) Although California entered the Union in 1850 outlawing slavery, the California Supreme Court stated that the antislavery law in the California Constitution was only a "declaration of a principle" and did not enact laws to enforce this provision and emancipate slaves.

- c) The California Supreme Court enforced the federal fugitive slave law until the official end of enslavement in 1865.
- d) The State of California prevented African Americans from testifying in court against a white person until 1863.
- e) The California Legislature opposed Congress' Reconstruction civil rights laws and delayed ratifying the 14th and 15th Amendments to the federal constitution.
- f) The State of California disenfranchised African American citizens through racial barriers to voting, such as poll taxes and literacy tests.
- g) The California Legislature prohibited interracial marriage and passed an anti-miscegenation law in its first legislative session in 1850. The Legislature repeatedly refused to repeal the law after the California Supreme Court struck it down in 1948, and only did so 11 years later.
- h) The State of California constructed monuments, memorials, state markers, and plaques memorializing and preserving confederate culture and glorifying slavery and white supremacy.
- i) From the brutality of enslavement to contemporary police killings, state and local government-sanctioned violence, such as lynching, coercive sterilization, torture, and property destruction inflicted death, physical injuries, and psychological harms on African Americans in California.
- j) The State of California openly allowed segregation and discrimination against African Americans with respect to musicians, workers, and artists.
- k) State and local governments in California enacted restrictive zoning ordinances, licensing laws, fire and safety codes, and anti-nuisance laws to disrupt African American businesses and their customers.
- l) Discriminatory housing policies including redlining, residential zoning ordinances, and loan practices have produced persistent and longstanding housing segregation and inequities in home ownership for African Americans in California.
- m) State and local governments in California targeted property owned by African Americans in urban renewal and development projects for unjust uses of eminent domain, often without providing just compensation.
- n) State and local segregation laws in California historically excluded African Americans from outdoor recreation, public transit, and other public infrastructure.
- o) The eugenics movement thrived in California and thousands of African Americans were forcibly sterilized or were the subjects of medical experiments without consent.
- p) Black Californians experience persistent discrimination in healthcare services and access through inaccurate diagnoses, use of involuntary force, high costs, and a lack of culturally competent services.
- q) African Americans have been routinely excluded from professional careers in California. For example, African American physicians, psychologists, and

- psychiatrists are underrepresented in California's medical fields, further exacerbating the inequities in the healthcare system.
- r) California's child welfare system has experienced some of the worst racial disparities in the country, with African American children suffering the highest rate of system involvement and correspondingly heightened risks and harms associated with entering foster care.
  - s)
- 3) Resolves by the Senate, with the Assembly concurring, that:
- a) The State of California recognizes and accepts responsibility for all of the harms and atrocities committed by representatives of the state who promoted, facilitated, enforced, and permitted the institution of chattel slavery and its legacy of ongoing badges and incidents of slavery that form the systemic structures of discrimination.
  - b) The State of California now affirms its role in protecting the descendants of enslaved people as well as their civil, political, and socio-cultural rights.
  - c) The Secretary of the Senate shall transmit copies of this resolution to the author for appropriate distribution.

### COMMENTS

#### 1. Author's statement

According to the author:

This resolution is a long overdue acknowledgement of the ongoing harms of slavery in our state and nation. One of the most powerful aspects of the Reparations Tasks Force Report was the detailed discussion of how laws in California were crafted to directly cause harm to its Black residents. That harm touched every aspect of their lives and many of those harms are still felt by Black Californians generations later. This is why the Caucus' first step has been to introduce a resolution that recognizes that harm done against Black Californians.

#### 2. California's long, shameful history of supporting slavery and implementing discriminatory policies targeted at African Americans

There is not room in this analysis for a full account of California's willful, intentional discrimination against African Americans or the effects of centuries of discrimination and unequal treatment. The Task Force to Study and Develop Reparation Proposals for African Americans (Task Force) issued a final report on the matter that is over 1,000 pages long (discussed further in Part 3); this analysis is not intended to be nearly as comprehensive. Instead, this analysis discusses some of the most egregious instances of discrimination and resulting inequalities listed in the resolution before the Committee.

Because California was officially admitted to the United States as a “free state,”<sup>1</sup> its role in perpetuating slavery is often overlooked. At a national level, California was admitted to the Union as part of a compromise that also included the passage of the Fugitive Slave Act of 1850, which compelled officials to aid in the return of escaped enslaved persons and denied escaped enslaved persons (or alleged escaped enslaved persons) the right to a jury trial.<sup>2</sup> Here, despite California’s “free state” status, slavery was common within the state.<sup>3</sup> Indeed, California was so willing to perpetuate the institution of slavery that in 1852, California enacted its own fugitive slave statute that (1) made it easier for enslaved persons who fled to California to be recaptured and returned to the state in which they were held in bondage, and (2) required all enslaved persons who were brought or introduced to the State before its admission to the United States to return to their original state, or else be deemed fugitives.<sup>4</sup> The California Supreme Court upheld the 1852 Fugitive Slave Act, affirming that enslavers who brought enslaved persons from other states were not affected by the anti-slavery clause in the constitution.<sup>5</sup>

Similarly, while California fought on the side of the Union in the Civil War, the State remained hostile to racial equality. While the nation as a whole ratified the “Reconstruction Amendments” – the Thirteenth, Fourteenth, and Fifteenth Amendments to the United States Constitution – California dragged its feet. The State did not ratify the Thirteenth Amendment (prohibiting slavery) until after the amendment had already become the law of the land,<sup>6</sup> and it did not ratify the Fourteenth Amendment (promising equal protection under the law) and the Fifteenth Amendment (protecting the right to vote) until 1959 and 1962.<sup>7</sup>

California’s refusal to endorse measures to promote equality at the national level was matched by measures dedicated to preserving white supremacy within the state. California adopted several measures intended to prevent persons of color, including

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<sup>1</sup> See Pub. L. No. 31-50 (Sept. 9, 1850), 9 Stat. 452.

<sup>2</sup> See Pub. L. No. 31-60 (Sept. 18, 1850), 9 Stat. 462. Several states’ legislatures passed acts purporting to nullify the federal Fugitive Slave Act; California was not among them.

<sup>3</sup> Smith, *Remaking Slavery in a Free State: Masters and Slaves in Gold Rush California*, 80 *Pacific Historical Review* 28, 29-30 (2011). The exact number of African American enslaved persons in California in the 1850s is unknown, but estimates range from several hundred to a few thousand. (*Id.*, p. 29, fn. 2.; see also Beckner, *Slavery: California’s hidden sin*, *Sacramento News & Review* (Oct. 23, 2003) (California newspapers in the 1850s advertising slave sales), available at

<https://www.newsreview.com/sacramento/slavery-californias-hidden-sin/content?oid=16199>.) All links in this analysis are current as of February 23, 2024.

<sup>4</sup> See An Act Respecting Fugitives from Labor, and Slaves brought to this State prior to her Admission into the Union, April 15, 1852, ch. 33, California Statutes, at 67-69.

<sup>5</sup> *In re Perkins* (1852) 2 Cal. 424, 437-441, 454-457.

<sup>6</sup> Katz, et al., *Reckoning With Our Rights: The Evolution of Voter Access in California* (2020), p. 6, available at <https://tinyurl.com/5xzhj32p>.

<sup>7</sup> California Task Force to Study and Develop Reparation Proposals for African Americans, *Final Report* (Jun. 29, 2023), p. 4, available at <https://oag.ca.gov/system/files/media/full-ca-reparations.pdf> (Final Report).

African Americans, from voting, including adding a literacy requirement in 1894 that lasted until 1970.<sup>8</sup> The State's ban on interracial marriage lasted until 1948, when it was struck down by the California Supreme Court;<sup>9</sup> the Legislature refused to repeal the law for another 11 years.<sup>10</sup> California also permitted employers and labor unions to openly discriminate on the basis of race.<sup>11</sup>

The State's anti-African American animus is particularly clear in the realm of property rights and home ownership. Federal, state, and local governments established systems of "redlining, zoning ordinances, school and highway siting decisions, and discriminatory federal mortgage policy," which prevented African Americans from developing intergenerational wealth, devalued property owned by African Americans, and deliberately placed health hazards (such as freeways and chemical plants) in neighborhoods with high African American populations.<sup>12</sup> California also permitted white homeowners to enter into agreements not to sell homes to African American buyers (and, often, other people of color), known as "racially restrictive covenants"; the California Supreme Court approved of the practice in 1919,<sup>13</sup> and that ruling stayed in effect until the United States Supreme Court prohibited the enforcement of racially restrictive covenants in 1948.<sup>14</sup> In 1964, Californians overwhelmingly approved a ballot measure to prohibit the state Fair Employment Practices Commission to intervene on behalf of potential tenants and homebuyers in housing discrimination cases.<sup>15</sup>

The 1950s and 1960s are often recognized as the end of explicit (*de jure*) race-based discriminatory laws, but in many cases, state efforts to maintain white supremacy merely shifted to legislation targeted at African Americans without mentioning them by name (*de facto* discrimination). One significant example of this phenomenon is the use of the criminal justice system to target African Americans, which resulted in the U.S. prison population quadrupling between 1980 and 2000.<sup>16</sup> The increase in imprisonment was not due to an increase in crime, but an increase in long prison sentences and other "tough-on-crime" measures targeted at African Americans, such as the 1986 Anti-Drug

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<sup>8</sup> *Castro v. State of California* (1970) 2 Cal.3d 223, 231, 243. The literacy requirement was struck down by the California Supreme Court. (*Id.* at p. 243.)

<sup>9</sup> *Perez v. Sharp* (1948) 32 Cal.2d 711, 731-732.

<sup>10</sup> Final Report, *supra*, p. 309.

<sup>11</sup> *Id.* at p. 375.

<sup>12</sup> *Id.* at pp. 9-10.

<sup>13</sup> *Los Angeles Inv. Co. v. Gary* (1919) 181 Cal.60, 684.

<sup>14</sup> *Shelley v. Kraemer* (1948) 334 U.S. 1, 20. Racially restrictive covenants were not actually outlawed until the passage of the federal Fair Housing Act in 1948. (*See* 42 U.S.C. § 3604.)

<sup>15</sup> Reft, *How Prop 14 Shaped California's Racial Covenants*, KCET.org (Sept. 20, 2017),

<https://www.kcet.org/shows/city-rising/how-prop-14-shaped-californias-racial-covenants>. The ballot measure passed with 65 percent of the vote. (*Ibid.*) The ballot measure was eventually struck down. (*See* *Reitman v. Mulkey* (1967) 387 U.S. 369, 373-374 (affirming California Supreme Court opinion striking Proposition 14 as unconstitutional.))

<sup>16</sup> Coates, *The Black Family in the Age of Mass Incarceration*, *The Atlantic* (Oct. 2015), available at <https://www.theatlantic.com/magazine/archive/2015/10/the-black-family-in-the-age-of-mass-incarceration/403246/>.

Abuse Act's provision of a five-year minimum sentence for possession of five grams of crack cocaine (commonly associated with African American drug users) and five hundred grams of powder cocaine (commonly associated with white drug users).<sup>17</sup> African Americans were also disproportionately targeted and charged with crimes:

'Between 1983 and 1997, the number of African Americans admitted to prison for drug offenses increased more than twenty-six-fold, relative to a sevenfold increase for whites ... By 2001, there were more than twice as many African Americans as whites in state prison for drug offenses.'<sup>18</sup>

There is no evidence suggesting that African Americans sell or use drugs at a greater rate than whites, much less at a rate that would explain the vast disparity in prison populations.<sup>19</sup>

As a result of centuries of deliberate, systematic discrimination and exclusion, African Americans in California are significantly worse off than their white counterparts across multiple metrics. Economically, policies that bolstered the development of white wealth and prevented the development of African American wealth were effective: as of 2019, white households owned nine times more assets than Black households.<sup>20</sup>

Disproportionate incarceration rates had ripple effects far beyond the term of imprisonment, including increasing the risk of homelessness.<sup>21</sup> African American families have also been disproportionately harmed: as of July 2023, African American children made up over 20 percent of children in foster care in the state,<sup>22</sup> even though African American children are approximately 5.4 percent of the state's child population.<sup>23</sup> And "African Americans have higher rates of morbidity and mortality than white Americans for almost all health outcomes in the United States," which is the result of "a culmination of historical racial inequalities, discriminatory health policy, and persistent racial discrimination in many sectors of life in the United States."<sup>24</sup>

### 3. The Task Force's reports and recommendations

In 2020, the Legislature enacted AB 3121 (Weber, Ch. 319, Stats. 2020), which created the first-in-the-nation Task Force to explore options for providing reparations to African Americans, and particularly the descendants of enslaved persons, in recognition of California's role in the heinous institution of slavery and the post-abolition

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<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> Final Report, *supra*, p. 411.

<sup>20</sup> Final Report, *supra*, p. 15.

<sup>21</sup> *Id.* at pp. 417-418.

<sup>22</sup> California Child Welfare Indicators Project, University of California at Berkeley, Report: Children in Foster Care by Ethnic Group: Number in Care, CWS/CMS 2023 Quarter 3 Extract (Feb. 21, 2024), available at <https://ccwip.berkeley.edu/childwelfare/reports/InCareRates/MTSG/r/rts/1>.

<sup>23</sup> *Id.*, Report: Children in Foster Care by Ethnic Group: Total Child Population.

<sup>24</sup> Final Report, *supra*, p. 462.

perpetuation of racist institutions.<sup>25</sup> The Task Force released an interim report on June 1, 2022, which provided the Task Force’s preliminary findings regarding the ongoing and compounding harms caused by federal, state, and local governments from slavery and the “ ‘badges and incidents of slavery’ ” that continued to be imposed on African Americans long after slavery was formally abolished.<sup>26</sup> The report notes that, because “the effects of slavery infected every aspect of American society over the last 400 years...it is nearly impossible to identify every ‘badge and incident of slavery,’ to include every piece of evidence, or describe every harm done to African Americans.”<sup>27</sup>

On June 29, 2023, the Task Force issued its final report to the California Legislature.<sup>28</sup> The final report incorporates and updates the interim report and recommends appropriate remedies, including compensation, for African Americans as recompense for the State’s gross human rights violations against African Americans and their descendants.<sup>29</sup> The final report explains:

[T]he harms inflicted upon African Americans have not been incidental or accidental—they have been by design. They are the result of an all-encompassing 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. And there has been no comprehensive effort to disrupt and dismantle institutionalized racism, stop the harm, and redress the specific injuries caused to descendants and the larger African American community.<sup>30</sup>

The Task Force developed its recommendations for reparations taking into account this willful infliction of harm and applying international standards and principles for the remedy of wrongs and injuries caused by a government.<sup>31</sup> One of the Task Force’s recommendations is that the State formally apologize for its human rights abuses.<sup>32</sup>

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<sup>25</sup> HR 40 (Lee, 118th Cong., 2023-2024), a federal bill to create a federal commission to study the effects of slavery and discrimination on African Americans and devise reparations proposals, is pending before the House Committee on Judiciary. The bill has been introduced every year since 1989.

<sup>26</sup> California Task Force to Study and Develop Reparation Proposals for African Americans, Interim Report (June 1, 2022), available at <https://oag.ca.gov/ab3121/reports>.

<sup>27</sup> *Id.* at p. 5.

<sup>28</sup> See generally Final Report, *supra*.

<sup>29</sup> *Id.* at p. 4.

<sup>30</sup> *Id.* at p. 48.

<sup>31</sup> *Id.* at p. 512.

<sup>32</sup> *Id.* at pp. 596-597.

4. This resolution acknowledges, apologizes for, and accepts responsibility for California's role in promoting, facilitating, enforcing, and permitting the institution of chattel slavery and the subsequent systematic structures of discrimination against African Americans

This resolution takes the first step toward implementing the recommendations of the Task Force, by acknowledging the harms and abuses perpetrated by the State against African Americans, accepting responsibility for the harms and atrocities it caused, and apologizing for them. The resolution further affirms California's role, going forward, in protecting the descendants of enslaved people. This resolution is identical to ACR 135 (Weber, 2024), which is pending before the Assembly floor.

The resolution does not constitute a formal state apology, though one is in the works. AB 3089 (Jones-Sawyer, 2024), which is pending referral in the Assembly, would issue a formal apology on behalf of the State in the form of a formal apology proclamation. This resolution is also not intended to create any liability on behalf of, or right to benefits from, the State of California or any of its subdivisions or employees; the acknowledgement of responsibility is intended to convey moral, but not legal, culpability. Nevertheless, as explained by the author, this non-binding acknowledgement of responsibility and apology is an important and long overdue first step towards recognizing the ongoing harms of slavery.

#### SUPPORT

None received

#### OPPOSITION

None received

#### RELATED LEGISLATION

##### Pending Legislation:

AB 3089 (Jones-Sawyer, 2024) provides that the State of California recognizes and accepts responsibility for all of the harms and atrocities committed by the state, its representatives thereof, and entities under its jurisdiction who promoted, facilitated, enforced, and permitted the institution of chattel slavery and the enduring legacy of ongoing badges and incidents from which the systemic structures of discrimination have come to exist; provides that the State of California accepts this responsibility with a formal apology for the harms perpetrated by the state, and orders this apology to be memorialized in the form of a proclamation to be publicly and conspicuously displayed permanently in the California State Capitol building; and requires the Legislature to



prepare a formal apology proclamation, as specified. AB 3089 is pending referral in the Assembly.

ACR 135 (Weber, 2024) is substantially similar to this resolution. ACR 135 is pending on the Assembly Floor.

Prior Legislation:

AB 3121 (Weber, Ch. 319, Stats. 2020) established a nine-member “Task Force to Study and Develop Reparation Proposals for African Americans, with a Special Consideration for African Americans Who are Descendants of Persons Enslaved in the United States.” The legislation required the Task Force to, among other things, identify, compile, and synthesize the relevant evidence and documentation on the institution of slavery that existed within the United States and the colonies; recommend the forms that any compensation might take and who should be eligible for such compensation. Finally, the bill required the Task Force to submit a written report of its findings and recommendations to the Legislature. The final report was released on June 29, 2023, and the legislation establishing the Task Force became inoperative on July 1, 2023.

AJR 21 (Gonzalez, 2019) would have formally apologized for California’s past complicity in enabling and furthering the practice of slavery and urged the United States Congress and the President of the United States to enact House Resolution 40 to study the legacy of slavery and provide recommendations on redress for descendants of enslaved persons. AJR 12 died in the Senate Rules Committee.

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