



California Task Force to Study and Develop Reparation Proposals for African Americans

SUBPOENA ADVISORY COMMITTEE

CONTEXT

The Task Force Interim Report establishes that the criminal legal system is a sector responsible for some of the most egregious state sanctioned human rights abuses against Black people.

Data tells the story of racial injustice objectively and convincingly. That is why robust, uniform, and strategic data collection is key to rehabilitating California's legal system within the reparations framework.

The Racial Justice Act (RJA) is existing law that can potentially serve as an effective backstop to racial profiling and anti-black bias in the California criminal legal system, if advocates have access to competent prosecutorial data to establish bias. Under the current parameters of the RJA, the data collection and transparency requirements are insufficient.

CONTEXT

The Task Force is leveraging its mandate to help to strengthen the Racial Justice Act by requiring all California District/City Attorney offices and Superior Courts to disclose the nature of the data collected regarding race at every level of the criminal prosecution process.

The advisory team deployed a survey to gather the information on data collection protocols in each prosecution office and court. This survey is a preliminary step to inform our recommendations to rehabilitate the criminal legal system within a reparations construct.

FINDINGS

A) The summation of the data collection protocol survey shows that data that implicates race is not being collected systematically or uniformly across all prosecutorial offices. Therefore, the Task Force should recommend fixes to the Racial Justice Act that require greater uniformity in data collection.

B) Based on our focused conversations with the leading advocates who use the Racial Justice Act, we can draw the conclusion that the RJA is undermined by the lack of prosecutor transparency, which blocks advocates access to data relating to racial bias in prosecution. Therefore, to try and correct biased prosecutions, the Task Force should recommend that systems be put in place to facilitate data transparency.

RECOMMENDATIONS

Specific non-uniformity and non-transparency fixes:

1) An enhanced right to discovery in criminal cases where defendants raise Racial Justice Act claims and/or defenses, with a low threshold for asserting these claims in the context of criminal litigation.

2) Non-compliance Penalties and Deterrence: Individual prosecutors who thwart Racial Justice Act data transparency requirements and engage in discovery violations (similarly to *Brady* violations) should be subject to penalties in the form of adverse rulings, jury instructions, and case dismissals. Also, institute fiscal and systemic penalties for offices that routinely fail to comply with RJA transparency and discovery rules.

RECOMMENDATIONS

3) Racial Justice Act Commission: Create a Commission, similar to the RIPA Board, to track, audit, monitor, and analyze data generated by the RJA process. This Commission could be styled as an arm of the Freedman Agency.

- Establish KPIs and other quality control metrics to ensure compliance by prosecutor offices and courts.
- Publish annual reports on prosecutorial bias for public consumption.
- Establish a federal nexus, which ensures that California data on prosecutorial bias and criminal legal racial profiling is uploaded and synced to national racial profiling databases.

RECOMMENDATIONS

4) Increase Public Oversight: Provide grants, technical assistance, and other resources to watchdog organizations and community based organizations to build expertise and capacity for Racial Justice Act advocacy and compliance monitoring. As a practical matter, this will have the effect of deputizing private Attorney Generals with the skills and infrastructure to leverage public pressure as a quality control for RJA compliance.