



NEW YORK STATE  
BAR ASSOCIATION

# Report and Recommendations of the New York State Bar Association **Task Force on Racism, Social Equity, and the Law**

June 2022

The views expressed in this report are solely those of the Task Force and do not represent those of the New York State Bar Association unless and until adopted by the House of Delegates.

# Task Force on Racism, Social Equity, and the Law

On June 12, 2021, President T. Andrew Brown stated, “I will convene a task force on racism, social equity and the law, with an eye toward building on the work the association has undertaken to address some of the most intransigent regulations, laws, and structures that are collectively holding us back as a society from achieving true equality. We will strive to see every issue we tackle this year through the lens of equity, as we know all too well that racism and injustice pervades almost every aspect of our lives.”

In setting our mission, the Task Force grounded it in the Association’s purposes as outlined in the Bylaws: “to promote reform in the law; to facilitate the administration of justice; ... to apply its knowledge and experience in the field of the law to promote the public good.” Thus, the Task Force sought to examine how structural racism permeates and influences facets of daily life leading to injustice and inequality among New Yorkers in six areas: (1) housing, (2) health, (3) criminal justice, (4) education, (5) economic opportunity and (6) environmental justice. Our mission reflects this Association’s deep commitment to examining the role that the law and this Association’s members can play in overturning the long lingering impacts of structural racism.

This draft report, as envisioned by President Brown, identifies some of the “intransigent regulations, laws, and structures that are collectively holding us back as a society from achieving true equality” and proposes 40+ recommendations to provide equality in opportunity and equity in result to mitigate the effects of structural racism.

In submitting this draft report, the Task Force is seeking feedback from the sections and committees so we may finalize the report for final submission to the House of Delegates at the June meeting. As such, please focus your feedback to us on the substance of the report – the recommendations – and not on the formatting, citations or footnoting.

Our report has three main sections: (1) Key and Framing Concepts, (2) Subcommittee Reports and Recommendations and (3) Concluding Remarks (to be provided in the final report).

## Key and Framing Concepts

A common perception is that people of color should be able to achieve success in the US. Slavery was abolished over 150 years ago by the 13<sup>th</sup> Amendment, laws were passed in the 1900s to address the practices put in place to exclude people of color from being able to exercise their rights as US citizens. Although laws have been on the books for a generation to correct exclusionary public policy practices, people of color still fall short of obtaining true equitable outcomes in the United States.

To understand why equity evades many people of color, we need to understand some key concepts creating this situation. But first, we provide a modern illustration to frame these concepts - artificial intelligence.

“Society has and will continue to benefit from AI based on character/facial recognition, digital content analysis and accuracy in identifying patterns, whether they are used for health sciences, academic research or technology applications,” observes Mark Butler member of Forbes Technology Council in the March 2018 article entitled *14 Ways AI Will Benefit Or Harm Society*, “The AI risks are real if we don't understand the quality of the incoming data and set AI rules which are making granular trade-off decisions at increasing computing speeds.”

What is the risk with incoming data? The risk is that the data contains bias. “The critical question to ask is: What is the root cause for introducing bias in AI systems, and how can it be prevented?” asks in a subsequent February 2021 Forbes article entitled *The Role Of Bias In Artificial Intelligence*, “In numerous forms, bias may infiltrate algorithms. Even if sensitive variables such as gender, ethnicity or sexual identity are excluded, AI systems learn to make decisions based on training data, which may contain skewed human decisions or represent historical or social inequities.”

The introduction of bias into AI is such a significant risk that the NY Department of Financial Services cautioned insurers in 2019 to “not use an external data source, algorithm or predictive model for underwriting or rating purposes unless the insurer can establish that the data source does not use and is not based in any way on race, color, creed, national origin, status as a victim of domestic violence, past lawful travel, or sexual orientation in any manner, or any other protected class.”

Algorithms, the systems and applications containing the algorithms and the computers, by extension, are not biased. Yet, they can and have produced biased results because of the “incoming data” that is used to enable them to make decisions and deliver outcomes. Why?

Data is based on human experiences, perceptions and, thus, our biases. The algorithms are the processes through which the data is assessed and analyzed to produce an outcome. The computer is the tool used to deliver that outcome. As such, the outcome will contain whatever bias was present in the data.

In the way that these algorithms produce biased results, our policies and laws have created structures that perpetuate biases in our institutions. The bias, to put a finer point on it, is racism. Racism is defined by the Merriam-Webster dictionary is, “a belief that [race](#) is a fundamental [determinant](#) of human traits and capacities and that racial differences produce an inherent superiority of a particular race; the [systemic](#) oppression of a racial group to the social, economic, and political advantage of another.”

Policies and laws (criminal justice, education, housing, health) are similar to algorithms, they are the processes to determine how resources are allocated. The institutions - the court system, schools, regulatory and other government agencies - are the tools that disseminate the resources. If bias is at the starting point, the bias is embedded and permeates the processes and the tools. Even if you were not a part of the creation of the bias, the process or the tool, you can still be a beneficiary of the resource allocation or not.

Structural racism as explained by Paula Johnson, Professor of Law at Syracuse University “is a system of laws, policies, and institutional practices that produce and perpetuate racial inequities and inequalities in the United States... structural racism can operate in discrete, interconnected, and synergistic ways.”

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## Subcommittee Reports and Recommendations

### Housing Subcommittee Report

As is noted in the summary above, the involvement of the federal government in racial housing discrimination is well-documented[i]. State-enacted legislation allowing racial discrimination in residential housing was permissible until the U.S. Supreme Court decision of *Buchanan v. Warley* in 1917.[iii] In *Buchanan*, a Kentucky ordinance restricted the sale and occupancy of real property based on race.[iv] The petitioner in the case, a White American, wanted to sell his property to a Black American, arguing that the ordinance was unlawful[v] because it deprived him of the right to dispose of his property without due process of law. The Court held the Kentucky ordinance to be unlawful under the 14<sup>th</sup> Amendment because it restricted the sale and occupancy of real property based on race. [vi]

Although race-based State enactments related to purchasing or occupying housing were no longer constitutional after *Buchanan*, private citizens were still free to discriminate against persons due to their racial preferences.[ix] The Supreme Court, approximately thirty years after *Buchanan*, addressed this issue in the case *Shelley v. Kraemer*, by holding that private restrictive covenants on the conveyance of real property based on race were valid under the 14<sup>th</sup> Amendment, but unenforceable in a Court of law.[x] While the Supreme Court recognized that the 14<sup>th</sup> Amendment “erects no shield against merely private conduct, however discriminatory or wrongful”, it further held “that in granting judicial enforcement of the restrictive [agreement] in [this case], the [State has] denied petitioners the equal protection of the laws and that, therefore, the action of the [State court] cannot stand.”[xiv]

At the advent of the Great Depression, there was an enormous housing shortage in the country and many families were homeless. In 1933, President Roosevelt created the Public Works Administration, one of the New Deal programs, to build public housing for white middle-class and lower middle-class families. Almost as an afterthought, the government also began to build public housing for black families. However, one of the explicit requirements was that public housing throughout the country had to be segregated by race. As Richard Rothstein noted, the federal government’s policy segregated neighborhoods that had never known segregation before. [xv]

In 1934, the Federal Housing Administration (FHA) was created to facilitate home financing in the wake of the Great Depression. [xvi] In seeking to develop a method of assessing the value of residential land, the FHA employed Frederick M. Babcock, who in 1924 had authored the manual The Appraisal of Real Estate. [xvii] Babcock instructed appraisers evaluating homes for federally-insured mortgages to:

investigate areas surrounding the location to determine whether or not incompatible racial and social groups are present, to the end that an intelligent prediction may be made regarding the possibility or probability of the location being invaded by such groups. If a neighborhood is to retain stability it is necessary that properties shall continue to be

occupied by the same social and racial classes. A change in social or racial occupation generally leads to instability and reductions in values.[xviii]

Joining Babcock at the FHA was Homer Hoyt who affirmed Babcock's belief that race affected land values. Using the Babcock/Homer construct, determinations were made at FHA as to who would receive government-backed mortgages: white people would qualify because of their perceived positive influence on land values; Black people would not because of their perceived negative affect on land values. As white families left public housing, the FHA-financed mortgages allowed for the development of white suburbia. Moreover, FHA required white homeowners to have deeds with covenants prohibiting the sale of the properties to Black people. Over time, maps all over the country would be constructed showing where FHA will grant mortgages. Census tracts with a large number of Black citizens were circled with a red marker. No FHA-backed mortgages would be issued in the red-circle census tracts and no one in a red-circled census tract would qualify for an FHA-backed mortgage. This practice came to be known as redlining.

Against the backdrop of the civil rights movement, Congress enacted several pieces of pivotal legislation to ensure racial equality for all under the law for many fundamental aspects of American life.[xxx] One of these enactments was the Civil Rights Act of 1968, commonly referred to as the Fair Housing Act.[xxxii] This Act not only declared that racial discrimination in housing was unlawful, but provided a remedy for redress as this occurred because persons could now be held responsible for such conduct in civil and criminal proceedings.[xxxii] Also, Congress entrusted the U.S. Department of Housing and Urban Development ("HUD"), which had been created just a few years earlier in 1965, with the responsibility of ensuring that the goals of the Fair Housing Act were carried out.[xxxiii] In 1974, HUD was later given the authority to make community development block grants ("CDBG") to State and local governments to affirmatively further fair housing throughout the United States.[xxxiv] The CDBG are federal funds that HUD distributes to municipalities and not-for-profits throughout the United States for different fair housing initiatives.[xxxv] Receipt of funding has always triggered an obligation to affirmatively further fair housing. The obligation to affirmatively further fair housing requires recipients of HUD funds to take meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics, which are:[xxxvi] race, color, national origin, religion, sex (including sexual orientation and gender identity), familial status, and disability.

In 2015, HUD set new responsibilities for each recipient to ensure that its sub-recipients of the CDBG are trained in exactly how to spend the grant money to meet the obligation to "affirmatively further fair housing" through projects that expand affordable housing. Further, two years earlier, HUD promulgated additional regulations in 2013 that set a national standard for establishing disparate-impact liability by initially stating that it "has long interpreted the [FHA] to prohibit practices with an unjustified discriminatory effect, regardless of whether there was an intent to discriminate." [xxxvii] HUD thereby sought to "[formalize] a [three-part] burden-shifting test for determining whether a given practice has an unjustified discriminatory effect, leading to

liability under the [FHA].[xxxviii] This final rule also adds to, and revises, illustrations of discriminatory housing practices found in HUD's Fair Housing Act regulations.”[xxxix]

The Supreme Court subsequently held in *Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc., et al.*, (576 U.S. 519 [2015]), that the 1988 amendments to the FHA “signal that Congress ratified disparate-impact liability.” While *Shelley* found racially restrictive covenants to be unconstitutional and the Fair Housing Act of 1968 prohibited racial discrimination in the financing of housing, the thirty-four years of non-investment in the Black community contributed to the lack of development in the community and to the poor economic outcomes of the inhabitants. Rothstein noted in the 2017 NPR interview that:

(t)oday, African-American incomes, on average, are about 60 percent of average white incomes. But African-American wealth is about 5 percent of average white wealth. Most middle-class families in this country gain their wealth from equity they have in their homes. So, this enormous difference between a 60 percent income ratio and a 5 percent wealth ratio is almost entirely attributable to federal housing policy implemented through the 20<sup>th</sup> century. . . . African-American families that were prohibited from buying homes in the suburbs in the 1940s and ‘50s and even into the ‘60s by the Federal Housing Administration gained none of the equity appreciation that whites gained[xli].

In New York State, the historical record is replete with accounting of the exercise of governmental power to deprive Black or African Americans access to land and home ownership both before the Civil War was fought and thereafter in the assertion of the doctrine of eminent domain. Examples of governmental taking of land, owned and/or occupied by African Americans, include but are not limited to the following: Seneca Village, Manhattantown, San Juan Hill, all in New York County.

The use of eminent domain is not the only tactic that has been consistently employed by governmental entities, within New York State, to create barriers to residents of color from enjoying access to fair and affordable housing notwithstanding the governing enactments of the Civil Rights Act of 1968. In more modern times, a distinct pattern and practice of a failure to build such housing stock, even after localities have sought and obtained federal grant monies for this very purpose, has emerged.

Since both the federal and New York State government created the framework and contributed significantly to the gross inequities between the Black and White communities, it is appropriate to call upon these governments to remedy the situation. This portion of the report is asking the House of Delegates of the New York State Bar Association to adopt the following recommendations:

## RECOMMENDATIONS

- (1) NYSBA recommends that the Department of Financial Services undertakes a study to determine whether any entity underwriting mortgages in the State of New**

**York are using external data sources, computer algorithms, and/or predictive models that have a significant potential negative impact on the availability and affordability of home mortgages for protected classes of consumers**

As highlighted in the Key and Framing Concepts section of our report, bias in data can lead to disparate outcomes for people of color. It is recommended that New York State take steps to prevent what is termed as ‘Coded Bias’ in the FINTECH [lxxxix] mortgage sector of the economy. FINTECH is the melding of finance services and technology that now dominate the financial sector of the economy. It not only facilitates the ease of on-line banking but is also playing an increasingly larger role in the mortgage industry. The rapid rise of complete mortgage services (from application to approval/denial) can now be done remotely with the use of computer applications based on sophisticated algorithms. The best way to encapsulate the concern here is that ‘any application/algorithm is only as good as the data inputted.’

Recent articles, scholarship, and studies on Coded Bias indicate that, even when holding seventeen different factors steady in a complex statistical analysis of more than two million conventional mortgage applications for home purchases, lenders were 40% more likely to turn down Latino applicants for loans, 50% more likely to deny Asian/Pacific Islander applicants, and 70% more likely to deny Native American applicants than similarly-situated White applicants. It was an 80% rejection rate for Black applicants[xc] compared to similarly situated White applicants[xci]. Even more alarming, as reported in the August 25, 2021, article of The Markup entitled “The Secret Bias Hidden in Mortgage-Approved Algorithms:”

No one outside Fannie and Freddie knows exactly how the factors in their underwriting software are used or weighted; the formulas are closely held secrets. Not even the companies’ regulator, the FHFA, appears to know, beyond broad strokes, exactly how the software scores applicants, according to (David) Stevens, who served as Federal Housing Administration commissioner and assistant secretary for housing at HUD during the Obama administration.

Given this level of ignorance, it is clear that many laws are NOT equipped to discover and ferret out the effects of Coded Bias in housing discrimination. As another recent paper put it[xcii]:

America’s current legal and regulatory structure to protect against discrimination and enforce fair lending is not well equipped to handle AI (artificial intelligence). The foundation is a set of laws from the 1960s and 1970s (Equal Credit Opportunity Act of 1974, Truth in Lending Act of 1968, Fair Housing Act of 1968, etc.) that were based on a time with almost the exact opposite problems we face today: not enough sources of standardized information to base decisions and too little credit being made available. Those conditions allowed rampant discrimination by loan officers who could simply deny people because they “didn’t look credit worthy.”

For the practicing bar and specifically the attorneys who work in the equal rights arena, this is extremely difficult as the pertinent actor in the discriminatory housing case is not likely to be an actual person, but rather a computer program into which a person has ‘entered the data.’

The fact that a computer algorithm may be committing the discrimination has been identified in another recent study. “The mode of lending discrimination has shifted from human bias to algorithmic bias,” according to the study co-author Adair Morse, a finance professor at the Haas School of Business that published the study. “Even if the people writing the algorithms intend to create a fair system, their programming is having a disparate impact on minority borrowers — in other words, discriminating under the law.” [xciii]

In addition to the problem with algorithms is the fact that many computer applications now are capable of making their own correlations through the use of artificial intelligence (AI). By doing so, the AI-enhanced computer application will then start making other correlations among factors. As the Brookings article pointed out:

There are strong reasons to believe that AI will naturally find *proxies for race*, given that there are large income and wealth gaps between races. As Daniel Schwarcz put it in [his article on AI and proxy discrimination](#): ‘Unintentional proxy discrimination by AIs is virtually inevitable whenever the law seeks to prohibit discrimination on the basis of traits containing predictive information that cannot be captured more directly within the model by non-suspect data.’ Proxy discrimination by AI is even more concerning because the machines are likely to uncover proxies that people had not previously considered. Think about the potential to use whether or not a person uses a Mac or PC, a factor that is both correlated to race and whether people pay back loans, [even controlling](#) for race[xciv].

Finally, it must be mentioned that use of credit scores in the current FINTECH/mortgage system has to be studied relative to the impact of credit in housing discrimination. In this context, it should be noted that the entities determining credit scores are NOT public entities. They are in fact private for-profit corporations. It should be further noted that these credit scoring entities’ use, and adoption of electronic data precede that of the mortgage industry. It is quite likely that this is the reason the ‘electronic mortgage market’ is so heavily influenced by credit scores. This raises multiple concerns.

First, not all ‘public data’ are correct. There has been and continues to be mistakes by credit reporting agencies in the use of public information such as judgments, careless disregard for the rights of victims of identity theft and failed to recognize simple credit fraud schemes victims may have suffered. In addition, it is noteworthy that NOT all financial transactions are going to be captured by credit reporting agencies. For electronic credit information to be captured/reported, it not only requires that the purchaser/consumer uses an electronic medium, but also the vendor/seller be tied into, and reporting that data to, the private credit reporting agencies. There is a fee associated with this service. Consequently, many vendors in fact do NOT report this data.

This clearly can affect poor BIPOC [xcv] communities as well as large rural swaths of New York State where credit use, and payments, are likely not being ‘captured’. Perhaps the best example in this regard is the recent announcement by Fannie Mae and some credit reporting agencies that they will begin to use rent payments for credit scoring purposes. Of course, for this to be of assistance to someone in obtaining a mortgage, the landlord has to report the payments.

With respect to the credit reporting agencies, it is clear that they have been for some time in the ‘data merchant’ business. From even a cursory review of a credit reporting company’s website, one can easily discern that the company already has developed ‘data products’ that can reveal where the highest credit scores are located and the places most desirable for banks to issue mortgages. In this context, it is likely that there will continue ‘geographic discrimination’ and/or ‘Coded Bias,’ which inevitably will continue to impact negatively poor BIPOC communities and sizable portions of rural New York State.

Many times, the popular expression may be for the State to ‘get ahead of the curve.’ It is submitted that the better expression at this point may be for the State to at least get on the graph.

**(2) To assist in the eradication of substandard public housing, it is recommended that a New York State Bar Association entity or another appropriate body examine, evaluate, and recommend steps towards the elimination of substandard housing conditions endemic to public housing and Housing Choice Voucher/Section 8 and promote access to housing through HUD-CDBG’s affirmatively furthering fair housing (AFFH).**

The Subcommittee has two recommendations. First, it recommends that a New York State Bar Association entity or another appropriate body examine, evaluate, and recommend steps to eradicate substandard housing conditions endemic to public housing and Housing Choice Voucher/Section 8. The goals would be to preserve, restore, and maintain public and private housing. Given the complexities and challenges presented by the history of housing inequities, an ongoing approach and monitoring is in order to “effectuate meaningful societal transformation.” [xcvi] Second, the subcommittee recommends that current HUD CDBG funding be used in accordance with its potential and encourages adherence to meaningful use of that funding in accordance with its underlying goal of affirmatively furthering fair housing.

The Subcommittee on *Block grant funding/Fair Housing/Public Housing (including sec.8)* discussed and examined basic issues pervasive in public housing and section 8 housing and concludes that substandard housing conditions exist and have a negative and lasting impact on communities of color. [xcvii] The history of housing segregation, discrimination, and the unequitable allocation of resources have deep roots. While these practices are illegal, the remnants of the past continue to disproportionately affect housing conditions in communities of color. [xcviii]

The Subcommittee finds that as a matter of state and federal policy, when local governments apply for and accept federal funding for community development to create affordable and fair housing within their municipalities, HUD's "affirmatively furthering fair housing" requirements should be construed as unambiguous. Ambiguity opens the gate to noncompliance with Federal Fair Housing Laws. Furthermore, the HUD regulations and guidelines regarding the AFFH requirements must be aggressively enforced by HUD. Enforcement is needed to ensure that local governments, who fail to adhere to their obligations to affirmatively further fair housing, after accepting federal grant monies, are held accountable. Upfront enforcement alleviates costly and protracted litigation; this occurred in Westchester County in 2006. It should be noted that in that case, once HUD intervened, it brokered a settlement between the parties.

The subcommittee further recommends that the RPLS identify the current limitations on funding to address substandard housing through HUD's Eligible Activities. Currently, although funds CAN be used toward the salaries of inspectors enforcing codes, funds CANNOT be used to correct code enforcement violations identified during inspection.

This recommendation would expand the ability to address substandard housing through an existing funding stream.

Expanding the correction of code enforcement violations through inclusion as an Eligible Activity is consistent with the safe housing goals of HUD, as exemplified by its *Healthy Homes Production Grant Program*,<sup>[xcix]</sup> which takes a comprehensive approach to addressing multiple childhood diseases and injuries in the home by focusing on housing-related hazards in a coordinated fashion, rather than addressing a single hazard at a time. *Healthy Homes* builds upon HUD's successful Lead Hazard Control programs to expand the HUD's efforts to holistically address a variety of high-priority housing-based health and safety hazards, such as mold and moisture, poor indoor air quality, pests, carbon monoxide, injury, and safety hazards, in addition to lead-based paint.

The State's obligation to provide safe and affordable housing to prevent the separation of families and to properly provide for youths leaving placements must be enforced through adequate funding of parent and child representation in family court and the provision of adequate housing resources. Substandard housing, the hallmark of poverty, alone cannot continue to provide a basis for family separation in New York.

### **(3) NYSBA supports the "Good Cause Eviction" bills pending in the New York State legislature (S3082 and A5573)**

The establishment of legal protections for tenants from unjust evictions and unreasonable rent increases and requiring landlords to have a "good cause" to terminate a tenancy would go a long way to benefitting Black Indigenous People of Color (BIPOC), immigrant communities, and low-income households struggling with severe housing instability in New York. The National Equity Atlas<sup>[cv]</sup> estimates that 79% of those struggling to pay rent in New York are low income, and 72% of BIPOC. Evictions are always higher in counties with predominantly BIPOC renters. Between two demographics with little-to-no savings, BIPOC tenants are twice more likely to face evictions

than white tenants.[cvi] Further, [according to an analysis by the Community Service Society](#), more than half of the State’s renters make less than \$50,000 and 70% earn less than \$75,000; that is far below the median income of homeowners (\$98,000) in the State. Given the rapid rise in rent since 2021, with an average increase of 9.4% nationwide, these residents may not make rent in the coming months. [cvii]

The best way to reverse these racial and economic inequities in housing is to strengthen tenant protections. Currently, the Good Cause Eviction bills, proposed by Senator Julia Salazar (S3082) and Assemblymember Pamela J. Hunter (A5573) are an important and impactful step, and should be supported by the New York State Bar Association.

The proposed law applies to all apartment buildings except for owner occupied 1–4-unit homes, and would cover approximately 1.6 million households, including about four million tenants statewide, roughly half the state’s renters. Good cause eviction also protects month to month tenants and tenants with no lease, renters that are more likely to be working class, low income, and immigrants.

The bill would not reduce supply in housing, nor would it discourage investment. Landlords can still set “first rents” at market rates that cover their construction and debt levels. Research from other states show that similar laws give confidence to tenants who know they are in a stable housing market. The state of New Jersey has had Good Cause eviction protections for nearly fifty years and yet apartment construction has boomed in many parts of the state.

[Research](#) published by Princeton University’s Eviction Lab in 2019 found that Good Cause laws passed in California significantly reduced evictions and evictions filing rates. [cix]

## **Economic Opportunities Committee and Housing Committee Joint Recommendations on Reparations**

### **Recommendations:**

1. Support the House of Representative’s Bill H.R. 20, which would establish a 13-person commission to study the effects of slavery and racial discrimination in the United States, from before the country’s founding to the present day.<sup>i</sup>
2. The New York State Bar Association should support NY State Senate Bill and Assembly Bill(S7215/A2619a) that will create a slavery reparations Commission. The Commission establishes a Commission to study and examine the harm done and would establish a plan on how to deliver reparations to African Americans. The Commission would not provide money. The Bill has stalled in The New York State Bar Association should urge Assembly Speaker Carl Heastie and Senate Majority Leader Stewart Cousins to pass the bill. The Bill would start

off with establishing a Commission to Study. At this time the Commission would not provide financial restitution.

3. NYSBA should request the Governor to authorize the Department of Financial Services to conduct a study on reparations with respect to the effect of housing discrimination on communities of color as a result of redlining and the use of eminent domain, along with other tactics intended to prevent their access to homeownership and quality affordable housing.

### **Restitution for the enslavement of people of African descent in what is now the United States of America**

#### **What is owed to Black America?**

In the United States, reparations were paid on April 16, 1862—to slave owners. Pursuant to the Act for the Release of Certain Person Held to Service or Labor within the District of Columbia, signed by President Lincoln, former slave owners received \$300 per enslaved person, for a total of \$930,000 (\$25,000,000 in today's value). By contrast, the formerly enslaved received nothing, albeit they were offered a \$100 emigration incentive (\$2,683 today), if they agreed to leave the United States permanently.<sup>ii</sup>

The infamous “forty acres and a mule” offer to Black Americans came later:

As the Civil War was winding down ... Union leaders gathered a group of black ministers in Savannah, Ga. The goal was to help the thousands of newly freed slaves. From that meeting came Gen. William T. Sherman's Special Field Order 15. It set aside land along the Southeast coast so that "each family shall have a plot of not more than forty acres of tillable ground." That plan later became known by a signature phrase: "40 acres and a mule."<sup>iii</sup>

According to Professor Henry Louis Gates, Jr. of Harvard University's Hutchins Center for African & African American Research, in his article, entitled, “The Truth Behind '40 Acres and a Mule,”:

Sherman prescribed 40 acres in that Order, but not the mule. The mule would come later. ... With this Order, 400,000 acres of land — “a strip of coastline stretching from Charleston, South Carolina, to the St. John's River in Florida, including Georgia's Sea Islands and the mainland thirty miles in from the coast,” as Barton Myers reports — would be redistributed to the newly freed slaves. The extent of

this Order and its larger implications are mind-boggling, actually. General Sherman met with Black ministers in Savannah, Georgia to learn what the freed slaves “most wanted,” and their response was recorded as “to have land, and turn it and till it by our own labor ... and we can soon maintain ourselves and have something to spare ... We want to be placed on land until we are able to buy it and make it our own.” And when asked next where the freed slaves “would rather live — whether scattered among the whites or in colonies by themselves.” President Lincoln thereby approved this Order. By June of 1865, June, “40,000 freedmen had been settled on 400,000 acres of the [land designated for their occupancy and possession.]” Sherman later ordered that the army could lend the new settlers mules; hence the phrase, “40 acres and a mule.”

After Lincoln’s assassination on April 14, 1865, the order was rescinded by then President Andrew Johnson and the land ordered to be given to Black families was rescinded or returned to white Confederate landowners.<sup>iv</sup> As cogently described by Professor Gates: “the very people who had declared war on the United States.”

Left homeless and jobless, many Black families resorted to sharecropping (a form of indentured servitude where former slaveholders “leased” them land to farm in exchange for a large portion of the crops produced and “extended credit” for equipment, like seeds and fertilizer).<sup>v</sup>

Black people who did not even have that paltry option, were arrested for things like “vagrancy” and—when they could not pay the hefty fines—jailed for long periods of time and made to work in the coal mines, turpentine factories and lumber camps. At this point, due to these “Black Codes,” 9 out of 10 convicts were Black people. Black convicts were leased to private companies and the southern states profited from incarcerating Black people.<sup>vi</sup>

Following the inequities of the Reconstruction period (1865-1877), America ushered in Jim Crow laws (1877-1965), which enforced racial segregation in many forms and through many means, including redlining.

## **Housing Segregation and Redlining**

Housing segregation was no accident – it was the result of institutional practices of discrimination. The systemic practice of denying lending to applicants based on average community income is today known as “redlining” – a reference to red lines drawn on maps and relied upon by New Deal

housing programs of the 1930s to identify and avoid loans to predominately-Black neighborhoods and applicants living near such neighborhoods.<sup>vii</sup> The Home Owners' Loan Corporation (HOLC) was created by the United States Congress in 1933 as part of the New Deal housing programs, in part, to provide new low-interest mortgages to homeowners. The Federal Home Loan Bank Board (FHLBB), the parent company of HOLC, in 1935 initiated the "City Survey Program" which served as a study of real estate lending risks in more than 200 cities with the development of "residential security maps" that categorized neighborhoods into four grades. The fourth grade, grade D neighborhoods, were considered "hazardous" and colored in red on the map. These neighborhoods had low home ownership rates, old housing stock, and an "undesirable population", which, at the time, largely referred to Black Americans. The residential security maps played a major role in discriminatory lending and investment practices by banks for more than four decades and continued even after the passage of the Fair Housing Act of 1968, enacted to address racial discrimination in housing. It was not until the passage of the Housing and Community Development Act of 1977 that redlining was specifically addressed.

Together with racially restrictive housing covenants that prohibited Black Americans from buying certain properties, redlining prevented generations of families from gaining equity in home ownership or making improvements to homes already owned. These unfair practices form part of a long history of discrimination, which has contributed to the disparities in home ownership and the wealth gap still recognized between the Black and white populations of the country today.<sup>viii</sup> The history of redlining also supports examining reparations.

### **The current day value of "40 acres and a mule"**

Experts differ on what the current value of the promised "40 acres and a mule" would be today if America were to keep its promise to African Americans. Some say \$640 billion, others go as high as \$6.4 trillion.<sup>ix</sup>

Compare these sums to tax cuts in 2019, the "war on terror" and corporate subsidies, and even \$6.4 trillion set aside for reparations on the federal level<sup>x</sup> is not unreasonable.<sup>xi</sup>

Moreover, our nation prides itself in providing humanitarian aid to less developed countries. According to the United States Department of State website, "[t]he United States is the largest single provider of humanitarian assistance worldwide. Total U.S. humanitarian assistance worldwide was nearly \$13 billion in fiscal year 2021, including funding from the State Department's Bureau of Population, Refugees, and Migration and the U.S. Agency for International Development's Bureau for Humanitarian Assistance."<sup>xii</sup> The website further notes the following:

The primary goal of U.S. humanitarian assistance is to save lives and alleviate suffering by ensuring that vulnerable and crisis-affected individuals receive assistance and protection. U.S. funding provides life-saving assistance to tens of millions of displaced and crisis-affected people, including refugees, worldwide.

Our assistance provides urgent, life-saving support, including food, shelter, safe drinking water, improved sanitation and hygiene, emergency healthcare services, child protection programs, and education, among other activities. This assistance is provided as close to refugees' homes as possible in order to ensure timely access to assistance and mitigate against the need for dangerous onward travel.<sup>xiii</sup>

To our knowledge, there has never been an outpouring of opposition from the public at large and/or by their representatives in both the federal and state legislative branch of government because taxpayer funds are spent in this manner, particularly where there is no moral or legal obligation to provide monetary assistance to these disadvantaged individuals. Our State and Federal governments have a moral and legal obligation to remit long overdue monetary compensation to its citizens of African ancestry, who were once subjected to enslavement, followed by generational poverty as a result of government sanctioned race-based discriminatory practices, specifically tailored to deny them access to land acquisition, home ownership and quality affordable housing. As the effects of these abhorrent practices still linger today, in our view, just compensation remains due and payable to the descendants of these African slaves, and we respectfully submit should be prioritized over global humanitarian aid.

Indeed, Dr. Martin Luther King, Jr., himself, repeatedly asserted that Black people deserved reparations for all that they had endured in this country:

At the very same time that America refused to give the Negro any land, through an act of Congress our government was giving away millions of acres of land in the West and the Midwest, which meant it was willing to undergird its white peasants from Europe with an economic floor. But not only did they give them land, they built land grant colleges with government money to teach them how to farm. Not only that, they provided county agents to further their expertise in farming. Not only that, they provided low interest rates in order that they could mechanize their farms.<sup>xiv</sup>

**Why only Black people who can trace their lineage to American slavery, Reconstruction and segregation?**

[T]he Negro came to this country involuntarily, in chains, while others came voluntarily... [N]o other racial group has been a slave on American soil... [T]he other problem that we have faced over the years is that the society placed a stigma on the color of the Negro, on the color of his skin. Because he was black, doors were closed to him that would not close to other groups.<sup>xv</sup>

Not only were Black Americans forcibly enslaved and put to labor—which, as Dr. Martin Luther King, Jr. noted, is not the case for any other group of people in this country—the other groups of people wronged by the federal government have already received apologies and some form of monetary compensation: that includes Native Americans and Japanese Americans who were interned during World War II.<sup>xvi</sup> That is not to say that those groups were already made whole—no one can be made whole from genocide and oppression—but at least the United States government recognized that it had wronged Native Americans and Japanese Americans and both apologized and provided minimal financial remuneration for such wrongs.

While Congress issued an apology for slavery and Jim Crow in 2008, the United States has never attempted to right the monetary wrongs inflicted against Black Americans who were descendants of slaves.<sup>xvii</sup> Further, as much thought and planning that the federal, state and local governments put into the Black Codes, segregation, Jim Crow, even the “war on drugs” (which saw a disproportionate number of black men incarcerated for decades upon decades for marijuana offenses), equivalent planning and thought has not been given to undoing the effects of systemic racism and white supremacy in the United States.

### **The number of people at issue**

As of the 2020 census, there are 41.1 million people of African descent in the United States.<sup>xviii</sup> However, not all of those people are descendants of enslaved persons here in the United States. In fact, research shows that fully 9% of people who check off the “Black” box for race were born in other countries, like the Caribbean and Africa.<sup>xix</sup>

Even assuming that reparations were given to all 41.1 million Black people (which we are not advocating for) in the United States, a registry of that size is not untenable. Consider that the government can receive tax returns for all working adults in the country and issue tax refunds, when applicable, to same.

### **Who else is considering reparations?**

The House of Representative, via pending Bill H.R. 20, would establish a 13-person commission to study the effects of slavery and racial discrimination in the United States, from before the country's founding to the present day.<sup>xx</sup>

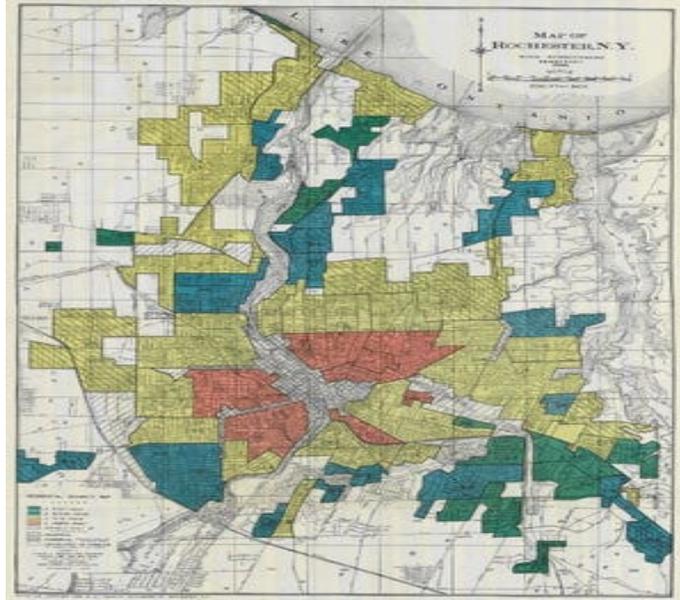
California Assembly Bill 3121 established the Task Force to Study and Develop Reparation Proposals for African Americans, with a Special Consideration for African Americans Who are Descendants of Persons Enslaved in the United States (Task Force or Reparations Task Force). The purpose of the Task Force is: (1) to study and develop reparation proposals for African Americans; (2) to recommend appropriate ways to educate the California public of the task force's findings; and (3) to recommend appropriate remedies in consideration of the Task Force's findings.<sup>xxi</sup>

### **What could reparations look like on a federal and/or state level?**

Reparations can take many different forms at both the federal and state levels.

The government could provide tax credits in specific amounts over a period of years to African Americans to be used in areas where the most discrimination occurred. For instance, credits toward a higher education or home ownership or to be used as capital to begin a new business. Student loan forgiveness and mortgage forgiveness (for government backed mortgages) up to a certain amount could be offered.

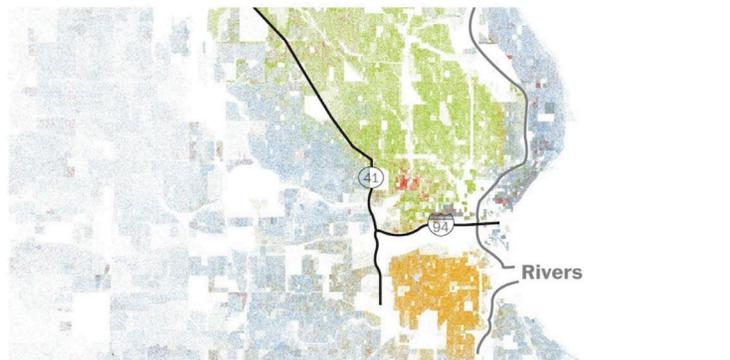
This requires further study and NYSBA should support the creation of commissions to do just that. Further, we recommend that NYSBA request the Governor to authorize the Department of Financial Services to conduct a study on reparations with respect to the effect of housing discrimination on communities of color as a result of redlining and the use of eminent domain, along with other tactics intended to prevent their access to homeownership and quality affordable housing



1935 Map of the City of Rochester (University of Richmond (VA))

### Lines of segregation in Milwaukee

1 dot = 1 person    ● White    ● Black    ● Asian    ● Hispanic    ● Other



Source: U-Va. Cooper Center analysis of 2010 Census data

THE WASHINGTON POST

## Economic Opportunities Report

### EXECUTIVE SUMMARY

In addition to the joint recommendation with the Housing Committee, the Economic Opportunities subcommittee identified the following additional areas for potential solutions for Black, Indigenous, and people of color (“BIPoC”) communities:

- A. Student loans;

- B. Expansion of labor rights and ending wage theft;
- C. Creating Alternatives to Public Assistance; and
- D. Access to capital and economic opportunities for those re-entering our communities post-incarceration.

#### A. Student Loans

As college is now considered the path to the middle class and more lower income students are attending college, the amount of student loans has skyrocketed, with student loan debt recently reaching \$1.11 trillion.”[4] While the amount of student debt is affecting students of all racial backgrounds, racial disparities in lending, amount of debt acquired and the ability to pay back the loans are evident, with Black students suffering disproportionately more than White Students. On average, Black students owe more, accumulate more debt accrued from interest, and suffer more secondary economic fallout, such as inability to purchase homes or have a savings account.

Black college graduates owe \$7,400 more on average than their white peers (\$23,400 versus \$16,000, including non-borrowers in the averages). But over the next few years, the Black-white debt gap more than triples to a whopping \$25,000. Four years after graduation, on average, Black graduates owe 12.5% more they borrowed.[5] Differences in interest accrual and graduate school borrowing lead to Black graduates holding nearly \$53,000 in student loan debt four years after graduation—almost twice as much as their white counterparts.[6]

This problem has several causes to include the lack of generational wealth, coming from a lower income background, and poorer post-graduation job prospects.[7] Family wealth is a critical factor on both college and post-college opportunities.[8] “Black students—whose families disproportionately do not own homes or retirement accounts and who cannot rely on intergenerational transfers for support—are far more likely to borrow not only federal subsidized and unsubsidized loans, but also have fewer alternative sources of credit beyond Parent PLUS loans.”[9] This finding was confirmed by the Federal Reserve of St. Louis. They found that “impact of just inheritance or large financial gifts and find that they decrease the existing racial wealth gap by nearly \$40,000, or 20 percent. Further ... White college graduates are significantly and substantially more likely to provide and receive financial support for education and/or a home purchase, while Black college graduates are significantly more likely to financially support their parents.” [10] Thus, 40% of all Black graduates have student loan debt from graduate school compared to only 22% of White graduate students.[11]

This problem is only getting worse as more students must borrow money in order to attend college. According to a study published by the Pew Research Center, the “class of 2011-12, graduates from relatively poorer families were more likely to borrow than were their richer counterparts. Nearly four-in-five graduates (77%) from the lowest parental income quartile had accumulated some

student debt by graduation compared with half of graduates from the richest parental income quartile.” [12] While College is viewed as the path to the middle class, unless a student starts in the middle-class s/he has a greater chance of accumulating debt. In “79% of graduates whose parents had no formal education beyond high school incurred student debt. By contrast, only 61% of graduates with college-educated parents incurred debt.” [13]

This accumulation of student debt has had an adverse impact on credit scores. Once, graduates and non-college graduates had similar score, but according to the New York Federal young student debtors have lower scores than those without student debt.[14]

“Black households carry more student debt, which pushes down their creditworthiness. Unsurprisingly, then, Black people with a college degree have lower homeownership rates than white high school dropouts.” [15]

Further, guaranteed student loans do not take into account the full cost of college. Students who borrow federal loans, on average must still produce \$7,900 to pay for college. This results in turning to private loans. The number of private loans grew from 5% to 14% between 2003-4 and 2008-2009 and falling back to 6% in 2011-2012.[16] The raising rates of default have caused some policy makers to consider limiting access to the federal loans.[17]

While college expenses and borrowing are increasing, Black graduates have a more challenging time repaying these increasing amounts. The Black-White wage disparity plays a significant role. Unfortunately, according to Economic Policy Institute that equality of educational access “only small effects on class-based wage inequality, and racial wealth gaps have been almost entirely unmoved by a narrowing of the black–white college attainment gap...” [18]

This depression of the Black college educated workforce has significant impacts on the economy. By having to service such large debt obligations, 46% of Black student borrowers were more likely to put off buying a home, while 60% do not have savings accounts. That number jumps to 71% for borrowers on income-driven repayment plans.[19] To that, it must also be kept in mind the structural barriers which still exist to both the job market and access to credit. Merely erasing student debt will not in, and of itself address the economic disparities noted by the Economic Policy Institute.

## Recommendations

1. “De-capitalize” student loans. Students who borrow relatively small amounts of money end up paying back double, if not triple, the amount borrowed due to the capitalization of interest, even during deferment periods. Student loan debt should not be treated like consumer debt.
2. Extend bankruptcy protection to all federal loans.

3. Allow PLUS loans (student loans taken by the student's parents) to be eligible for income-based repayment. [20]
4. Include a grace period where no interest would be charged for a period of 3 to 5 years after graduation in order to allow the graduate time to become economically settled.
5. Expand careers that are eligible for loan forgiveness.[21]
6. Shorten the period after which a loan is eligible for forgiveness from 10 years to 7.
7. Adjust the federal needs analysis to allow for a negative expected family contribution, so that all struggling families receive more support to facilitate college enrollment, reducing their need to borrow.
8. Increase the transparency of the borrowing process and lower the risks associated with borrowing, thus improving the odds that educational debt will help, rather than hinder, upward mobility. Begin this effort by extending bankruptcy protections to all federal loans and providing for an income-based repayment option for the PLUS loan.
9. Raise the borrowing cap on federal student loans. This would help close the gap between what is borrowed and what needs to be paid. This could prevent the recourse to private lenders with their higher rates.
10. Expand service-based tuition assistance plans, such as ROTC, GI Bill, AmeriCorps, etc., should be expanded. Such service opportunities, in addition to full time work, could also include options, such as employed by the military for "reserve" or weekend duty.

## B. Expand New York Labor Rights and End Wage Theft

### 1. Expand Labor Rights

To effectively provide for economic opportunities and tackle income inequality, New York must expand state collective bargaining, associational rights for all workers and grant greater protections against worker misclassification and wage theft.

It is well-recognized by economists that there is a direct correlation between the massive growth in income inequality and the decline in union density and collective bargaining over the past four decades. *See, Lawrence Mishel, [The Enormous Impact of Eroded Collective Bargaining on Wages](#) (Economic Policy Institute, 2021)* Indeed, "[r]esearchers have long demonstrated the connection between being represented by a union and earning higher wages. This advantage, called the "union wage premium," measures the percent difference between the wages of unionized workers and those of non-unionized workers with the same characteristics." Mishel, p. 2.

Figure 1 outlines the clear historical correlation between union membership and income inequality in the United States over in the past century:

In 1935, Congress passed the National Labor Relations Act (NLRA) and in 1937 New York enacted the State Labor Relations Act, which was later renamed the State Employment Relations Act (SERA). Both federal and state laws are explicitly aimed at encouraging collective bargaining and protecting the rights of workers to form, join, and participate in a union or engage in other forms of mutual aid and protection to improve their working conditions. When enacted, both laws included discriminatory exclusions of farm workers and domestic workers.

Three years ago, the Appellate Division, Third Department ruled that the SERA exclusion of farmworkers violated the fundamental constitutional right to organize and bargain collectively under the New York state Constitution. *Hernandez v. State*, 173 A.D.3d 105, 113-115 (3d Dept., 2019). New York State Constitution, Art. 1, Sec. 17 states: “Employees shall have the right to organize and to bargain collectively through representatives of their own choosing.”

Since that historic court ruling, the Legislature amended SERA to eliminate the discriminatory exclusion of farmworkers, who are primarily workers of color and immigrants. The Legislature, however, has not acted to remove another SERA discriminatory exclusion of domestic workers, who are predominately women, and like farm workers, hold low-paying and insecure jobs. The Legislature’s failure to act means that over 300,000 domestic workers in New York remain without statutory rights to unionize or bargain collectively, which is unjustifiable and unconscionable.

It is time for the discriminatory exclusion of domestic workers to end. Over a decade ago, the Governor and Legislature received a requested report from the New York State Department of Labor *See*, Report from the Commissioner of Labor to the Governor, the Speaker of the Assembly, and the Temporary President of the Senate, on the Feasibility of Domestic Worker Collective Bargaining (November 2, 2010). The report set forth a blueprint for amending SERA to protect domestic workers that should be acted upon by the Legislature and the Governor.

Another group of workers in New York without workplace associational rights are independent contractors and freelancers. According to one recent study, there are approximately 850,000 low-paid independent contractors working in New York State. *See*, Lina Moe, James A. Parrott, and Jason Rochford, *The Magnitude of Low-Paid Gig and Independent Contract Work in New York State* (Center for New York City Affairs, February 2020). When workers are misclassified as independent contractors, they are not only denied protected associational rights but also ineligibility for unemployment compensation, workers compensation, and entitlement to a minimum wage and overtime pay.

It is time for SERA to be amended to grant independent contractors with statutorily protected associational rights to meet and confer collectively with their employers. In addition, New York’s Labor Law should be amended to permit the New York’s Labor Commission to appoint just compensation boards for independent contractors. Just compensation boards would establish minimum workplace standards by industry for independent contractors.

Like the NLRA, SERA makes it illegal to intimidate, terminate, and retaliate against workers for engaging in concerted activities. However, SERA lacks sufficient remedies or penalties to discourage anti-union behavior. To dissuade employers from violating the fundamental rights granted by NY Constitution and SERA, the statute should be amended to permit the awarding of compensatory and punitive damages, with attorneys' fees, against an employer found to have engaged in unlawful anti-union behavior under SERA.

## 2. End Wage Theft

New York State workers, especially workers earning minimum wage or low wages, find it difficult to recover wages stolen by their employer. According to the US Department of Labor, workers in NYS are cheated out of \$500 million to \$1 billion in wages by their employer each year. The report further notes that the industry with the most minimum wage violations in NYS is leisure and hospitality, an industry that typically employs workers at low wages. Black workers are overrepresented relative to their share of the total US workforce among those workers that earn minimum wage. ([https://www.brookings.edu/wp-content/uploads/2019/11/201911\\_Brookings-Metro\\_low-wage-workforce\\_Ross-Bateman.pdf](https://www.brookings.edu/wp-content/uploads/2019/11/201911_Brookings-Metro_low-wage-workforce_Ross-Bateman.pdf); <https://www.bls.gov/opub/reports/minimum-wage/2020/home.htm>).

Employers who engage in wage theft in NYS often evade financial liability due to gaps in NYS law. Although wage and hour lawsuits have surged over the last 10 years, employees who obtain a favorable judgement against their employers often are unable to collect because their employer has dissipated their assets. (<https://nclej.org/wp-content/uploads/2015/11/Empty-Judgments-The-Wage-Collection-Crisis-in-New-York.pdf>).

In conclusion, expansion of labor rights and protections against misclassification and wage theft are core necessities for expanding economic opportunities, fighting the legacy of racism and sexism, and diminishing income and wealth inequality. The failure to include support for these labor law changes in the NYSBA Task Force on Racism, Social Equity, and the Law report would undermine its credibility.

### Recommendations:

1. To end the misclassification of workers and wage theft, New York must enact S6699A/A8721A that would adopt the so-called ABC test applied in other states for determining independent contractor status: the worker is free from the control and direction of the hiring company, the worker performs work outside the usual course of business of the hiring entity, and the worker is independently established in that trade, occupation or business.
2. Support pending legislation, A00766/S02762, which, if enacted would make it more difficult for employers to escape financial liability for wage theft by (1) expanding NYS mechanics lien law to allow all workers the right to put a temporary lien on an employer's property when they have not been paid for their work; (2) adopt a standard that allows workers with wage theft claims

to temporarily hold an employer's property during litigation if the workers show a likelihood of success on their claims; and (3) amend New York Business Corporation Law to help workers collect from shareholders and members who are already liable under existing law for unpaid wage judgements against corporations and companies.

### C. Creating Alternatives to Public Assistance

A disproportionate number of BIPOC families in New York State live in poverty or are low-income. NYS has about 670,000 children under the age of 3. Twenty-one percent (21%) of these children live in families earning less than the federal poverty level (FPL) and seventeen percent (17%) of them live in families with low incomes -- 100% to 200% of the FPL.<sup>[22]</sup>

We offer the following recommendations: (1) adjustments to the poverty level to increase access to public assistance (such as SNAP and WIC); (2) continuing the federal Child Tax Credit expansions provided in the American Rescue Plan by supporting the Build Back Better legislation; (3) providing access to clean diapers; and (4) increasing access to childcare, particularly for BIPOC parents and caregivers who serve as essential workers.

#### Increasing the Poverty Level Cut-Off

The poverty and low-income levels are important because they determine which New York families qualify for tax breaks and government programs providing economic assistance for housing, food, childcare and healthcare such as Supplemental Nutrition Assistance Program (SNAP) and WIC, which is a supplemental nutrition program for low-income women, infants and children. Under SNAP and WIC, federal grants and funds are provided to states to administer to poverty level and low-income level families. A disproportionate number of BIPOC families live in poverty or are low-income. "Before the pandemic, nearly one in five adults (or 1.2 million people) in New York City lived in poverty. More than 350,000 children (one in five) lived in poverty." Poverty Tracker Research Group at Columbia University, *State of Poverty and Disadvantage in New York City*, Vol. 3 at 5 (2020). "In 2019, more than half of Black and Latino adults in New York City were low-income or lived in poverty, compared to 34 percent of white New Yorkers." (*Id.* at 21.) Similarly, there are enormous disparities in the incidence of "material hardship along racial and ethnic lines." (*Id.* at 6.) In New York City in 2019, 29% of adults struggled to afford housing, healthcare or sufficient food for themselves and their families, and "[r]ates of material hardship for Black and Latino New Yorkers were more than twice those of white New Yorkers in 2019 (38 percent, 43 percent, and 17 percent)." (*Id.*)

In 2020, for a family of four, the federal poverty level was \$26,200 and the low income cut-off was \$49,025.<sup>[23]</sup> NYS generally follows the federal poverty level, but New York City has set its own poverty level at a rate higher than the federal poverty level in order to account for higher costs of living since 2005.<sup>[24]</sup> However, the NYS, New York City and federal poverty levels are too low as they preclude many of our most vulnerable New Yorkers (including a disproportionate number in the BIPOC community) who have limited income from obtaining essential assistance for housing, food, childcare and healthcare which they cannot afford on their own. We thus

recommend that NYSBA support legislation increasing the NYS poverty level and low-income level cut-offs so that more families in need can qualify for assistance from government programs.

### 1. Continuing Federal Child Tax Credit Expansions

The federal Child Tax Credit (CTC) was expanded under the American Rescue Plan of 2021, enacted in March 2021 (ARP). The IRS pre-paid half of the total credit amount in monthly payments from July to December 2021. (People can claim the other half when they file their 2021 income tax returns.) The ARP made three other significant changes to the CTC. First, it made the full CTC available to families with low or no income in a given year, which has been referred to as making the credit “fully refundable.” Center on Budget and Policy Priorities (CBPP), “If Congress Fails to Act, Monthly Child Tax Credit Payments Will Stop, Child Poverty Reductions Will Be Lost” (updated Dec. 3, 2021).<sup>[25]</sup> Before the ARP was enacted, “27 million children, including roughly half of Black and Latino children ... received less than the full credit amount, which higher-income children received, because their parents’ income[s] were too low.” (*Id.*) This change led to most of the significant reduction in child poverty from the enhanced CTC. Second, the ARP “increased the maximum credit amount from \$2,000 to \$3,600 for a child under 6 (\$3,000 for a child aged 6-17), for head of household filers making less than \$112,500 and married tax filers making less than \$150,000.” (*Id.*) Third, it allowed families to “claim their 17-year-old children for the credit for the first time.” (*Id.*)

The enhanced CTC has enabled parents throughout the country to pay for food, clothing, housing and other basic necessities. It was expected that this would “lower the number of children experiencing poverty by more than 40% as compared to child poverty levels in the absence of the expansion.” (*Id.*) The CTC expansions ended in December 2021, but the proposed federal Build Back Better (BBB) legislation would make the credit fully available to children in families with low incomes on a permanent basis and extend the other expansions through 2022. (*Id.*) However, the BBB legislation has not yet been passed and “[t]he poverty rate for children in the U.S. has already surged since monthly government checks from the expanded Child Tax Credit ended in December.” CBS News, *Child Poverty Surges After Child Tax Credit Payments End* (Feb. 24, 2022).<sup>[26]</sup> Without the enhanced CTC payments, “[a]n additional 3.7 million children slipped into poverty” in January 2022, increasing the national child poverty rate to 17% in January, compared to 12.1% in December 2021 – the highest poverty rate for children in the U.S. since the end of 2020.” (*Id.*) A staggering 12.6 million children were living below the poverty line as of January, as compared with 8.9 million in December 2021. (*Id.*) An estimated 681,000 children in NYS are at risk of slipping back below the poverty line or deeper into poverty if the CTC expansions are not continued. CBPP, Appendix Table 1.<sup>[27]</sup> In addition, failing to extend the CTC expansions will increase poverty rates among Black and Latino children by an estimated 8 to 9 percent, and will also reverse significant progress in narrowing differences in child poverty rates by race and ethnicity – “the differences in child poverty rates between Latino and white children would grow by 70 percent, and between Black and white children by 78 percent,” among others. (*Id.*)

Accordingly, we recommend that NYSBA support passage of the Build Back Better bill to extend the CTC expansions and thereby continue to enable parents in New York – and across the country

– to pay for food, clothing, housing and other basic necessities for our most vulnerable children, helping to keep a significant number of children out of poverty.

## 2. Addressing Diaper Need: Legislation Providing Diapers to Infants and Toddlers

Diaper need occurs when parents and caregivers cannot afford an adequate supply of clean diapers to keep their infant or toddler dry, clean, and healthy. Clean diapers are essential to the health of infants and toddlers, and they are, by extension, essential to the mental health of parents and caregivers. On average, a baby needs to be changed eight to ten times per day. Depending on a family's access to low-cost and bulk purchasing (i.e., big box stores), a monthly supply of disposable diapers can range in cost between \$80 to \$100 per month per child (over \$1000 a year).<sup>[28]</sup> Most childcare facilities require parents and caregivers to provide disposable diapers for their child. This means that, for families with infants and toddlers, diaper need is an immediate barrier to employment and income stability.

While diapers are, without question, an essential need for New York State families, they are not covered by any state public assistance program.<sup>[29]</sup> This "diaper loophole" has devastating effects on families in New York State<sup>[30]</sup> --particularly BIPoC families who experience diaper need in addition to other forms of structural racism and income inequality. In fact, diaper need amongst BIPoC families is exacerbated by the fact that communities of color cannot access bulk purchasing options (such as big box stores and online subscriptions) due to lack of adequate affordable housing, lack of transportation infrastructure, racially discriminatory hiring practices, and "retail deserts" caused by racially discriminatory zoning practices.

Diaper need is a direct cause of preventable health conditions in young children and their families. There are people in virtually every community in NY who cannot afford diapers for their children, or who must forego food or other necessities to buy diapers. During a recent study of Erie County, NY families experiencing diaper need, participants were asked what they did when they ran out of diapers. Most caregivers (32.9%) responded that they extended the time between diaper changes. Others responded that they put their child in a diaper that did not fit (29%) or borrowed diapers from another parent (25.8%). Others responded that they left their child without a diaper or even cleaned and reused a soiled disposable diaper. These actions lead not only to preventable diaper-related medical conditions in children (diaper rash, infant urinary tract infections), but also psychological trauma to parents and caregivers.<sup>[31]</sup>

The case for diaper subsidies is simple – babies and toddlers cannot stay clean and healthy without an adequate supply of clean disposable diapers. The solution is similarly simple: the State Legislature must pass a law allowing for the distribution of disposable diapers to all young children receiving public assistance in New York State and providing diapers in all licensed New York daycare facilities.

Title 6 of Article 2 of the Public Health Law was amended effective July 1, 2018 to provide feminine hygiene products in the restrooms of all New York State public school buildings for grades 6-12, and in December 2021 Governor Hochul signed into law a bill requiring menstrual

products be provided in all homeless shelters in the state.<sup>[32]</sup> Further, there is a bill in the NYS Assembly that would require feminine hygiene products be provided in all female-designated bathrooms in NYS.<sup>[33]</sup> Similarly, we recommend that NYSBA support an amendment to NYS' Public Health Law which would (1) provide for a monthly distribution of disposable diapers to all children under the age of 4 who are receiving other forms of public assistance (such as SNAP, WIC, or TANF) and (2) provide for the distribution of diapers to all daycare centers licensed within the State.

### 3. Increasing Access to Childcare: Support the Universal Child Care Bill

In December 2021, the Office of New York State Senator Jabari Brisport issued a report detailing the state's childcare crisis.<sup>[34]</sup> Among numerous other serious issues (most notably, the cost of childcare), the study found that "sixty-four percent of New Yorkers live in a 'childcare desert,' where there are either no available childcare providers or far too few providers to meet families' needs." Some counties within the state have lost over 50% of their childcare programs in the last 10 years.

The crisis is amplified for parents and caregivers who work outside of normal business hours. Senator Brisport's study found that while existing providers showed interest in expanding their services to nights and weekends, they lacked the necessary funding (for staff and space) to do so. The lack of available off-hours childcare has disproportionately affected BIPOC parents and caregivers, many of whom live in childcare deserts and continue to serve as essential workers during the pandemic.<sup>[35]</sup>

The effects of the childcare crisis are not only disproportionately felt by BIPOC parents, but also by Black women and women of color who are paid substandard wages while working in childcare facilities. Governor Hochul's Child Care Availability Task Force found that "65% of childcare providers receive such low wages that they are eligible for several social safety net programs such as food stamps and Medicaid." As Senator Brisport noted, this injustice leads to childcare providers leaving the industry for other employment, thus perpetuating existing childcare shortages.<sup>[36]</sup>

#### Recommendations:

1. That NYSBA support legislation increasing the NYS poverty level and low-income level cut-offs so that more families in need can qualify for assistance from government programs.
2. That NYSBA support passage of the Build Back Better bill to extend the CTC expansions and thereby continue to enable parents in New York – and across the country – to pay for food, clothing, housing and other basic necessities for our most vulnerable children, helping to keep a significant number of children out of poverty.
3. That NYSBA support an amendment to NYS' Public Health Law which would (1) provide for a monthly distribution of disposable diapers to all children under the age of 4 who are receiving

other forms of public assistance (such as SNAP, WIC, or TANF) and (2) provide for the distribution of diapers to all daycare centers licensed within the State.

4. That NYSBA support passage of the Universal Child Care bill which would amend the State finance law to establish funds to provide for the establishment and funding of universal childcare and provide competitive salaries to childcare workers as “educators.”

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[1] Urofsky, Melvin I. “Jim Crow law”. Encyclopedia Britannica, 20 Se. 2021, <https://www.britannica.-com/event/Jim-Crow-law>.

[2] States (California and New York) are also studying whether reparations are feasible at the state level.

[3] See also <https://slate.com/news-and-politics/2007/03/what-special-benefits-do-you-get-for-being-choerokee.html>

Native Americans have called for their stolen land to be restored. That could be the topic of another Task Force. <https://www.scu.edu/ethics-spotlight/ethics-and-systemic-racism/regarding-reparations-the-us-should-adhere-to-the-highest-standards-of-justice/> Japanese Americans who were interned during World War II received checks for \$20,000 and a formal apology from the federal government in 1990. <https://www.history.com/news/reparations-slavery-native-americans-japanese-internment>

[4] Goldrick-Rab, Kelchen and Houle (2014) Hope Lab, University of Wisconsin <https://hope4college.com/wp-content/uploads/2018/09/Goldrick-Rab-Kelchen-Houle-2014.pdf>

[5] Hanson, Melanie. “Student Loan Debt by Race” EducationData.org, December 12, 2021, <https://educationdata.org/student-loan-debt-by-race>

[6] <https://www.brookings.edu/research/black-white-disparity-in-student-loan-debt-more-than-triples-after-graduation/>

[7] Federal Reserve Bank of St. Louis, First Quarter 2017, Vol. 99, No. 1, Posted 2017-02-15 <https://research.stlouisfed.org/publications/review/2017/02/15/family-achievements-how-a-college-degree-accumulates-wealth-for-whites-and-not-for-blacks/>, The Color of Student Debt: Implications of Federal Loan Program Reforms for Black Students and Historically Black Colleges and Universities, a Goldrick-Rab, Kelchen and Houle (2014) Hope Lab, University of Wisconsin <https://hope4college.com/wp-content/uploads/2018/09/Goldrick-Rab-Kelchen-Houle-2014.pdf>

[8] Goldrick-Rab, Kelchen and Houle (2014), *Supra*.

[9] *Supra*

[10] Federal Reserve Bank of St. Louis, First Quarter 2017, Vol. 99, No. 1, Posted 2017-02-15, Supra

[11] Hanson, Melanie. “Student Loan Debt by Race” Supra

[12] <https://www.pewresearch.org/social-trends/2014/10/07/cumulative-student-debt-among-recent-college-graduates/>

[13] Supra.

[14] <https://www.pewresearch.org/social-trends/2014/10/07/cumulative-student-debt-among-recent-college-graduates/>

[15] <https://www.brookings.edu/research/student-loans-the-racial-wealth-divide-and-why-we-need-full-student-debt-cancellation/>

[16] Goldrick-Rab, Kelchen and Houle (2014) Supra

[17] Supra.

[18] <https://www.epi.org/blog/black-white-wage-gaps-are-worse-today-than-in-2000/>

[19] Hanson, Melanie. “Student Loan Debt by Race” Supra.

[20] Goldrick-Rab, Kelchen and Houle (2014) Supra

[21] <https://www.savingforcollege.com/article/which-jobs-qualify-for-public-service-loan-forgiveness>

[22] National Diaper Bank Network, 2020 New York Diaper Facts, [https://nationaldiaperbanknetwork.org/wp-content/uploads/2021/03/2020\\_State\\_Diaper\\_Facts\\_3\\_2021\\_New\\_York\\_V1.pdf](https://nationaldiaperbanknetwork.org/wp-content/uploads/2021/03/2020_State_Diaper_Facts_3_2021_New_York_V1.pdf)

[23] *See* [https://info.nystateofhealth.ny.gov/sites/default/files/2020%20FPLs%20during%202020\\_2021\\_OE.pdf](https://info.nystateofhealth.ny.gov/sites/default/files/2020%20FPLs%20during%202020_2021_OE.pdf).

[24] *See* <https://www.thecity.nyc/2022/1/3/22865699/poverty-trends-future-nyc>.

[25] <https://www.cbpp.org/research/federal-tax/if-congress-fails-to-act-monthly-child-tax-credit-payments-will-stop-child>.

[26] <https://www.cbsnews.com/news/child-tax-credit-poverty-surges-after-ctc-checks-end/#:~:text=With%20the%20tax%20season%20open,provides%20%242%2C000%20per%20eligible%20child>.

[27] <https://www.cbpp.org/research/federal-tax/if-congress-fails-to-act-monthly-child-tax-credit-payments-will-stop-child>.

[28] According to a 2014 study conducted by the Center for Economic and Policy Research, the poorest 20 percent of families in the U.S. (with an average after-tax income of \$11,253) spent nearly 14 percent of their annual income on diapers. See <https://www.cepr.net/the-hygiene-assistance-for-families-of-infants-and-toddlers-act-will-help-the-poor-pay-for-diapers/>.

[29] The only form of federal public assistance that can be used to purchase diapers is Temporary Assistance for Needy Families (TANF). However, TANF funds are limited and must cover other essential household expenses, such as heating, electricity, rent, clothing, and transportation. National Diaper Bank Network, New York Diaper Facts, [https://nationaldiaperbanknetwork.org/wp-content/uploads/2021/03/2020\\_State\\_Diaper\\_Facts\\_3\\_2021\\_New\\_York\\_V1.pdf](https://nationaldiaperbanknetwork.org/wp-content/uploads/2021/03/2020_State_Diaper_Facts_3_2021_New_York_V1.pdf).

[30] The "diaper loophole" is especially significant given the number of children in the state receiving public assistance: According to statistics published by the National Diaper Bank Network, twenty-three percent (23%) of WIC recipients in NYS are infants; eleven percent (11%) of SNAP recipients in NYS are under the age of 5; forty-three (43%) of births are covered by Medicaid; and thirty percent (30%) of families receiving TANF have at least once child under the age of 3. National Diaper Bank Network, New York Diaper Facts,

[https://nationaldiaperbanknetwork.org/wp-content/uploads/2021/03/2020\\_State\\_Diaper\\_Facts\\_3\\_2021\\_New\\_York\\_V1.pdf](https://nationaldiaperbanknetwork.org/wp-content/uploads/2021/03/2020_State_Diaper_Facts_3_2021_New_York_V1.pdf).

[31] Kaley Donaldson, The Prevalence and Impact of Diaper Need, SUNY Rockefeller Institute of Government, available at <https://rockinst.org/blog/the-prevalence-and-impact-of-diaper-need/>, Sept. 9, 2021.

[32] See S.6572/A.529-A; <https://www.governor.ny.gov/news/governor-hochul-signs-legislation-addressing-labor-and-healthcare-inequalities-women> (Dec. 22, 2021).

[33] See A137

[34] Office of Senator Jabari Brisport and the Alliance for Quality Education, The Child Care Crisis in New York State, available at <https://www.nysenate.gov/sites/default/files/childcareourreport.pdf>, December 2021.

[35] See <https://www.americanprogress.org/article/child-care-disruptions-hurt-parents-color/> and <https://www.clasp.org/publications/report/brief/anti-racist-approach-supporting-child-care-through-covid-19-and-beyond>.

[36] Office of Senator Jabari Brisport and the Alliance for Quality Education, The Child Care Crisis in New York State, available at <https://www.nysenate.gov/sites/default/files/childcareourreport.pdf>, December 2021.

[37] [MBDA\\_ Improving Minority Businesses' Access to Capital \(census.gov\)](#)

[38] [\(PDF\) Small business development: immigrants' access to loan capital \(researchgate.net\)](#)

[39] [sbc-s-report-on-firms-owned-by-people-of-color \(fedsmallbusiness.org\)](#)

[40] [Annual Report Template \(nyc.gov\)](#)

[41] [MBDA\\_ Improving Minority Businesses' Access to Capital \(census.gov\)](#)

[42] [NY Exec. L. 296\(15\)-\(16\); Correct. L. 750-752.](#)

DRAFT

## **Criminal Justice Subcommittee Report**

The Criminal Justice System is built on the foundation of structural and systemic racism in the United States. Racially disparate policing and prosecution has led to significant racial disparities in convictions, and the collateral consequences of those convictions. For example, in 2019, Black New Yorkers accounted for 38% of adult arrests and 48% of prison sentences, despite making up only 15% of the state population. In that same year, Latino New Yorkers accounted for 24% of adult arrests and 23% of prison sentences, while making up only 18% of the state population.<sup>2</sup> In contrast, White New Yorkers made up 33% of adult arrests and 28% of prison sentences, while making up 58% of the state population in 2019.<sup>3</sup> It is this foundation—the over-representation of racial minorities in the criminal justice system, and resulted in social and economic marginalization of minorities.

The hope of creating a clear and swift path to equality and fairness inspired the work of our subcommittee. Our recommendations are not original, but critical. Our focus on these issues is a recognition of accomplished goals, but also a reminder that work that remains and we cannot lose a sense of urgency for reform. Jury composition, the length of carceral sentences, the collateral consequences of a criminal conviction, the pitfalls of the parole system, and the implicit bias exhibited by prosecutors, judges, and even defense counsel are driving forces of inequity, and there has been a great deal of progress toward reform, below are our suggestion.

### **I. Sentences must be Shorter, Parole must be revisited**

The impact of incarceration is far reaching, affecting not only the person convicted of a crime, but their family and communities. In fact, the Office of Children and Family Services estimates that about 105,000 children within the state have a parent currently incarcerated. This is an alarming statistic with generational consequences, as “children of incarcerated parents are, on average, six times more likely to become incarcerated themselves.”<sup>[ccxcvi]</sup> Notably, people of color represent two-thirds of those sentenced to incarceration in prisons throughout New York.<sup>[ccxcvii]</sup> Statutory sentencing requirements including mandatory minimums, the finality of sentences, which are based principally on the prosecution’s charging discretion, and the severe reduction in earned time credit availability, all contribute to the racial disparities in carceral sentences.

In order to address this serious disparity, this subcommittee urges broad and significant changes to New York's sentencing structure aimed at lowering the amount of time people spend incarcerated.

First, and most pointedly, New York must eliminate mandatory minimum sentences. Functionally, mandatory minimums contribute to the "Trial Penalty" and have an "important role in reducing our trial rate from more than 20% thirty years ago to 3%" in 2018.<sup>[ccxcviii]</sup> The threat of mandatory minimum sentences render trials a sizable risk, allowing prosecutors to "skirt due process" and coerce people into taking guilty pleas.<sup>[ccxcix]</sup> Allowing judges to tailor a sentence to the person and case before it rather than being forced to follow these statutory penalties triggered by a prosecutor's charging decision is a necessary step in social equity.

For those already sentenced, New York must create meaningful opportunities to review lengthy sentences, primarily in trial courts where the totality of the circumstances can be considered. Currently, trial court judges have no opportunity to review sentences. Those who are serving lengthy sentences have no opportunity to demonstrate to a judge that they have changed after years or decades in prison or that, given changed laws and norms, the sentence is no longer appropriate. Long prison sentences are therefore unreviewed, other than limited powers held by the Appellate Division to review for excessiveness. In order to align New York with the latest studies, presumptions in favor of resentencing should be created for elders and those under the age of 25 when the crime was committed, and individuals must be afforded a chance to demonstrate that they deserve reconsideration after serving a portion of their sentence.

Finally, New York's restrictive scheme for incarcerated people to earn time against their sentences must be reversed. During the 1990s, in line with racially charged sentencing laws enacted throughout the country, New York dramatically reduced the ability to earn time off sentences while incarcerated. Now, the state must reverse course by eliminating barriers to earning good time credit and merit time, increasing the amount of time one can earn, and incentivizing facilities to add programming options that facilitate merit time accrual.

## Education Subcommittee Report and Recommendations

The New York State Constitution requires that all children be offered a free public education, and it is the hope that all students have the chance to explore their full potential. To ensure that all children have this opportunity, it is critical that NYS support efforts to eliminate inequities, reduce biases, whether explicit or implicit, as well as support curriculum and learning settings that embrace a diversity of cultures.

Children learn best when they are included, when all backgrounds are embraced, when they do not feel like outsiders. A key factor associated with optimal child well-being is our ability to provide children with safe, nurturing, stable environments that support development of sound cognitive, emotional and social skills. It is well established that children tend to thrive and become healthy, productive adults when they are provided with these types of environments.

To achieve this goal, this report focuses on three categories of findings and recommendations.

*First*, given the effect of a long history of systemic and institutionalized racism on our country and in schools leading to significant disproportionate outcomes among children of color in virtually every indicator of public education, it is critical that legislation be enacted to address the effect of trauma on students and the disproportionate availability of resources in NYS public schools. This can be achieved by creating Healing Centered Schools<sup>[1]</sup>, amending the education law to adopt research based reforms such as those presented in the Solutions not Suspensions bill, amending of the education law to increase accessibility to screenings for special education and related services, and amending the education law to require school districts to provide each student with an age-appropriate digital device and access to the internet.

*Second*, while educators are required to complete training in the NYS Dignity for All Students Act (DASA) prior to certification and the NYS Board of Regents has recognized the tremendous value in districts implementing a Culturally Responsive Sustaining Education Framework, certain modifications and additional curriculum and training in DASA, Diversity, Equity and Inclusion (DEI), special education, and trauma informed responses should be required for all school district employees.

*Third*, students who live in persistently underfunded school districts have been deprived of the resources necessary to obtain a sound basic education. Students of color have been disproportionately affected. To address the economic inequity amongst school districts, legislation should be introduced to establish an independent commission reporting on a recurring five-year basis to the Governor and the legislature concerning the cost of educational funding necessary to comply with the decisions of the Court of Appeals on a per district basis.

## *Current State of the NYS Public Education System*

There are 2,598,921 public school students in NYS in grades kindergarten through twelve.<sup>[2]</sup> NYS has additional students in universal public preschool and prekindergarten public-school programs in Buffalo and New York City. The majority of NYS public school students, 56.8%, do not identify as white.<sup>[3]</sup>

Even though the majority of students in NYS identify as students of color, the statistics for students of color in NYS are concerning. In 2019, the graduation rate for white and Asian students was 90% while the graduation rate for Black, Latinx and Native American students was 75%.<sup>[4]</sup> In the 2018-2019 school year, Black and Latinx students represented 67% of the student body in NYC, but were involved in 89% of police interventions in school and 84% of suspensions.<sup>[5]</sup> In 2018, 83% of the children in juvenile detention in NYS were children identifying as Black or Latinx.<sup>[6]</sup>

It is obvious but this result is neither inherent to this population or inevitable. It is the result of intentional actions and policies, and we can decide to do something different that will work to make sustainable and lasting improvements to the outcomes for all children in the public education system.

### *Recommendations*

#### **I. We can address disproportionality and make sustainable and lasting improvements to the outcomes for all children in the public education system.**

The long history of systemic and institutionalized racism in the United States (such as slavery, forced relocations, segregation, redlining, etc.) directly contributes to the significant disproportional outcomes among children of color in the area of education today. Children of color, in particular Black students and Native American students, have disproportionately negative outcomes in virtually every indicator of public education: graduation rates, discipline, over identification of special education, gifted and talented education participation, and other such indicators.<sup>[7]</sup> We must decide to do something different that will work to make sustainable and lasting improvements to the outcomes for all children in the public education system.

Over the last twenty-five years a growing consensus has developed around the impact of trauma and child development. Significant research and medical studies have found that adverse childhood experiences (ACEs) negatively impact a child's social, emotional, and cognitive development and can have negative, lasting effects on an individual's health and well-being.<sup>[8]</sup> These negative experiences range from physical, emotional, or sexual abuse to parental divorce or the incarceration of a parent or guardian. Some of these ACEs can come from a collective trauma or a societal history of trauma such as slavery, generations of racism, and state sanctioned racist policies.<sup>[9]</sup> Consequently, children of color and low-income children on average experience many more ACEs than white children and children who come from economically advantaged families.<sup>[10]</sup>

ACEs sustained over a prolonged period of time may create “toxic stress” upon the child.<sup>[11]</sup> Children typically are unable to effectively manage this type of stress by themselves. This can lead to an overactive stress response system which can cause permanent changes in the development of the child’s brain. Research strongly links ACEs and childhood trauma with a wide array of negative impacts throughout one’s life including the ability to learn. Young children exposed to five or more ACEs in their first three years are 76% more likely to have one or more delays in language, emotional, or brain development.<sup>[12]</sup> Trauma and toxic stress can impact a student’s ability not only to learn and develop but to respond to challenging situations in the school environment.<sup>[13]</sup>

Trauma can disrupt a student’s core beliefs about safety, security, and the world around them. But students impacted by trauma who have adequate support to make sense of their circumstances may experience psychological growth or post traumatic growth. Thankfully, research shows that these negative effects of toxic stress can be lessened or even *healed* by building resilience through the support of caring adults and with appropriate interventions.<sup>[14]</sup>

Research-based approaches to address this public health issue are focused on preventing exposure to school-based trauma and on building resilience in children who have been exposed to trauma. A significant aspect to building resilience is to create safe, stable, nurturing relationships in the school community. These relationships not only help students cope with ongoing trauma, but they ensure that trauma-related behavioral challenges receive a compassionate, not punitive, response. Healing-centered schools (HCS) are vital to helping children exposed to trauma and toxic stress build resilience and learn. HCS are also more likely to provide support for and reduce manifestations of trauma-related behavioral challenges, unlike punitive responses that exacerbate those challenges.<sup>[15]</sup>

**This committee recommends the NYS Board of Regents and the NYS Education Department support the design and development of healing centered/trauma sensitive schools in all school districts throughout the state.** This should include the development of guidance, policies and curricula (see below) that will not only support but also encourage the adoption of a healing centered/trauma sensitive approach by any school or school district.

One of the adverse effects of failing to respond appropriately to children exposed to trauma and ACEs is that children of color are suspended<sup>[16]</sup> and over-identified for self-contained special education classrooms in upper elementary and middle school at a disproportionate rate to their white peers.<sup>[17]</sup> Compounding the problem is that children of color are given less access to intervention services provided in early childhood and early elementary school than their white peers.<sup>[18]</sup> Black children with developmental delays are 78% less likely to be identified and receive early intervention services.<sup>[19]</sup>

The failure to provide students of color with necessary interventions and services to address their needs contributes to students of color being suspended at a disproportionately higher rate. For example, in 2018-2019, Black and Latinx students represented 67% of students in NYC but were involved in 89% of police interventions in school and 84% of suspensions.<sup>[20]</sup>

Under 8 NYCRR 117.3, students are screened for “determination of development in oral expression, listening comprehension, written expression, basic reading skills and reading fluency and comprehension, mathematical calculation and problem solving, motor development, articulation skills, and cognitive development using recognized and validated screening tools upon entrance to a district” (“Developmental Screening”).<sup>[21]</sup> Additional diagnostic screening is conducted only if the student has low test scores and then only looks at vision and hearing concerns that may contribute to interfering with learning.<sup>[22]</sup> Response to intervention programs, under 8 NYCRR 100.2 (ii) (1) (ii), require “screenings applied to all students in the class to identify those students who are not making academic progress at expected rates.” However, the regulation does not explain how students are to be screened, what the screenings are to look for or create validity standards for the screenings.

Given the importance of early intervention in improving the outcomes of students with disabilities, it is crucial that school districts timely and correctly identify children in need of special education services. **This committee recommends that the 8 NYCRR 117.3 Developmental Screening be expanded to require that all children be screened: (1) upon entering the district or universal preschool or prekindergarten program as defined by 8 NYCRR 100.3 regardless of the age at date of entrance; (2) if the student is performing below grade level in any academic or social emotional areas for more than two reporting periods<sup>[23]</sup>; and (3) upon teacher or administrator recommendation. Such screenings should not be performed more than once every two years.**

To directly address the disproportionality in student discipline, **this committee recommends the NYS Legislature amend the Education Law to adopt research-based reforms<sup>[24]</sup> such as those proposed in the Solutions Not Suspensions bill before the state legislature.** Such a bill should require school codes of conduct to include restorative approaches to discipline discussed in part above; to proactively foster a school community based on cooperation, communication, trust, and respect; to limit the use of suspensions for students in kindergarten through 3rd grade to only the most serious behavior<sup>[25]</sup>; to shorten the maximum length of suspension from 180 to 20 school days (except when required by federal law); to require that students who are suspended receive academic instruction and related services and the opportunity to earn credit, complete assignments,

and take exams; to require that a reentry program be established so students can successfully return to the academic environment following a suspension; to require schools to notify parents of the opportunity to receive a special education evaluation for any academic or social emotional concerns that may have led to the suspension; and to require charter schools to follow state education law on student behavior and discipline.<sup>[26]</sup>

**Data is crucial for communities and school districts to hold each other accountable for efforts to reduce disproportionality in student discipline. This committee recommends that all school districts in NYS make public and accessible school level discipline data, similar to that was legislated in NYC,<sup>[27]</sup> disaggregated by race, ethnicity, disability status, socio-economic status, gender, age, grade, discipline code infraction and English language learner status.**

The current pandemic exposed another significant area of disproportionality: the digital divide. The committee believes the digital divide must be closed to ensure all students and especially students of color, receive their state constitutional right to a sound basic education.

It is estimated that approximately 726,000 students in NYS do not have access to adequate internet. Another 567,000 students are estimated not to have access to an appropriate internet device.<sup>[28]</sup> While NYS has a 60% fiber optic coverage rate and ranks amongst the top five states in education funding, little has been done to address the statewide digital divide for students. It is estimated that 31% of rural households and 26% of metropolitan households do not have access to wireline broadband in NYS.<sup>[29]</sup> According to a report by NYS Comptroller Thomas DiNapoli, 250,000 New Yorkers do not have access to broadband in their neighborhood, and an estimated one million households do not have access to or a subscription to broadband.<sup>[30]</sup> A UCLA study utilizing U.S. Census data, determined that low income homes were disproportionately impacted by the switch to remote and hybrid learning, and Hispanic and African American students were 1.3-1.4 times more likely than white students to experience limited accessibility to the internet during the fall 2020 semester.<sup>[31]</sup>

In Western NY alone, it is reported that nearly 20% of households have no access to the internet; with a large portion of these households located in the city of Buffalo mainly affecting children of color and new Americans.<sup>[32]</sup> If a student does not have quality internet access or a functioning district provided device, the student would be denied academic instruction for the days of remote instruction.<sup>[33]</sup>

In New York City, the City Council took steps to address the digital divide by introducing Int. No. 2138 to provide every public-school student with an internet ready laptop computer. The bill was subsequently filed in December 2021.<sup>[34]</sup> **We recommend the passage of similar legislation that requires every NYS public school to provide each student with an internet ready age-appropriate device and high-quality internet access. Additionally, this committee supports the implementation of the programs and objectives developed by the gubernatorial Reimagine New York Commission to address universal internet connectivity highlighted in the Comptroller’s report.**<sup>[35]</sup>

## **II. Sufficient training and curriculum responsive to cultural differences is the lynchpin to continuing to eliminate barriers to learning for all.**

### **A. Training**

Currently, an unspecified amount of implicit bias training is required for educator certification, via the NYS Dignity for All Students Act (DASA).<sup>[36]</sup> The State requires that candidates for educator certification complete six hours of DASA training “in harassment, bullying and discrimination prevention and intervention.”<sup>[37]</sup> This training covers a number of topics, including implicit bias, by helping staff “reflect upon their own personal identities including privileges and vulnerabilities.”<sup>[38]</sup>

This training in recognizing one’s own implicit biases is critical to ensuring a level playing field for children of color. Since implicit bias influences how we act in a subconscious way, it is only by becoming aware of our own implicit biases that we can address them and become cognizant of their impact on our decision making and those around us.<sup>[39]</sup> But anecdotal reports and prior research, indicate that implicit bias training in NYS is not taught in a consistent manner and worse, that implicit bias work is often not even included in the DASA trainings.<sup>[40]</sup>

To this end, we suggest that NYSED refocus attention on this aspect of DASA and ensure that required DASA trainings specifically include implicit bias training. The current regulation, entitled “Required study in harassment, bullying and discrimination prevention and intervention,” requires six hours of study, but only specifies that this work be in “harassment, bullying and discrimination prevention and intervention.”<sup>[41]</sup> **This committee recommends amending this rule to specifically include implicit bias training in the list of required study and that all District employees be required to attend this training.**

Additionally, all educators – from the teacher and teacher assistant in the classroom to the administrators responsible for leading school personnel – need training to effectively respond to

the needs of all students. When school officials are left without sufficient training and the tools to respond to the needs of all students, they are more likely to resort to the use of punitive and exclusionary responses for disruptive student behaviors. Studies show that Black students are suspended and expelled three times more than white students. Students with disabilities are more than twice as likely to receive an out-of-school suspension versus students without disabilities.<sup>[42]</sup> Suspension data in NYS reflect similar disparities with Black girls receiving the most disproportionate discipline.<sup>[43]</sup> Even with the knowledge that students who miss 20 days or more in a single year have a dramatically reduced chance of graduation, suspensions in NYS can last up to a year.<sup>[44]</sup> Compounding this problem is that children of color are given less access to intervention services provided in early childhood than their white peers.<sup>[45]</sup>

Educators who have some knowledge in the areas of special education, implicit bias and the impacts of trauma and ACEs on child development and the school environment, can play an important role in building resilience and promoting academic performance. Front line educators can be critical agents in the healing process as they spend many hours with students each day. Preparing aspiring educators with a greater understanding of the students they work with will equip them to provide more thoughtful lessons and build stronger student-educator relationships.

We make the following recommendations to ensure educators are adequately prepared to meet the academic, cultural and emotional needs of the students they serve:

The COVID-19 pandemic and the national reckoning on racial injustice elevated the issue of trauma like never before on the national level. However, many communities, especially low income and communities of color, were dealing with the significant impacts of trauma daily and this was manifested most acutely in the local schools. Therefore, to ensure educators are prepared to meet the needs of students impacted by trauma, **we recommend the Governor and legislature amend section 3004 of the Education Law, to require ALL aspiring educators receive coursework on trauma and its impact on child development as a prerequisite for obtaining any teaching license in NYS.**<sup>[46]</sup>

In New York State, 56% of students are students of color, but only 19% of teachers are people of color.<sup>[47]</sup> Students can go their entire PK - 12 public education without ever being taught by a teacher with shared or similar experiences or different and new experiences. The importance of this experience cannot be understated. A 2017 John Hopkins University Study found that low-income Black students who have at least one Black teacher in elementary school are at least 29% more likely to graduate from high school.<sup>[48]</sup>

In response to this study and others like it, the NYS legislature created the Teacher Opportunity Corps. Through this state funded program, Buffalo City School District Teacher Assistants and Aides receive funding that covers tuition, books and vouchers for state certification exams in order to bridge from teacher assistant or aide to teacher. The teacher assistants and aides in the program

are able to complete the necessary coursework by attending classes year-round, evenings and Saturdays, and their student teaching experience is combined with their teaching assistant duties, so they are able to continue their TA employment. The graduates of this program have then been hired as teachers by the District. **Based on the proven success of the Teacher Opportunity Corps, this committee recommends an expansion of this program to other districts in New York State.**

Educators with a Professional Classroom Teacher/School Leader or Level III Teaching Assistant certification are required to complete one hundred hours of continuing education every 5-year period.<sup>[49]</sup> Some of those hours are already designated for a specific purpose (e.g., for work relating to English Language Learners). Designating another portion of those hours to relate to Diversity, Equity, and Inclusion, including implicit bias, special education, and trauma-informed responses would keep teachers up to date on the latest work in these areas, would inform those who never studied any of these materials, and would not increase the overall 100-hour requirement. **We recommend that 8 NYCRR § 80-6.3 be amended to designate that a percentage of the one hundred hours of coursework be in the area of Diversity, Equity, and Inclusion, special education and trauma informed responses and that this requirement be in effect for each five-year registration cycle.**

While the various statewide child protective agencies serve the noble purpose of protecting children, its practices have produced an unintended negative impact that disproportionately affects children of color.<sup>[50]</sup> According to reports, 25% of Child Protective Services (CPS) investigations stem from allegations of serious physical injury, sexual acts, or substantial emotional abuse. The remaining investigations take place as a result of alleged “neglect” which is defined by a parent’s inability to provide the basic needs for their children including healthcare, food, and other essentials.<sup>[51]</sup> Considering this definition, the inclusion of “neglect” as a mandatory reporting requirement in turn has negatively impacted low-income and poverty-stricken families due to financial struggles and not serious harm.<sup>[52]</sup> Additionally, the expansion of designated professionals who qualify as a mandated reporter has significantly contributed to the sharp increase and disproportionate number of CPS cases involving children of color.<sup>[53]</sup> According to a NYC report, education based and social service based mandated reporters submitted the most SCR intake allegations during a four-month period substantially on the basis of neglect and in boroughs with a significant population of BIPOC students.<sup>[54]</sup>

Therefore, to ensure that children who need support are not then removed, **we support the amendment to Social Services Law Section 413 updating the mandated reporter training and**

**recommend an additional update to include training on understanding the difference between poverty and neglect.<sup>[55]</sup>**

Finally, we suggest that NYSED consider re-examining criteria for providers of trainings and amend regulations to include specific requirements and credentials for all State approved trainings. For example, the State requires only that an applicant seeking certification to provide DASA training simply show that the applicant has the “competence to offer the course work or training.”<sup>[56]</sup> No specific training or work in bias training is required. Amending this regulation to include specific training requirements for prospective training providers would help to ensure that the trainings are effective and well received. **We recommend that 8 NYCRR § 57-4.3 be amended to include specific credentials relating to bias training, in order to be certified as a NY State-approved DASA trainer and that all other required trainings have similar standards.**

## **B. Curriculum**

In 2021 the NYS Board of Regents issued a Culturally Responsive-Sustaining Education Framework for student, teachers, school and district leadership, families and community advocates, higher education, and NYSED.<sup>[57]</sup> The Regents’ Framework explains the importance of promoting equitable opportunities that help all children thrive, acknowledging that “the results we seek for all our children can never be fully achieved without incorporating an equity and inclusion lens in every facet of our work.”<sup>[58]</sup> The Framework calls for all children to be treated inclusively, and rigorous teaching and high standards are equally prioritized. This is accomplished through four principles: a welcoming and affirming environment; elevated expectations and rigorous instruction; inclusive curriculum and assessment; and ongoing professional learning and support.

As specific curricula vary from district to district, there is no one particular format of culturally responsive-sustaining curriculum. Rather, districts review their current curriculum and assess what parts do and do not support culturally responsive work. Areas of review include assessing: the diversity of authors and characters presented to students; the variety of cultural traditions, languages, and customs presented; the array of family structures; how differences in physical ability and development are portrayed; stereotypes including depicting persons of color as low income or low educational attainment; the variety of points of view presented including from traditionally marginalized communities.<sup>[59]</sup>

The Framework is currently considered guidance **only** by the Board of Regents. **Therefore, we recommend that use of the Regents’ Framework be required in all NYS school districts. The Regents used the word “urgent” to describe how critical promoting equitable opportunities that help all children thrive is; we agree.<sup>[60]</sup>**

As discussed above, by providing students with safe, stable, nurturing relationships, the school community can play a key role in helping students heal from exposure to trauma/ACEs. However, the school curriculum can pose a significant obstacle to cultivating those important relationships and other healing centered practices since most school curriculum does not afford time within the school day for these practices. Therefore, **we recommend the Board of Regents and NYSED promulgate regulations requiring school districts to ensure time is available during the school day for healing centered practices.**

### **III. All children in NYS are constitutionally entitled to a sound basic education.**

In 1995, the NYS Court of Appeals, in the landmark case entitled: *Campaign for Fiscal Equity v. State of New York*, ruled that the New York Constitution requires the State to offer all children the opportunity for a "sound basic education" defined as a meaningful high school education that prepares students for competitive employment and civic participation.<sup>[61]</sup>

Funding for public education in NYS has historically been provided through a combination of direct state funding and local taxes based on real estate value. Students who live in school districts which have been consistently underfunded have been deprived of the resources necessary to obtain a sound basic education. Students of color have been disproportionately affected by the State's inequitable school funding system. NYS ranks 48th in educational equity among **all states** by measure of the funding gap between the districts enrolling the most students in poverty and the districts enrolling the fewest and ranks 44th by measure of the funding gap between the districts enrolling the most students of color and those enrolling the fewest.<sup>[62]</sup>

In 2018, NYS underfunded school districts by \$4.2 billion with 62% owed to school districts that are defined as high need and have 50% or more Black and Latinx students based on the funding formula adopted by the NYS legislature.<sup>[63]</sup> Unsurprisingly, those same Black and Latinx high need districts had a 26% lower overall graduation rate than wealthy districts.<sup>[64]</sup> It is important to note that funding inequities also exist on the individual school level within school districts. This is especially pronounced in the "Big 5" school districts (Buffalo, NYC, Rochester, Syracuse and Yonkers), where schools with higher rates of poverty receive less funding than schools with lower rates of poverty.<sup>[65]</sup>

The courts have considered it to be the legislature's function to provide adequate resources to NYS students so as to ensure they are provided an education that prepares them for competitive employment and civic participation. While the legislature has made some good faith attempts to address the issue, no consistently applied procedure has been developed to determine independently the resources necessary for a school district to provide a sound basic education that considers the needs of students based on their financial, social and cultural circumstances. The objective determination of funding sufficiency has also suffered from the fiscal pressures of the

moment and from outdated data about cost. As a result, many students, particularly students of color, continue to be deprived of their constitutional right to a sound basic education.<sup>[66]</sup>

**We recommend the introduction of legislation that would establish an independent commission reporting on a recurring five-year basis to the Governor and the legislature concerning the cost of educational funding necessary to fulfill the State’s constitutional obligations on a per district basis.** This costing-out study should also consider the weighted needs of students in each school district in NYS. The framework of the commission’s inquiry should reflect best practices in place in other states, the mission of the New York Board of Regents and other elements that reflect unique factors relating to education in NYS. **In addition, we recommend individual school districts address the funding inequities that exist among schools in their district and in particular the disparities between schools that enroll high percentages of students of color and low-income students with those that do not.**

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[1] Healing-centered schools are holistic learning environments that have undergone a whole-school culture shift co-created through the valued input of all students, parents and caregivers, and staff. Healing-centered schools recognize that social-emotional well-being is a necessary ingredient for learning, so they have worked as a community to remove punitive, harmful practices and to implement trauma-responsive, restorative, and anti-racist and culturally responsive practices. Healing-centered schools also recognize that students, parents and caregivers, and staff are critical partners in creating a supportive school environment and center them in decision-making and school change. Healing Centered Schools. New York City Public Advocate. *Education & Opportunity*, New York City Pub. Advoc., <https://www.pubadvocate.nyc.gov/education-opportunity/education-resources/healing-centered-schools> (last visited Apr. 16, 2022).

[2] *New York State Education at a Glance*, New York State Educ. Dep’t, <https://data.nysed.gov/> (last visited Apr. 16, 2022).

[3] *Id.*

[4] *NY State Graduation Rate Data 4 Year Outcome as of August 2019*, New York State Educ. Dep’t, <https://data.nysed.gov/gradrate.php?year=2019&state=yes> (last visited Apr. 16, 2022).

[5] *The Bill*, Solutions Not Suspensions, <https://www.solutionsnotsuspensionsny.org/sns-bill> (last visited Apr. 16, 2022).

- [6] New York State Div. Crim. Just. Serv., Statewide Juv. Just. Profile (2019), <https://www.criminaljustice.ny.gov/crimnet/ojsa/jj-reports/newyorkstate.pdf>.
- [7] Cristobal de Brey et al., *Status and Trends in the Education of Racial and Ethnic Groups 2018*, U.S. Dep't of Educ. (Feb. 2019), <https://nces.ed.gov/pubs2019/2019038.pdf>.
- [8] *Adverse Childhood Experiences among New York's Adults*, Council on Child. & Families (2010), [https://www.ccf.ny.gov/files/4713/8262/2276/ACE\\_BriefTwo.pdf](https://www.ccf.ny.gov/files/4713/8262/2276/ACE_BriefTwo.pdf); V. J. Felitti et al., *Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults. The Adverse Childhood Experiences (ACE) Study*, *Am. J. Prev. Med.* (May 1998), <https://pubmed.ncbi.nlm.nih.gov/9635069/>.
- [9] Andrew Curry, *Parents' Emotional Trauma May Change Their Children's Biology. Studies in Mice Show How*, *Science.org* (Jul. 18, 2019), <https://www.science.org/content/article/parents-emotional-trauma-may-change-their-children-s-biology-studies-mice-show-how>, *Healing the Wounds of Slave Trade and Slavery*, [Healingthewoundsofslavery.org](http://healingthewoundsofslavery.org) (Jan. 2021), [https://healingthewoundsofslavery.org/wp-content/uploads/2021/04/UNESCO-GHFP\\_2020\\_Healing-the-Wounds-of-Slavey\\_Desk-Review\\_Report.pdf](https://healingthewoundsofslavery.org/wp-content/uploads/2021/04/UNESCO-GHFP_2020_Healing-the-Wounds-of-Slavey_Desk-Review_Report.pdf).
- [10] *Adverse Childhood Experiences*, Child Trends, <https://www.childtrends.org/indicators/adverse-experiences> (last visited Apr. 16, 2022).
- [11] Jennifer S. Middlebrooks & Natalie C. Audage, *The Effects of Childhood Stress on Health Across the Lifespan*, U.S. Dep't of Health and Human Servs. (2008), <https://stacks.cdc.gov/view/cdc/6978>.
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- [13] Center on the Developing Child, *The Impact of Early Adversity on Child Development (InBrief)*, Harvard University (2007), retrieved from [www.developingchild.harvard.edu](http://www.developingchild.harvard.edu).
- [14] Center on the Developing Child, *The Science of Resilience (InBrief)*, Harvard University (2015). retrieved from [www.developingchild.harvard.edu](http://www.developingchild.harvard.edu); see also, Nicole R. Nugent et al., *Resilience after trauma: From surviving to thriving. European Journal of Psychotraumatology*, 5 *European Journal of Psychotraumatology* 25339 (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4185140/>
- [15] *Community Roadmap to Bring Healing-Centered Schools to the Bronx*, Healing-Centered Schools Working Group (June 2020)

<https://www.legalservicesnyc.org/storage/PDFs/community%20roadmap%20to%20bring%20healing-centered%20schools%20to%20the%20bronx.pdf>.

[16] The 2019 Final Report of NYSBA’s Task Force on the School to Prison Pipeline reviewed the evidence and found that students of color were suspended in disproportionate numbers, mostly for minor and common misbehavior and that there was no evidence that the higher rate of suspensions for students of color was linked to higher rates of misbehavior. <https://archive.nysba.org/pipelinefinalreport/> at 49 *et seq.* The Task Force recommended the State Department of Education require school districts with levels of disproportionate discipline above thresholds set by SED be required to develop remedial plans to correct the disproportionate discipline. *Id.* at 53.

[17] *The Bill supra* note 5.

[18] Dawn M. Magnusson et al., *Beliefs Regarding Development and Early Intervention Among Low-Income African American and Hispanic Mothers*, *Pediatrics* (Nov. 1, 2017), <https://publications.aap.org/pediatrics/article/140/5/e20172059/37803/Beliefs-Regarding-Development-and-Early>; and <https://edtrust.org/increasing-equity-in-early-intervention/>.

[19] *Id.*

[20] *The Bill supra* note 5.

[21] N.Y. Comp. Codes R. & Regs. tit. 8, § 117.3

[22] *Id.*

[23] This would eliminate the need to wait for NYS exam scores which are not announced until the end of the academic year and would expand the screening criteria to include children whose learning difficulties may be presenting as a behavioral issue.

[24] See National Association of School Psychologists, *Framework for effective school discipline* (2020),

<http://www.nasponline.org/discipline-framework>

[25] Alex Zimmerman, *NYC to Curb Suspensions Longer than 20 Days, A Major Victory for Discipline Reform Advocates*, *Chalkbeat* (June 20, 2019, 8:44 PM), <https://ny.chalkbeat.org/2019/6/20/21108352/nyc-to-curb-suspensions-longer-than-20-days-a-major-victory-for-discipline-reform-advocates>.

[26] The Judith S. Kaye Solutions Not Suspensions bill encompasses many of these recommendations and is currently before the NYS Assembly (bill no. A05197)

([https://nyassembly.gov/leg/?default\\_fld=&leg\\_video=&bn=A05197&term=&Summary=Y&Actions=Y](https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A05197&term=&Summary=Y&Actions=Y)) and the NYS Senate (bill no. S07198) (<https://www.nysenate.gov/legislation/bills/2021/S7198>) for the 2021-2022 legislative session.

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[29] John B. Horrigan, *New York’s Digital Divide: Examining adoption of internet and computers for the state and its library districts* (Apr. 2021), <https://www.nysl.nysed.gov/libdev/documents/HorriganReportNY.pdf> (last visited Apr. 18, 2022).

[30] *Availability, Access and Affordability: Understanding Broadband Challenges in NYS* (Sept. 2021), <https://www.osc.state.ny.us/files/reports/pdf/broadband-availability.pdf> (last visited Apr. 18, 2022).

[31] *Id.*

[32] Jeddy Johnson, *Remote Learning Highlights Buffalo’s Digital Divide*, WKBW (Aug. 20, 2020, 5:41 PM), <https://www.wkbw.com/news/local-news/remote-learning-highlights-buffalos-digital-divide>.

[33] For the 21-22 school year, the Buffalo Public School District had 4 days of weather-related remote learning and for one particular high school, an entire month of remote learning was implemented. Dale Anderson, *Full Reopening Set Monday for McKinley High School*, Buffalo News (Mar. 5, 2022), [https://buffalonews.com/full-reopening-set-monday-for-mckinley-high-school/article\\_44746890-9ce1-11ec-89f6-9f3423f52abc.html](https://buffalonews.com/full-reopening-set-monday-for-mckinley-high-school/article_44746890-9ce1-11ec-89f6-9f3423f52abc.html)

[34] See, Providing every public-school student with an internet ready laptop computer, New York City, N.Y., Loc. Laws Int. No. 2138 (2020). <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4680231&GUID=B959A7CA-9A0F-4C35-987A-EC08C48188AC&Options=&Search=>

[35] *Understanding Broadband Challenges in NYS supra* note thirty.

[36] DASA aims to provide students “with a safe and supportive environment free from discrimination, intimidation, taunting, harassment, and bullying,” and requires mandatory

reporting of material incidents ....” *The Dignity for All Students Act*, New York State Educ. Dep’t, <http://www.nysed.gov/content/dignity-all-students-act-dasa> (last visited Apr. 18, 2022)

[37] N.Y. Comp. Codes R. & Regs. tit. 8, § 80-1.13.

[38] *Dignity Act Syllabus for Training in Harassment, Bullying, Cyberbullying, and Discrimination in Schools: Prevention and Intervention (DASA Training)*, New York State Educ. Dep’t, <http://www.highered.nysed.gov/tcert/certificate/dasa-syllabus.html> (last visited Apr. 18, 2022).

[39] Nicole Scialabba, *How Implicit Bias Impacts Our Children in Education*, Am. Bar Assoc. (Oct. 2, 2017), <https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2017/fall2017-how-implicit-bias-impacts-our-children-in-education/>.

[40] E.g. Only 22% of new teachers reported that their DASA training discussed “internalized bias.” *DASA Task Force Meeting Notes*, New York State Educ. Dep’t (Dec. 6, 2017), <http://www.nysed.gov/common/nysed/files/dasanotes120617.pdf>.

[41] N.Y. Comp. Codes R. & Regs. tit. 8, § 80-1.13.

[42] Nicole Scialabba *supra* note 40.

[43] *Stolen Time New York State’s Suspension Crisis*, New York Equity Coal. (Dec. 2018), <https://urbanleaguelongisland.org/wp-content/uploads/2019/04/Stolen-Time-002.pdf>.

[44] N.Y. Educ. Law § 3214(3)(d) (McKinney).

[45] Magnusson *supra* 18; *Our Youngest Learners Increasing Equity in Early Intervention*, Educ. Trust, <https://edtrust.org/increasing-equity-in-early-intervention/#:~:text=Black%20and%20Latino%20children%20with,to%20receive%20early%20intervention%20services> (last visited Apr. 16, 2022).

[46] N.Y. Educ. Law § 3004 (McKinney).

[47] *These Times Have Raised an Important Question: How Can We Support Our Public Schools as the Center of Every Community?*, NYSUT United (Jan./Feb. 2022), [https://www.nysut.org/~/\\_media/files/nysut/nysut-united/2022/nysutunited\\_january2022.pdf](https://www.nysut.org/~/_media/files/nysut/nysut-united/2022/nysutunited_january2022.pdf).

[48] Jill Rosen, *With Just One Black Teacher, Black Students More Likely to Graduate*, Johns Hopkins University (Apr. 5, 2017), <https://releases.jhu.edu/2017/04/05/with-just-one-black-teacher-black-students-more-likely-to-graduate/>.

[49] N.Y. Comp. Codes R. & Regs. tit. 8, § 80-6.3.

[50] *Report and recommendations of the Committee on Families and the Law Racial Justice and Child Welfare*, New York State Bar Association, 6 (April 2022), <https://nysba.org/app/uploads/2022/03/Committee-on-Families-and-the-Law-April-2022-approved.pdf>.

[51] *Id.* at 7.

[52] *Id.* at 7. Stating “By the time they reach the age of 18 years old, an astounding 53% of Black children in the United States will have been subject to at least one Child Protective Services (CPS) investigation compared with 28% of white children and 38% of all children”

[53] *Id.* at 9 stating “Since the enactment of CAPTA the number of reports to state child welfare agencies of suspected abuse and neglect have increased exponentially, in 1974 there were 60,000 reports, in 2018 3,534,000 million children were the subject of a CPS investigation or alternative response.; *see also* New York City Administration for Children’s Service Monthly Indicator Flash Report for March 2022 at 29, <https://www1.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2022/03.pdf> (last visited Apr. 18, 2022).

[54] Flash Report for March 2022 *supra* note 54 at 29 and 30.

[55] Additional recommendations to address over-reporting can be found in *Rise Recommendations to Address Schools’ Over-Reporting to Child Protective Services*, Rise (Mar. 2, 2022), <https://www.risemagazine.org/2020/03/rise-recommendations-schools-over-reporting/>.

[56] N.Y. Comp. Codes R. & Regs. tit. 8, § 57-4.3.

[57] *Culturally Responsive-Sustaining Education Framework*, New York State Educ. Dep’t, <http://www.nysed.gov/common/nysed/files/programs/crs/culturally-responsive-sustaining-education-framework.pdf> (last visited Apr. 16, 2022).

[58] *Id.* at 6.

[59] Districts must be sure to include cultures beyond just those represented within that specific district. *See e.g.* Leah Q. Peoples et al., *The Culturally Responsive-Sustaining STEAM Curriculum Scorecard*, [https://steinhardt.nyu.edu/sites/default/files/2021-02/CRSE-STEAMScorecard\\_FIN\\_optimized%20%281%29.pdf](https://steinhardt.nyu.edu/sites/default/files/2021-02/CRSE-STEAMScorecard_FIN_optimized%20%281%29.pdf) (last visited Apr. 18, 2022).

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[61] Campaign for *Fiscal Equity Inc. v. State*, 86 N.Y.2d 306 (1995); *See also Background: CFE v. State of New York*, New Yorkers for Students’ Educ. Rts., <http://nyser.org/about-us/background-cfe-v-state-of-new-york/> (last visited Apr. 16, 2022).

[62] *Education Equity in New York: A Forgotten Dream*, New York Advisory Comm. to the U.S. Comm. on Civ. Rts. (Feb. 10, 2020), <https://www.usccr.gov/files/pubs/2020/02-10-Education-Equity-in-New%20York.pdf>.

[63] Marina Marcou-O'Malley, *Educational Racism: Andrew Cuomo's Record of Underfunding Public Schools in Black & Latino Communities*, All. Quality Educ. (Sept. 2018), [http://www.aqeny.org/wp-content/uploads/2018/09/educationalracism\\_corrected.pdf](http://www.aqeny.org/wp-content/uploads/2018/09/educationalracism_corrected.pdf).

[64] *Id.*

[65] Jim Malatras, *Uneven Distribution of Education Aid within Big 5 School Districts in New York State*, Rockefeller Inst. Gov't (Nov. 14, 2018), [https://rockinst.org/wp-content/uploads/2018/11/11-13-18-School-Spending-in-NYS\\_FINAL.pdf](https://rockinst.org/wp-content/uploads/2018/11/11-13-18-School-Spending-in-NYS_FINAL.pdf).

[66] Marina Marcou-O'Malley, *CFE Derailed: The State of Our Schools in the Wake of the 2016 New York State Budget and a Decade after the Campaign for Fiscal Equality*, All. Quality Educ. (June 2017), <http://www.aqeny.org/wp-content/uploads/2018/01/CFE-Derailed-June-17-final-1.pdf>; Erica Vladimer, *New York Ci*

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## Health Subcommittee Report

### Introduction

On December 22, 2021, Governor Hochul signed legislation declaring racism a public health crisis and acknowledging the negative impact that racism has on the lives of people of color in New York State, including their health, education, and housing opportunities.[i] The New York City and Albany County Health Commissioners also declared racism a public health crisis in June 2020 with the NYC Board of Health following with a resolution thereafter in October 2021.[ii] The Institute of Medicine’s (now the National Academy of Medicine) seminal 2003 report titled “Unequal Treatment: Confronting Racial Disparities in Health Care,” discusses the historic and contemporary social and economic inequality in the United States and concluded that systemic discrimination, including health professional bias, influences the health care outcomes of racial and ethnic minorities.[iii] The United States continues to underperform on its health care outcomes when compared to other high-income countries, notwithstanding its outsized and ever increasing expenditures for health care, accounting for almost 20% of the gross domestic product.[iv] Although New York ranks in the top ten states for health outcomes and access to health care, there is significant variability in health outcomes throughout the state, and persistent racial and socio-economic disparities in health outcomes remain.[v]

Health equity means “attainment of the highest level of health for all people... [which] requires valuing everyone equally with focused and ongoing societal efforts to address avoidable inequalities, historical and contemporary injustices, and health and health care disparities.”[vi] Health disparities include differences in health insurance coverage, access to and use of care, and quality of care, which often have dire consequences for health outcomes, as laid bare by the COVID-19 crisis.[vii] We have examined legal policies that promote health equity with a particular focus on ameliorating racial disparities. Achieving health equity will improve health outcomes for all individuals by permitting everyone to achieve their best possible health, which will result in lower health expenditures overall in the long term, however it is imperative to identify health disparities and implement policies, laws, and systems that reduce inequity, including addressing economic, environmental, and social inequities in addition to those directly related to health care delivery and access.

New York’s Black non-Hispanic population had the highest age- adjusted mortality rate, the highest rates of diabetes and cardiovascular disease mortality and disease burden, infant mortality, and asthma and diabetes short-term complications hospitalization rates among all racial and ethnic groups in New York State.[viii] 57.6% of Black non-Hispanic New Yorkers died before the age of 75 years of age (considered premature death) and 53.8% of Hispanics who died in New York State during 2014-2016 died prematurely. 45.8% of the New York Asian/Pacific Islander population died prematurely. Hispanic New Yorkers had the second lowest age-adjusted total mortality rate compared to the other racial and ethnic groups.[ix] There was a higher percentage of Black Non-Hispanic and Asian Pacific Islander infants born between 2014-2016 considered low birth weight and the Black non-Hispanic infant mortality rate was twice the rate of White non-Hispanics.[x] Hispanics had the second highest age-adjusted rates for diabetes mortality and the

second highest age-adjusted diabetes hospitalizations in 2012-2014 to other racial and ethnic groups in New York State.[xi]

Asian/Pacific Islanders in New York also had the second-highest age-adjusted suicide mortality rate compared to all other racial and ethnic groups in New York. [xii] Disaggregated data from New York City reveals that the aggregated data obscures disparities among New York's Asian population. Compared to White adults, Asian/Pacific Islander adults were twice as likely to be uninsured. Bangladeshi, Pakistani, Chinese, and Native Hawaiian and Pacific Islanders had the highest rates of poverty amongst Asian Americans in New York City. Similarly, outcomes during the COVID-19 pandemic revealed disparities among all racial and ethnic groups in New York, including a high mortality rate of Chinese, Hispanic, and non-Hispanic Blacks.[xiii] The devastating toll of COVID-19 deaths in the United States also revealed a disparity in health care provider deaths, with a median age of death of 59 years of age, compared to 78 years in the general population. The majority of those workers were people of color with a disproportionate burden of deaths amongst Black and Asian/Pacific Islander providers, of 26% and 21% of deaths, respectively, and disproportionate impact on health care providers of Filipino origin. [xiv]

Health is impacted by the “conditions in the environments where people are born, live, learn, work, play, worship, and age,” commonly referred to as the social determinants of health (“SDOH”).[xv] The SDOH are structurally dictated by the socioeconomic and political context, including policies at all levels of government, cultural and societal values, and power structures. In the United States, that context is reinforced by racial categorization, subjugation, subordination, and exploitation and the social reproduction of these inequities. The organized health care and public health systems were crafted within the same structure. [xvi] Structural racism and systemic inequalities impact access to a quality education, clean air and water, safe living conditions, the accumulation of wealth, criminal justice involvement, access to health care, health improving resources, and health coverage, all of which impact health outcomes. [xvii]

Not only does racism influence health outcomes through the mechanisms of the SDOH and interpersonal/individual level mechanisms, it also causes negative physical and mental health outcomes, including anxiety, depression, adverse cardiovascular disease outcomes, hypertension, and negative health behaviors such as smoking and the unavailability of healthy food.[xviii] Structural racism impacts the health of all people of color in the United States through many mechanisms, including through differential access to health care, historical and continuing residential segregation, and individual discrimination and internalized discrimination.[xix]

### Recommended Framework for Action/Intervention

The World Health Organization's conceptual framework on structural social determinants of health provides an approach for policy interventions to address social determinants of health and

the resulting inequities. The WHO recommends context-specific strategies to address both structural and intermediary determinants at key levels, within the socio-political context at the interpersonal micro-level, community, public, and environmental levels. [xx] The WHO's framework focuses attention on the way that socioeconomic and political context impacts health outcomes through their influence on the social determinants of health. Structural racism has impacted the socioeconomic and political context in which the structural and social determinants of health inequities were created and are reinforced by social status, including gender, social class, race, ethnicity, and discrimination, ultimately impacting the material circumstances, behavioral and biological factors, and psychosocial factors which impact individual health.[xxi] Examples include redlining, health and food deserts, de jure and de facto segregation, and health care insurance and access.

### Historical Context

The current overarching goal, commitment, and achievement of medicine, public health, and their respective professionals is to help all people, but the historic oppression and continued marginalization of people of color contributes to the health disparities observed in them, resulting in actual and perceived mistrust of organized medicine and clinical research, inadequate health care coverage, and a lack of clinical research related to diseases prevalent in minority populations.[xxii]

Medical experimentation was performed on enslaved African Americans by medical professionals, some of whom continue to be heralded as the founding fathers of branches of medicine, such as Dr. J. Marion Sims. [xxiii]

The historical exploitation and misrepresentation of clinical research subjects by the government, public health service, and medical institutions, e.g. the Tuskegee Syphilis experiment and state sponsored sterilization, may contribute to the mistrust of clinical research participation by members of communities of color.[xxiv] The lack of representation of people of color in clinical research is not solely due to the mistrust of potential participants but is also influenced by the exclusion of many people of color in studies, ostensibly due to comorbidities, which may contribute to the lack of generalizability of the findings of clinical research and racial disparities in health outcomes.[xxv]

Following the release of what is commonly referred to as the Flexner Report in 1910, during de jure segregation, over half of the black medical schools which existed at the time were closed based on Abraham Flexner's recommendations and due to a lack of funding or will to support the development of programs which met the "rigorous" model of medical education utilized in the report.[xxvi] The closure of these schools resulted in a negative impact on the number of black physicians and the provision of health care to African-Americans due to existing segregation policies. The American Medical Association acknowledged that for over one hundred years, the organization "actively reinforced or passively accepted racial inequalities and the exclusion of African-American physicians." [xxvii] The only federal legislation passed in the 20<sup>th</sup> Century which included a "separate but equal" clause was legislation related to the national health

care infrastructure, the Hospital Survey and Construction Act of 1946, also known as the Hill-Burton Act, which provided government funding which was ultimately matched by three times that amount in private funding.[xxviii]

The Civil Rights movement incorporated legal challenges by Black dentists and physicians arguing that the segregation of the medical facilities built with Hill-Burton funds was unconstitutional based on denial of privileges to Black physicians at those segregated hospitals; suits in which some of which the Department of Justice entered amicus briefs in support of the plaintiffs. The separate but equal provision of Hill-Burton was found to be unconstitutional in a Circuit Court decision, but was unenforceable on a national level, until the passage of the Civil Rights Act of 1965 which ended de jure segregation in the United States through Title VI which ended the segregation of any hospital facility which received federal funding.[xxix] The passage of the Social Security Act of 1965 established Medicaid and Medicare, providing health coverage for the poor, disabled, and aged, and increased the access to comprehensive health care for historically underserved populations.[xxx] The historical development of the health care systems in the United States has favored employer-sponsored health insurance, centering not only insurance coverage, but also care models, around those with higher-earning employment.[xxxi] Health care coverage and in turn, service distribution, tied to higher-earning employment has meant that people without access to those jobs have been left out of our health systems, leading to worse health outcomes. [xxxii] These systems developed along explicitly racist lines, exempting industries with disproportionately high numbers of workers from communities of color from coverage. [xxxiii] In the 1960s, against this backdrop, the need to fill these gaps led to the creation of Medicare and Medicaid, which expanded access to health care for Black people in the US.[xxxiv]

## Data Collection

**Recommendation #1:** Require collection by *all* healthcare providers of self-reported race/ethnicity information through standardized disaggregated categories with information provided to the patients on why the data is being collected and improved training for those collecting the data so they can address patient concerns. Add race and ethnicity subpopulation categories for all racial designations, particularly for the Black non-Hispanic population.

Identification of areas in which disparities exist will equip researchers to study and ultimately to address the factors contributing to those disparities, including the impact of structural inequities as compared to other SDOH. Data collection will permit providers, researchers, and officials to determine whether disparities exist and ultimately to research whether racial discrimination contributes to those disparate health outcomes.[xxxv] National data sets are a valuable tool to measure the variables that are the most important determinants of disparate outcomes and can help estimate and understand the sources of those outcomes.[xxxvi] New York is primed to provide

valuable information, but ensuring it is both accurate and complete is paramount and will only be achieved by adding subpopulation categories.

Healthcare disparities are often the result of a complex and varied combination of factors, many of which may not be immediately apparent to patients or providers. It is imperative to increase the availability of health data to better understand the extent of disparities and the circumstances under which those disparities are likely to occur. Unfortunately, standardized racial and ethnic data demonstrating differences in care are not generally available. [xxxvii]

Racial and ethnic data collected and analyzed in broad categories may obscure disparities which exist amongst subpopulations, rendering them invisible, or obscure the factors which impact health outcomes due to the differing cultural circumstances in which the subpopulations live. Demographic diversity in the United States continues to grow, and thus the importance of tracking and analyzing patterns in racial and ethnic subgroups becomes more valuable and necessary. [xxxviii]

In 2019, 46.8 million people identified as Black in the United States, including 4.6 million being foreign-born, 3.7 million identified as multi-racial non-Hispanic Black, and 2.4 million identified as Black Hispanics. New York state has the highest number of foreign-born black immigrants consisting of many African and Caribbean born.[xxxix] African populations and those of African descent have been found to have greater genetic diversity compared to other populations, and there is tremendous diversity in culture, diet, religion, migration experience, educational attainment, and health behaviors between groups of African descent.[xl] Understanding specific factors related to cultural influences unique to racial ethnic subgroups increases the ability to design strategies to address the root causes of disparities.[xli] Those identified as foreign-born immigrants and refugees experience influences on their health distinct from native-born populations.[xlii]

Using observed race and ethnicity data rather than self-reported data results in unavoidable misclassification. Inaccuracies in data collection impact the research process. [xliii] Barriers due to health care providers/staff hesitance and patient reluctance can be overcome by transparency about why the data is being collected, how it will be used, and that it will be deidentified. Training of those collecting the data will be essential to ensuring accurate data collection.

New York has made some progress in recent years in standardizing racial and ethnic health data collection. The Statewide Planning and Research Cooperative System (SPARCS) collects inpatient and outpatient data from “health care facilities” licensed under article 28 of the Public Health Law, which are required to submit SPARCS data.[xliv] In January 2014, the race and ethnicity codes used by SPARCS were expanded to include subcategories of different races and ethnicities, conforming with the CDC Race and Ethnicity Code Set - Version 1.0. Notably the race categories do not include any subcategories for “Black or African American,” although they include 24, 26, and 40 subcategories for Asian, Hawaiian/Pacific Islander, and Spanish/Hispanic origin, respectively. [xlv]

**Recommendation # 2: Mandate Training on Structural Racism, Bias, and Equity for Health Care Providers and Facilities.**

In an effort to combat structural racism and bias in health care, the Task Force recommends mandating training on structural racism, bias, and equity for health care providers as both a prerequisite for licensure and/or certification, and on a continuing basis as part of applicable continuing education requirements. The Task Force also recommends that this training be required as a minimum standard for licensure or certification of all health care facilities that are licensed and/or certified by the New York State Department of Health.

**A. Basis for Recommendation.**

Research indicates that clinicians’ racial bias or deficiencies in cultural competency can adversely affect the quality of care they provide. Persistent structural and interpersonal racism impact overall health, the care that Black, Indigenous, People of Color (“BIPOC”) receive, their experiences with providers, and their likelihood to seek treatment. Research suggests that implicit bias may result in poorer quality of care and communication and may negatively impact patient compliance and follow-up care. Clinicians’ and patient facing staff’s lack of training and understanding of racial bias and cultural humility impacts the health care received by BIPOC, and action must be taken to ensure that this pattern of practice no longer continues in New York’s health care system.

Implicit bias impacts the physician-patient interaction through six mechanisms before, during, and after the clinical encounter, including impacting the perceptions of people of color and their expectations, erroneous statistical interpretations and data application about racial and ethnic groups, impacts on physician and patient communication, and physician’s choices of treatment and diagnostic decisions which impact compliance, adherence, and patient follow-up.<sup>[xlvii]</sup> An abundance of research demonstrates the clear negative impact that racism and implicit bias have on the health care outcomes of BIPOC. For example, a 2020 study found that between 2005 and 2016, medical professionals were 10 percent less likely to admit Black patients to the hospital than white patients,<sup>[xlviii]</sup> and a 2016 study found that many white medical students wrongly believed Black people have a higher pain tolerance than white people.<sup>[xlix]</sup> 73% of participants held at least one false belief about the biological differences between races—including that Black people have thicker skin, less sensitive nerve endings, or stronger immune systems—beliefs which are centuries old, were used to justify the inhumane treatment of slaves in the 19<sup>th</sup> century, and which are patently false.

The negative impacts of implicit bias and racism, both structural and interpersonal, arise in all corners of health care, and are further compounded by intersectional issues where a BIPOC is also a member of another minority group. For example, according to the Commonwealth Fund, Black women who survived breast cancer reported that they experienced poor treatment, including instances when physicians didn’t take time to explain their diagnoses and options, front-desk staff treated them with disrespect, and lack of support in dealing with complications.<sup>[l]</sup> Various studies combined into a report by the Commonwealth Fund<sup>[1]</sup> also found that Black women are significantly more likely than white women to report that their concerns and preferences regarding

birth were disregarded, and women with Medicaid coverage reported inadequate postpartum care and support. Compared to white women, non-Hispanic Black women were more likely to report being treated unfairly and with disrespect by providers, not having decision autonomy during labor and delivery, feeling pressured to have a cesarean section, and not exclusively breastfeeding at one week and six months. Additionally, women with Medicaid coverage, as compared with women with private health insurance, were more likely to report no postpartum visit, returning to work within two months of birth, less postpartum emotional and practical support at home, not having decision autonomy during labor and delivery, being treated unfairly and with disrespect by providers because of their insurance status, and not exclusively breastfeeding at one week and six months. These findings show that the experiences of pregnant and birthing people differ based on race and highlight the need for health care systems to focus on and address structural factors, such as racism and bias, which affect treatment.

The pediatric BIPOC population is not immune and reports of racialized health disparities, stereotype threat, racial microaggressions, and language use exist in this population as well.<sup>[li]</sup> Doctors in emergency departments were less likely to classify Black and Latinx children as requiring emergency care, to recommend hospital admission, to order blood tests, CT scans, or X-rays, or to order appropriate pain medication as compared to white and Asian children.<sup>[lii]</sup> Although this study did not specifically look at the cause of these differences, the researchers noted that the causes could not be explained by social, economic, or clinical factors that would change how doctors treat BIPOC in emergencies.<sup>[liii]</sup>

In addition to a health care professional often being less willing to acknowledge symptoms and less knowledgeable on how to diagnose and provide care for BIPOC patients, providers also often lack awareness of the needs of LGBTQAI+ patients, in large part because more than half of medical school curricula do not have information about the unique health issues and treatment of LGBTQAI+ people beyond work related to HIV. This leaves BIPOC LGBTQAI+ people to face compounded forms of stigma at the doctor's office, resulting in substandard or refusal of care, harsh language, perceived discrimination, and even physical mistreatment, causing some to forego necessary care.<sup>[liv], [lv]</sup>

### **Current Licensure and Certification Requirements.**

The New York State Education Department's Office of Professions oversees at least 23 health care-related and ancillary professions, including dentistry, medicine, mental health practitioners, midwifery, nursing, occupational therapy, physical therapy, psychology, social work, and speech-language pathology.<sup>[lvi]</sup>

At present, it does not appear that any of these professions require anti-racism, bias, diversity, and/or equity-focused training at all, let alone as a prerequisite for licensure and/or certification, or on a continuing basis as part of applicable continuing education requirements.<sup>[lvii]</sup> Various professional practice-related guidelines from the New York State Office of Professions reference the importance of culturally competent care, but do not place any affirmative requirements on

providers.<sup>[lviii]</sup> Notably, it is impossible to meet these ethical requirements without incorporating an understanding of structural racism and unconscious bias into clinical practice.

In addition to the various medical and related professions overseen by the Office of Professions, the New York State Department of Health oversees several types of medical facilities. The types of medical facilities that require a license or certificate from the Department of Health to operate include adult, long-term, assisted living, and residential care facilities; diagnostic and treatment centers; hospitals; hospice; and birthing centers.<sup>[lix]</sup> There are minimum standards for licensure and/or certification that are applicable to each of these types of facilities, but presently, there are no minimum standards that apply to racial bias and cultural humility or competency training requirements. There are, however, various patient rights and facility-related requirements that are relevant to the need for racial bias, equity, and cultural competency training.

### **B. Task Force Recommendation and Impact.**

The Task Force recommends mandating training on structural racism, bias, and equity for health care providers as both a prerequisite for licensure and/or certification, and on a continuing basis as part of applicable continuing education requirements, and that this training be required as a minimum standard for licensure or certification of all health care facilities that are licensed and/or certified by the New York State Department of Health. The mandated training should be focused on topics such as diversity, equity, and inclusion, structural racism and bias, bias towards other diverse groups (*e.g.*, LGBTQAI+, ethnic minorities, people with disabilities) in the health care industry, the impacts of these structures on patient care, social determinants of health, medical approaches that are grounded in framework that addresses structural racism and equity, and the roles of racial and other biases and gatekeeping in health care.

Bias can be mitigated through education, and implicit bias training has been recommended as an addition to the formal medical school curriculum. Raising awareness of one's implicit biases and the circumstances in which the bias are most likely to be manifested is recommended to decrease the initiation of implicit bias in the clinical encounter and improve patient-centered care.<sup>[lx]</sup> To combat the disparities in health care, advocates say health care professionals must explicitly acknowledge that race and racism factor into health care. Less directed efforts to improve health outcomes—for example, efforts that fail to consider the factors that may lead to worse outcomes for BIPOC—may not lead to equal gains across groups and, in some cases, may exacerbate racial health disparities. Providers need to understand how these belief systems became embedded in our society, both structurally and culturally, how they impact both providers personally and as caregivers, and the overall provision of health care services.<sup>[lxi]</sup> Practitioners must identify and remove any structures, attitudes, beliefs, and practices that may be placing specific groups and/or communities at a disadvantage.

Awareness of bias and its impacts on the provision of health care services is an ethical and professional responsibility imperative, encouraging providers to confront interpersonal bias and empowering them to identify and modify any institutional bias can also improve health equity, patient safety, and help to eliminate disparities in care quality. Mandating bias training and

education requirements for both licensure and/or certification of professionals and health care facilities will impact most health care providers and support staff to ensure that culturally humble and competent care will be provided to more New Yorkers.

## **Affordability and Accessibility**

Expanding access to and improving public health insurance coverage should be a major policy priority in reducing racial health disparities in our state. Research has shown that expanding access to Medicaid is not only associated with reductions in racial/ethnic disparities in health coverage but also narrowing disparities in health outcomes for Black and Latino/a individuals, particularly for measures of maternal and infant health.<sup>[lxii]</sup> Today, Medicaid and Child Health Plus insure more than 1 in 3 New Yorkers.<sup>[lxiii]</sup> And people of color remain overrepresented in these programs. .

Despite progress, gaps in access to affordable health insurance coverage, leading to gaps in access to health care services and worse health outcomes remain. For example, since New York enactment of the Affordable Care Act Marketplace in 2010, the number of uninsured has been reduced from 3 million to 1 million people however, hundreds of thousands of immigrant New Yorkers are specifically excluded from New York's Essential Plan because of their immigration status.<sup>[lxiv]</sup>

Specific recommendations to expand health coverage to all New Yorkers, with a particular focus on filling gaps to remedy racial disparities should include:

- **Creating equity in Medicaid eligibility for seniors and people with disabilities** by eliminating the income and asset “cliff.” When an enrollee turns sixty-five or obtains Medicare based on Social Security Disability, the Medicaid income limit drops from 138% to 84% of the federal poverty level (from \$1,482 monthly to \$884), and enrollees are suddenly subject to an asset test. This disproportionately affects people of color, who are more likely to have cash assets than exempted assets like homes or retirement accounts.<sup>[lxv]</sup>
- **Expanding the Essential Plan to immigrants.** Immigrants have disproportionately served on the frontlines during the COVID-19 pandemic, yet nearly 400,000 New Yorkers lack health care coverage due simply to their immigration status.<sup>[lxvi]</sup>
- **Expanding Medicaid eligibility for incarcerated people prior to reentry.** People leaving prison and jail often do not have health insurance prior to or even at release, hindering access to critical health care upon reentry: people reentering the community are 129% more likely to die from a drug overdose<sup>[lxvii]</sup> and are at significantly higher risk to die by suicide.<sup>[lxviii]</sup>
- **Expanding Medicaid and Medicare coverage of dental care.** Extreme disparities exist in oral health. For example, while overall, 17% of older individuals in the U.S. suffer from complete tooth loss, 31% of older Black adults do. These trends are particularly pronounced among low-income people.<sup>[lxix]</sup> One of the main drivers of this disparate outcome has been the high cost and lack of health insurance coverage for dental care.<sup>[lxx]</sup>

- **Increasing wages for direct care and entry-level health care workers, such as Home Health Aides and Personal Care Aides, Nursing Assistants, Pharmacy Technicians, and Medical Assistants.** Direct care workers are predominantly women, the majority of whom are people of color, with 30% identifying as Black/African American, 18% as Latino/Hispanic, and 7% Asian or Pacific-Islander. Wages and benefits for these workers are low and insufficient and do not reflect the demand or the importance of this workforce.[lxxi] 42% of direct care workers require public assistance and there are high rates of poverty within this group, forcing them to take multiple jobs at various facilities, which was thought to be a contributing factor the spread of COVID-19 in residential care facilities in New York State.

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[vi] U.S. Dep't Health & Human Servs., Office of Disease Prevention and Health Promotion, *HealthyPeople.gov, Disparities* (last updated Oct. 27, 2021), <https://www.healthypeople.gov/2020/about/foundation-health-measures/Disparities>.

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[viii] [https://health.ny.gov/community/minority/docs/health\\_equity\\_report\\_2019.pdf](https://health.ny.gov/community/minority/docs/health_equity_report_2019.pdf)

[ix] Id.

[x] Id.

[xi] [https://health.ny.gov/community/minority/docs/health\\_equity\\_report\\_2019.pdf](https://health.ny.gov/community/minority/docs/health_equity_report_2019.pdf)

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[xiv] <https://www.theguardian.com/us-news/ng-interactive/2020/aug/11/lost-on-the-frontline-covid-19-coronavirus-us-healthcare-workers-deaths-database>

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[lvi] See *New York State Licensed Professions*, N.Y. St. Ed. Dep't, Off. of the Professions (Mar. 18, 2021), <http://www.op.nysed.gov/prof/>.

[lvii] See, e.g., *New York Continuing Medical Education Credit Requirements*, AltusLearn (2022), <https://altuslearn.com/state-credit-requirements/new-york/> (setting out various continuing medical education requirements for various medical professions in New York, none of which include diversity-related requirements).

[lix] *See generally* N.Y. Pub. Health Law Art. 28 (hospitals, residential health care facilities), 28-A (long-term care); 10 NYCRR Parts 405 – 408 (hospitals), 410 – 415 (residential health care facilities), 430 (home care), 431 (diagnostic and treatment centers), 432 (hospice), 750 – 759 (diagnostic and treatment centers), 760 – 768 (home care), 795 (midwifery birth centers), 1001 (assisted living); *Wadsworth Center*, N.Y. St. Dep’t of Health, <https://www.wadsworth.org/> (last visited Jan. 19, 2022) (laboratories).

[lx] *See* Staats, *supra* note vii.

[lxi] *See* Hostetter, *supra* note v.

[lxii] *See, e.g.*, Madeline Guth, Samantha Artiga & Olivia Pham, *Effects of the ACA Medicaid Expansion on Racial Disparities in Health and Health Care*, Kaiser Family Found. (Sept. 30, 2020), <https://www.kff.org/medicaid/issue-brief/effects-of-the-aca-medicaid-expansion-on-racial-disparities-in-health-and-health-care/>.

[lxiii] NYS Dep’t of Health, *Enrollment by County, August 2021* (data last updated Sept. 7, 2021), [https://www.health.ny.gov/health\\_care/medicaid/enrollment/docs/by\\_resident\\_co/2021/aug-2021.pdf](https://www.health.ny.gov/health_care/medicaid/enrollment/docs/by_resident_co/2021/aug-2021.pdf) (Medicaid insures over seven million); NYS Dep’t of Health, *Child Health Plus Enrollment by Month and Year: Beginning 2009* (last visited Nov. 8, 2021), <https://health.data.ny.gov/Health/Child-Health-Plus-Program-Enrollment-by-Month-and-/cucz-jjkg> (CHP insures nearly 400,000 children).

[lxiv] *See* New York State Assembly Memorandum in Support of Legislation submitted in accordance with Assembly Rule II, Sec 1(f) (2021) (submitted in support of Assembly bill A880A0, [https://nyassembly.gov/leg/?default\\_fld=&leg\\_video=&bn=A00880&term=2021&Summary=Y&Memo=Y](https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A00880&term=2021&Summary=Y&Memo=Y)).

[lxv] Stefanos Chen, *The Resiliency of New York’s Black Homeowners*, New York Times (Aug. 17, 2021), <https://www.nytimes.com/2021/08/17/realestate/new-york-black-homeowners.html?referringSource=articleShare>; Kelly Anne Smith, *America’s Racial Wealth Gap In Retirement Savings*, Forbes, (Sept. 1, 2020), <https://www.forbes.com/advisor/retirement/retirement-racial-wealth-gap/>; *see also* Prosperity Now Scorecard, <https://scorecard.prosperitynow.org/data-by-issue#finance/outcome/asset-poverty-rate> (NY has the highest asset poverty rate for Latino/a households nationally; the sixth highest for households of color, and the sixth highest for household with an adult with a disability).

[lxvi] For ongoing campaigns and work surrounding this policy, *see, e.g.*, Coverage 4 All, <https://www.coverage4all.info/mission>.

[lxvii] Ingrid A. Binswanger et al., *Release from Prison; – A High Risk of Death for Former Inmates*, 356 N. Eng. J. Med. 157 (2007), <https://www.nejm.org/doi/full/10.1056/NEJMsa064115>.

[lxviii] Joe Russo et al., *Caring for Those in Custody: Identifying High-Priority Needs to Reduce Mortality in Correctional Facilities* (2017), [https://www.rand.org/content/dam/rand/pubs/research\\_reports/RR1900/RR1967/RAND\\_RR1967.pdf](https://www.rand.org/content/dam/rand/pubs/research_reports/RR1900/RR1967/RAND_RR1967.pdf).

[lxix] U.S. Dep’t Health & Human Servs., Centers for Disease Control and Prevention, *Oral Health Surveillance Report: Trends in Dental Caries and Sealants, Tooth Retention, and Edentulism, United States 1999–2004 to 2011–2016* (2019), [https://www.cdc.gov/oralhealth/pdfs\\_and\\_other\\_files/Oral-Health-Surveillance-Report-2019-h.pdf](https://www.cdc.gov/oralhealth/pdfs_and_other_files/Oral-Health-Surveillance-Report-2019-h.pdf).

[lxx] Georgia Burke et al., Justice in Aging, *Adding a Dental Benefit to Medicare: Addressing Racial Disparities* (Oct. 2019), <https://www.justiceinaging.org/wp-content/uploads/2019/10/Addressing-Oral-Health-Equity-by-Adding-a-Dental-Benefit-to-Medicare.pdf>.

[lxxi] Scales K., *Caring for the Future: The Power and Potential of America’s Direct Care Workforce: A Detailed Profile of America’s Direct Care Workforce*. (2021). <https://phinational.org/caringforthefuture/>

[i] S. 29876-A/A.5679 (December 22, 2021)

## **Environmental Justice Report**

### **Executive Summary**

Environmental justice (EJ) was born from the recognition that communities of color and low-income communities have been, and continue to be, harmed by legacies of environmental racism and unfair processes. Objective and subjective data have confirmed that these communities and “front line” communities of Black, Indigenous, and People of Color (BIPOC) bear the largest burden of a warming planet and pollution. For too long, EJ Communities have pleaded with decision-makers for fair treatment and meaningful involvement in the development, implementation, and enforcement of policies - laws, regulations, guidance and appropriations - that impact their local environment and health.

Recognizing the disproportionate exposure that EJ Communities have to pollution, extreme weather events, and the adverse impacts of climate change, we also take note of the structurally

racist origins of environmental injustice. While there are numerous environmental injustices that we might address within New York State, we have focused our recommendations in four key areas: air quality; clean drinking water; government accountability; and environmental review/public participation.

In summary, we recommend that New York state and local governments pursue the following actions in EJ Communities, or more specifically, those areas designated by the state as “potential environmental justice areas” or “disadvantaged communities”:

**In addressing environmental injustices relating to clean air:**

- New York City (NYC) should finalize implementation of 2019 congestion pricing regulations and utilize funds from the recently passed federal Infrastructure Investment and Jobs Act (Infrastructure Act) to improve the mass transit systems throughout the State, particularly New York City;
- NYC should implement Comptroller Lander’s proposal to invest \$500 million over the next eight years to install 25,000 solar panels on rooftops through New York City; and
- The state Public Service Commission (PCS) should reduce the number of “peaker” power plants in half by 2025, followed by a complete shutdown of such plants by 2030.

**In addressing environmental injustices relating to clean water:**

- The New York State Department of Health (DOH) should require municipal and private water districts to conduct feasibility studies on water treatment;
- DOH should provide supplemental grants to low-income communities to cover both the capital cost and subsequent operation and maintenance of drinking water treatment;
- DOH and municipal water districts should utilize Infrastructure Act funds to improve the drinking water infrastructure throughout the State; and
- DOH and/or the New York State Department of Environmental Conservation (DEC) should require landlords of multifamily apartment buildings (i.e., ten units or more) to annually sample drinking water in their buildings for lead.

### **In addressing government non-accountability resulting in environmental injustices:**

- The State should conduct workshops for community groups with attorneys and investigators to explain relevant laws and regulations, and how to gather evidence to enable agency determinations about whether to conduct investigations;
- The State should hold government agencies accountable for their actions or inactions through judicial review, executive and legislative scrutiny, and public oversight;
- The State should conduct third-party audits of municipal and state agencies to assess the determination to open investigations and the grounds for their conclusions; and
- The State should establish and publicize the availability of a dedicated communication channel between communities and agencies to facilitate both the supply of information to agencies about problematic activity and to communities about agency findings and decisions.

### **In addressing environmental injustices relating to environmental review/public participation:**

- The DEC should amend regulations to require that project sponsors provide funding for resident groups or community organizations to hire pro bono attorneys and/or technical experts to assist in analyzing potential impacts of proposed projects;
- State and municipal agencies should utilize New York's existing governing infrastructure, including community boards, to serve as a conduit between lead/reviewing agencies and the public with respect to proposed projects that may impact the health or environment;
- State and municipal agencies should bolster public participation in meetings concerning proposed projects via several methods including requiring that all public meetings be made available virtually; creating a dedicated hotline/website with information about projects; providing childcare stipends or reimbursement for parents to attend meetings; and boost publicity for projects using traditional media and social media; and
- State and municipal agencies should extend public review and comment periods for projects.

## Background

The United States of America has the dubious distinction of being one of few nations that historically enslaved people based on race. Race-based chattel slavery dominated American society and underpinned U.S. capitalism and wealth. In New York, residents remained deeply divided over slavery and race well into the first half of the 20th century. While the state may have served as headquarters for leading antislavery associations, it was also the seat of proslavery business owners who capitalized on the slave trade. With the country embroiled in civil war, white mobs chose the guise of a “draft riot” to inflict atrocities upon the Black population – lynching men, terrorizing women and children, burning homes, destroying an orphanage from July 13 to 16, 1863. The New York draft riots remain the deadliest riots in U.S. history, even compared with the 1992 riots in Los Angeles or the 1967 Detroit riots. The legacy of this violence has shaped the lives and fortunes of black New Yorkers.

Since time immemorial, Mohawk, Oneida, Onondaga, Cayuga, and Seneca people have lived in what is now New York State. People living in these communities formed the Haudenosaunee Confederacy several hundred years ago. Up through the mid-eighteenth century, Haudenosaunee people controlled most of New York State’s land territory. White settlers increasingly forced Haudenosaunee people onto smaller and smaller reservations, so that by the early nineteenth century, the population of New York State was predominately white. As noted above, some White settlers enslaved people of African descent and forced them to live in New York as slaves. After New York State outlawed slavery, free people of color settled in New York City and in communities across New York State to escape enslavement in southern states.

In the early 20<sup>th</sup> century, Black families left the Jim Crow South in droves for northern industrial cities. Black populations surged in cities across New York, and especially in New York City, where there had already been an established Black population. Many people faced racism and discrimination upon their arrival. Policies enacted by the federal government, New York State, and cities encouraged segregation of neighborhoods by race and led to concentrated areas with predominantly Black populations. White individuals left behind areas with concentrated populations of non-White people, enabled by the rise of the automobiles and highways that provided easy access out of cities. In New York State, Robert Moses was influential in constructing these highways that cut through Black communities in cities and enabled White individuals to move to suburban towns. Governmental policies subsidized suburbs at the expense of cities. What resulted were concentrated urban neighborhoods in which the population was mostly non-white and mostly poor, while white individuals lived in enclaves in suburbs, often in places with healthier environments, where they excluded people of color.

While many Black Americans moved from the South to the North, federal immigration laws changed the makeup of who was arriving new to this country. The Immigration and Nationality Act of 1965 abolished country-of-origin quotas, which since the 1920s had restricted non-White immigration to the United States. This and subsequent changes to U.S. immigration laws have led

to increased immigration from places other than Europe, especially Asia, which has led to increasingly diverse populations across the country.[8]

The legacies of segregation live out in New York's cities. By 2010, New York City was the only of the top-five most-populous cities in the United States to have over 10% each of Hispanic/Latinx, Black, and Asian, populations.[9] This led to concentrated pockets of poverty in cities across New York State. These areas are most often home to mostly non-White individuals. A 2016 report by the NYU Furman Center found that Black and Hispanic individuals who live in poverty in New York City are more likely to live in high-poverty neighborhoods than poor White or Asian New Yorkers.

These inequities have led to place-based environmental injustices, which New York's Climate Leadership and Community Protection Act of 2019 (CLCPA) seeks to address. The CLCPA defines "disadvantaged communities" as "communities that bear burdens of negative public health effects, environmental pollution, impacts of climate change, and possess certain socioeconomic criteria, or comprise high-concentrations of low- and moderate- income households." The CLCPA set out the following criteria for defining EJ zones:

- Areas burdened by cumulative environmental pollution and other hazards that can lead to negative public health effects.
- Areas with concentrations of people that are of low income, high unemployment, high rent burden, low levels of home ownership, low levels of educational attainment, or members of groups that have historically experienced discrimination based on race or ethnicity.
- Areas vulnerable to the impacts of climate change such as flooding, storm surges, and urban heat island effect.

The Climate Justice Working Group is in the process of further definition and identification of these areas. In the interim, the state is using the definition of Communities that meet the U.S. Department of Housing and Urban Development 50% AMI threshold and are also within NYS Department of Environmental Conservation [Potential Environmental Justice areas](#), or areas within a [New York State Opportunity Zone](#). See [NYSERDA website](#) for a map of these areas.

## **Air Quality**

New York State passed congestion pricing legislation in 2019, however, implementation has remained stalled due to political wrangling. The congestion pricing plan involves imposition of tolls for persons traveling by car into portions of Manhattan during peak hours. Studies have already demonstrated the positive impact the plan would have on air quality in EJ areas, specifically South Williamsburg in Brooklyn. Now, with Kathy Hochul serving as governor and the passage of the federal Infrastructure Act, the state stands poised to enact rules and regulations that realize the intent of the congestion pricing plan. In Governor Hochul's proposed budget, the

state would impose new fine structures and rules related to obscuring license plates to avoid paying tolls and changing vehicle registration to avoid paying accumulated tickets, as well as addressing attempts to fraudulently exempt a vehicle from congestion pricing. While details surrounding toll collection remain unresolved, the state legislature is in a unique position to make substantive change in air pollution affecting marginalized communities. We recommend approval of the budget, which will finally implement this crucial air quality reform.

During his 2021 campaign to serve as New York City comptroller, Brad Lander proposed a novel idea to reduce dependency on fossil fuel use and convert to clean energy use in the city: install 25,000 solar panels on rooftops citywide. This ambitious plan would involve a capital commitment of \$500 million over the next eight years, but such funds could be potentially allocated from New York's share of the federal Infrastructure Act, municipal bonds, or the city's pension funds. Under Lander's plan, the city would own and operate the panels through a municipal utility that could negotiate better rates with Consolidated Edison (or other electric suppliers). While there are challenges to implement such a plan (e.g., New York City's dense urban landscape that offers few ideal spaces for large renewable energy plants), the prospect of clean, affordable, and renewable energy for urban dwellers should be explored. A shift away from fossil fuels with "green" buildings will only result in a better air quality outcome for all residents.

Introduced in March 2021 by Assemblyman Carroll, New York is currently considering the adoption of the Pollution Justice Act of 2021 (PJA). The PJA addresses the decommissioning of peaker plants (i.e., electric generating units that operate during periods of peak electricity demand in New York). In its findings, the bill notes that:

A substantial number of peaker plants are located in or adjacent to environmental justice communities in the city of New York and Long Island that already bear disproportionate pollution burdens due to a history of siting pollution sources in those communities. More than one million New Yorkers live within one mile of a peaker plant.

Pollutants from peaker plants contribute to significant public health problems, including asthma and lung and heart conditions. In lieu of peaker plants, the bill proposes replacement of these fossil fuel-burning facilities with renewable energy systems that will eliminate or significantly reduce air pollution impacts to EJ communities. We advocate for the adoption of a modified version of the PJA into law mandating the decommissioning of peaker plans and expressly directs the New York State Department of Environmental Conservation (DEC) and the New York State Public Service Commission (PSC) to only allow a replaceable peaker plant to apply for a single two-year (not five-year) extension of the deadline to replace such plant based on reliability and emissions factors.

We also recommend the creation of healthy and climate-safe school buildings by investing in upgrades to building envelopes and ventilation systems and transitioning away from fossil-fueled HVAC systems and other appliances, which contribute to localized poor air quality.

## Clean Drinking Water

Water districts in low-income communities often lack the resources to treat drinking water that wealthier communities take for granted. The fragmented nature of the state's water districts is a principal reason for disparate water quality among communities, creating an environmental justice concern.

The New York State Department of Health (NYSDOH) has a policy of encouraging voluntary water district consolidation. However, water districts supplying water in wealthier areas have no incentive to consolidate with lower income water districts. This is particularly an issue on Long Island where segregated communities are supplied water by fragmented water districts. Prior to paying millions of dollars on water treatment, water districts should be required to conduct feasibility studies to analyze alternatives to treatment. This analysis must include connecting to neighboring water systems or drawing from another source of water. For example, on Long Island water districts extract water from groundwater and have been greatly impacted by contaminants. Before installing treatment, water districts generally do not analyze whether connecting to the neighbors' water system is feasible and cost-effective. Nor have they analyzed whether connecting to New York City's water supply or relocating wells into the Central Pine Barrens located in Suffolk County is feasible.

While state grants appear to be available to municipalities to address drinking water contamination, the grants are insufficient to cover drinking water treatment systems of lower income communities and smaller water systems. For example, a treatment system to cover the cost of newly regulated contaminants, 1,4-dioxane, PFOA and/or PFOS may cost more than \$4 million. Further, the grants do not cover the cost of operating and maintaining the systems, which costs are significant.<sup>[3]</sup> Supplemental grants should be provided to low-income communities to cover both the capital cost and operation and maintenance cost of drinking water treatment that they otherwise cannot afford.

These grants would help offset costs that would otherwise be passed down to low-income ratepayers in these communities, avoiding inequities with access to clean drinking water.

The federal Infrastructure Act will allocate billions of dollars to New York, part which will be required for spending on drinking water infrastructure. New York should allocate those funds primarily to addressing newly regulated "emerging contaminants" and lead pipe infrastructure in EJ Communities.

New York should require owners of multifamily apartment buildings of ten units or more to annually sample drinking water in their buildings for lead. To the extent lead is detected in any sample at half the state's lead drinking water standards, the owner should be required to report such sample to the DOH and be required to either provide filtration systems to each unit within the building or update the plumbing to address the lead issues. The owner would also be subject to penalties and/or prosecution for failing to comply with these requirements. To assist owners,

grants and/or low interest loans should be made available to owners to fund the annual sampling, installation of filtration systems and plumbing upgrades in EJ Communities, in order to avoid rent hikes.

## **Government Accountability**

State and federal governments in the United States have given some amount of official consideration to EJ issues since the 1980s. President Clinton's 1994 Executive Order 12898, which directed federal agencies to make the pursuit of EJ objectives part of their missions, marked an important transition in environmental policy between an era when the distributional effects of environmental policy were largely or wholly ignored to one in which, officially, they were understood to deserve consideration. Even so, in the years since, federal and state governments alike have been slow to make themselves accountable for outcomes that reflect giving due priority to EJ considerations.<sup>[ccli]</sup> Since 2019, several states, including New York, have used legislation to make EJ a priority for state agencies. In some instances, this legislation introduced EJ to the state's body of laws, in others it strengthened and clarified earlier commitments. Although the particulars of each state's approach differ, several resemble that of New York, which created a Climate Justice Working Group and tasked it with identifying "disadvantaged communities" and directed the state's DEC to issue regulations that prioritize both avoiding the further burdening of those communities and measures to alleviate existing burdens. New York law also directs state agencies to cause those communities to receive no less than 35% of the overall benefits of spending on clean energy and energy efficiency programs.<sup>[cclii]</sup>

Government agencies can be held accountable for their decisions in a variety of ways, including through formal processes like judicial review, scrutiny from political leaders in the executive or legislative branches or the press, and personnel decisions that respond to outcomes or reception of agency (in)action on a given issue, among others.<sup>[ccliii]</sup>

In New York, government agencies have sometimes not appropriately scrutinized government activities with potential adverse effects on environmental health in EJ communities. Relatedly, government agencies sometimes under-enforce against activities with adverse effects on environmental health. And little if any legal recourse is available to people affected by agencies' laxity with respect to inspection and enforcement.<sup>[ccliiv]</sup> To address and ameliorate these failings, we recommend that government agencies, ideally in collaboration with community organizations, undertake the following measures:

- Conduct workshops for community groups with attorneys and investigators (both in private practice and employed by government agencies) to explain relevant laws and regulations and to teach community groups how to gather evidence to enable agency determinations about whether to investigate issues or impacts.

- Conduct periodic third-party audits of selected (a) city and state agency decisions about whether to investigate and (b) completed investigations by responsible agencies. Costs of the audits could be covered by a fee charged to the appropriate subset of permit applicants. Results would not need to be made fully public.
- Establish and publicize availability of a dedicated channel of communication between communities and relevant agencies to facilitate the flow of information about (a) problematic activity to agencies and (b) agency findings and decisions to communities.

### **Environmental Review/Public Participation**

One of the cornerstones of EJ is that communities and individuals whose environment and health will be impacted by government action (or inaction) must be allowed to meaningfully participate as equal partners at every level of decision-making. Indeed, the “17 Principles of Environmental Justice” and the “Jemez [EJ] Principles” demand that inclusivity cannot be achieved without meaningful and diverse participation by EJ Community members. New York law already requires environmental review and public participation in advance of many government actions that could impact the environment, such as the permitting of new industrial facilities or proposals under the state Brownfield Cleanup Program. However, the existing process has resulted in the unfair concentration of pollution in EJ Communities or community voices being left out of the conversation altogether.

To make the environmental review and public participation process more equitable, we provide a number of policy recommendations, which would be applied to areas designated by the New DEC as “potential environmental justice areas” and/or “disadvantaged communities” under the CLCPA. A link to the DEC’s current “potential environmental justice areas” map showing EJ-designated communities can be found [here](#); the DEC is anticipated to release a new map showing “disadvantaged communities,” which is expected to be a broader designation, later in 2022. More information regarding the term “disadvantaged communities” can be found [here](#) and [here](#).

Many times, individuals living or working in EJ Communities do not have sufficient information about a proposed project and/or its environmental impacts and, therefore, cannot effectively comment on it. Information is often dense and hard to understand for lay people. We recommend that regulations be amended to require that the developer/sponsor of projects in EJ Communities provide funding for EJ Community organizations to hire attorneys and/or technical experts that can explain - in simple terms - the impacts of the proposed project, and/or that the State establish a fund with a pre-approved list of experts that could provide technical assistance to EJ Community members.

We also recommend that a dedicated hotline or website be set up specifically to provide information to community members about proposed projects located in “potential environmental justice areas” or “disadvantaged communities.” A dedicated website with a repository of important

documents (e.g., fact sheets, FAQs, environmental reports, data, etc.) can ensure that individuals living in EJ Communities can easily access information concerning proposed projects.

Community members in EJ Communities are many times unaware of projects that may impact their health and environment. We recommend that state and local agencies overseeing the public participation process utilize existing governing infrastructure, such as community boards in NYC, county and/or village, town and county executives in other parts of the state, to serve as a conduit between lead/reviewing agencies and the public. Alternatively, state and local agencies can establish lists of trusted local community members (e.g., congregation) and community organizations who can serve as the conduits. A third option would be for the State to appoint third-party “Environmental Community Liaisons” that would engage in mass communication campaigns with respect to projects requiring public participation. These “conduits” referenced above could serve as the front-line voices for EJ Communities - they would be trusted with asking the agencies and project proponents impactful questions. Any of the foregoing options would serve the purpose of communicating the potential impacts of proposed projects in EJ Communities with as many residents as possible.

Public attendance at meetings held in many EJ Communities is low because meetings are either held on weeknights, which may be inconvenient for those who work the night shift or who do not have access to childcare. To encourage public participation, we recommend that state and local agencies overseeing the public participation aspect of proposed projects schedule meetings during times other than just weekday evenings (e.g., weekday morning; weekends, etc.). We also recommend that state and local agencies provide childcare resources for parents who wish to attend meetings and that all or most of the meetings be made available via a virtual platform (e.g., Zoom, MS Teams, etc.). State and local agencies should also be required to publicize notices for public meetings using traditional media (e.g., newspapers, agency website, etc.) and social media (e.g., paid advertisements targeted to zip codes).

We also believe the public review and comment period can be short to allow meaningful review and comment, particularly for proposed projects or agency actions that are extremely complex or technical in nature. We recommend that state and local agencies extend the review and comment period for the review process in EJ Communities to ensure the public is adequately informed and has sufficient time to digest the implications of proposed projects and submit meaningful comments.

A variation of some of the foregoing recommendations are memorialized in two legislative bills intended to address the problems of cumulative impacts to EJ Communities and poor public participation in the State Environmental Quality Review (SEQR) process. The first bill ([S1031B/A2103A](#)) would require any agency seeking a facility permit to prove - in an “existing burden report” - that its siting is not adding to existing public health or environmental burdens in EJ Communities. The second bill ([S3211A/A6530](#)) adds more emphasis to the public participation requirements for the SEQR process, mandating for example the preparation of an “enhanced public participation plan” for SEQR projects in EJ Communities. Both bills provide that facility permits

can be denied if the applicant fails to meet the requirements. We advocate for the adoption of these two bills, in addition to the above recommendations.

DRAFT

## **Criminal Justice Subcommittee Report**

The Criminal Justice System is built on the foundation of structural and systemic racism in the United States. Racially disparate policing and prosecution has led to significant racial disparities in convictions, and the collateral consequences of those convictions. For example, in 2019, Black New Yorkers accounted for 38% of adult arrests and 48% of prison sentences, despite making up only 15% of the state population. In that same year, Latino New Yorkers accounted for 24% of adult arrests and 23% of prison sentences, while making up only 18% of the state population.<sup>2</sup> In contrast, White New Yorkers made up 33% of adult arrests and 28% of prison sentences, while making up 58% of the state population in 2019.<sup>3</sup> It is this foundation—the over-representation of racial minorities in the criminal justice system, and resulted in social and economic marginalization of minorities.

The hope of creating a clear and swift path to equality and fairness inspired the work of our subcommittee. Our recommendations are not original, but critical. Our focus on these issues is a recognition of accomplished goals, but also a reminder that work that remains and we cannot lose a sense of urgency for reform. Jury composition, the length of carceral sentences, the collateral consequences of a criminal conviction, the pitfalls of the parole system, and the implicit bias exhibited by prosecutors, judges, and even defense counsel are driving forces of inequity, and there has been a great deal of progress toward reform, below are our suggestion.

### **I. Sentences must be Shorter, Parole must be revisited**

The impact of incarceration is far reaching, affecting not only the person convicted of a crime, but their family and communities. In fact, the Office of Children and Family Services estimates that about 105,000 children within the state have a parent currently incarcerated. This is an alarming statistic with generational consequences, as “children of incarcerated parents are, on average, six times more likely to become incarcerated themselves.”<sup>[ccxcvi]</sup> Notably, people of color represent two-thirds of those sentenced to incarceration in prisons throughout New York.<sup>[ccxcvii]</sup> Statutory sentencing requirements including mandatory minimums, the finality of sentences, which are based principally on the prosecution’s charging discretion, and the severe reduction in earned time credit availability, all contribute to the racial disparities in carceral sentences.

In order to address this serious disparity, this subcommittee urges broad and significant changes to New York's sentencing structure aimed at lowering the amount of time people spend incarcerated.

First, and most pointedly, New York must eliminate mandatory minimum sentences. Functionally, mandatory minimums contribute to the "Trial Penalty" and have an "important role in reducing our trial rate from more than 20% thirty years ago to 3%" in 2018.<sup>[ccxcviii]</sup> The threat of mandatory minimum sentences render trials a sizable risk, allowing prosecutors to "skirt due process" and coerce people into taking guilty pleas.<sup>[ccxcix]</sup> Allowing judges to tailor a sentence to the person and case before it rather than being forced to follow these statutory penalties triggered by a prosecutor's charging decision is a necessary step in social equity.

For those already sentenced, New York must create meaningful opportunities to review lengthy sentences, primarily in trial courts where the totality of the circumstances can be considered. Currently, trial court judges have no opportunity to review sentences. Those who are serving lengthy sentences have no opportunity to demonstrate to a judge that they have changed after years or decades in prison or that, given changed laws and norms, the sentence is no longer appropriate. Long prison sentences are therefore unreviewed, other than limited powers held by the Appellate Division to review for excessiveness. In order to align New York with the latest studies, presumptions in favor of resentencing should be created for elders and those under the age of 25 when the crime was committed, and individuals must be afforded a chance to demonstrate that they deserve reconsideration after serving a portion of their sentence.

Finally, New York's restrictive scheme for incarcerated people to earn time against their sentences must be reversed. During the 1990s, in line with racially charged sentencing laws enacted throughout the country, New York dramatically reduced the ability to earn time off sentences while incarcerated. Now, the state must reverse course by eliminating barriers to earning good time credit and merit time, increasing the amount of time one can earn, and incentivizing facilities to add programming options that facilitate merit time accrual.

Longer sentences are known to increase recidivism rates. Racist sentencing policies enacted between the 1970s and 1990s created structures that warehouse people in prison for as long as possible causing trauma to families and communities and doing nothing to improve public safety.

Incorporating the above changes will reverse this course, reduce the average sentence length and represent a significant step in promoting social equity in New York,

The parole system in New York contributes to the lengthy incarceration of individuals. In 2019 NYSBA launched the Task Force on Parole System Reform, chaired by Seymour James and William T Russell. The Task Force issued two reports detailing actions that must be taken to reform the parole system to reduce the incarceration of minorities on parole and to address the need for services and resources to prevent parole violations. ([Nov 2019 Report](#) and [June 2020 Report](#))

One of the recommendations, from the 2019 report was the enactment of *Less is More*. Less is more was signed into law and went into effect March 1, 2022. The goal of the new act is to decrease the number of people in jail for minor parole violations and prevent overcrowding in prisons. The enactment of Less Is More certainly is a step forward, to ending a parole system that is a significant contributor to mass incarceration in New York. The number of people awaiting parole, the length and type of sentences that lead people to prolonged community supervision, in addition to the lack of meaningful discharge and reentry services are not addressed by Less is More, but the Parole System in New York will not complete its reformation until those issues are addressed. There are several bills that will progress reforms, and therefore the subcommittee recommends the following:

1. The passage of the Fair and Timely Parole Act.

The Fair and Timely Parole Act establishes standards for making parole determinations based upon a person's rehabilitation and status at the time of review, pursuant to procedures designed to remove racial discrimination from a determination of parole eligibility. S497-A/Rivera; A4346-A/Weprin

2. The State Legislature should pass the Elder Parole bill.

The Elder Parole bill authorizes parole review for persons aged fifty-five or older. S2144/Hoylman; A9040/De La Rosa

## **II. Consequences of arrests, prosecutions, and convictions must be minimized**

After a person has been arrested, convicted, sentenced, or even paroled the connection to the Criminal Justice system does not end. The collateral consequences of arrests, prosecutions, and convictions last long after a defendant has repaid their court-imposed debt to society, and the

impact of those consequences are felt by innocent family members as well as the defendants themselves. Even after defendants and their families deal with the cost of hiring counsel and the familial separation caused by prison sentences, defendants must still bear the weight of a criminal record, as well as court and parole fees, and families are often forced to share in this burden. Criminal records often exclude people convicted of crimes from gainful employment and economic opportunities, making them less able to legally provide for themselves and their families, and hinder their ability to positively contribute to their communities. Additionally, criminal records can often act as a barrier to receiving public benefits, including housing, meaning that people with criminal convictions are often unable to cohabit with their loved ones, for fear of jeopardizing an innocent family member's ability to continue receiving housing or financial assistance. For New Yorkers of color, these collateral consequences are more likely because they are more likely to be arrested and prosecuted. According to the Brennan Center for Justice, around 80% of lost earnings due to previous convictions are borne by Black and Latino New Yorkers. However, these consequences affect people of all backgrounds- roughly 75% of previously incarcerated individuals remain unemployed one year after their release, with criminal records costing New Yorkers losing roughly \$2 billion per year in lost wages.

In addition to the financial burden caused by lost wages due to previous convictions, mandatory court fees, surcharges, and parole fees are often tacked onto defendants' sentences, acting as a further financial obstacle for defendants which, in many cases, can extend the length of a defendant's case, or extend a defendant's period of post-conviction supervision (either via probation or parole) for years. Moreover, since 1995 when the Legislature made many criminal surcharges mandatory, judges have had little or no discretion as to the imposition of these fees, forcing them to act as revenue generators by extracting wealth from indigent defendants, and wasting significant time and money for minimal economic gain, with court fines and fees accounting for an average of only 0.7% of city budgets, and 0.2% of county budgets across the state .

The extrajudicial burdens of conviction, and the racially discriminatory manner in which those burdens are imposed, continue to have a disparate impact on economic opportunity which impacts minority communities most acutely. However, these burdens are shared by people of all backgrounds, including the family members of previously incarcerated people, and taxpayers who

must subsidize economically ineffective revenue generation by the courts. Equity demands that these burdens be addressed. Therefore, the subcommittee recommends the following

1. The State Legislature should pass, and the Governor should sign, the “Clean Slate Act.”

The Clean Slate Act (S.1553-C/A.6399-B) would automatically clear a New Yorker’s conviction record once they become eligible. Presently, collateral consequences of conviction impair one’s ability to secure employment, housing, education, and can affect eligibility for public assistance. This Act would help erase these barriers to societal participation, allowing convicted individuals the economic opportunities and resources needed to break the cycle of poverty for millions of New Yorkers. This Act also includes exceptions to eligibility for individuals convicted of certain sex offenses and crimes against children, balancing the need for public safety with the need to address social and economic barriers imposed by decades of systemically racist policing and prosecution.

2. The State Legislature should pass, and the Governor should sign, the “End Predatory Court Fees Act.”

The End Predatory Court Fees Act (A.2348-B / S.3979-C) would end the practice of imposing mandatory court fees, probation and parole fees, commissary account garnishment, and incarceration for failure to pay fines and fees. These predatory fines and fees, which disproportionately impact poor people of color, help to create a separate system of justice for poor defendants who cannot afford to pay them. This Act would eliminate this regressive tax on poor people, restore judicial discretion over the imposition of court fees, and create a fairer criminal justice system in which the severity of one’s punishment is no longer determined by one’s income.

### **III. Juries in New York do not uphold the constitutional principal that one will be judged by a Jury of their peers.**

It is a vital constitutional right that the jury pool – the group of potential jurors from which the trial jurors are selected – be representative of the community. According to the ninth annual report Pursuant to Section 528 of the Judiciary Law published by the Office of Court Administration which examined 2019 jury pools, People of Color are severely under-represented in jury pools in New York, confirming what practitioners have observed for years. Almost half a century ago the U.S. Supreme Court in *People v. Kiff*, 407 U.S. 493. 503-4 (1972) made clear the deleterious effects of jury exclusion:

*When any large and identifiable segment of the community is excluded from jury service, the effect is to remove from the jury room qualities of human nature and varieties of human experience, the range of which is unknown and perhaps unknowable. It is not necessary to assume that the excluded group will consistently vote as a class in order to conclude, as we do, that its exclusion deprives the jury of a perspective on human events that may have unsuspected importance in any case that may be presented.*

There are several factors that impede the diversity of a jury—the laws that limit qualification, laws that expand the pool of eligible jurors, and policy that might make it less of a burden for working people. To add people to the jury are the laws that prohibit jurors from serving on a Jury. In New York State approximately 33% of Black men are excluded from the jury pool because of the state’s felony exclusion law. Therefore, the subcommittee makes the following recommendations:

1. Support legislation that would amend subdivision 3 of Judiciary Law § 510 to state:

“If convicted of a felony, have completed the service of any sentence related to such conviction, including any period of probation or community supervision.” The felony conviction jury service exclusion contained in Judiciary Law § 510 (3), is one such law. These felony convictions fall disproportionately on Black and Latino males both nationally and in New York.

2. Support for rules that permit a greater number of people to serve

Jury service is a compulsory obligation, requiring jurors to sacrifice both their time and their potential earnings while they fulfill this unique role of the justice system. Though compulsory, non-response rates to juror summonses remain high. For many prospective jurors who answer, jury service is not economically viable as juror pay does not adequately replace lost earnings, leading to their excusal. Forty dollars per day equates to five dollars an hour, well under the minimum wage. A prospective juror earning minimum wage will see their pay decrease by two-thirds or three-fifths for each day of jury service; prospective jurors who earn above minimum wage experience even greater decreases. Low juror pay disproportionately affects minority and low-income populations, acting as a bar to their participation. Increasing jury service pay will increase juror participation by making participation economically viable. Supporting legislation to amend

Judiciary Law § 506(1), would increase the daily rate of pay for all juror service from \$40.00 to \$120.00.

3. Juror pool must be representative of the demographic makeup of the community, where the trial will be conducted.

Certain city/town courts have expanded the juror pool to include county wide jurors. This has the impact of decreasing the percentage of POC in the pool. Judiciary Law § 500, in pertinent part, states “[i]t is the policy of this state that all litigants in the courts of this state entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross-section of the community in the county or other governmental subdivision wherein the court convenes” (emphasis added). The Court of Appeals in *Matter of Oglesby v McKinney*, 7 N.Y.3d 561 (2006), held that “[w]hile section 500 clearly does not command that all juries be selected county-wide, it seems to imply that selection from the county will be the norm, to which exceptions are possible.” See *Matter of Oglesby v McKinney*, 7 N.Y.3d 561, at 566 (2006). Further, it noted that “But neither the Legislature nor OCA has provided for City Court jurors to be empaneled from lists of city residents. City Courts are often located ... near courts of county-wide jurisdiction, and it has apparently been found convenient for them to draw on the same county-wide lists of jurors.” *Id.*, at 567. Thus, the legislature should amend Section 500 of the Judiciary Law to address the disparate impact of county-wide selection of jurors from the venire, in the unfair elimination of jurors of color, who customarily and predominately reside in cities or urban areas, during the selection process to ensure that the jury more fairly and accurately reflects the demographic composition of the community, where the trial will be held. Local jury pools (not for Felony level) should follow the County wide rule. The jury pool should reflect the community demographics. If a city within a County is predominately Black etc. potential jurors should come from within that City and not from without

4. The New York State Legislators must enact legislation to expand and mandate the amount of time permitted for attorney conducted voir dire

Defense counsel is often subjected to unreasonable time limits during voir dire. CPL Section 270.15 should be revised to set some minimum standard for the timeframe that should be afforded to counsel to conduct voir dire. Moreover, the Legislature should articulate a policy that indicates that there is a presumption of unreasonableness, abuse of discretion, prejudice to the Defendant if less than 30 minutes is allotted to counsel per round, particularly when there are serious felonies to be tried in the case.

The Court of Appeals holding in *People v. Jean*, 75 N.Y.2d 744 (1989), which found that the trial court did not abuse its discretion in limiting counsel questioning to 15 minutes in first two rounds and 10 minutes in third round of voir dire should be overturned by a legislative pronouncement of a timeframe that would now be considered to be an abuse of discretion, unreasonable and prejudicial to the Defendant if imposed upon counsel during voir dire. Questioning potential jurors on bias alone can take more than 15 minutes. Thus, the legislature should further announce a policy of the state for the preference of prospective jurors to be educated about implicit bias and its adverse impact on criminal proceedings in an appropriate amendment to Criminal Procedure Law Section 270.15. The model instruction on implicit bias must be updated with accurate testimonials about the miscarriage of justice that has occurred in a wrongful conviction as a result of members of the jury having impermissible bias.

##### 5. Peremptory Challenges must not be used to eliminate People of color

Black Potential Jurors are often singled out and questioned about their trust of the police. However, white jurors are not asked this question in similar numbers. If only Black Jurors are asked questions about their lack of trust of the police, this is clearly a Bias. Congress passed the Civil Rights Act of 1875 to ensure that there were provisions that did not exclude Black Jurors from jury selection. (*Equal Justice Initiative, "Race and the Jury: Illegal Racial Discrimination in Jury Selection" (2021)*). Courts should recognize the context or the why Black Jurors have this lack of trust of law enforcement. Courts often rehabilitate jurors on whether they can be 'fair and impartial.' The Court can allow further questioning of Black jurors who have issues with law enforcement.

#### **IV. All courts, prosecutors, and defense organizations in New York State should develop data tracking systems to end racial disparate outcomes in the Criminal Justice System**

It has been said that “If you can't measure it, you can't manage it,” and this maxim certainly holds true in terms of racial disparities in criminal legal outcomes. Walking into most courtrooms across New York State, the degree of racial disparities will often be immediately apparent -- but are these disparities the result of bias amongst prosecutors in making charging decisions, the result of bias by public defenders in terms of resource allocation, or the result of bias by judges in administering sentences? Certainly, all of these could be true, and there are likely many more factors, but the reality is that without an ability to track decision points from each vantage point, and to cross reference such data with demographic information, it is difficult to intervene and eliminate the manifestations of bias. To facilitate the creation of policies tailored to end racial disparate outcomes, all courts, prosecutors, and defense organizations in New York State should develop data tracking systems that are cross-referenced with demographic data to identify areas of disparity, such data should be made public, and the agencies should develop targeted bias training to address the identified disparities.

Such efforts face myriad logistical challenges. Across New York State, the many prosecutors' offices, courts, and public defense organizations use a wide array of case management systems which lack uniformity, and often do not interface with one another. Notably, most such offices are largely comprised of lawyers and administrators, and as such most employees lack data gathering expertise. This makes the simple gathering of information a heavy lift: the task of determining whether a particular prosecutor's office is making racially disparate sentencing recommendations at arraignment, for example, requires that at every arraignment either the prosecutor herself or court staff, make a notation in a computerized case management system as to the charge and the recommendation. Training lawyers who are often accustomed to making such notations on a paper case file, can itself be a tremendous challenge, and can have imperfect results.

Even once a rigorous case management system is put in place in a particular prosecutor's office, the data gathered across many comparable arraignments must then be anonymized and cross-referenced with information about the race of the person charged. Often prosecution, defense, and judicial agencies do not themselves track demographic data, instead relying on police departments'

determinations as to race, which are often not based on the self-reporting of the person charged, and therefore, may be unreliable. Once case level data is gathered, anonymized, and cross-referenced with racial information, it should be published to enable further analysis by non-profit organizations and academic researchers. Moreover, to further accountability, the data should be made available to the public. This is no small feat as depending on the size of a jurisdiction, even when identifying factors are removed from a case, privacy and other constitutional concerns must be assessed in all published data.

Following this analysis, criminal legal agencies should undertake internal analysis of this data and develop specific interventions to address identified areas of disparity. If a particular courthouse identifies, for example, that its judges are more likely to set bail for a Black person as compared to a similarly situated white person, then the judges of that courthouse should be trained about implicit bias with a particular focus on how they make bail determinations. The tracking should continue, to determine the efficacy of training, which should iterate as the analysis continues.

In sum, the recommendation of the Task Force is that New York State prosecutors, public defenders, and criminal courts should:

1. Implement case management systems that store information about each decision made in the course of a criminal case.
2. Cross reference case level data with demographic data.
3. Publish data to ensure transparency and accountability.
4. Develop tailored trainings designed to educate criminal legal system professionals about where biases in their agencies are greatest, and to interrupt the implicit and explicit biases of the professionals who operate those agencies.
5. Continue to gather data about disparities to assess the effectiveness of trainings on reducing disparities and make changes accordingly.

Despite the challenges to implementation, it is critical that New York's criminal legal agencies develop reliable systems for tracking each decision point made by staff, assess where racial

disparities are greatest, and implement trainings to enable staff to identify and interrupt their biases.

### Concluding Remarks

TBP.

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[1] Henry-Louis Taylor, Jr., Jin-Kyu Jung and Evan Dash, *The Harder We Run: The State of Black Buffalo in 1990 and the Present*, SUNY at Buffalo Center for Urban Studies (Sept. 2021) [<https://right2thecity.files.wordpress.com/2021/10/taylorh1-the-harder-we-run.pdf>]; Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* (Liveright 2017)

[2] Terry Gross, *A 'Forgotten History' of How the U.S. Government Segregated America*, Nat'l Public Radio (May 3, 2017), <https://www.npr.org/2017/05/03/526655831/a-forgotten-history-of-how-the-u-s-government-segregated-america>

[3] <https://www.britannica.com/topic/Federal-Housing-Administration>

[4] Henry-Louis Taylor, Jr. et al., *ibid.*, p.17; Adrienne Brown, *Appraisal Narratives: Reading Race on the Midcentury Block*, Johns Hopkins University Press, *American Quarterly*, Vol. 70, No. 2 (June 2018, pp. 211-234), p. 215 [[https://theasa.net/sites/default/files/Appraisal%20Narratives\\_1.pdf](https://theasa.net/sites/default/files/Appraisal%20Narratives_1.pdf)]

[5] Adrienne Brown, *ibid.*, p. 215

[6] Henry-Louis Taylor, Jr. et al., *ibid.*, p.17

[7] Adrienne Brown, *ibid.*, p. 215

[8] Terry Gross, *ibid.*

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[i] Henry-Louis Taylor, Jr., Jin-Kyu Jung and Evan Dash, *The Harder We Run: The State of Black Buffalo in 1990 and the Present*, SUNY at Buffalo Center for Urban Studies (Sept. 2021) [<https://right2thecity.files.wordpress.com/2021/10/taylorhl-the-harder-we-run.pdf>]; Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* (Liveright 2017)

[ii] 42 U.S.C.A. § 1982.

[iii] *Buchanan v. Warley*, 245 U.S. 60, 38 S.Ct. 16 (1917).

[iv] *ibid.*

[v] *ibid.*

[vi] *ibid.*

[vii] *id.*, at 81.

[viii] *ibid.*

[ix] *id.*, at 80-81 (“That there exists a serious and difficult problem arising from a feeling of race hostility *which the law is powerless to control*, and to which it must give a measure of consideration, may be freely admitted. But its solution cannot be promoted by depriving citizens of their constitutional rights and privileges.” (Quoting the Court) (emphasis added).

[x] *Shelley v. Kraemer*, 334 U.S. 1, 68 S.Ct. 836 (1948).

[xi] *Ibid.*

[xii] *Ibid.*

[xiii] *Ibid.*

[xiv] *id.*, at 13, 20.

[xv] Terry Gross, *A ‘Forgotten History’ of How the U.S. Government Segregated America*, Nat’l Public Radio (May 3, 2017), <https://www.npr.org/2017/05/03/526655831/a-forgotten-history-of-how-the-u-s-government-segregated-america>

[xvi] <https://www.britannica.com/topic/Federal-Housing-Administration>

[xvii] Henry-Louis Taylor, Jr. et al., *id.*, p.17; Adrienne Brown, *Appraisal Narratives: Reading Race on the Midcentury Block*, Johns Hopkins University Press, *American Quarterly*, Vol. 70, No. 2 (June 2018, pp. 211-234), p. 215 [[https://theasa.net/sites/default/files/Appraisal%20Narratives\\_1.pdf](https://theasa.net/sites/default/files/Appraisal%20Narratives_1.pdf)]

[xviii] Adrienne Brown, *ibid.*

[xix] Professor Henry-Louis Taylor, Jr. is a tenured professor with the Department of Urban and Regional Planning at the University at Buffalo and director of the U.B. Center for Urban Studies. He was a featured speaker at the Task Force’s Second Public Forum, held on December 13, 2021, entitled, *The Impact of Structural Racism: Overcoming Barriers to Housing, Economic, and Environmental Justice*. Professor Taylor provided historical and contemporary analysis of factors affecting distressed urban neighborhoods, including social isolation and race and class issues among people of color. Thereafter, Professor Taylor met directly with the Housing Subcommittee to provide further consultation for our work.

[xx] Henry-Louis Taylor, Jr. et al., *ibid.*

[xxi] Adrienne Brown, *ibid.*

[xxii] Amy E. Hillier, *Residential Security Maps and Neighborhood Appraisals. The Homeowners’ Loan Corporation and the Case of Philadelphia*, University of Pennsylvania, Department Papers (City and Regional Planning) (2005). [https://repository.upenn.edu/cplan\\_papers/5](https://repository.upenn.edu/cplan_papers/5).

[xxiii] Amy E. Hillier, *ibid.*

[xxiv] Daniel Aaronson, Daniel Hartley, Bhashkar Mazumder, *The Effects of the 1930s HOLC “Redlining” Maps*, Federal Reserve Bank of Chicago (working paper 2017, revised 2020) <https://www.chicagofed.org/~media/publications/working-papers/2017/wp2017-12-pdf>.

[xxv] Daniel Aaronson, *ibid.*

[xxvi] See *Brown, et al. v. Board of Education Topeka, et al.*, 347 U.S. 483 (at 495), 74 S. Ct. 686 (1954).

[xxvii] *id.*, at 493-494.

[xxviii] See *Brown, et al. v. Board of Education Topeka, et al.*, 347 U.S. 483 (1954) (Generally).

[xxix] See [www.civilrights.org/education/brown](http://www.civilrights.org/education/brown); The Leadership Conference is a 501(c)(4) organization that engages in legislative advocacy. It was founded in 1950 and has coordinated national lobbying efforts on behalf of every major civil rights law since 1957

[xxx] See Civil Rights Act of 1964, 42 U.S.C.A. § 2000a (outlawed segregation in places of public accommodations); Voting Rights Act of 1965, 42 U.S.C.A. § 1973 (outlawed discrimination practices in voting).

[xxxi] See 42 U.S.C.A. § 3601.

[xxxii] See 42 U.S.C.A. § 3631.

[xxxiii] See 42 U.S.C.A. § 3531; 42 U.S.C.A. § 3608(a).

[xxxiv] See 42 U.S.C.A. § 5303; 24 C.F.R. § 570.3.

[xxxv] See [https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_op/affh](https://www.hud.gov/program_offices/fair_housing_equal_op/affh)

[xxxvi] *id.*

[xxxvii] See Federal Register: Implementation of the Fair Housing Act's Discriminatory Effects Standard (February 15, 2013)

[xxxviii] *id.*

[xxxix] *id.*

[xl] *Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc., et al.*, (576 U.S., at 539 -540.

[xli] Terry Gross, *ibid.*

[xlii] See <https://www.nyhistory.org/blogs/seneca-village-a-community-lost-to-central-park>; See also <https://www.thenation.com/article/society/black-land-seneca-village/>

[xliii] See <https://ny.curbed.com/2018/5/29/17332770/new-york-neighborhoods-eminent-domain-history-west-side-story>

[xliv] See [https://en.wikipedia.org/wiki/San\\_Juan\\_Hill,\\_Manhattan](https://en.wikipedia.org/wiki/San_Juan_Hill,_Manhattan); See also <https://ilovetheupperwestside.com/san-juan-hill-lincoln-center/>

[xlv] See *United States of America ex rel. Anti-Discrimination Center of Metro New York, Inc. v. Westchester County, New York*, 2006 WL 6348390 (S.D.N.Y. December 18, 2006).

[xlvi] *id.*

[xlvii] *id.*

[xlviii] *id.*

[xlix] *id.*

[l] *id.*

[li] *id.*

[lii] 2007 WL 1622360 (S.D.N.Y April 17, 2007)

[liii] 2008 WL 6802246 at 6 (S.D.N.Y. September 30, 2008).

[liv] *id.*, at 18; 2008 WL 6802251 at 6 fn 3; 13 fn 22 (S.D.N.Y. October 31, 2008).

[lv] *id.*, at 9.

[lvi] 2008 WL 6802251 at 7 (S.D.N.Y. October 31, 2008).

[lvii] *id.*, at 9.

[lviii] 2008 WL 6802215 at 9 (S.D.N.Y. November 14, 2008).

[lix] *id.*, at 13.

[lx] *id.*

[lxi] Press Release of Westchester County Board of Legislators on 9/23/09; See [www.westchester.gov](http://www.westchester.gov).

[lxii] See [http://www.westchestergov.com/pdfs/HOUSING\\_lawsuitSettlement.pdf](http://www.westchestergov.com/pdfs/HOUSING_lawsuitSettlement.pdf).

[lxiii] HUD Press Release, “HUD and Justice Department Announce Landmark Civil Rights Agreement in Westchester County” by Jereon Brown, HUD No. 09-149, August 10, 2009.

[lxiv] New York Times On-Line Article “Integration Faces a New Test in the Suburbs” by Peter Applebome, August 22, 2009; [http://www.nytimes.com/2009/08/23/weekinreview/23applebome.html?\\_r=1&pagewanted=all](http://www.nytimes.com/2009/08/23/weekinreview/23applebome.html?_r=1&pagewanted=all)

[lxv] See *MHANY Management, Inc. v. County of Nassau*, 819 F.3d 581 (2d Cir. 2016)

[lxvi] *id.*, at 589.

[lxvii] *id.*

[lxviii] *id.*

[lxix] *id.*, at 591 – 597.

[lxx] *Id.*, at 598.

[lxxi] *Id.*, at 599.

[lxxii] *Id.*, at 608 – 609.

[lxxiii] See NYSBA Article, entitled, “How the Dormant Commerce Clause Can Fight Zoning Discrimination,” by Michael D. Diederich, Jr. at <https://nysba.org/how-the-dormant-commerce-clause-can-fight-zoning-discrimination/>

[lxxiv] *Records of the Federal Home Loan Bank Board [FHLBB]*, National Archives, <https://www.archives.gov/research/guide-fed-records/groups/195.html> (last reviewed Aug. 15, 2016); *How a New Deal Housing Program Enforced Segregation*, History (Oct. 20, 2020, updated June 1, 2021), <https://www.history.com/news/housing-segregation-new-deal-program>.

[lxxv] Ray and Perry, *Why We Need Reparations for Black Americans*, Brookings Policy 2020, April 2020, P. 2.

[lxxvi] <https://www.cityofevanston.org/government/citycouncil/reparations#:~:text=The%20first%20reparations%20initiative%20developed,the%20City%20from%201919%2D1969>.

[lxxvii] Ray and Perry, P. 5.

[lxxviii] See <https://www.state.gov/policy-issues/refugee-and-humanitarian-assistance/>

[lxxix] *id.*

[lxxx] According to Professor Henry Louis Gates, Jr. of Harvard University’s Hutchins Center for African & African American Research, in his article, entitled, “The Truth Behind ‘40 Acres and a Mule,’” Union General William T. Sherman, issued “Special Field Order No. 15,” on January 16, 1865. “Sherman prescribed 40 acres in that Order, but not the mule. The mule would come later. ... With this Order, 400,000 acres of land — “a strip of coastline stretching from Charleston, South Carolina, to the St. John’s River in Florida, including Georgia’s Sea Islands and the mainland thirty miles in from the coast,” as Barton Myers reports — would be redistributed to the newly freed slaves. The extent of this Order and its larger implications are mind-boggling, actually.” General Sherman met with Black ministers in Savannah, Georgia to learn what the freed slaves “most wanted, “and their response was recorded as “is to have land, and turn it and till it by our own labor ... and we can soon maintain ourselves and have something to spare ... We want to be placed on land until we are able to buy it and make it our own.” And when asked next where the freed slaves “would rather live — whether scattered among the whites or in colonies by themselves.” President Lincoln thereby approved this Order. By June of 1865, June, “40,000 freedmen had been settled on 400,000 acres of the [land designated for their occupancy and possession.]” “Sherman later ordered that the army could lend the new settlers’ mules; hence the phrase, “40 acres and a mule.” But, after Lincoln’s assassination, “Andrew Johnson, Lincoln’s successor and a sympathizer with the South, overturned the Order in the fall of 1865, and, as Barton Myers sadly

concludes, “returned the land along the South Carolina, Georgia and Florida coasts to the planters who had originally owned it” — to the very people who had declared war on the United States of America.”

[lxxxix] See *Racial and Ethnic Valuation Gaps In Home Purchase Appraisals*, Freddie Mac, Research Note: September 20, 2021; available at: <https://www.freddiemac.com/research/insight/20210920-home-appraisals>; See also <https://www.bloomberg.com/news/articles/2021-03-03/appraisers-acknowledge-bias-in-home-valuations>; <https://www.brookings.edu/research/biased-appraisals-and-the-devaluation-of-housing-in-black-neighborhoods/>; <https://news.bloomberglaw.com/banking-law/freddie-mac-finds-pervasive-bias-in-home-appraisal-industry>

[lxxxii] According to Freddie Mac’s Research Note, appraisal gap means the percent difference in the number of properties or applicants receiving “appraisal value lower than contract price between minority and White groups.”

[lxxxiii] *The Increasing Effect of Neighborhood Racial Composition on Housing Values, 1980–2015*.

J. Howell & E. Korver-Glenn; *Social Problems*, Volume 68, Issue 4, November 2021, Pages 1051–1071, <https://doi.org/10.1093/socpro/spaa033>

[lxxxiv] *Increasing Diversity in the Appraisal Profession Combined with Short-Term Solutions Can Help Address Valuation Bias for Homeowners of Color*, M. Neal, P. Mattingly, *Urban Wire: Housing and Housing Finance*, July 1, 2021, available at: <https://www.urban.org/urban-wire/increasing-diversity-appraisal-profession-combined-short-term-solutions-can-help-address-valuation-bias-homeowners-color>.

[lxxxv] <https://www.nerdwallet.com/article/mortgages/black-homeowners-may-face-discrimination-in-appraisals>.

[lxxxvi] See <https://www.appraisalinstitute.org/chase-commits-3-million-to-appraiser-diversity-initiative/> regarding one lender’s recent contribution to the Appraiser Diversity Initiative to help “attract diverse new entrants into the residential appraisal field, overcome barriers to entry (such as education, training, and experience requirements), and provide support to position aspiring appraisers for professional success.”

[lxxxvii] *Increasing Diversity in the Appraisal Profession Combined with Short-Term Solutions Can Help Address Valuation Bias for Homeowners of Color*, M. Neal, P. Mattingly, *Urban Wire: Housing and Housing Finance*, July 1, 2021, available at: <https://www.urban.org/urban-wire/increasing-diversity-appraisal-profession-combined-short-term-solutions-can-help-address-valuation-bias-homeowners-color>; New York State Real Estate Appraiser license requirements are available at <https://dos.ny.gov/real-estate-appraiser> (including links to relevant statutes, rules, and regulations).

[lxxxviii] *id.*

[lxxxix] FINTECH is short for financial technology. It is utilized to help companies, business owners and consumers better manage their financial operations, processes, and lives by utilizing specialized software and algorithms that are used on computers and, increasingly, smartphones ([www.investopedia.com/terms/f/fintech.asp](http://www.investopedia.com/terms/f/fintech.asp)).

[xc] At the time of the preparation of this report, cases have been filed against Wells Fargo, alleging that 'coded bias' in computer applications used by Wells Fargo resulted in discriminatory mortgage practices. See *Braxton v. Wells Fargo (NDCA)*, 4:2022 cv-748, as reported in the *New York Times* on March 21, 2022. See also the March 11, 2022, issue of *Bloomberg* that reported Wells Fargo had rejected over 1/2 of Black applicants who applied for mortgage refinancing during the pandemic when rates were the lowest. In *Williams v. Wells Fargo*, 4:22-cv-00990, Williams, a Black Georgia resident, was denied a refinancing loan. He had identified his race during the application process, and then he asked Wells Fargo to recheck his credit report. The bank, Williams alleged, refused to do so. In September 2019, he received a letter from the bank, wherein the bank allegedly cited its “unique scoring model” considering factors beyond credit scores for applications.

[xci] These are national rates. See *The Secret Bias Hidden in Mortgage-Approval Algorithms* (The Markup, Aug. 25, 2021.)

[xcii] *Reducing Bias in AI-based Financial Services* (Brookings Institute, July 2020).

[xciii] *Mortgage Algorithms Perpetuate Racial Bias in Lending, Study Finds* (Public Affairs, UC Berkeley| November 2018.)

[xciv] See footnote #68

[xcv] Black, Indigenous, and people of color (BIPOC)

[xcvi] The NYSBA Task Force of Racism, Social Equity, and the Law Housing Subcommittee call for the Committee “explore changes in the law and public policy and deliver a report recommending action steps the NYSBA can take to attack structural racism and effectuate meaningful societal transformation.

[xcvii] In the eloquent words of Prof. Henry Louis Taylor, Jr., the inequities in housing are complex and we can begin to remedy the situation by addressing substandard housing conditions. See, also Prof. Keeanga Yamahtta Taylor on the history of housing inequities and public policy.

[xcviii] Conversation with Richard Rothstein on housing segregation in the North. *The Color of Law: A Forgotten History of How Our Government Segregated America.*

[xcix] Healthy Homes Production Grants are intended to help grantees identify health and safety hazards in low-income families' homes to protect children and families with incomes at or below eighty percent of the area median income level by targeting significant lead and health hazards.

[c] NYSBA, Committee on Families and the Law, *Report and Recommendations on Racial Justice and Child Welfare*, April 2022.

[ci] Effective October 27, 2019. See Soc. Serv. Law § 384-b(7)(f), defining “diligent efforts” as reasonable attempts by an agency to assist, develop, and encourage a meaningful relationship between the parent and child, including: 1) cooperating with the parents to develop a plan for appropriate services to the child and his or her family; 2) Making suitable arrangements for the parent to visit with the child; 3) Providing services and other assistance so that problems preventing the child's discharge from care can be resolved or ameliorated; 4) Informing the parents of the child's progress, development, and health; 5) Making suitable arrangements with a correctional facility for an incarcerated parent to visit with the child, if such visiting is in the best interests of the child; and 6) When the child is in the custody of authorized agency, providing information outlining the legal rights and obligations of a parent who is incarcerated or in a residential substance abuse treatment program and on social or rehabilitative services available in the community.

[cii] See Jerry Milner and David Kelly, *It's Time to Stop confusing Poverty with Neglect*, The Imprint (Jan. 17, 2020), <https://imprintnews.org/child-welfare-2/time-for-child-welfare-system-to-stop-confusing-poverty-with-neglect/40222>

[ciii] Mark E. Courtney et al., *Midwest Evaluation of Adult Functioning of Former Foster Youth: Outcomes at Age 26*, at 6 (2011). See also Laura Gypen et al., *Outcomes of Children Who Grew Up in Foster Care: Systematic-Review*, 76 Child. & Youth Servs. Rev. 74 (2017).

[civ] Dettlaff, A., & Weber, K. (2020, June 22), *Now Is the Time for Abolition* [Editorial]. The Imprint. Retrieved August 16, 2020, from <https://imprintnews.org/child-welfare-2/now-is-the-time-for-abolition/44706> (“While the potential for these adverse outcomes exists for all children who enter foster care, the risk of experiencing these outcomes is heightened for Black children.”).

[cv] [Workbook: Rent Debt in America \(tableau.com\)](#)

[cvi] [The Right to Remain ← Our Work ← Pratt Center For Community Development](#)

[cvii] See [Good Cause Legislation Would Protect 1.6 Million Households, Nearly 50% of Tenants Statewide, Community Service Society of New York \(cssny.org\)](#)

[cviii] Matthew Desmond has shown that “for two mothers who are very similar, but only one experiences an eviction, the mother who is evicted is more than twice as likely to report that her child is in poor health.” See [Effect of “Just Cause” Eviction Ordinances on Eviction in Four California Cities, Journal of Public and International Affairs \(princeton.edu\)](#). Research also confirms that higher rates of eviction correspond to higher incidence of homicides, robberies and

burglaries. See [\*Eviction and Crime: A Neighborhood Analysis in Philadelphia\*, Daniel C. Semenza, Richard Stansfield, Jessica M. Grosholz, Nathan W. Link, 2021 \(sagepub.com\)](#)

[cix] New York would not be the first to enact such a bill. New Jersey has had a similar law in place since 1974. Cities in California and Washington, D.C., according to a study, exhibited that filings and evictions actually declined when good cause was in effect. All of these states have higher living costs than the national average, with New Jersey fronting the largest property tax rates in the country. It serves as an example of the bill's importance in protecting vulnerable communities. See [\*Effect of "Just Cause" Eviction Ordinances on Eviction in Four California Cities\*, Journal of Public and International Affairs \(princeton.edu\)](#)

[cx] Healing-centered schools are holistic learning environments that have undergone a whole-school culture shift co-created through the valued input of all students, parents and caregivers, and staff. Healing-centered schools recognize that social-emotional well-being is a necessary ingredient for learning, so they have worked as a community to remove punitive, harmful practices and to implement trauma-responsive, restorative, and anti-racist and culturally responsive practices. Healing-centered schools also recognize that students, parents and caregivers, and staff are critical partners in creating a supportive school environment and center them in decision-making and school change. Healing Centered Schools. New York City Public Advocate. <https://www.pubadvocate.nyc.gov/education-opportunity/education-resources/healing-centered-schools>

[cxi] <https://data.nysed.gov/>

[cxii] *Id.*

[cxiii] <https://data.nysed.gov/gradrate.php?year=2019&state=yes>

[cxiv] <https://www.solutionsnotsuspensionsny.org/sns-bill>.

[cxv] <https://www.criminaljustice.ny.gov/crimnet/ojsa/jj-reports/newyorkstate.pdf>

[cxvi] de Brey, C., Musu, L., McFarland, J., Wilkinson-Flicker, S., Diliberti, M., Zhang, A., Branstetter, C., and Wang, X. (2019). Status and Trends in the Education of Racial and Ethnic Groups 2018 (NCES 2019-038). U.S. Department of Education. Washington, DC: National Center for Education Statistics. Retrieved March 8, 2022, from <https://nces.ed.gov/pubsearch/>.

[cxvii] Adverse Childhood Experiences among New York's Adults, A Research Brief on Child Well-Being. New York State Council on Children & Families, 2010. Accessed on line February 28, 2022 at: [http://ccf.ny.gov/files/4713/8262/2276/ACE\\_BriefTwo.pdf](http://ccf.ny.gov/files/4713/8262/2276/ACE_BriefTwo.pdf); see also, Felitti, V.J., Anda, R.F., Nordenberg, D., Williamson, D.F., Spitz, A.M., Edwards, V., & Koss, M. P. (1998) Relationship of childhood abuse and household dysfunction to many of the leading causes of death

in adults: The Adverse Childhood Experiences (ACE) Study. *American Journal of Preventive Medicine* 14(4), 245-258.

[cxviii] Curry, Andrew. Parents' emotional trauma may change their children's biology. *Studies in mice show how*. *Science* July 18, 2019; See also, DeGruy, J. (2005/2017) *Post Traumatic Slave Syndrome: America's Legacy of Enduring Injury and Healing (PTSS)*. Milwaukie, OR: Uptone Press; and UNESCO, *Healing the Wounds of Slavery: Approaches and Practices (2021)*: [https://healingthewoundsofslavery.org/wp-content/uploads/2021/04/UNESCO-GHFP\\_2020\\_Healing-the-Wounds-of-Slavery\\_Desk-Review\\_Report.pdf](https://healingthewoundsofslavery.org/wp-content/uploads/2021/04/UNESCO-GHFP_2020_Healing-the-Wounds-of-Slavery_Desk-Review_Report.pdf)

[cxix] 5 Adverse Childhood Experiences. *Child Trends* (2019). Retrieved February 28, 2022, from <https://www.childtrends.org/indicators/adverse-experiences>.

[cxx] Middlebrooks JS, Audage NC. *The Effects of Childhood Stress on Health Across the Lifespan*. Atlanta (GA): Centers for Disease Control and Prevention, National Center for Injury Prevention and Control; 2007.

[cxxi] Downs & Manning, *Understanding How Trauma Affects Students*, Scholastic, [www.scholastic.com/teachers/articles/18-19/understanding-how-trauma-affects-students/](http://www.scholastic.com/teachers/articles/18-19/understanding-how-trauma-affects-students/).

[cxxii] National Scientific Council on the Developing Child. (2005/2014). *Excessive Stress Disrupts the Architecture of the Developing Brain: Working Paper 3*. Updated Edition. <http://www.developingchild.harvard.edu>

[cxxiii] Center on the Developing Child (2015). *The Science of Resilience (InBrief)*. Retrieved from [www.developingchild.harvard.edu](http://www.developingchild.harvard.edu); see also, Resilience after trauma: from surviving to thriving. Nicole R. Nugent, Jennifer A. Sumner, Ananda B. Amstadter, *Eur J Psychotraumatol*. 2014; 5: 10.3402/ejpt. v5.25339. Published online 2014 Oct 1. doi: 10.3402/ejpt. v5.25339

[cxxiv] *Community Roadmap to Bring Healing-Centered Schools to the Bronx*. June 2020 Healing-Centered Schools Working Group

[cxxv] The 2019 Final Report of NYSBA's Task Force on the School to Prison Pipeline reviewed the evidence and found that students of color were suspended in disproportionate numbers, mostly for minor and common misbehavior and that there was no evidence that the higher rate of suspensions for students of color was linked to higher rates of misbehavior. <https://archive.nysba.org/pipelinefinalreport/> at 49 *et seq*. The Task Force recommended the State Department of Education require school districts with levels of disproportionate discipline above thresholds set by SED be required to develop remedial plans to correct the disproportionate discipline. *Id.* at 53.

[cxxvi] <https://www.solutionsnotsuspensionsny.org/sns-bill>

[cxxvii] Dawn M. Magnusson, Cynthia S. Minkovitz, Karen A. Kuhlthau, Tania M. Caballero, and Kamila B. Mistry, "Beliefs Regarding Development and Early Intervention Among Low-Income

African American and Hispanic Mothers,” *Pediatrics* 140 (5): e20172059 (2017), <https://doi.org/10.1542/peds.2017-2059>; and <https://edtrust.org/increasing-equity-in-early-intervention/>.

[cxxxviii] *Id.*

[cxxxix] <https://www.solutionsnotsuspensionsny.org/sns-bill>.

[cxxx] 8 NYCRR 117.3

[cxxxii] *Id.*

[cxxxii] This would eliminate the need to wait for State exam scores which frequently are not announced until the end of the academic year and would expand the screening criteria to include children whose learning difficulties may be presenting as a behavioral issue.

[cxxxiii] See National Association of School Psychologists. (2020). Framework for effective school discipline.

<http://www.nasponline.org/discipline-framework>

[cxxxiv] Zimmerman, Alex. NYC to curb suspensions longer than 20 days, a major victory for discipline reform advocates. Chalkbeat. June 20, 2019. <https://ny.chalkbeat.org/2019/6/20/21108352/nyc-to-curb-suspensions-longer-than-20-days-a-major-victory-for-discipline-reform-advocates>

[cxxxv] The Judith S. Kaye Solutions Not Suspensions bill encompasses many of these recommendations and is currently before the NYS Assembly (bill no. A05197) and the NYS Senate (bill no. S07198) for the 2021-2022 legislative session. [https://nyassembly.gov/leg/?default\\_fld=&leg\\_video=&bn=A05197&term=&Summary=Y&Actions=Y](https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A05197&term=&Summary=Y&Actions=Y)

[cxxxvi] See, Student Safety Act, New York City, N.Y., Loc. Laws No. 93 (2015), which requires quarterly reporting of disaggregated school level data.

[cxxxvii] Chandra, S., Chang, A., Day, L., Fazlullah, A., Liu, J., McBride, L., Mudalige, T., Weiss, D., (2020). Closing the K–12 Digital Divide in the Age of Distance Learning. San Francisco, CA: Common Sense Media. Boston, Massachusetts, Boston Consulting Group. [https://www.common sense media.org/sites/default/files/featured-content/files/common\\_sense\\_media\\_report\\_final\\_7\\_1\\_3pm\\_web.pdf](https://www.common sense media.org/sites/default/files/featured-content/files/common_sense_media_report_final_7_1_3pm_web.pdf)

[cxxxviii] New York’s Digital Divide: Examining adoption of internet and computers for the state and its library districts; <https://www.nysl.nysed.gov/libdev/documents/HorriganReportNY.pdf>

[cxxxix] Availability, Access and Affordability: Understanding Broadband Challenges in NYS. <https://www.osc.state.ny.us/files/reports/pdf/broadband-availability.pdf>

[cxl] Id.

[cxli] Id.

[cxlii] Johnson, Jeddy. Remote learning highlights Buffalo's digital divide. WKBW 7 News. Aug 20, 2020, <https://www.wkbw.com/news/local-news/remote-learning-highlights-buffalos-digital-divide>

[cxliii] For the 21-22 school year, the Buffalo Public School District had 4 days of weather related remote learning and for one particular high school, an entire month of remote learning was implemented. [https://buffalonews.com/full-reopening-set-monday-for-mckinley-high-school/article\\_44746890-9ce1-11ec-89f6-9f3423f52abc.html](https://buffalonews.com/full-reopening-set-monday-for-mckinley-high-school/article_44746890-9ce1-11ec-89f6-9f3423f52abc.html)

[cxliv] Int. 2138-2020. City Council of New York. <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4680231&GUID=B959A7CA-9A0F-4C35-987A-EC08C48188AC&Options=&Search=>

[cxlv] Availability, Access and Affordability: Understanding Broadband Challenges in NYS. <https://www.osc.state.ny.us/files/reports/pdf/broadband-availability.pdf> [cited previously]

[cxlvi] DASA aims to provide students “with a safe and supportive environment free from discrimination, intimidation, taunting, harassment, and bullying,” and requires mandatory reporting of material incidents ....” <http://www.nysed.gov/content/dignity-all-students-act-dasa>.

[cxlvii] 8 NYCRR 80-1.13

[cxlviii] <http://www.highered.nysed.gov/tcert/certificate/dasa-syllabus.html>

[cxlix] <https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2017/fall2017-how-implicit-bias-impacts-our-children-in-education/>

[cl] See, e.g. <http://www.nysed.gov/common/nysed/files/dasanotes120617.pdf> (DASA Task Force minutes, noting that only 22% of new teachers reported that their DASA trainings discussed “internalized bias”).

[cli] 8 NYCRR § 80-1.13

[clii] <https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2017/fall2017-how-implicit-bias-impacts-our-children-in-education/>

[cliii] New York Equity Coalition, Stolen Time: New York State's Suspension Crisis. December 2018. <https://urbanleaguelongisland.org/wp-content/uploads/2019/04/Stolen-Time-002.pdf>

[cliv] N.Y. Edn § 3214(3)(d) (2021)

[clv] Dawn M. Magnusson, Cynthia S. Minkovitz, Karen A. Kuhlthau, Tania M. Caballero, and Kamila B. Mistry, “Beliefs Regarding Development and Early Intervention Among Low-Income African American and Hispanic Mothers,” *Pediatrics* 140 (5): e20172059 (2017), <https://doi.org/10.1542/peds.2017-2059>; <https://edtrust.org/increasing-equity-in-early-intervention/#:~:text=Black%20and%20Latino%20children%20with,to%20receive%20early%20intervention%20services> .

[clvi] NY Edn. §3004 (2021).

[clvii] [https://www.nysut.org/~media/files/nysut/nysut-united/2022/nysutunited\\_january2022.pdf](https://www.nysut.org/~media/files/nysut/nysut-united/2022/nysutunited_january2022.pdf)

[clviii] <https://releases.jhu.edu/2017/04/05/with-just-one-black-teacher-black-students-more-likely-to-graduate/>.

[clix] 8 NYCRR § 80-6.3

[clx] New York State Bar Association, Report and recommendations of the Committee on Families and the Law Racial Justice and Child Welfare at page 6.

[clxi] New York State Bar Association, Report and recommendations of the Committee on Families and the Law Racial Justice and Child Welfare at page 7.

[clxii] *Id.* at 7. Stating “By the time they reach the age of 18 years old, an astounding 53% of Black children in the United States will have been subject to at least one Child Protective Services (CPS) investigation compared with 28% of white children and 38% of all children”

[clxiii] *Id.* at 9 stating “Since the enactment of CAPTA the number of reports to state child welfare agencies of suspected abuse and neglect have increased exponentially, in 1974 there were 60,000 reports, in 2018 3,534,000 million children were the subject of a CPS investigation or alternative response.; See also, New York City Administration for Children’s Service February Flash Report at 29.

[clxiv] New York City Administration for Children’s Service February Flash Report at 29.

[clxv] *Id.* at 30.

[clxvi] Additional recommendations to address over-reporting can be found in the March 2, 2020, edition of *Rise Magazine* found here <https://www.risemagazine.org/2020/03/rise-recommendations-schools-over-reporting/>

[clxvii] 8 NYCRR § 57-4.3(b)(2)

[clxviii] <http://www.nysed.gov/common/nysed/files/programs/crs/culturally-responsive-sustaining-education-framework.pdf>

[clxix] *Id.* at 6.

[clxx] As NYS has a multitude of cultures, districts must be sure to include cultures beyond just those represented within that specific district.

[clxxi] [cite number 1 - NYU Metro Center]

[clxxii] *Id.* at 13.

[clxxiii] Campaign for Fiscal Equity Inc. v. State, 86 N.Y.2d 306 (1995). See also, Background: CFE v. State of New York. New Yorkers for Students' Educational Rights. <http://nyser.org/about-us/background-cfe-v-state-of-new-york/>

[clxxiv] Education Equity in New York: A Forgotten Dream; United States Commission on Civil Rights (2020) <https://www.usccr.gov/files/pubs/2020/02-10-Education-Equity-in-New%20York.pdf>

[clxxv] Educational Racism: Andrew Cuomo's Record of Underfunding Public Schools In Black & Latino Communities; [http://www.aqeny.org/wp-content/uploads/2018/09/educationalracism\\_corrected.pdf](http://www.aqeny.org/wp-content/uploads/2018/09/educationalracism_corrected.pdf)

[clxxvi] *Id.*

[clxxvii] [https://rockinst.org/wp-content/uploads/2018/11/11-13-18-School-Spending-in-NYS\\_FINAL.pdf](https://rockinst.org/wp-content/uploads/2018/11/11-13-18-School-Spending-in-NYS_FINAL.pdf)

[clxxviii] CFE Derailed: The state of our schools in the Wake of the 2016 NYS Budget and a Decade after the Campaign for Fiscal Equity, <http://www.aqeny.org/wp-content/uploads/2018/01/CFE-Derailed-June-17-final-1.pdf>;

New York City Schools Continue to See Shortfall in Foundation Aid, <https://ibo.nyc.ny.us/iboreports/new-york-city-schools-continue-to-see-shortfall-in-foundation-aid-march-2017.pdf>

[clxxix] S. 29876-A/A.5679 (December 22, 2021).

[clxxx] Resolution of the NYC Bd. Of Health Declaring Racism A Public Health Crisis. October 18, 2021.

[clxxxii] See Inst. of Med., Unequal Treatment: Confronting Racial and Ethnic Disparities in Health Care (2003), <https://doi.org/10.17226/10260>.

[clxxxiii] <https://2020scorecard.commonwealthfund.org/rankings/>

[clxxxiii] <https://www.americashealthrankings.org/learn/reports/2018-annual-report/findings-state-rankings>

[clxxxiv] U.S. Dep't Health & Human Servs., Office of Disease Prevention and Health Promotion, [HealthyPeople.gov](https://www.healthypeople.gov), *Disparities* (last updated Oct. 27, 2021), <https://www.healthypeople.gov/2020/about/foundation-health-measures/Disparities>.

[clxxxv] *See, e.g.*, U.S. Dep't Health & Human Servs., Centers for Disease Control and Prevention, *Risk for COVID-19 Infection, Hospitalization, and Death By Race/Ethnicity* (updated Sept. 9, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html>.

[clxxxvi] [https://health.ny.gov/community/minority/docs/health\\_equity\\_report\\_2019.pdf](https://health.ny.gov/community/minority/docs/health_equity_report_2019.pdf)

[clxxxvii] *Id.*

[clxxxviii] *Id.*

[clxxxix] [https://health.ny.gov/community/minority/docs/health\\_equity\\_report\\_2019.pdf](https://health.ny.gov/community/minority/docs/health_equity_report_2019.pdf)

[cxc] [https://health.ny.gov/community/minority/docs/health\\_equity\\_report\\_2019.pdf](https://health.ny.gov/community/minority/docs/health_equity_report_2019.pdf)

[cxci] Kalyanaraman Marcello R, Dolle J, Tariq A, Kaur S, Wong L, Curcio J, Thachil R, Yi SS, Islam N. Disaggregating Asian Race Reveals COVID-19 Disparities Among Asian American Patients at New York City's Public Hospital System. *Public Health Rep.* 2022 Mar-Apr;137(2):317-325. doi: 10.1177/00333549211061313. Epub 2021 Dec 30. PMID: 34965776; PMCID: PMC8900247.

[cxcii] <https://www.theguardian.com/us-news/ng-interactive/2020/aug/11/lost-on-the-frontline-covid-19-coronavirus-us-healthcare-workers-deaths-database>

[cxci] <https://www.cdc.gov/socialdeterminants/index.htm>

[cxciv] Solar O, Irwin A. A conceptual framework for action on the social determinants of health. *Social Determinants of Health Discussion Paper 2 (Policy and Practice)*. Available at [https://www.who.int/sdhconference/resources/ConceptualframeworkforactiononSDH\\_eng.pdf](https://www.who.int/sdhconference/resources/ConceptualframeworkforactiononSDH_eng.pdf)

[cxcv] Churchwell K, Elkind MSV, Benjamin RM, Carson AP, Chang EK, Lawrence W, Mills A, Odom TM, Rodriguez CJ, Rodriguez F, Sanchez E, Sharrief AZ, Sims M, Williams O; American Heart Association. Call to Action: Structural Racism as a Fundamental Driver of Health Disparities: A Presidential Advisory From the American Heart Association. *Circulation.* 2020 Dec 15;142(24): e454-e468. doi: 10.1161/CIR.0000000000000936. Epub 2020 Nov 10. PMID: 33170755.

[cxcvi] Williams, D. R., Lawrence, J. A., & Davis, B. A. (2019). [Racism and Health: Evidence and Needed Research](#). Annual Review of Public Health, 40, 105-125.

[cxcvii] Williams, D. R., Lawrence, J. A., & Davis, B. A. (2019). [Racism and Health: Evidence and Needed Research](#). Annual Review of Public Health, 40, 105-125.

[cxcviii] Solar O, Irwin A. A conceptual framework for action on the social determinants of health. Social Determinants of Health Discussion Paper 2 (Policy and Practice). Available at [https://www.who.int/sdhconference/resources/ConceptualframeworkforactiononSDH\\_eng.pdf](https://www.who.int/sdhconference/resources/ConceptualframeworkforactiononSDH_eng.pdf)

[cxcix] Solar O, Irwin A. A conceptual framework for action on the social determinants of health. Social Determinants of Health Discussion Paper 2 (Policy and Practice). Available at [https://www.who.int/sdhconference/resources/ConceptualframeworkforactiononSDH\\_eng.pdf](https://www.who.int/sdhconference/resources/ConceptualframeworkforactiononSDH_eng.pdf)

[cc] Gordon, Kimberly & Hairston, Danielle & Miller, Shadé & Legha, Rupinder & Starks, Steven. (2019). Origins of Racism in American Medicine and Psychiatry: Contemporary Issues and Interventions. 10.1007/978-3-319-90197-8\_1.

[cci] Gordon, Kimberly & Hairston, Danielle & Miller, Shadé & Legha, Rupinder & Starks, Steven. (2019). Origins of Racism in American Medicine and Psychiatry: Contemporary Issues and Interventions. 10.1007/978-3-319-90197-8\_1.

[ccii] Gordon, Kimberly & Hairston, Danielle & Miller, Shadé & Legha, Rupinder & Starks, Steven. (2019). Origins of Racism in American Medicine and Psychiatry: Contemporary Issues and Interventions. 10.1007/978-3-319-90197-8\_1.

[cciii] Gordon, Kimberly & Hairston, Danielle & Miller, Shadé & Legha, Rupinder & Starks, Steven. (2019). Origins of Racism in American Medicine and Psychiatry: Contemporary Issues and Interventions. 10.1007/978-3-319-90197-8\_1. Churchwell K, Elkind MSV, Benjamin RM, Carson AP, Chang EK, Lawrence W, Mills A, Odom TM, Rodriguez CJ, Rodriguez F, Sanchez E, Sharrief AZ, Sims M, Williams O; American Heart Association. Call to Action: Structural Racism as a Fundamental Driver of Health Disparities: A Presidential Advisory From the American Heart Association. Circulation. 2020 Dec 15;142(24): e454-e468. doi: 10.1161/CIR.0000000000000936. Epub 2020 Nov 10. PMID: 33170755.

[cciv] Gordon, Kimberly & Hairston, Danielle & Miller, Shadé & Legha, Rupinder & Starks, Steven. (2019). Origins of Racism in American Medicine and Psychiatry: Contemporary Issues and Interventions. 10.1007/978-3-319-90197-8\_1.

[ccv] <https://www.ama-assn.org/about/leadership/reckoning-medicine-s-history-racism>

[ccvi] Pub. L. 79–725, 60 Stat. 1040, enacted July 13, 1946,

[ccvii] <https://journalofethics.ama-assn.org/article/american-medical-association-and-race/2014-06>

[ccviii] Byrd WM, Clayton LA. Race, medicine, and health care in the United States: a historical survey. *J Natl Med Assoc.* 2001;93(3 Suppl):11S-34S.

[ccix] Ruqaiijah Yearby, Brietta Clark & José F. Figueroa, *Structural Racism in Historical and Modern US Health Care Policy*, 41(2) *Health Affairs* 187, 188 (2022), available at <https://www.healthaffairs.org/doi/10.1377/hlthaff.2021.01466>.

[ccx] *Id.*

[ccxi] Bobbi M. Bittker, *Racial and Ethnic Disparities in Employer-Sponsored Health Coverage*, ABA Human Rights Magazine, Vol. 45, No. 4 (Sept. 7, 2020), [https://www.americanbar.org/groups/crsj/publications/human\\_rights\\_magazine\\_home/health-matters-in-elections/racial-and-ethnic-disparities-in-employer-sponsored-health-coverage/](https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/health-matters-in-elections/racial-and-ethnic-disparities-in-employer-sponsored-health-coverage/).

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[ccxxii] 10 NYCRR 400.18.

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[ccxxxix] See Hostetter, *supra* note v.

[ccxli] See, e.g., Madeline Guth, Samantha Artiga & Olivia Pham, *Effects of the ACA Medicaid Expansion on Racial Disparities in Health and Health Care*, Kaiser Family Found. (Sept. 30, 2020), <https://www.kff.org/medicaid/issue-brief/effects-of-the-aca-medicaid-expansion-on-racial-disparities-in-health-and-health-care/>.

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[https://nyassembly.gov/leg/?default\\_fld=&leg\\_video=&bn=A00880&term=2021&Summary=Y&Memo=Y](https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A00880&term=2021&Summary=Y&Memo=Y).

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[ccli] *See generally* Jill Harrison, *From the Inside Out: The Fight for Environmental Justice Within Government Agencies* (Cambridge, MA: MIT Press, 2019).

[cclii] N.Y. ECL § 75-0117.

[ccliii] *See generally* Harrison, *supra* note \_ (exploring external and intra-institutional factors in priority given to EJ by agencies responsible for its consideration and enforcement).

[ccliv] N.Y. C.P.L.R. § 7803 (authorizing judicial review to determine, inter alia, “whether the body or officer failed to perform a duty enjoined upon it by law”); see also 6 N.Y. Jur. 2d Article 78 § 85 (noting that to prevail a petitioner must “establish a clear legal right to relief.”).

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[cclvi] States (California and New York) are also studying whether reparations are feasible at the state level.

[cclvii] *See also* <https://slate.com/news-and-politics/2007/03/what-special-benefits-do-you-get-for-being-choerokee.html>

Native Americans have called for their stolen land to be restored. That could be the topic of another Task Force. <https://www.scu.edu/ethics-spotlight/ethics-and-systemic-racism/regarding-reparations-the-us-should-adhere-to-the-highest-standards-of-justice/> Japanese Americans who were interned during World War II received checks for \$20,000 and a formal apology from the federal government in 1990. <https://www.history.com/news/reparations-slavery-native-americans-japanese-internment>

[cclviii] Goldrick-Rab, Kelchen and Houle (2014) Hope Lab, University of Wisconsin <https://hope4college.com/wp-content/uploads/2018/09/Goldrick-Rab-Kelchen-Houle-2014.pdf>

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[cclxvi] <https://www.pewresearch.org/social-trends/2014/10/07/cumulative-student-debt-among-recent-college-graduates/>

[cclxvii] Supra.

[cclxviii] <https://www.pewresearch.org/social-trends/2014/10/07/cumulative-student-debt-among-recent-college-graduates/>

[cclxix] <https://www.brookings.edu/research/student-loans-the-racial-wealth-divide-and-why-we-need-full-student-debt-cancellation/>

[cclxx] Goldrick-Rab, Kelchen and Houle (2014) Supra

[cclxxi] Supra.

[cclxxii] <https://www.epi.org/blog/black-white-wage-gaps-are-worse-today-than-in-2000/>

[cclxxiii] Hanson, Melanie. “Student Loan Debt by Race” Supra.

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[cclxxv] <https://www.savingforcollege.com/article/which-jobs-qualify-for-public-service-loan-forgiveness>

[cclxxvi] National Diaper Bank Network, 2020 New York Diaper Facts, [https://nationaldiaperbanknetwork.org/wp-content/uploads/2021/03/2020\\_State\\_Diaper\\_Facts\\_3\\_2021\\_New\\_York\\_V1.pdf](https://nationaldiaperbanknetwork.org/wp-content/uploads/2021/03/2020_State_Diaper_Facts_3_2021_New_York_V1.pdf)

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*See*

[https://info.nystateofhealth.ny.gov/sites/default/files/2020%20FPLs%20during%202020\\_2021\\_OE.pdf](https://info.nystateofhealth.ny.gov/sites/default/files/2020%20FPLs%20during%202020_2021_OE.pdf).

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[cclxxxix] <https://www.cbpp.org/research/federal-tax/if-congress-fails-to-act-monthly-child-tax-credit-payments-will-stop-child>.

[cclxxx] <https://www.cbsnews.com/news/child-tax-credit-poverty-surges-after-ctc-checks-end/#:~:text=With%20the%20tax%20season%20open,provides%20%242%2C000%20per%20eligible%20child>.

[cclxxxii] <https://www.cbpp.org/research/federal-tax/if-congress-fails-to-act-monthly-child-tax-credit-payments-will-stop-child>.

[cclxxxiii] According to a 2014 study conducted by the Center for Economic and Policy Research, the poorest 20 percent of families in the U.S. (with an average after-tax income of \$11,253) spent nearly 14 percent of their annual income on diapers. See <https://www.cepr.net/the-hygiene-assistance-for-families-of-infants-and-toddlers-act-will-help-the-poor-pay-for-diapers/>.

[cclxxxiiii] The only form of federal public assistance that can be used to purchase diapers is Temporary Assistance for Needy Families (TANF). However, TANF funds are limited and must cover other essential household expenses, such as heating, electricity, rent, clothing, and transportation. National Diaper Bank Network, New York Diaper Facts, [https://nationaldiaperbanknetwork.org/wp-content/uploads/2021/03/2020\\_State\\_Diaper\\_Facts\\_3\\_2021\\_New\\_York\\_V1.pdf](https://nationaldiaperbanknetwork.org/wp-content/uploads/2021/03/2020_State_Diaper_Facts_3_2021_New_York_V1.pdf).

[cclxxxv] The "diaper loophole" is especially significant given the number of children in the state receiving public assistance: According to statistics published by the National Diaper Bank Network, twenty-three percent (23%) of WIC recipients in NYS are infants; eleven percent (11%) of SNAP recipients in NYS are under the age of 5; forty-three (43%) of births are covered by Medicaid; and thirty percent (30%) of families receiving TANF have at least once child under the age of 3. National Diaper Bank Network, New York Diaper Facts,

[https://nationaldiaperbanknetwork.org/wp-content/uploads/2021/03/2020\\_State\\_Diaper\\_Facts\\_3\\_2021\\_New\\_York\\_V1.pdf](https://nationaldiaperbanknetwork.org/wp-content/uploads/2021/03/2020_State_Diaper_Facts_3_2021_New_York_V1.pdf).

[cclxxxvi] Kaley Donaldson, The Prevalence and Impact of Diaper Need, SUNY Rockefeller Institute of Government, available at <https://rockinst.org/blog/the-prevalence-and-impact-of-diaper-need/>, Sept. 9, 2021.

[cclxxxvii] See S.6572/A.529-A; <https://www.governor.ny.gov/news/governor-hochul-signs-legislation-addressing-labor-and-healthcare-inequalities-women> (Dec. 22, 2021).

[cclxxxviii] See A137

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[ccxcii] [MBDA Improving Minority Businesses' Access to Capital \(census.gov\)](#)

[ccxciii] [\(PDF\) Small business development: immigrants' access to loan capital \(researchgate.net\)](#)

[ccxciiii] [sbcs-report-on-firms-owned-by-people-of-color \(fedsmallbusiness.org\)](#)

[ccxcv] [Annual Report Template \(nyc.gov\)](#)

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[ccxcvii] Eric Martin, "Hidden Consequences: The Impact of Incarceration on Dependent Children," NIJ Journal 278, March 2017, <https://nij.gov/journals/278/Pages/impact-ofincarceration-on-dependent-children.aspx>.

[ccxcviii] <https://www.criminaljustice.ny.gov/crimnet/ojsa/comparison-population-arrests-prison-demographics/2019%20Population%20Arrests%20Prison%20by%20Race.pdf>

[ccxcix] The Trial Penalty: The Sixth Amendment Right to Trial on the Verge of Extinction and how to save it., NACDL, 2018 <https://www.nacdl.org/getattachment/95b7f0f5-90df-4f9f-9115-520b3f58036a/the-trial-penalty-the-sixth-amendment-right-to-trial-on-the-verge-of-extinction-and-how-to-save-it.pdf>

[ccxcix] Jeanmarie Everlly, *New Campaign Aims to Reform NY's 'Racist, Draconian' Sentencing Laws*, *City Limits*, November 18, 2021, <https://citylimits.org/2021/11/18/new-campaign-aims-to-reform-nys-racist-draconian-sentencing-laws/>

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- <sup>ii</sup> <https://today.uconn.edu/2021/03/there-was-a-time-reparations-were-actually-paid-out-just-not-to-formerly-enslaved-people/#>
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- <sup>vii</sup> *Records of the Federal Home Loan Bank Board [FHLBB]*, NATIONAL ARCHIVES, <https://www.archives.gov/research/guide-fed-records/groups/195.html> (last reviewed Aug. 15, 2016); *How a New Deal Housing Program Enforced Segregation*, HISTORY (Oct. 20, 2020, updated June 1, 2021), <https://www.history.com/news/housing-segregation-new-deal-program>.
- <sup>viii</sup> <https://www.brookings.edu/events/racial-wealth-inequality-social-problems-and-solutions/>
- <sup>ix</sup> <https://www.yesmagazine.org/wp-content/uploads/pdf/74/74-JTF-8.5x11.pdf>
- <sup>x</sup> States (California and New York) are also studying whether reparations are feasible at the state level.
- <sup>xi</sup> See <https://www.politico.com/story/2018/02/28/tax-cuts-trump-gop-analysis-430781> See also <https://www.brown.edu/news/2021-09-01/costsofwar>. See also the cost of corporate subsidies. <https://subsidytracker.goodjobsfirst.org/top-100-parents>.
- <sup>xii</sup> See <https://www.state.gov/policy-issues/refugee-and-humanitarian-assistance/>
- <sup>xiii</sup> *id.*
- <sup>xiv</sup> <https://www.rev.com/blog/transcripts/the-other-america-speech-transcript-martin-luther-king-jr>
- <sup>xv</sup> <https://www.rev.com/blog/transcripts/the-other-america-speech-transcript-martin-luther-king-jr>
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