



CITY OF SOUTH PASADENA
PUBLIC SAFETY COMMISSION REGULAR MEETING AGENDA

AMEDEE O. "DICK" RICHARDS, JR. COUNCIL CHAMBER
1424 MISSION STREET, SOUTH PASADENA, CA 91030
TEL: (626) 403-7210 • FAX: (626) 403-7211
WWW.SOUTHPASADENACA.GOV

Monday, September 13, 2021 at 8:30 a.m.

South Pasadena Public Safety Commission Statement of Civility

As your appointed governing board we will treat each other, members of the public, and city employees with patience, civility and courtesy as a model of the same behavior we wish to reflect in South Pasadena for the conduct of all city business and community participation. The decisions made today will be for the benefit of the South Pasadena community and not for personal gain.

PUBLIC ADVISORY: THE CITY COUNCIL CHAMBERS WILL BE OPEN TO THE PUBLIC

Pursuant to Section 3 of Executive Order N-08-21, issued by Governor Newsom the Regular Meeting of the Public Safety Commission for September 13, 2021 will be conducted in-person/hybrid and held by video conference, beginning at 8:30 a.m.

Beginning in August, the City will resume in-person/hybrid public meetings. The in-person/virtual hybrid meetings will maintain transparency and public access while protecting the health and safety of the public. Members of the public have the option to participate in-person or via Zoom using the following link:

To maximize public safety while still maintaining transparency and public access, members of the public can observe the meeting via Zoom Webinar in one of the methods below.

**Public Safety Commission
Zoom Webinar Information
Meeting ID: 876 3567 3513**

1. Go to the Zoom website, <https://zoom.us/join> and enter the Zoom Webinar information accordingly; or

Click the following link to join the webinar: <https://us06web.zoom.us/j/87635673513>

2. You may listen to the meeting by calling: **+16699006833** and entering the Zoom Webinar ID when prompted to do so.

For additional Zoom assistance with telephone audio, you may find your local number at: <https://zoom.us/j/9201111111>

IMPORTANT NOTE: Members of the public may access the meeting to observe the meeting’s proceedings; however, at this time, there is no live, real-time participation by members of the public.

PUBLIC COMMENTS: If you would like to comment on an agenda item or make a general public comment, members of the public may submit their comments in writing, for Commission consideration, by emailing them to: pscpubliccomment@southpasadenaca.gov

Public Comments must be received by **6 p.m., September 12, 2021** to ensure adequate time to compile. Public Comment portion of the email is limited to 250 words. Please make sure to indicate: 1) your name; 2) what agenda item you are submitting public comment on or if it is a general public comment; and 3) clearly state if you wish for your comment to be read.

CALL TO ORDER Chair Amin Alsarraf

ROLL CALL Commission members Grace Liu Kung, Jeremy Ding, Ed Donnelly, Lisa Watson, Lindsey Angelats; Vice-Chair Stephanie Cao; and Chair Amin Alsarraf

COUNCIL LIAISON: Jon Primuth

PUBLIC COMMENTS AND SUGGESTIONS

The Public Safety Commission welcomes public input. Members of the public may address the Public Safety Commission by emailing: pscpubliccomment@southpasadenaca.gov

Public Comments must be received by **6 p.m., September 12, 2021** to ensure adequate time to compile. Public Comment portion of the email is limited to 250 words. Please make sure to indicate: 1) your name; 2) what agenda item you are submitting public comment on or if it is a general public comment; and 3) clearly state if you wish for your comment to be read.

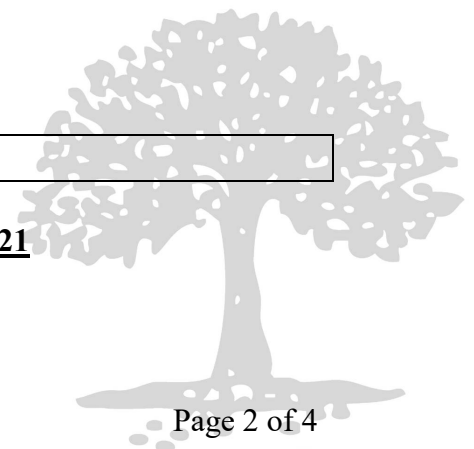
Pursuant to state law, the Public Safety Commission may not discuss or take action on issues not on the meeting agenda, except that members of the Public Safety Commission or staff may briefly respond to statements made or questions posed by persons exercising public testimony rights (Government Code Section 54954.2). Staff may be asked to follow up on such items.

1. Public Comment – General

ACTION/DISCUSSION

2. Minutes of the Public Safety Commission Meeting of June 14, 2021

Recommendation



It is recommended that the Commission review and approve the June 14, 2021 Meeting Minutes.

3. Firearms Safe Storage Ordinance-Lieutenant Jacobs

Recommendation

It is recommended that the Commission discuss Firearms Safety Storage Ordinance.

4. Unarmed Traffic Enforcement-Ed Donnelly and Lisa Watson Recommendation

It is recommended that the Commission discuss Unarmed Traffic Enforcement

5. School Safety

Recommendation

It is recommended that the Commission discuss School Safety

COMMUNICATIONS

6. City Council Liaison Communications

7. Staff Liaison Communications

8. Commissioner Communications

ADJOURNMENT

PUBLIC ACCESS TO AGENDA DOCUMENTS

The complete agenda packet may be viewed on the City's website at:

<https://www.southpasadenaca.gov/government/boards-commissions>

Meeting recordings will be available for public viewing after the meeting. Recordings will be uploaded to the City's YouTube Channel no later than the next business day after the meeting.

The City's YouTube Channel may be accessed at:

https://www.youtube.com/channel/UCnR169ohzi1AIewD_6sfwDA/featured

ACCOMMODATIONS

The City of South Pasadena wishes to make all of its public meetings accessible to the public. If special assistance is needed to participate in this meeting, please contact the City Clerk's Division via e-mail at CityClerk@southpasadenaca.gov or by calling (626) 403- 7230. Upon request, this agenda will be made available in appropriate alternative formats to persons with disabilities. Notification at least 48 hours prior to the meeting will assist staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting (28 CFR 35.102-35.104 ADA Title II).

*I declare under penalty of perjury that I posted this notice of agenda on the bulletin board in the courtyard of City Hall at 1414 Mission Street, South Pasadena, CA, and the City's website at www.southpasadenaca.gov on **September 9, 2021** as required by law.*

9/9/2021
Date

/s/
Brian Solinsky, Police Chief





**MONDAY, JUNE 14, 2021
MINUTES OF THE REGULAR MEETING OF THE
PUBLIC SAFETY COMMISSION
OF THE CITY OF SOUTH PASADENA**

CALL TO ORDER

A Regular Meeting of the Public Safety Commission was called to order by Chair Alsarraf on Monday, June 14, 2021, at 8:33 a.m., in the Amedee O. “Dick” Richards, Jr., Council Chamber, located at 1424 Mission Street, South Pasadena, California.

ROLL CALL

Present: Commissioners: Ed Donnelly, Grace Liu Kung, Jeremy Ding, Lisa Watson, Lindsay Angelats, and Chair Amin Alsarraf.

Absent: Vice-Chair Cao

Officials

Present: City Council Liaison Jon Primuth, Police Chief/Staff Liaison Brian Solinsky, Fire Operations Division Chief/Staff Liaison Eric Zanteson, and Police Department Clerk/Recording Secretary Laura Mendez.

Absent: Fire Chief/Staff Liaison Paul Riddle

PUBLIC COMMENTS AND SUGGESTIONS

1. Joanne Nuckols and Tom stated that Ramona Ave Neighbors are concerned about the safety problem around Holy Family School as well as all the schools in South Pasadena. Joanne would like the Public Safety Commission to have a discussion before schools start about the risky driving behaviors of parents around the schools.
2. Joanne Nuckols for Ramona Ave Neighbors states concerns about the traffic and safety for Ramona students, neighborhoods and residents.

ACTION/DISCUSSION

3. Minutes of the Public Safety Commission Meeting of May 10, 2021

MOTION BY COMMISSIONER LIU KUNG, AND SECOND BY COMMISSIONER WATSON, CARRIED 6-0, to approve the Minutes of the May 10, 2021 Public Safety Commission Regular Meeting.

4. Receive and File Fremont Avenue and Monterey Road Traffic Incident Update

Police Chief Solinsky stated that traffic and related issues have always been a concern to the Health and Safety of South Pasadena residents. Earlier this year, a public comment which was received from the Council for traffic conditions, specifically on Fremont and Monterey Road Council directed staff to present an in-depth into those issues.

Fremont Ave is a two lane road way, it carried high volumes of traffic, it is rated at 30 MPH, an average of 18,494 cars travel on it daily the percentage is down 29% from 2014 when we last did the study which had 26,000 cars passing by. Monterey Road is a 4 way road, it has a speed limit of 35 MPH, the intersection is a 4 way intersection controlled by traffic signals in each direction. The city conducted a survey in 2014 indicating the average speed of vehicles traveling was 28 MPH.

Looking back at data from 2019, we only had two reportable collisions and an additional six minor traffic collisions where information was exchanged for a total of eight collisions, and the total number of citations issued during the same time period were twelve. The police department looked at a number of different things including what we were doing to combat volume of traffic and flow of traffic and reduce the possibility of collisions. We have a number of mechanisms in place which include enforcement, education component, SRO that addresses the kids when in session not only driving, but walking safely to and from school. We have multi-jurisdictional task force that help out with traffic enforcement.

Chief Solinsky is looking for the Commission to approve and recommend that the report be given to Council which will then be another presentation hopefully at the next Council meeting.

MOTION BY COMMISSIONER DONNELLY, AND SECOND BY COMMISSIONER ANGELATS, CARRIED 6-0, to MOVE FORWARD TO CITY COUNCIL.

COMMUNICATIONS

1. City Counsel Liaison Communications

City Council Liaison Primuth stated he is glad the Fremont corridor is getting some attention. North Fremont has been getting busier with people going back to work, peoples safety, people living on foothill think they can't cross on Fremont because it is dangerous pedestrian safety and pedestrian improvement are important. Thank you Director Abbas

for staying on top of this I know you have a lot of good ideas. I have meet with the Council Member from Pasadena and he has assured me that he want to keep coordination going on Fremont. I have also meet with the Director of Transportation for Pasadena and she assured me that they will work with us to make sure our flow thru traffic is coordinated, they are also trying to shift traffic to Eastern to Fair Oaks just like we are. On the Council agenda for Wednesday night we have on action item only and that is the Budget.

2. Staff Liaison Communications

Police Chief Solinsky stated the City Manager regrets that she was not able to make it to the meeting, her calendar was full, and City Manager's intention is to meet with every group as soon as possible. At the last meeting some Council Members asked about the South Pasadena connector, a better way for the city to communicate with its residents during emergencies or times of community concern and we have connect South Pasadena which is a free system that residents can log into they can go to the city website click on the link and input their information and any alerts that come out of the city traffic or any other significant information that needs to come out you can receive information via land line, cell phone, text message and via email.

Fire Operations Division Chief Eric Zanteson stated that Chief Riddle extended his apologies for not being able to attend the meeting. With the drought and expected heat wave that is coming field moisture is already at a critical level for wild and brush incidents, we anticipate that it was going to be a very active year though out the state. We expect our resources to be deployed though out the state in the summer into the fall.

We do have an open recruitment right now for firefighter/paramedic within the department to plan for potential retirements.

3. Commissioner Communications

Commissioner Liu Kung states public schools ended a week and a half ago, since summer camps were being held at the middle school. Today is the first day of summer school and they had some in person classes at Marengo Elementary and the Middle School. The high school is all distance learning, middle school summers classes is four weeks long and ends next month, the high school is one week longer for a total of 5 weeks. The new school year will begin August 12, 2021, the plan is to be back to normal in person.

Commissioner Watson stated that she and Commissioner Donnelly have been working on a report in regards to unarmed traffic stops and we should have a report by the next monthly meeting.

Commissioner Angelats stated she wanted to thank the Police Chief helping orient her to the commission and bring her on board, we had a good talk about the initiatives about Mental Health and concurrent responses that are appropriate with Public Safety and Mental Health.

Commissioner Ding inquired about the new format for the Commission for Public Comments that are emailed to the Public Comment email. Commissioner Ding would also like to propose a School Safety Agenda item to address generally School Safety and SRO.

Commissioner Donnelly stated he would like to thank Chief Solinsky for giving him a tour of the Police Station and was able to meet more of the staff and get a sense of what happens behind that front entrance.

Chair Alsarraf would like to thank Lisa and Ed on the work for the Subcommittee.

ADJOURNMENT

Chair Alsarraf adjourned the meeting at 9:20 a.m.

Respectfully Submitted:

Approved By:

Laura Mendez /
Recording Secretary

Amin Alsarraf /
Chair

**CITY OF SOUTH PASADENA
ORDINANCE NO. 3 _____**

AN ORDINANCE OF THE CITY OF SOUTH PASADENA ADDING
CHAPTER 20F (“SAFE STORAGE OF FIREARMS IN RESIDENCES”),
OF THE CITY OF SOUTH PASADENA MUNICIPAL CODE

The people of the City of South Pasadena do hereby ordain as follows:

WHEREAS, firearm injuries have a significant public health impact both nationally and locally;

WHEREAS, the Gun Violence Archive data indicates that in 2020, more than 20,000 people persons died from firearm-related injuries in the United States;

WHEREAS, in 2020, firearms were used in 24,000 suicides or accidental deaths in the United States;

WHEREAS, in 2020, the United States saw the highest one-year increase in homicides;

WHEREAS, having a loaded or unlocked firearm in the home is associated with an increased risk of gun-related injury and death;

WHEREAS, children are particularly at risk of injury and death, or causing injury and death, when they can access firearms in their own homes or homes that they visit;

WHEREAS, more than two-thirds of school shooters obtain their guns from their own home or that of a relative;

WHEREAS, research shows that while most mass shootings involve handguns, shootings involving rifles contribute to higher casualty counts;

WHEREAS, hundreds of thousands of firearms are stolen from homes and vehicles of legal gun owners each year and flow into the underground market;

WHEREAS, applying trigger locks or using lockboxes when storing firearms in the home reduces the risk of firearm injury and death and is associated with a reduction of unintentional firearm deaths and decreases in suicides among children and teens;

WHEREAS, keeping a firearm locked when it is not being carried prevents unauthorized users, including children, from accessing and using firearms, which can reduce tragedies due to suicide, unintentional discharges, and firearm theft;

WHEREAS, safe storage measures have a demonstrated protective effect in homes with children and teenagers where firearms are stored;

WHEREAS, there is a broad consensus among medical professionals, gun control advocates, and gun rights groups that applying trigger locks or using lockboxes to store unsupervised firearms in the home promotes health and safety;

WHEREAS, the American Academy of Pediatrics recommends that, if families must have firearms in their homes, the firearms should be stored locked, unloaded, and separate from locked ammunition;

WHEREAS, requiring firearms to be stored with trigger locks or in a locked container does not substantially burden the right or ability to use firearms for self-defense in the home;

WHEREAS, the locking requirements apply only to firearms that are not being lawfully carried and allow gun owners and adults over 18 years of age to carry loaded and unlocked firearms in the home at any time;

WHEREAS, firearms can be safely stored in and quickly accessed from affordable, widely available lockboxes. Indeed, users report that they can retrieve a loaded firearm from a pushbutton lockbox in just two to three seconds and that locks are easy to open in the dark. Some lockboxes also feature biometric locks, which provide immediate access when they scan the owner's fingerprint; and

WHEREAS, portable lock boxes can store loaded firearms such that they are within easy reach in closets, under the bed, or on tables or nightstands. Such safely stored firearms are more quickly and easily retrieved for use in self-defense than unlocked firearms that have been hidden away in seldom-used locations.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SOUTH PASADENA, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter 20F ("Safe Storage of Firearms in Residences") is added to the South Pasadena Municipal Code in its entirety to read as follows:

SEC. 20F-1. Definitions.

1. Firearm" means a firearm as defined in California Penal Code, Section 16520, as amended from time to time.
2. Locked Container" means a secure container that is fully enclosed and locked by a padlock, key lock, combination lock, or similar locking device.

3. Residence” means any structure intended or used for human habitation, including, but not limited to, houses, condominiums, apartments, rooms, accessory dwelling units, motels, hotels, single room occupancies, time-shares, and recreational and other vehicles where human habitation occurs.

4. Trigger Lock” means a trigger lock that is listed on the California Department of Justice’s roster of approved firearm safety devices and that is identified as appropriate for that firearm by reference to either the manufacturer and model of the firearm or to the physical characteristics of the firearm that match those listed on the roster for use with the device under Penal Code Section 23655(d).

SEC 20F-2 Prohibition. No person shall keep a firearm within a residence unless the firearm is:

1. Stored in a locked container or disabled with a trigger lock that has been approved by the California Department of Justice; or
2. Carried on the person of the owner or other lawfully authorized user of the firearm who is over the age of 18; or
3. Within close enough proximity and control that the owner or other lawfully authorized user of the firearm who is over the age of 18 can readily retrieve and use the firearm as if carried on the person.
4. An exemption for this section shall apply if the person is a peace officer or a member of the Armed Forces or the National Guard and the child obtains the firearm during, or incidental to, the performance of the person’s duties.

SEC 20F-Penalty. Every violation of this Section shall constitute a misdemeanor and upon conviction shall be punished by a fine not to exceed \$1,000 or by imprisonment in the county jail not to exceed six months, or by both.

SEC 20F-4 Severability. If any provision of this Section is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, that invalidity shall not affect the remaining provisions of this Section which can be implemented without the invalid provisions, and to this end, the provisions of this Section are declared to be severable. The City Council hereby declares that it would have adopted this Section and each provision thereof irrespective of whether any one or more provisions are found invalid, unconstitutional, or otherwise unenforceable.

Section 2. CEQA. The City Council hereby finds that the proposed Code amendment is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines § 15061(b)(3), which states the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment.

Section 3. Effective Date. This ordinance shall take effect thirty (30) days after its final passage, the City Clerk of the City of South Pasadena shall certify to the passage and adoption of this ordinance and its approval by the Mayor and City Council and shall cause the same to be published in a newspaper in the manner required by law.

PASSED AND ADOPTED by the City Council of the City of South Pasadena, State of California, on _____, 2021 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Diana Mahmud, Mayor

Attest:

Lucie Colombo, CMC, CPMC
City Clerk

The Mayor's Working Group on Fair and Impartial Policing Policy Proposals

Developing and implementing reforms that will effectively reduce existing racial disparities requires changes at several levels. The following recommendations include setting new policy, updating institutional structures, and mandating individual accountability. Their implementation and ongoing effectiveness require supportive leadership, transparency and police accountability.

Executive Summary. Mayor's Working Group on Fair and Impartial Policing (hereafter, "the working group") focused on reducing racial disparities in stops and searches and improving community relationships damaged by the racially disparate practices in stops and searches.

This report advances the following recommendations for BPD practices:

- Focus on public safety and eliminate stops for low-level offenses not directly impacting public safety.
- Use race and ethnicity as determining factors in stops only when paired with clear, evidence-based criteria.
- Institute annual implicit bias training and scenario-based training for California Penal Code 13519.4, prohibiting racial or identity profiling.
- Establish a truly effective Early Intervention System and risk management process to ensure department accountability and identify officers who are outliers in stops, searches, dispositions, and outcomes.
- Limit warrantless searches of individuals on supervised release status such as Post Release Community Supervision (PRCS), probation, or parole.
- Require written consent for consent searches.
- Include evaluations of cultural competence in hiring and promotion, and fire officers who have expressed racist attitudes and/or are identified as members of racist groups.

The report also advances these recommendations for the Berkeley City Council and/or the City of Berkeley:

- Hire a consultant to create a plan for monitoring and reporting on the implementation of these recommendations.
- Ensure the creation of a Specialized Care Unit with crisis-response field workers, as included in the recent contract for a community-process to establish an SCU.
- Ensure a robust community engagement process, including annual surveys and community forums
- Require quarterly analysis of stop, search, and use of force data by City Auditor and/or the PRC.
- Adopt and carry out the compliance and accountability system outlined in this document.

Proposed Actions

Table 1 provides a proposed action for each recommendation in the body and appendices of this draft report.

<u>Action</u>	<u>Recommendations</u>
Direct the City Manager to implement key recommendations, with at minimum, quarterly progress reports to the PAB and/or the Working Group	<ul style="list-style-type: none"> • <u>Focus traffic stops on safety</u> • <u>Use a clear, evidence-based definition for stops of criminal suspects</u> • <u>Use race and ethnicity as determining factors in stops only when paired with clear, evidence-based criteria</u> • <u>Eliminate stops for low-level offenses</u> • <u>Implement an Early Intervention System (EIS) and a risk-management structure</u> • <u>Immediately release stop, arrest, calls for service and use of force data from 2012 to present to the Working Group</u> • <u>Limit warrantless searches of individuals on supervised release status such as Post Release Community Supervision (PRCS), probation, or parole</u> • <u>Require written consent for all consent searches</u> • <u>Address Profiling by Proxy (PAB Policy Development, Dispatcher Training)</u> • <u>Fire racist police officers identified through social media and other media screens</u> • <u>Address Profiling by Proxy (Council develop & pass CAREN policy)</u> • <u>Require regular analysis of BPD stop, search, and use of force data</u> • <u>Make resources on police-civilian encounters more publicly available such as RAHEEM.org</u> • <u>Adopt Compliance and Accountability Mechanisms</u> <ul style="list-style-type: none"> a. Hire consultant to develop implementation plan • <u>For any individual detained, BPD officers shall provide a business card with info on a website similar to RAHEEM and info on complain process with PAB</u>
Refer to be included in the process to reimagine public safety	<ul style="list-style-type: none"> • <u>The City should create a formalized feedback system to gauge community response to ongoing reforms and ensure this constructive input system is institutionalized and includes a basic report card and quarterly neighborhood check-ins</u> • <u>Conduct a baseline community survey.</u>
Refer to the Police Accountability Board	<ul style="list-style-type: none"> • <u>Include a scenario-based training component in the existing officer training required by California Penal Code 13519.4</u> • <u>Require enhanced annual implicit bias training for police</u> • <u>Accelerate Crisis Intervention Team (CIT) activity</u>
Follow-up with PAB and/or Fair and Impartial Working Group	<ul style="list-style-type: none"> • <u>Evaluate the impact of these proposals on racial disparities in stops and searches, using regular updates to stop and search data</u> • <u>Conduct a regular community survey and annual community forums on Police and Public Safety</u>
Recommendations already underway	<ul style="list-style-type: none"> • <u>Fund and implement a specialized care unit for mental health crises</u> • <u>Conduct a Capacity Study of police calls and responses and use of officer time outside of case work</u>
Outstanding - No Action Recommended	<ul style="list-style-type: none"> • <u>Include community member participation and feedback in the hiring process</u> • <u>Include the following for Performance Appraisal Reports</u>

Reducing Disparities in Vehicle, Pedestrian, and Bicycle Stops & Searches:

1. Focus traffic stops on safety

According to Dr. Frank Baumgartner's 2018 book, *Suspect Citizens*, "Safety stops are those aimed at enforcing the rules of the road to decrease the likelihood of an accident" (pg. 191). The types of stops falling into this traffic safety category may include:

- Excessive speeding¹
- Running a stop sign or stop light
- Unsafe movement
- Driving while intoxicated

2. Use a clear, evidence-based definition for stops of criminal suspects

Dr. Baumgartner's analysis² reveals that "investigatory stops" (stops that use a minor infraction as a pretext for investigating rather than to prevent or reduce dangerous behavior pgs. 53-55) allow for the most officer discretion and open the possibility of implicit bias or "reliance on cultural heuristics" (pg. 191). Based on analyses of more than 9 million stops, Baumgartner's team found that 47% were investigatory and that they added substantially to the racial disparity statistics. Thus, investigatory stops and stops of criminal suspects shall be restricted to those made because the person and/or vehicle fits a description in relation to a specific crime.³⁴

Since the Oakland Police Department (OPD) has implemented evidence-based methods, the number of African American civilians stopped by the OPD has declined. Since Oakland Police Department has implemented evidence-based methods, the number of African American civilians stopped has declined from 19,185 in 2017 to 7,346 in 2019, a drop of 62% and a stop disparity rate reduction of almost 60%,⁵ with no corresponding increase in crime (Captain Chris Bolton presentation, 7/15/2020).

3. Use race and ethnicity as relevant factors when determining law enforcement action only when provided as part of a description of a crime and suspect that is credible and relevant to the locality and timeframe of the crime and only in combination with other specific descriptive and physical characteristics.^{6,7}

Specific descriptive and physical characteristics may include, for example: the gender, age, height, weight, clothing, tattoos and piercings of the suspect, the make and model of the car, and the time and location of the crime. Simple race and ethnicity alone are not

¹ <https://www.idrivesafely.com/dmv/california/laws/traffic-tickets-and-violations/>,
<https://www.martenslawfirm.com/blog/2015/november/what-is-excessive-speeding/>

² *Suspect Citizens*, pp. 190-192

³ Eberhardt, J. L. (2016). *Strategies for change: Research initiatives and recommendations to improve police-community relations in Oakland, Calif.* Stanford University

⁴ This definition was created by Dr. Jennifer Eberhardt in collaboration with the Oakland Police Department.

⁵ This is the percentage of African American stops within all discretionary non-intel led stops made by Police Area 2 officers fell from 76% in September 2017 to 31% in September 2018

⁶ Southern Poverty Law Center, 10 Best Practices for Writing Policies Against Racial Profiling

⁷ CA Penal Code

satisfactory as bases for reasonable suspicion under the law, and amount to racial profiling.

4. Eliminate stops for low-level offenses

According to the presentation to the Working Group by Captain Bolton of the OPD, Oakland significantly reduced stops for these low-level, non-public safety related offenses, resulting in a reduction in the number of African Americans being stopped and a reduced stop-disparity rate, with no effect on crime rates (homicides and injury shootings went down during the same period). There is often overlap between “investigatory stops” and “stops for low-level offenses,” as the latter may be used as a pretext for investigation. The types of stops falling into these categories may include:

- Equipment violations
- Not wearing a seat belt
- Improper use of high beams
- Violating a regulation (e.g. expired license tags)
- Stop purposes recorded as “other”

5. Implement an Early Intervention System (EIS) and a risk-management structure

These measures to ensure individual accountability have operated successfully in Oakland and many other localities for some time. They involve identifying officer outliers in stops, searches, and use of force and their outcomes and examining the reasons for racial disparities. Existing software programs to assist BPD in implementing an EIS could be utilized or BPD can build its own system.

These programs operate to identify officers who are a danger either to themselves or to the public. They are referred to as “risk management” systems because they help limit the financial liability of the City and hence its taxpayers. They may address a broad range of concerns, but in this document, we only consider their use with regard to racial disparities. Elements of this process include the following steps:

- a. Evaluate and assess stop incidents for legality and enforcement yield.
- b. Analyze data to determine whether racial disparities are generalized across the force or are concentrated in a smaller subset of outlier officers or squads/groups of officers. To the extent that the problem is generalized across the department, supervisors as well as line officers should be re-trained and monitored, and department recruitment, training, and structure should be reviewed. In addition, department policy should be examined for their impacts.
- c. Where disparities are concentrated in an individual or a group of officers, with no race-neutral legitimate evidence for this behavior in specific cases, initiate an investigation to determine the cause for the disparity. Evaluate whether there are identifiable causes contributing to racially disparate stop rates and high or low rates of resulting enforcement actions exhibited by outlying officers. Determine and address any trends and patterns among officers with disparate stop rates. In the risk management process, the responsible personnel in the chain of

command reviews and discusses the available information about the subject officer and the officer's current behavior.

- d. Absent a satisfactory explanation for racially disparate behavior, monitor the officer.. Options for the supervisor in these cases include reviewing additional body-worn camera footage, supervisor ride-alongs, and other forms of monitoring. Further escalation to intervention, if necessary, may include a higher form of supervision, with even closer oversight. If performance fails to improve, command should consider other options including breaking up departmental units, transfer of officers to other responsibilities, etc. The goal of this process is to achieve trust and better community relations between the department as a whole and all the people in Berkeley. Formal discipline is always a last resort unless there are violations of Department General Orders, in which case this becomes an IAB matter.
- e. Identify officers who may have problems affecting their ability to make appropriate judgments, and monitor and reduce time pressures, stress and fatigue on officers.
- f. An outside observer from the PRC shall sit in on the risk management and/or EIS program. Reports from these meetings, or other accurate statistical summary, can be given to the commission without identifying any officers' names.
- g. Report the results of this data analysis quarterly.

6. Immediately release the following data to the Working Group:

- a. All data given to the Center for Policing Equity (CPE) - This data includes:
 - i. Calls for Service (January 1, 2012 - December 2016)
 - ii. Use of Force Data (January 1, 2012 - December 31, 2016)
 - iii. Crime Report Data (January 1, 2012 - December 31, 2016)
- b. STOP DATA - this data shall include information on "call type," similar to the data used by the Center for Policing Equity. The timeframe would be January 1, 2012 to present.
- c. USE OF FORCE DATA - This data was used in the analysis presented in the CPE report. Along with the CPE data, it would be helpful to have more recent Use of Force data. The timeframe would be January 1, 2012 to present.
- d. DEIDENTIFIED STOP & ARREST DATA - To determine if there are any problematic patterns among certain officers, or perhaps pairs of officers, data that we can be attached to anonymized individuals. The timeframe for this data would be January 1, 2012 to present.
- e. ADDITIONAL ARREST DATA - Currently, the Open Data Portal posts arrest data from January 1, 2015. The timeframe for this data would be January 1, 2012 to present day.
- f. ADDITIONAL CALLS FOR SERVICE - Currently, Calls for Service data are posted for the last 180 days. The timeframe for this data would be January 1, 2012 to present.

7. Limit warrantless searches of individuals on supervised release status, including probation, Post Release Community Supervision (PRCS), and parole, absent evidence of imminent danger

California is one of a handful of states that allow high-discretion, suspicionless searches of probationers and parolees. The following was passed by the Police Review Commission on 9/23/2020 and the Working Group endorses this approach:

"In accordance with California law, individuals on probation, parole, Post Release Community Supervision, or other supervised release status may be subject to warrantless search as a condition of their probation. Officers shall only conduct probation or parole searches to further a legitimate law enforcement purpose. Searches shall not be conducted in an arbitrary, capricious, or harassing fashion. However, under Berkeley policy, officers shall not detain and search a person on probation or parole solely because the officer is aware of that person's probation or parole status.

The decision to detain a person and conduct a probation or parole search, or otherwise enforce probation or parole conditions, should be made, at a minimum, in connection with articulable facts that create a reasonable suspicion that a person may have committed a crime, be committing a crime, or be about to commit a crime."

8. Require written consent for all consent searches

Baumgartner (pp. 195-209) and his team found that in cities requiring written consent to perform a consent search, these searches declined by 75%. Since people of color are disproportionately the subjects of these searches, it makes sense that a significant reduction would lead to fewer consent searches for people of color.

Examining three cities in North Carolina, Baumgartner found that in cities where there was resistance by leadership to the new written-consent policy, there was a substitution effect, such that as consent searches went down, probable cause searches went up. However, the substitution effect seemed to be directly correlated with leadership priorities. The chapter concludes, "We showed that a combination of leadership directives and simple initiatives can alter the relationship a department can have with their community" (pg. 213). *This speaks to the need for clear buy-in from BPD leadership.* The Working Group recommends that the BPD adopt the written consent form used in North Carolina, a copy of which can be found [here](#).

9. For any individual detained, BPD officers shall provide a business card with the following information on the back

- a) A website similar to RAHEEM that collects information on police-civilian encounters.⁸
- b) Contact information for filing a complaint with the PRC or its successor, the Police Accountability Board.

⁸ <https://www.raheem.ai/en/>

10. Address Profiling by Proxy⁹

Police should not be dispatched to calls that are motivated by caller bias or malintent, e.g., a claim that someone is suspicious with no corroborating reason.¹⁰ These types of calls harm police-community relationships and undermine the authority of the police. To protect against profiling by proxy the police department shall:

- a. work with PRC and other appropriate agencies to formulate a policy that defines and remedies profiling by proxy.
- b. enhance Dispatcher training to evaluate calls and add implicit bias training for 911 Dispatch.

An article on profiling by proxy by the Vera Institute of Justice recommends including 911 Dispatch in implicit bias training as a method for reducing issues with profiling by proxy. Anti-bias training will also help Dispatchers become aware of their own biases. For example, when they receive calls about behavior the complainant may dislike but is not illegal—e.g., “too many” black teenagers in the public park.¹¹

Hiring & Evaluation

The successful hiring and evaluation of police officers is an important part of creating a healthy and high-functioning police department. The types of people the department hires, and the effective evaluation of police officers are important in determining police department culture. Researchers on policing have repeatedly found that organizational culture is the single most important determinant of officer behavior.¹² Human Resource Management research supports including the evaluation for cultural competency as important in improving agencies. The key components for a high degree of cultural competency are: awareness, attitude, knowledge, skills.

11. Fire racist police officers identified through social media and other media screens

A third-party agency, hired by the City of Berkeley, or agency outside the police department should screen police officers and potential new hires' social media accounts for racist or violent comments, affiliations to racist groups whether public or private, including private groups expressing racist or violent rhetoric.

- a. BPD shall immediately fire all identified officers who have engaged in racist or violent actions or commentary online.
- b. A social media screen of officer online conduct shall be done annually.

⁹ Profiling by proxy may occur “when an individual calls the police and makes false or ill-informed claims of misconduct about persons they dislike or are biased against—e.g., ethnic and religious minorities, youth, homeless people” (retrieved from The Vera Institute of Justice).

¹⁰ Captain Bolton of the Oakland Police Department made improvements on profiling by proxy using an approach that educated citizens on focusing on criminal behavior instead of suspicion when calling police.

¹¹ “[Avoiding 'profiling by proxy'](https://www.vera.org/blog/police-perspectives/avoiding-profiling-by-proxy),” Vera Institute of Justice, March 13, 2015, <https://www.vera.org/blog/police-perspectives/avoiding-profiling-by-proxy>

¹² [Organizational Culture and Police Misconduct](#)

Recommendations for Council

Community Engagement and Feedback - When the City of Berkeley pledged to consider reducing funding for the police department by 50%, it also committed itself to shifting to new and alternative methods of community safety. To effectively understand and implement new and alternative safety practices and services, the City of Berkeley must look to its residents for ongoing insight and feedback. The City must collect and utilize regular community feedback to inform the city on community investment priorities including police department policies and practices and future direction. To that end:

12. Address Profiling by Proxy¹³

To protect against profiling by proxy City Council should:

- a. Introduce profiling by proxy legislation similar to CAREN Act in SF, which would hold residents accountable for using police in a biased manner.
- b. Issue a quarterly review of data from 911 Dispatch, for the PRC or City Auditor to help understand the extent of calls from community members presenting 'biased' suspicions."

13. Require regular analysis of BPD stop, search, and use of force data

The City Auditor and/or PRC shall update the analysis of BPD data completed by the Center for Policing Equity and the PRC and publish the results on the BPD website every quarter. This report shall include stop, search, and use of force analysis. —

Ensuring Timely and Effective Implementation:

Since the fall of 2017, the police department has received 37 separate policy or legislative directives to address the racially disparate treatment of City of Berkeley residents. Those directives are the result of extensive and on-going racial disparities in police department stops, searches, and use of force. As of the drafting of this report, at least 30 of those directives remain outstanding with **no plan** for implementation.

We respectfully recognize that the role of the Mayor's Working Group on Fair and Impartial Policing is to advise the Berkeley City Council and staff. We recognize that we are not in a position to make final decisions; rather, our role is to offer advice and recommendations to the Council. The Mayor's Working Group is committed to ensuring that the policy recommendations outlined in this proposal are not added to the long list of unaccomplished directives. Therefore, we have included an accountability system with our policy proposal. This accountability system

¹³ When an individual calls the police and makes false or ill-informed claims of misconduct about persons they dislike or are biased against—e.g., ethnic and religious minorities, youth, homeless people; retrieved from The Vera Institute of Justice

will ensure that the changes necessary to establish fair and impartial policing and rebuild public trust occur.

Compliance and Accountability Mechanisms:

- A. Working in partnership with the Mayor's Working Group on Fair and Impartial Policing and within six months from approval of the proposal (extended for good cause), the City Manager hires an experienced consultant to help draft an implementation plan that includes a timeline to monitor, assess, and report on the implementation of the items outlined in the working group's policy proposal.
 - i. If a consultant is not hired within six months from approval of the proposal, the Council should move to item "E" below.
 - ii. If a consultant is not hired within six months (extended for good cause), the working group should remain formally organized by the Mayor until a consultant is hired and a plan is approved.
- B. The Working Group, Police Chief, and the consultant will create an implementation plan that includes a timeline to monitor, assess, and report on the implementation of the items outlined in the Working Group's policy proposal. Long-term monitoring and assessments will be the responsibility of the police oversight body (the PRC or its successor the Police Accountability Board).
- C. The implementation plan will be presented to the Berkeley City Council for approval. Once the plan is approved by the City Council, the consultant's work is finished. Long-term monitoring and assessment will be the responsibility of the police oversight body (the PRC or its successor the Police Accountability Board).
- D. The City Manager and the Berkeley Police Chief should do everything within their power to implement the items outlined in the plan and timeline set forth and approved by City Council.
- E. The City Council should set the implementation of this plan as a priority in the annual evaluation of the city manager.
- F. If the City Manager does not ensure that the Police Department implements the plan in accordance with the timeline, the City Manager should be held accountable.
 - i. In the event of a new Berkeley Police Department Chief: the Mayor's Working Group, on Fair and Impartial Policing, the new Police Chief and the City Manager shall meet and agree upon an updated timeline to monitor, assess, and report on the implementation of the items outlined in the plan approved by City Council.
 - ii. In the event of a new City Manager: the Working Group, the Berkeley Police Chief, and the new City Manager shall meet and agree upon an updated timeline to monitor, assess, and report on the implementation of the items outlined in the plan approved by City Council.

If these recommendations are adopted and implemented promptly, we expect that the disparate stop data can show significant improvement in the near future. We expect the City Manager and the Police Chief to implement these programs with enthusiasm and dedication, as they reflect the constitutional imperative of equal protection under the law.

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Appendix A: Additional Recommendations

The following recommendations are also supported by the working group, which suggests referring them to the reimagining process and/or follow-up with the Police Accountability Board and the Fair and Impartial working group. See table 1 for recommended actions.

14. Include a scenario-based training component in the existing officer training required by California Penal Code 13519.4

- a. The training must include specific, relevant examples of prohibited actions and how to conduct law enforcement activities in an unbiased manner.¹⁴
- b. MILO and VIRTRA are two such scenario-based training programs¹⁵
- c. An independent observer shall review the training and report back to the PRC or its successor on the quality of the training.

15. Require enhanced annual implicit bias training for police

There is scant scientific evidence that implicit bias training works to change implicit biases over the long-term. However, agency-wide, enhanced, and well-executed training that occurs on a regular basis could have a positive effect on the cultural environment of the police department and on expectations for behavior. Regular, required implicit bias training provides an expression of institutional support for fairness, which is important in improving relationships across groups¹⁶ and improving agency culture.

- a. Officers should receive intensive anti-racism and implicit bias training as part of their core instruction in the first 90 days of employment, and an annual 'refresher' course.
- b. An independent observer shall attend the training and report back to the PRC on the quality of the training.

16. Accelerate Crisis Intervention Team (CIT) activity

- a) Require 40 hours of CIT training in the first year of employment.
- b) Collect data on CIT calls to allow BPD to make informed decisions about staffing and deployment so that a CIT officer is available for all shifts in all districts to respond to every CIT call.
- c) Develop a CIT reporting system so that each deployment of a CIT officer is well documented. CIT officers should submit narrative reports of their interactions with persons in crisis so the appropriateness of the response can be evaluated in an after-action analysis.
- d) Implement an assessment program to evaluate the efficacy of the CIT program as a whole and the performance of individual CIT officers. A portion of a CIT officer's performance review should address skill and effectiveness in CIT situations.

¹⁴ CA Penal Code

¹⁵ MILO in an Oakland setting

¹⁶ Allport, G. W., Clark, K., & Pettigrew, T. (1954). The nature of prejudice.

17. The City of Berkeley should conduct annual community forums on Police and Public Safety:

- a. Identifying community-based leaders and impacted individuals for control of the envisioning process.
- b. Placing the process under the Office of the Mayor, not the City Manager. Upon establishment of the Police Accountability Board, place the process under the auspices of the Police Accountability Board.
- c. Including the creation of community-based measures of safety as part of the first round of the envisioning process.¹⁷
- d. Once community-based measures of safety are created, including these measures in the annual community survey (see item 17) and publishing the data as per item 17b.

18. The City of Berkeley should conduct an annual community survey.

Sample surveys include the Milwaukee survey and the Dallas survey.

- a. Data collected should be shared publicly via the City of Berkeley website or an online community dashboard.

19. The City should create a formalized feedback system to gauge community response to ongoing reforms and ensure this constructive input system is institutionalized and includes:

- a. A basic "Report Card," in collaboration with the PRC or its successor the Police Accountability Board, based on community feedback for each reform. This will enable the Department to take the 'community's temperature' on how the implementation of the reforms are being perceived by the public.
- b. Quarterly neighborhood 'check ins' for relationship building .

20. Conduct a Capacity Study

- a. Release data including but not limited to 911 dispatch calls, BPD stops and interventions, written reports, and body-worn camera footage to the City Auditor and/or PRC for analysis.¹⁸
- b. Conduct an audit on officer down time to determine the percentage of police time spent outside of responding to calls for service and how police officers spend this time. Share this information with the City Auditor and/or PRC for analysis for use in the capacity study.
- c. Conduct an audit of police overtime to determine the factors that contribute to the use of overtime .

¹⁷ This process should follow or be modeled after the Everyday Peace Indicators process

¹⁸ This study could be time-limited and would not have to be a comprehensive analysis of internal data; a random sample done correctly would suffice to determine how best to restructure the response to a variety of problematic situations.

- d. Identify what percentage of calls for service require a unique police response and what percentage of calls could be better served by an alternative response with the goal to focus police response on issues that can best be responded to by police officers.
- e. These data can also assist in identifying calls suspected of profiling by proxy.

21. Fund and implement a specialized care unit for mental health crises

Fully fund and implement the specialized care unit as swiftly as possible in order to remove mental health and homeless encounters from the responsibility of BPD. Research has found that individuals with mental illness are at a higher risk of police stops, use of force,¹⁹ and a fatal police encounter.²⁰ These disparities increase for Black and Latinx individuals. Specialized mental health crisis units are a safer option for those experiencing a mental health crisis than a police response and a more cost-effective use of public resources.²¹ The Council's July 14, 2020 decision to create a Specialized Care Unit will better serve people in Berkeley experiencing a mental health crisis. The Working Group supports transitioning away from police as first responders to 911 calls related to mental health and towards trained, unarmed mental health first responders.

The Berkeley Community Safety Coalition in collaboration with Councilmember Bartlett are developing a proposal related to a pilot program transitioning away from sworn police as first responders to professional mental health first responders. The Working Group supports this effort.

22. Make resources on police-civilian encounters more publicly available, including:

- a. A website similar to RAHEEM that collects information on police-civilian encounters.²²
- b. Contact information for filing a complaint with the PRC or its successor.

23. Evaluate the impact of these proposals on racial disparities in stops and searches, using regular updates to stop and search data

¹⁹ [Mental Illness, Police Use of Force, and Citizen Injury](#)

²⁰ [Deaths of people with mental illness during interactions with law enforcement](#)

²¹ [CAHOOTS Media Guide, 2020](#)

²² <https://www.raheem.ai/en/>

Appendix B: No Action Recommended

The following recommendations were proposed and discussed at the working group but no action is recommended by the Council.

1. Include community member participation and feedback in the hiring process

For all potential sworn officer hires interviewed by BPD, Berkeley residents should be included in the hiring process. For example, citizens of Berkeley should be allowed, in an equitable manner, to participate in Berkeley Police Department orals boards for prospective police officers or some comparable interview process.

2. Include the following for Performance Appraisal Reports

As the current Performance Appraisal Reports General Order P-28 requires, objectives of the report are to provide for fair and impartial personnel decisions, and to provide an objective and fair method for the measurement and recognition of individual performance according to prescribed guidelines.²³

- a. Officers should exhibit cultural competency and anti-racist conduct, and that should be included in their City of Berkeley Performance Appraisal Report (Police Sworn-Operations Division Personnel²⁴)
- b. Add to standards 1 and 2 of the Performance Appraisal Report as follows:
 - i. Provides excellent customer service and represents the Department well as a culturally competent and anti-racist officer
 - ii. Is respectful of both the people they serve and the people they serve with, in a culturally competent and anti-racist manner
 - iii. All officers should aspire for an "Above Average" "Exceeds Expectations" or "Exemplary Performance" mark each year with "Meets Minimum Standards" as the basic floor (with expected increase in performance level in subsequent years)

3. Include community and peer input into the annual review of sworn police officers.

For all BPD sworn officers, Berkeley residents should be included in the annual review process. For example, citizens of Berkeley should be allowed, in an equitable manner, to provide feedback into the annual review of Berkeley police officers.

²³ Previous language "a. An amendment to General Order P-28 would add a reference to 'cultural competency' and reassurances by the community that the officers are evaluated on their conduct in relationship to a person's gender, race, ethnicity, religion or gender identity/orientation. B. Performance Evaluation, Section B, page 2; #1 and #2 include language of cultural competency "

²⁴ on p. 2 of 8 under Section "B" "Professionalism."

Appendix C – Incorporation of BPD Feedback

Please note: quoted text in this section references written feedback on the working group draft proposal provided by Chief Greenwood of the Berkeley Police Department.

Focus traffic stops on safety.

The BPD are in agreement with this item. In July 2020, representatives from BPD (Officer Matthew Ye and Arlo Malmberg) presented a “problem-oriented policing” strategy to the working group. Further, Captain Bolton of the Oakland Police Department presented an intelligence-led policing strategy to the working group. According to Captain Bolton, OPD was able to significantly reduce stops for low-level and non-public safety related offenses using an intelligence-led policing strategy, resulting in a 70% reduction in the number of African Americans being stopped with no effect on crime rates. BPD stated they plan to “establish a formal strategy focusing officers’ discretionary stops on intelligence-based and traffic safety stops.”

Additional updates include: the sample list of stops falling into the category of unsafe driving behavior was updated based on BPD feedback; the working group deleted a reference made to “misdemeanor” stops as BPD pointed out that most traffic violations are “infractions” and not misdemeanors.

Use a clear, evidence-based definition for stops of criminal suspects.

BPD stated they plan to establish a formal strategy focusing officers’ discretionary stops on intelligence-based stops. Chief Greenwood stated that an “intelligence based stop strategy aligns with [use of a clear, evidence-based definition for stops of criminal suspects].”

The BPD strategy as described focuses on general “intelligence” related to crime patterns. The BPD strategy does not respond to specific descriptions of perpetrators, nor is it clear what types of intelligence BPD would be using for stops of criminal suspects. An intelligence-based stop strategy can and should be implemented in concurrence with the items outlined in the working group’s proposal. However, the working group is not convinced by Chief Greenwood’s response that the BPD strategy will effectively address this item. The Working Group is recommending a shift in stop policy to address issues with racial disparities in stops. The BPD response as well as the strategy they have offered has not provided evidence there will be any shift from the status quo.

Use race and ethnicity as relevant factors when determining law enforcement action only when provided as part of a description of a crime and suspect that is credible and

relevant to the locality and timeframe of the crime and only in combination with other specific descriptive and physical characteristics.

BPD stated “overall agreement” with this recommendation. BPD did not directly address the specific recommendation that race and ethnicity be used *only* in combination with other descriptive features of the individual or alleged offense. BPD wrote “[d]epending on circumstances, simple race and sex in a description can be sufficient for a terry [sic] stop.” It is the working group’s understanding that, absent other factors, race is insufficient to constitute the reasonable suspicion required for a Terry stop (i.e. detaining an individual based on reasonable suspicion of illegal activity, including the ability to handcuff and search the outer clothing of the individual detained). Furthermore, BPD’s feedback that “In a 1538 Motion to Suppress hearing, the court makes a determination if there [sic] factors associated with a detention are sufficient,” is inappropriate in this context. While the statement is factually accurate, the purpose of this recommendation is to establish a stop policy based on the Constitution, not to place the burden on civilians to go to court for relief.

Eliminate stops for low-level offenses

In response, BPD stated the plan to establish a formal strategy focusing officers’ discretionary stops on intelligence-based stops. Further, BPD stated, “We would support our Intelligence Based Stop Strategy through increasing our analysis capability, so that more information can be more efficiently provided to officers, Officers working in this manner would be more likely to have a higher yield even when making fewer stops, because of their focus on crime investigations.” It remains unclear to the working group how BPD plans to increase their analysis capacity or how that would impact racial disparities in stops.

In responses to items throughout the draft working group policy proposal, BPD referenced an early transition to the data collection methods required by the California Racial and Identity Profiling Act (RIPA). BPD announced an early transition to data collection methods in line with RIPA requirements at an October 2020 working group meeting. As of the writing of this report, data collected according to RIPA standards (hereafter “RIPA data”) has not been released on the BPD open data portal.

It is important to note: using the data currently available on the open data portal, a hit rate cannot be calculated. Hit rates are commonly used to measure the presence of racial bias in searches. A hit rate is calculated by dividing contraband found during a search (e.g. weapons, drugs, etc.) by the total numbers of searches, within racial categories (e.g. Black or white). The logic of the hit rate is straightforward: in the absence of discriminatory behavior, officers should find contraband on searched minorities at the same rate as on searched whites. A similar hit rate indicates a similar standard for searches is being used across different groups. If searches of racial minorities turn up contraband at lower rates than searches of whites, this suggests there is a double standard, where minorities are being stopped and searched on the basis of less evidence. BPD did not collect contraband information before the transition to RIPA. Therefore, there was no way to calculate a true hit rate during the period the working group met. Transitioning to RIPA will be helpful to determine racial bias in search decisions, but it does not

provide information on racial bias in stop decisions. Most importantly, the collection of RIPA data does not directly address or work to mitigate existing racial disparities.

In a previous draft, this item included a reference to BerkDOT, but we removed it after BPD pointed out that inclusion was an unnecessary addition.

We also deleted a recommendation that officers provide those they stop with a reason for the stop, since BPD feedback cited section 14 of the T-3 Traffic Enforcement policy which requires officers to provide “explanation of the circumstances giving rise to the enforcement contact.”

Include a scenario-based training component in the existing officer training required by California Penal Code 13519.4.

BPD responded that it “conducts all mandated training.” However, the working group item recommends including scenario-based training with relevant examples of what is prohibited, and includes an independent observer. This addition of specific scenario-based training is not currently mandated by the state, and it is this specific scenario-based training that the working group is recommending. This recommendation for specific scenario-based training comes from the Southern Poverty Law Center, “10 Best Practices for Writing Policies Against Racial Profiling.”

Require enhanced annual implicit bias training for police.

BPD agrees with the importance of implicit bias training and stated officers currently get implicit bias training while in training academy. BPD also cited budget constraints would limit the department’s ability to provide annual implicit bias training. The working group understands the constraints of budget cuts, but anticipates that some of the recommendations proposed here (e.g. eliminating stops for many low-level infractions) may free up resources for this important training that has the potential to trigger the kind of cultural shifts that are necessary.

This item also includes a policy recommendation that an independent observer attend the training and report back to the police oversight body (the PRC or its successor). Chief Greenwood stated he was open to the idea of an outside observer but had concerns that difficult conversations might be chilled by outside observers. The working group understands and appreciates these concerns.

Implement an Early Intervention System (EIS) and a risk-management structure.

Chief Greenwood's feedback expressed interest in this approach and in learning how the Oakland program works, stating “Open to learning about how Oakland does this work. Learning how the analysis works will help us understand the resources needed to do this work.” In response, a member of the working group put Chief Greenwood in touch with the OPD official in charge of that program. To date he has not taken advantage of that opportunity.

Further, BPD feedback references RIPA data, stating “With the collection of RIPA data, we will have richer data to examine. This will help us focus on data on stops, searches, and yields.” According to the National Police Foundation, in their report, *Best Practices in Early Intervention*

System Implementation and Use in Law Enforcement Agencies, an “early intervention system [EIS] is a personnel management tool designed to identify potential individual or group concerns at the earliest possible stage so that intervention and support can be offered in an effort to re-direct performance and behaviors toward organizational goals. The ideal purpose of an EIS is to provide officers with resources and tools in order to prevent disciplinary action, and to promote officer safety, satisfaction and wellness.”

The collection and analysis of RIPA data could be helpful to identify *racial implications* related to identified individual or group red flag behavior. However, the collection of RIPA data does not meet two core components of an EIS system: 1) identify potential individual or group red flag behavior (as early as possible), and 2) intervene to redirect performance and behaviors toward organizational goals. In short, the collection of RIPA data does nothing to address this item.

The working group considers this recommendation for an EIS and risk management system to be among its top priorities.

Immediately release the following data to the Working Group:

All data given to the Center for Policing Equity (CPE) - This data includes:

- a. Calls for Service (January 1, 2012 - December 2016)
- b. Use of Force Data (January 1, 2012 - December 31, 2016)
- c. Crime Report Data (January 1, 2012 - December 31, 2016)

STOP DATA - this data shall include information on “call type,” similar to the data used by the Center for Policing Equity. The timeframe would be January 1, 2012 to present.

USE OF FORCE DATA - This data was used in the analysis presented in the CPE report. Along with the CPE data, it would be helpful to have more recent Use of Force data. The timeframe would be January 1, 2012 to present.

DEIDENTIFIED STOP & ARREST DATA - data that we can be attached to anonymized individuals. The timeframe for this data would be January 1, 2012 to present.

ADDITIONAL ARREST DATA - Currently, the Open Data Portal posts arrest data from January 1, 2015. The timeframe for this data would be January 1, 2012 to present day.

ADDITIONAL CALLS FOR SERVICE - Currently, Calls for Service data are posted for the last 180 days. The timeframe for this data would be January 1, 2012 to present.

The BPD responded by referring to RIPA data collection, stating “RIPA data and current BPD officers seems to be the best path forward.” BPD also states, “Approximately 50 officers have been hired since late 2016,” and, “BPD staff are working on a number of technical projects, and resources are limited, especially after recent budget deferrals.”

Based on conversations related to this item which occurred in formal working group sessions, the working group believes the BPD comment related to the hiring of 50 officers was intended to communicate that the BPD department before 2016 (reflected in the CPE data), is different from the BPD today. The working group believes this may be true. The best way to determine if this

is true is to have access to the data we have requested so we can determine if there have been any measurable shifts in the racial disparities found by CPE.

It is important to note that a member of the working group used publicly available BPD stop data to redo a portion of the CPE analysis. This publicly available stop data was from 2015 to 2019. Therefore, this data included the two years of the CPE report (2015 - 2016) and two and a half years after the CPE report (2017-2019). This analysis was presented to the working group. This analysis found persistent racial disparities in stops and searches during this time. In other words, the pattern of racial disparities found in the CPE analysis persisted through 2019, over two years after the CPE report was released. It is also important to note that this analysis only includes stops and searches. It does not include an analysis of use of force. A complete CPE redo has not been possible because **BPD has never released any data to the working group.**

The working group understands budgetary constraints are impacting BPD. Further, the working group understands that it is possible BPD does not have some of the data we request, e.g. de-identified stop and arrest data. When BPD has made it clear they do not have the data, we have updated our data requests. For example, an early draft of the working group's policy proposal included a request for weapons and contraband data: BPD has made clear they do not have weapons and contraband data, so the working group removed this data request from our final proposal.

For the remaining data requests, BPD has not provided a compelling reason for why they have not released this data. At the very least, BPD should be able to turn over all the data that was shared with CPE as this data has already been put into a format which allowed it to be shared. Moreover, BPD feedback that, "BPD staff are working on a number of technical projects," seems to indicate that BPD has staff capable of providing and perhaps already working on the data we request.

The Working Group agrees that RIPA data will be useful going forward. However, this item speaks to data from the past, beginning in 2012, and includes data given to the CPE as well as additional data. For the City Council to determine if and how the policy shifts implemented in this proposal have been effective in reducing racial disparities, it must have data from before the implementation of RIPA and this data must be more extensive than stop and search data. The data the working group has requested in this proposal would allow City Council to properly measure the impacts of the policy changes outlined in this proposal. RIPA data will help create a richer picture but in isolation it cannot tell us any information about changes to racial disparities that result from the policy changes outlined in this proposal.

Limit warrantless searches of individuals on supervised release status, including probation, Post Release Community Supervision (PRCS), and parole, absent evidence of imminent danger

BPD agrees with this recommendation which has passed the PRC with BPD collaboration.

Require written consent for all consent searches

BPD agreed with this item and cited the collection of RIPA data. Chief Greenwood's feedback states, "BPD will make it a policy that the department's existing consent search form shall be used when consent to search is sought by an officer. Existing body worn camera policy already captures the consent request interaction. RIPA data will specifically address this issue: Data will indicate when a consent search was performed, and what the outcome (yield) is providing specific data for analysis. The data will support understanding of how often it occurs, the circumstances under which it occurs, and the outcomes."

In mid-December, the Working Group received a copy of the consent form used by the BPD; however, as noted above in #8, the Working Group recommendation is that the BPD adopt the written consent used in North Carolina. It is imperative that any consent form be used consistently and include the printed name and signature of the person consenting to the search as well as clear indications of what property the person consents to search, rather than blanket statements that the consent includes all aspects of the person and their property.

Additionally, while the written feedback did not make this distinction, conversations with Chief Greenwood at Working Group meetings indicated that perhaps BPD focus for written consent was on car or traffic searches only. This policy item recommendation includes all searches-- traffic, pedestrian, bike, etc.

The Working Group acknowledges that body worn cameras may capture the consent process but does not support only the use of body worn cameras to capture this process. The intent of this item is to require written consent for any person, or their property, undergoing a consent search.

The Working Group agrees RIPA data collection will be helpful in determining if there are racial disparities in stops and searches. However, RIPA data collection is not a substitute for a written consent.

Accelerate Crisis Intervention Team (CIT) activity

BPD agrees with this response. However, Chief Greenwood states, "Class availability is limited. Budget and resource constraints may impact this as well, as overtime is restricted to backfill for officers' absence due to training." The working group considers that accelerating current CIT activity as critically important.

For any individual detained, BPD officers shall provide a business card that displays with the following information on the back:

- a. A website similar to RAHEEM that collects information on police-civilian encounters
- b. Contact information for filing a complaint with the PRC or its successor, the Police Accountability Board.

BPD feedback states, "Open to idea, but with balance: perhaps a link to an online survey, provide info on commendations as well as how to file complaints with PRC and IAB." The

working group supports the collection of both positive and negative feedback on police civilian contacts.

Address Profiling by Proxy

BPD supports this item.

Include community member participation and feedback in the hiring process

BPD provided no written feedback on this item. However, in a formal working group session Chief Greenwood expressed concerns about including community participation in the hiring process for all BPD staff. The proposal was updated to include community member participation only in the hiring process related to sworn officers.

Include the following for Performance Appraisal Reports

- a. Officers should exhibit cultural competency and anti-racist conduct, and that should be included in their City of Berkeley Performance Appraisal Report (Police Sworn-Operations Division Personnel), on p. 2 of 8 under Section "B" "Professionalism."
- b. Add to standards 1 and 2 of the Performance Appraisal Report as follows:
 - i. Provides excellent customer service and represents the Department well as a culturally competent and anti-racist officer
 - ii. Is respectful of both the people they serve and the people they serve with, in a culturally competent and anti-racist manner
 - iii. *All officers should aspire for an "Above Average" "Exceeds Expectations" or "Exemplary Performance" mark each year with "Meets Minimum Standards" as the basic floor (with expected increase in performance level in subsequent years).*

BPD provided no written feedback to this item. This item was updated based on verbal feedback Chief Greenwood gave during a formal working group session.

Include community and peer input into the annual review of sworn police officers.

Based on BPD feedback, this item was updated. Previous language was as follows: Include a "360 Degree Review Form" completed by December 30th each year after an Annual Community Forum. The working group updated the item to account for the lack of familiarity at BPD with a 360 review process as well as to incorporate peer review into the annual review process.

Fire racist police officers identified through social media and other media screens.

- a. BPD shall immediately fire all identified officers who have engaged in racist or violent actions or commentary online.
- b. A social media screen of officer online conduct shall be done annually.

BPD agrees with this item. In response, BPD cited existing policies in place to discipline or terminate an employee. However, Chief Greenwood stated a need to check if or how these policies are related to racist behaviors. Further, Chief Greenwood pointed towards the existing

DRAFT

screening process and background checks for hiring. Lastly, other members of BPD expressed concerns that social media screens might violate legal protections.

The working group has not received clarification on if or how existing disciplinary policies relate to racist behavior of officers. The working group would like clarity on this process. Further, if policies are in place to discipline an officer engaged in racist behavior this still does not address the issue of identifying officers engaged in racist behavior. This item is designed to identify if BPD officers are engaged in racist online activity and states clearly any officers so identified should be terminated. The working group does not recommend that Council accept any other action than termination for any officer found to have engaged or currently engage in racist behavior.

Additionally, this item is not requesting BPD violate privacy laws of potential or existing employees. Comments made on an electronic app, chat room, social media group, etc. are not protected by privacy laws or the constitution. A screen of social media platforms is routinely done by employers today. According to a 2018 CareerBuilder survey, "70% of employers use social media to screen candidates during the hiring process, and about 43% of employers use social media to check on current employees." Regular social media screens are a routine practice today. A third party that specialized in social media screens is well aware of legalities of the screening process, which is one reason why the FIP working group suggested a third party, not BPD, conduct the screening process.

Of Note:

The working group removed one item based on BPD feedback. The original item read: Officers shall prominently display identification. This item was updated with new language that read: Officers violating penal code (CA 830.10) shall be severely disciplined. Finally, the working group removed this item completed based on feedback from BPD.

Appendix D - Unfulfilled Council Mandates to BPD

Following on the publication by the CPE and the PRC of their respective reports on BPD stop, search, and use of force data, the Berkeley City Council gave specific policy direction to staff to address racial disparities apparent in that data.

At the onset of the Fair and Impartial Working Group in the fall of 2019, mayoral staff noted the following directions that had not been carried out by the City Manager or Chief of Police. Significantly, these directions remain unfulfilled as of August 2020:

- I. Council referral from Nov. 14, 2017, to be completed by September 2018 and annually thereafter.
 1. Direct the City Manager to track yield, stop, citation, search and arrest rates by race, develop training programs to address any disparities found, and implement policy and practice reforms that reflect cooperation between the Berkeley Police Department (“BPD”), the Police Review Commission (“PRC”) and the broader Berkeley community. The City Manager will report findings in September 2018 and annually thereafter, using anonymized data. [NOTE: BPD responded that they are addressing this via RIPA work, but it has still not been done.]
 2. Tracking Yield rates
 - a. Analyze whether officer-initiated or in response to calls for service or warrants.
 - b. Focus on reasons for disparate racial treatment and to identify any outliers. [NOTE: BPD responded that they are addressing this via RIPA work, but it has still not been done.]
 3. Consider any other criteria that would contribute to a better understanding of stops, searches, citations and arrests and the reasons for such actions. [NOTE: BPD responded that they are addressing this via RIPA work, but it has still not been done.]
 4. Consulting and cooperating with the broader Berkeley community, especially those communities most affected by observed racial disparities, to develop and implement policy and practice reforms that reflect these shared values. Work closely with the PRC, providing the commission all legally available information that may be helpful to designing reforms.
 5. Once released, BPD should analyze the final Center for Policing Equity report and propose improvements as needed. [NOTE: CPE final report was released in May 2018.]

None of these items, which are now nearly three years old, were ever accomplished

II. Council referral from April 24, 2018

1. Create, Present and Execute a Departmental Action Plan **by April 30, 2019.**

DRAFT

2. Officer Identification. Develop a policy requiring officers to identify themselves by their full name, rank and command and provide it writing (e.g. a business card) to individuals they have stopped, as in Oakland, New York, Providence, and San Jose.
3. Review and Update BPD Policy Surrounding Inquiries to Parole and Probation Status.
4. Enhance Search Consent Policies.
5. Collect Data on Terry Stops/Searches and Citations [NOTE: Remains undone. BPD responded that they are addressing this via RIPA work, but it has still not been done.]
6. BPD Data Dashboard.
7. Enhance Existing "Early Warning" Systems

None of these items, which are over two years old, were ever accomplished

III. CPE recommendations from early 2018

1. We recommend that BPD monitor search and disposition outcomes across race, and arrest and disposition outcomes associated with use of force. In particular, BPD should collect and share data with respect to contraband (distinguishing among drugs, guns, non-gun weapons, and stolen property) found during vehicle or pedestrian searches, and that it analyze data about charges filed resulting from vehicle and pedestrian stops. [NOTE: BPD responded 4/2019 that they are addressing this via RIPA work but it has still not been done.]
2. We recommend that BPD more clearly track, analyze, and share data with respect to whether law enforcement actions are officer-initiated, or responses to calls for service. [NOTE: BPD responded 4/2019 that they are addressing this via RIPA work but it has still not been done.]
3. We recommend that BPD continue to affirm that the egalitarian values of the department be reflected in the work its officers and employees do. [NOTE: Chief responded in 4/2019 message, saying they address in ongoing training, but their own heavily disparate stop and force data suggests that more needs to be done and that the ongoing training may be insufficient.]
4. We recommend that BPD consult and cooperate with the broader Berkeley community, especially those communities most affected by observed racial disparities, to develop and implement policy and practice reforms that reflect these shared values. [NOTE: See Council referrals above. Also referred to Working Group and to July 14 2020 community engagement process.]
5. We recommend BPD track yield rates (of contraband found at searches). [NOTE: BPD responded 4/2019 that they are addressing this via RIPA work but it has still not been done.]
6. We recommend that BPD monitor patrol deployments, using efficient and equitable deployment as a metric of supervisory success. One way to promote equitable contact rates is to monitor racial disparities (not attributable to non-police factors such as crime) and to adjust patrol deployments accordingly.
7. We recommend that BPD track crime trends with neighborhood demographics in order to ensure that response rates are proportional to crime rates.

8. We recommend that BPD engage in scenario-based training on the importance of procedural justice and the psychological roots of disparate treatment in order to promote the adoption of procedural justice throughout the organization, and to protect officers from the negative consequences of concerns that they will appear racist. [NOTE: Chief responded in 4/2019 message to say the department completed procedural justice training, but their own heavily disparate stop and force data suggests that more needs to be done and that the procedural justice training may be insufficient.]
9. We recommend that values-based evaluations of supervisors be developed to curb the possible influence of social dominance orientation on the mission of the department. CPE research has found a significant relationship between social dominance orientation and negative policing outcomes in many police departments.
10. We recommend that BPD training include clear messaging that racial inequality and other invidious disparities are not consistent with the values of BPD. [NOTE Chief responded in 4/2019 message, said they address in ongoing training, but their own heavily disparate stop and force data suggests that more needs to be done and that the ongoing training may be insufficient.]
11. We recommend leveraging the Police Review Commission, as well as ensuring inclusion from all groups in the community, to help review relevant areas of the general orders manual and provide a more integrated set of policies with clear accountability and institutional resources. [NOTE: Chief responded in 4/2019 message, saying they address in ongoing PRC subcommittee work.]

The Fair and Impartial Policing Working Group has received three contemporaneous studies of the BPD's stops as published on the City's Open Data Portal. The following patterns emerge from this data as shown in these studies:

1. Berkeley's stop rate for African Americans is over three times greater than Oakland's. Annually, African Americans are stopped by police according to BPD records at a rate of 32.7% (3,083 stops of African Americans compared to 10,331 African American Berkeley residents). In Oakland, the corresponding stop rate is 10.4% (10,874 compared to a total of 104,310 African American Oakland residents).
2. During the first 13 weeks of the Covid-19 pandemic from March 15 to June 12, the disparity between stops of Black and White civilians in Berkeley skyrocketed. African American stops were exactly 50% of total 608 stops at 304, with White stops were 143 for 23.52% of all stops. Taking into account the low number of African Americans residing in Berkeley, the disparities are even starker: African American stops are about 42.7 per 1,000 of their population, where White stops are about 2.9 per 1,000, a disparity of 14.5 to 1, twice the disparity in 2018.
3. The discriminatory stops exploded under the Black Lives Matter curfew at the end of May. In three days from May 31 to June 2, 92 African Americans and 18 Latinx people were pulled over by Berkeley police, compared to just 18 White people. This is a disparity in raw numbers of five to one. Based on stops per 1,000 of ethnic population,

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Black civilians were nearly 35 times more likely to be stopped than Whites during the curfew.

There has been no meaningful response from the BPD to either confirm and account for the disparities, convincingly explain why the critical analysis is incorrect, or give some alternative interpretation of the data. Instead the department has simply ignored the data and the evidence that it discriminates in its treatment of Black, Latinx, and White civilians. BPD representatives quibble over side issues such as whether the data is skewed by stops of Black people coming into Berkeley from outside, or a theory that police are being nice to Black people by issuing them only warnings whereas they ticket White civilians in similar circumstances. The recommendations made in this document will uncover the true cause of the stark racial disparities, and indicate a path to correct them.

The Fair and Impartial Working Group does not want its recommendations to go the way of prior recommendations and directives from the City Council, CPE, and PRC. As shown above, the City Manager and Chief of Police have failed to execute the policies set by the elected officials. The City Council must ensure that staff act promptly to bring Berkeley policing into compliance with constitutional principles, particularly equal protection under the law.



AB-550 Vehicles: Speed Safety System Pilot Program. (2021-2022)

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AMENDED IN ASSEMBLY APRIL 29, 2021

AMENDED IN ASSEMBLY APRIL 15, 2021

AMENDED IN ASSEMBLY MARCH 22, 2021

CALIFORNIA LEGISLATURE— 2021-2022 REGULAR SESSION

ASSEMBLY BILL

NO. 550

Introduced by Assembly ~~Member Chiu~~ Members *Chiu and Friedman*
(Principal coauthor: Senator Wiener)
(Coauthors: Assembly Members ~~Ting Lee, Ting,~~ and Wicks)

February 10, 2021

An act to amend, repeal, and add Section 70615 of the Government Code, and to add and repeal Article 3 (commencing with Section 22425) of Chapter 7 of Division 11 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 550, as amended, Chiu. Vehicles: Speed Safety System Pilot Program.

Existing law establishes a basic speed law that prohibits a person from driving a vehicle upon a highway at a speed greater than is reasonable or prudent given the weather, visibility, traffic, and highway conditions, and in no event at a speed that endangers the safety of persons or property.

This bill would authorize, until January 1, 2027, the Cities of Los Angeles, Oakland, San Jose, ~~two other cities~~ *one city* in southern California, and the City and County of San Francisco to establish the Speed Safety System Pilot Program for speed limit enforcement in certain areas, if the system meets specified requirements, including that the presence of a fixed or mobile system is clearly identified. The bill would require the participating cities or city and county to adopt a Speed Safety System Use Policy and a Speed Safety System Impact Report before implementing the program, and would require the city or city and county to engage in a public information campaign at least 30 days before implementation of the program, including information relating to when the systems would begin detecting violations and where the systems would be utilized. The bill would require the participating cities or city and county to issue warning notices rather than notices of violations for violations detected within the first 30 calendar days of the program. The bill would require the participating cities or city and county to develop uniform guidelines for, among other things, the processing and storage of confidential information. The bill would designate all photographic, video, or other visual or administrative records made by a

system as confidential, and would only authorize public agencies to use and allow access to these records for specified purposes.

This bill would specify that any violation of a speed law recorded by a speed safety system authorized by these provisions would be subject only to the provided civil penalties. The bill would, among other things, provide for the issuance of a notice of violation, an initial review, an administrative hearing, and an appeals process, as specified, for a violation under this program. The bill would require any program created pursuant to these provisions to offer a diversion program for indigent speed safety system violation recipients, as specified. The bill would require a city or city and county participating in the pilot program to submit reports to the Legislature, as specified, to evaluate the speed safety system to determine the system's impact on street safety and economic impact on the communities where the system is utilized.

Existing law establishes a \$25 filing fee for specified appeals and petitions.

This bill would require a \$25 filing fee for an appeal challenging a notice of violation issued as a result of a speed safety system until January 1, 2027.

This bill would make legislative findings and declarations as to the necessity of a special statute for the Cities of Los Angeles, Oakland, San Jose, and the City and County of San Francisco.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

- (a) Speed is a major factor in traffic collisions that result in fatalities or injuries.
- (b) State and local agencies employ a variety of methods to reduce speeding, including traffic engineering, education, and enforcement.
- (c) Traffic speed enforcement is critical to efforts in California to reduce factors that contribute to traffic collisions that result in fatalities or injuries.
- (d) However, traditional enforcement methods have had a well-documented disparate impact on communities of color, and implicit or explicit racial bias in police traffic stops puts drivers of color at risk.
- (e) Additional tools, including speed safety systems, are available to assist cities and the state in addressing excessive speeding and speed-related crashes.
- (f) Speed safety systems offer a high rate of detection, and, in conjunction with education and traffic engineering, can significantly reduce speeding, improve traffic safety, and prevent traffic-related fatalities and injuries, including roadway worker fatalities.
- (g) Multiple speed safety system programs implemented in other states and cities outside of California have proven successful in reducing speeding and addressing traffic safety concerns.
- (h) The Transportation Agency's "CalSTA Report of Findings: AB 2363 Zero Traffic Fatalities Task Force," issued in January 2020, concluded that international and domestic studies show that speed safety systems are an effective countermeasure to speeding that can deliver meaningful safety improvements, and identified several policy considerations that speed safety system program guidelines could consider.
- (i) In a 2017 study, the National Transportation Safety Board (NTSB) analyzed studies of speed safety system programs, and found they offered significant safety improvements in the forms of reduction in mean speeds, reduction in the likelihood of speeding more than 10 miles per hour over the posted speed limit, and reduction in the likelihood that a crash involved a severe injury or fatality. The same study recommended that all states remove obstacles to speed safety system programs to increase the use of this proven approach, and notes that programs should be explicitly authorized by state legislation without operational and location restrictions.

(j) The National Highway Traffic Safety Administration (NHTSA) gives speed safety systems the maximum 5-star effectiveness rating. NHTSA issued speed enforcement camera systems operational guidelines in 2008, and is expected to release revised guidelines in 2021 that should further inform the development of state guidelines.

(k) Speed safety systems can advance equity by improving reliability and fairness in traffic enforcement while making speeding enforcement more predictable, effective, and broadly implemented, all of which helps change driver behavior.

(l) Enforcing speed limits using speed safety systems on streets ~~and in highway work zones~~ where speeding drivers create dangerous roadway environments is a reliable and cost-effective means to prevent further fatalities and injuries.

SEC. 2. Section 70615 of the Government Code is amended to read:

70615. The fee for filing any of the following appeals to the superior court is twenty-five dollars (\$25):

(a) An appeal of a local agency's decision regarding an administrative fine or penalty under Section 53069.4.

(b) An appeal under Section 40230 of the Vehicle Code of an administrative agency's decision regarding a parking violation.

(c) An appeal under Section 99582 of the Public Utilities Code of a hearing officer's determination regarding an administrative penalty for fare evasion or a passenger conduct violation.

(d) A petition under Section 186.35 of the Penal Code challenging a law enforcement agency's inclusion of a person's information in a shared gang database.

(e) An appeal under Section 22428 of the Vehicle Code of a hearing officer's determination regarding a civil penalty for an automated speed violation, as defined in Section 22425 of the Vehicle Code.

(f) This section shall remain in effect only until January 1, 2027, and as of that date is repealed.

SEC. 3. Section 70615 is added to the Government Code, to read:

70615. The fee for filing any of the following appeals to the superior court is twenty-five dollars (\$25):

(a) An appeal of a local agency's decision regarding an administrative fine or penalty under Section 53069.4.

(b) An appeal under Section 40230 of the Vehicle Code of an administrative agency's decision regarding a parking violation.

(c) An appeal under Section 99582 of the Public Utilities Code of a hearing officer's determination regarding an administrative penalty for fare evasion or a passenger conduct violation.

(d) A petition under Section 186.35 of the Penal Code challenging a law enforcement agency's inclusion of a person's information in a shared gang database.

(e) This section shall become operative on January 1, 2027.

SEC. 4. Article 3 (commencing with Section 22425) is added to Chapter 7 of Division 11 of the Vehicle Code, to read:

Article 3. Speed Safety System Pilot ~~Program: Automated Speed Enforcement System~~ Program

22425. (a) As used in this article, the following definitions shall apply:

(1) "Automated speed violation" means a violation of a speed law detected by a speed safety system operated pursuant to this article.

(2) "Indigent" shall have the same meaning as defined in subdivision (c) of Section 40220.

(3) "Local department of transportation" means a city or city and county's department of transportation or, if a city or city and county does not have a department of transportation, their administrative division, including, but not limited to, a public works department that administers transportation and traffic matters under this code.

(4) "Speed safety system" or "system" means a fixed or mobile radar or laser system or any other electronic device that utilizes automated equipment to detect a violation of speeding laws and is designed to obtain a clear photograph, video recording, or other visual image of a vehicle license plate.

(b) (1) The Cities of Los Angeles, Oakland, San Jose, ~~two~~ *one* southern California ~~cities;~~ *city*, and the City and County of San Francisco may establish a program utilizing a speed safety system for speed limit enforcement, to be operated by a local department of transportation, in the following areas:

(A) Within 2,500 feet of a school.

(B) Within 2,500 feet of a senior zone.

(C) Within 2,500 feet of a public park.

(D) Within 2,500 feet of a recreational center.

(E) On a street meeting the standards of a high injury network, as defined by the Department of Transportation.

(2) A municipality operating a speed safety system pilot program under this article may have speed safety systems operational on no more than 15 percent of the municipality's streets at any time during the pilot program.

(3) (A) A municipality operating a speed safety pilot program under this article may have the following number of speed safety systems operational at any time during the pilot program:

(i) For a jurisdiction with a population over 3,000,000, no more than 125 systems.

(ii) For a jurisdiction with a population between 800,000 and 3,000,000, inclusive, no more than 33 systems.

(iii) For a jurisdiction with a population of 300,000 up to 800,000, no more than 18 systems.

(iv) For a jurisdiction with a population of less than 300,000, no more than 9 systems.

(B) For purposes of this paragraph, a "speed safety system" may include up to two fixed or mobile radar or laser systems at the same location in order to detect speed violations on two-way or multidirectional streets.

(c) The Speed Safety System Pilot Program shall not be operated on any California state route, including all freeways and expressways, United States Highway, Interstate Highway or any public road in an unincorporated county where the Commissioner of the California Highway Patrol has full responsibility and primary jurisdiction for the administration and enforcement of the laws, and for the investigation of traffic accidents, pursuant to Section 2400.

(d) If a school zone is located on a street or portion of a street that is eligible for a speed safety system pursuant to subdivision (b), and the posted speed limit is 30 miles per hour or higher when children are not present, a city or city and county may operate a speed safety system two hours before the regular school session begins and two hours after regular school session concludes.

(e) A speed safety system for speed limit enforcement may be utilized pursuant to subdivision (b) if the program meets all of the following requirements:

(1) Clearly identifies the presence of the speed safety system by signs stating "Photo Enforced," along with the posted speed limit within 500 feet of the system. The signs shall be visible to traffic traveling on the street from the direction of travel for which the system is utilized, and shall be posted at all locations as may be determined necessary by the Department of Transportation through collaboration with the California Traffic Control Devices Committee.

(2) Identifies the streets or portions of streets that have been approved for enforcement using a speed safety system and the hours of enforcement on the municipality's internet website, which shall be updated whenever the municipality changes locations of enforcement.

(3) Ensures that the speed safety system is regularly inspected and certifies that the system is installed and operating properly. Each camera unit shall be calibrated in accordance with the manufacturer's instructions, and at least once per year by an independent calibration laboratory. Documentation of the regular inspection, operation, and calibration of the system shall be retained until the date on which the system has been permanently removed from use.

(4) Utilizes fixed *or mobile* speed safety systems that provide real-time notification when violations are detected.

(f) Prior to enforcing speed laws utilizing speed safety systems, the city or city and county shall do both of the following:

(1) Administer a public information campaign for at least 30 calendar days prior to the commencement of the program, which shall include public announcements in major media outlets and press releases. The public information campaign shall include the draft Speed Safety System Use Policy pursuant to subdivision (g), the Speed Safety System Impact Report pursuant to subdivision (h), information on when systems will begin detecting violations, the streets, or portions of streets, where systems will be utilized, and the city's internet website, where additional information about the program can be obtained. Notwithstanding the above, no further public announcement by the municipality shall be required for additional systems that may be added to the program.

(2) Issue warning notices rather than notices of violation for violations detected by the speed safety systems during the first 30 calendar days of enforcement under the program. If additional systems are utilized on additional streets after the initial program implementation, the city or city and county shall issue warning notices rather than notices of violation for violations detected by the new speed safety systems during the first 30 calendar days of enforcement for the additional streets added to the program.

(g) The local governing body shall adopt a Speed Safety System Use Policy before entering into an agreement regarding a speed safety system, purchasing or leasing equipment for a program, or implementing a program. The Speed Safety System Use Policy shall include the specific purpose for the system, the uses that are authorized, the rules and processes required prior to that use, and the uses that are prohibited. The policy shall include the data or information that can be collected by the speed safety system and the individuals who can access or use the collected information, and the rules and processes related to the access or use of the information. The policy shall also include provisions for protecting data from unauthorized access, data retention, public access, third-party data sharing, training, auditing, and oversight to ensure compliance with the Speed Safety System Use Policy. The Speed Safety System Use Policy shall be made available for public review, including, but not limited to, by posting it on the local governing body's internet website at least 30 calendar days prior to adoption by the local governing body.

(h) (1) The local governing body also shall approve a Speed Safety System Impact Report prior to implementing a program. The Speed Safety System Impact Report shall include all of the following information:

(A) Assessment of potential impact of the speed safety system on civil liberties and civil rights and any plans to safeguard those public rights.

(B) Description of the speed safety system and how it works.

(C) Fiscal costs for the speed safety system, including program establishment costs, ongoing costs, and program funding.

(D) If potential deployment locations of systems are predominantly in low-income neighborhoods, a determination of why these locations experience high fatality and injury collisions due to unsafe speed.

(E) Locations where the system may be deployed and traffic data for these locations.

(F) Proposed purpose of the speed safety system.

(2) The Speed Safety System Impact Report shall be made available for public review at least 30 calendar days prior to adoption by the governing body.

(3) The local governing body shall consult and work collaboratively with relevant local stakeholder organizations, including racial equity, privacy protection, and economic justice groups, in developing the Speed Safety System Use Policy and Speed Safety System Impact Report.

(i) The municipality shall develop uniform guidelines for both of the following:

(1) The screening and issuing of notices of violation.

(2) The processing and storage of confidential information and procedures to ensure compliance with confidentiality requirements.

(j) Notices of violation issued pursuant to this section shall include a clear photograph, video recording, or other visual image of the license plate and rear of the vehicle only, the Vehicle Code violation, the camera location, and the date and time when the violation occurred. Notices of violation shall exclude images of the rear window area of the vehicle.

(k) The photographic, video, or other visual evidence stored by a speed safety system does not constitute an out-of-court hearsay statement by a declarant under Division 10 (commencing with Section 1200) of the Evidence Code.

(l) (1) Notwithstanding Sections 6253 and 6262 of the Government Code, or any other law, photographic, video, or other visual or administrative records made by a system shall be confidential. Public agencies shall use and allow access to these records only for the purposes authorized by this article or to assess the impacts of the system.

(2) Confidential information obtained from the Department of Motor Vehicles for the administration of speed safety systems and enforcement of this article shall be held confidential, and shall not be used for any other purpose.

(3) Except for court records described in Section 68152 of the Government Code, or as provided in paragraph (4), the confidential records and evidence described in paragraphs (1) and (2) may be retained for up to 60 days after final disposition of the notice of violation. The municipality may adopt a retention period of less than 60 days in the Speed Safety System Use Policy. Administrative records described in paragraph (1) may be retained for up to 120 days after final disposition of the notice of violation. Notwithstanding any other law, the confidential records and evidence shall be destroyed in a manner that maintains the confidentiality of any person included in the record or evidence.

(4) Notwithstanding Section 26202.6 of the Government Code, photographic, video, or other visual evidence that is obtained from a speed safety system that does not contain evidence of a speeding violation shall be destroyed within five business days after the evidence was first obtained. The use of facial recognition technology in conjunction with a speed safety system shall be prohibited.

(5) Information collected and maintained by a municipality using a speed safety system shall only be used to administer an program, and shall not be disclosed to any other persons, including, but not limited to, any other state or federal government agency or official for any other purpose, except as required by state or federal law, court order, or in response to a subpoena in an individual case or proceeding.

(m) Notwithstanding subdivision (l), the registered owner or an individual identified by the registered owner as the driver of the vehicle at the time of the alleged violation shall be permitted to review the photographic, video, or visual evidence of the alleged violation.

(n) A contract between the municipality and a manufacturer or supplier of speed safety systems shall allow the local authority to purchase materials, lease equipment, and contract for processing services from the manufacturer or supplier based on the services rendered on a monthly schedule or another schedule agreed upon by the municipality and contractor. The contract shall not include provisions for payment or compensation based on the number of notices of violation issued by a designated municipal employee, or as a percentage of revenue generated, from the use of the system. The contract shall include a provision that all data collected from the speed safety systems is confidential, and shall prohibit the manufacturer or supplier of speed safety systems from sharing, repurposing, or monetizing collected data, except as specifically authorized in this article. The municipality shall oversee and maintain control over all enforcement activities, including the determination of when a notice of violation should be issued.

(o) Notwithstanding subdivision (n), a municipality may contract with a vendor for the processing of notices of violation after a designated municipal employee has issued a notice of violation. The vendor shall be a separate legal and corporate entity from, and unrelated or affiliated in any manner with, the manufacturer or supplier of speed safety systems used by the municipality. Any contract between the municipality and a vendor to provide processing services may include a provision for the payment of compensation based on the number of notices of violation processed by the vendor.

(p) (1) A speed safety system shall no longer be operated on any given street if within the first 18 months of installation of a system, at least one of the following thresholds has not been met:

(A) Percentage of automated speed violations decreased by at least 25 percent.

(B) Percentage of violators who received two or more violations decreased by at least 50 percent.

(2) This subdivision shall not apply if a city or city and county adds traffic-calming measures to the street. "Traffic-calming measures" include, but are not limited to:

(A) Bicycle lanes.

(B) Chicanes.

(C) Chokers.

(D) Curb extensions.

(E) Median islands.

(F) Raised crosswalks.

(G) Road diets.

(H) Roundabouts.

(I) Speed humps or speed tables.

(J) Traffic circles.

(3) A city or city and county may continue to operate a speed safety system with a fixed or mobile vehicle speed feedback sign while traffic-calming measures are being planned or constructed, but shall halt their use if construction has not begun within two years.

(4) If the percentage of violations has not decreased by the metrics identified pursuant to paragraph (1) within one year after traffic-calming measures have completed construction, a city or county shall either construct additional traffic-calming measures or cease operation of the system on that street.

22426. (a) Notwithstanding any other law, a violation of Section 22350, or any other speed law pursuant to this chapter that is recorded by a speed safety system authorized pursuant to Section 22425 shall be subject only to a civil penalty, as provided in subdivision (d), and shall not result in the department suspending or revoking the privilege of a violator to drive a motor vehicle or in a violation point being assessed against the violator.

(b) The speed safety system shall capture images of the rear license plate of vehicles that are traveling 11 miles per hour or more over the posted speed limit and notices of violation shall only be issued to vehicles based on that evidence.

(c) No more than one notice of violation shall be issued for a violation recorded from a specific license plate within a 24-hour period.

(d) A civil penalty shall be assessed as follows:

(1) Fifty dollars (\$50) for a speed violation from 11 up to 15 miles per hour over the posted speed limit.

(2) One hundred dollars (\$100) for a speed violation from 15 up to 25 miles per hour over the posted speed limit.

(3) Two hundred dollars (\$200) for a speed violation from 25 up to 100 miles per hour over the posted speed limit.

(4) Five hundred dollars (\$500) for a speed violation 100 miles per hour or greater over the posted speed limit.

(e) A civil penalty shall not be assessed against an authorized emergency vehicle.

(f) The written notice of violation shall be issued to the registered owner of the vehicle within 15 calendar days of the date of the violation. The notice of violation shall include all of the following information:

(1) The violation, including reference to the speed law that was violated.

(2) The date, approximate time, and location where the violation occurred.

(3) The vehicle license number and the name and address of the registered owner of the vehicle.

(4) A statement that payment is required to be made no later than 30 calendar days from the date of mailing of the notice of violation, or that the violation may be contested pursuant to Section 22427.

(5) The amount of the civil penalty due for that violation and the procedures for the registered owner, lessee, or rentee to pay the civil penalty or to contest the notice of violation.

(6) An affidavit of nonliability, and information of what constitutes nonliability, information as to the effect of executing the affidavit, and instructions for returning the affidavit to the processing agency. If the affidavit of nonliability is returned to the processing agency within 30 calendar days of the mailing of the notice of violation, together with proof of a written lease or rental agreement between a bona fide rental or leasing company and its customer that identifies the rentee or lessee, the processing agency shall serve or mail a notice of violation to the rentee or lessee identified in the affidavit of nonliability.

(g) Mobile radar or laser systems shall not be used until at least two years after the installation of the first fixed radar or laser system.

(h) (1) Revenues derived from any program utilizing a speed safety system for speed limit enforcement shall first be used to recover program costs. Program costs include, but are not limited to the construction of traffic calming measures for the purposes of complying with subdivision (p) of Section 22425, the installation of speed safety systems, the adjudication of violations, and reporting requirements as specified in this section.

(2) Jurisdictions shall maintain their existing commitment of local funds for traffic-calming measures in order to remain authorized to participate in the pilot program, and shall annually expend not less than the annual average of expenditures for traffic-calming measures during the 2016–17, 2017–18, and 2018–19 fiscal years. For purposes of this subdivision, in calculating average expenditures on traffic-calming measures, restricted funds that may not be available on an ongoing basis, including those from voter-approved bond issuances or tax measures, shall not be included. Any excess revenue shall be used for traffic calming measures within three years. If traffic-calming measures are not planned or constructed after the third year, then excess revenue shall revert to the Active Transportation Program established pursuant to Chapter 8 (commencing with Section 2380) of the Streets and Highways Code, to be allocated by the California Transportation Commission pursuant to Section 2381 of the Streets and Highways Code.

22427. (a) For a period of 30 calendar days from the mailing of a notice of violation, a person may request an initial review of the notice by the issuing agency. The request may be made by telephone, in writing, electronically, or in person. There shall be no charge for this review. If, following the initial review, the issuing agency is satisfied that the violation did not occur, or that extenuating circumstances make dismissal of the notice of violation appropriate in the interest of justice, the issuing agency shall cancel the notice of violation. The issuing agency shall advise the processing agency, if any, of the cancellation. The issuing agency or the processing agency shall mail the results of the initial review to the person contesting the notice, and, if cancellation of the notice does not occur following that review, include a reason for that denial, notification of the ability to request an administrative hearing, and notice of the procedure adopted pursuant to paragraph (2) of subdivision (b) for waiving prepayment of the civil penalty based upon an inability to pay.

(b) (1) If the person contesting the notice of violation is dissatisfied with the results of the initial review, the person may, no later than 21 calendar days following the mailing of the results of the issuing agency's initial review, request an administrative hearing of the violation. The request may be made by telephone, in writing, electronically, or in person.

(2) The person requesting an administrative hearing shall pay the amount of the civil penalty to the processing agency. The issuing agency shall adopt a written procedure to allow a person to request an administrative hearing without payment of the civil penalty upon satisfactory proof of an inability to pay the amount due.

(3) The administrative hearing shall be held within 90 calendar days following the receipt of a request for an administrative hearing. The person requesting the hearing may request one continuance, not to exceed 21 calendar days.

(c) The administrative hearing process shall include all of the following:

(1) The person requesting a hearing shall have the choice of a hearing by mail, video conference, or in person. An in-person hearing shall be conducted within the jurisdiction of the issuing agency.

(2) If the person requesting a hearing is a minor, that person shall be permitted to appear at a hearing or admit responsibility for the automated speed violation without the appointment of a guardian. The processing agency

may proceed against the minor in the same manner as against an adult.

(3) The administrative hearing shall be conducted in accordance with written procedures established by the issuing agency and approved by the governing body or chief executive officer of the issuing agency. The hearing shall provide an independent, objective, fair, and impartial review of contested automated speed violations.

(4) (A) The issuing agency's governing body or chief executive officer shall appoint or contract with qualified independent examiners or administrative hearing providers that employ qualified independent examiners to conduct the administrative hearings. Examiners shall demonstrate the qualifications, training, and objectivity necessary to conduct a fair and impartial review. The examiner shall be separate and independent from the notice of violation collection or processing function. An examiner's continued employment, performance evaluation, compensation, and benefits shall not, directly or indirectly, be linked to the amount of civil penalties collected by the examiner or the number or percentage of violations upheld by the examiner.

(B) (i) Examiners shall have a minimum of 20 hours of training. The examiner is responsible for the costs of the training. The issuing agency may reimburse the examiner for those costs. Training may be provided through any of the following:

(I) An accredited college or university.

(II) A program conducted by the Commission on Peace Officer Standards and Training.

(III) A program conducted by the American Arbitration Association or a similar organization.

(IV) Any program approved by the governing body or chief executive officer of the issuing agency, including a program developed and provided by, or for, the agency.

(ii) Training programs may include topics relevant to the administrative hearing, including, but not limited to, applicable laws and regulations, enforcement procedures, due process, evaluation of evidence, hearing procedures, and effective oral and written communication. Upon the approval of the governing body or chief executive officer of the issuing agency, up to 12 hours of relevant experience may be substituted for up to 12 hours of training. Up to eight hours of the training requirements described in this subparagraph may be credited to an individual, at the discretion of the governing body or chief executive officer of the issuing agency, based upon training programs or courses described in this subparagraph that the individual attended within the last five years.

(5) The designated municipal employee who issues a notice of violation shall not be required to participate in an administrative hearing. The issuing agency shall not be required to produce any evidence other than, in proper form, the notice of violation or copy thereof, including the photograph, video, or other visual image of the vehicle's license plate, and information received from the Department of Motor Vehicles identifying the registered owner of the vehicle. The documentation in proper form shall be prima facie evidence of the violation.

(6) The examiner's final decision following the administrative hearing may be personally delivered to the person by the examiner or sent by first-class mail.

(7) Following a determination by the examiner that a person has committed the violation, the examiner may, consistent with the written guidelines established by the issuing agency, allow payment of the civil penalty in installments, or an issuing agency may allow for deferred payment or payments in installments, if the person provides evidence satisfactory to the examiner or the issuing agency, as the case may be, of an inability to pay the civil penalty in full. If authorized by the governing body of the issuing agency, the examiner may permit the performance of community service in lieu of payment of the civil penalty.

(8) If a notice of violation is dismissed following an administrative hearing, any civil penalty, if paid, shall be refunded by the issuing agency within 30 days.

22428. (a) Within 30 days after personal delivery or mailing of the final decision described in subdivision (c) of Section 22427, the contestant may seek review by filing an appeal to the superior court, where the case shall be heard de novo, except that the contents of the processing agency's file in the case on appeal shall be received in evidence. A copy of the notice of violation shall be admitted into evidence as prima facie evidence of the facts stated in the notice. A copy of the notice of appeal shall be served in person or by first-class mail upon the processing agency by the contestant. For purposes of computing the 30-day period, Section 1013 of the Code of Civil Procedure shall be applicable. A proceeding under this subdivision is a limited civil case.

(b) The fee for filing the notice of appeal shall be as provided in Section 70615 of the Government Code. The court shall request that the issuing agency's file on the case be forwarded to the court, to be received within 15 calendar days of the request. The court shall notify the contestant of the appearance date by mail or personal delivery. The court shall retain the fee under Section 70615 of the Government Code regardless of the outcome of the appeal. If the appellant prevails, this fee and any payment of the civil penalty shall be promptly refunded by the issuing agency in accordance with the judgment of the court.

(c) The conduct of the hearing on appeal under this section is a subordinate judicial duty that may be performed by a commissioner or other subordinate judicial officer at the direction of the presiding judge of the court.

(d) If a notice of appeal of the examiner's decision is not filed within the period set forth in subdivision (a), the decision shall be deemed final.

(e) If the civil penalty has not been paid and the decision is adverse to the contestant, the processing agency may, promptly after the decision becomes final, proceed to collect the civil penalty under Section 22426.

22429. (a) A city or city and county shall offer a diversion program for indigent speed safety system violation recipients, to perform community service in lieu of paying the penalty for an automated speed system violation.

(b) A city or city and county shall offer the ability for indigent speed safety system violation recipients to pay applicable fines and penalties over a period of time under a payment plan with monthly installments of no more than twenty-five dollars (\$25) and shall limit the processing fee to participate in a payment plan to five dollars (\$5) or less.

(c) Notwithstanding subdivisions (a) and (b), a city or city and county shall reduce the applicable fines and penalties by 80 percent for indigent persons, and by 50 percent for individuals 200 percent above the federal poverty level.

22430. A city or city and county shall each develop and submit to their respective governing body a Speed Safety System Report, two years after initial implementation of the program and at the end of the pilot program that includes all of the following information:

(a) A description of how the speed safety system was used.

(b) Whether and how often any system data was shared with outside entities, the name of any recipient entity, the type or types of data disclosed, and the legal reason for the disclosure.

(c) A summary of any community complaints or concerns about the speed safety system.

(d) Results of any internal audits, information about any violations of the Speed Safety System Use Policy, and any actions taken in response.

(e) Information regarding the impact the speed safety system has had on the streets where the speed safety system was deployed.

(f) A summary of any public record act requests.

(g) A list of system locations that did not meet the threshold for continuance of a program pursuant to paragraph (1) of subdivision (p) of Section 22425, and whether further traffic-calming measures are in planning or construction, or there is a decision to halt operation of the program in those locations.

22431. Any city or city and county that used speed safety systems shall, on or before March 1 of the fifth year in which the system has been implemented, submit to the transportation committees of the Legislature an evaluation of the speed safety system in their respective jurisdictions to determine the system's impact on street safety and the system's economic impact on the communities where the system is utilized. The report shall be made available on the internet websites of the respective jurisdictions and shall include all of the following information:

(a) Data, before and after implementation of the system, on the number and proportion of vehicles speeding from 11 to 19 miles per hour over the legal speed limit, inclusive, from 20 to 29 miles per hour over the legal speed limit, inclusive, from 30 to 39 miles per hour over the legal speed limit, inclusive, and every additional 10 miles per hour increment thereafter on a street or portion of a street in which an system is used to enforce

speed limits. To the extent feasible, the data should be collected at the same time of day, day of week, and location.

(b) The number of notices of violation issued under the program by month and year, the corridors or locations where violations occurred, and the number of vehicles with two or more violations in a monthly period and a yearly period.

(c) Data, before and after implementation of the system, on the number of traffic collisions that occurred where speed safety systems are used, relative to citywide data, and the transportation mode of the parties involved. The data on traffic collisions shall be categorized by injury severity, such as property damage only, complaint of pain, other visible injury, or severe or fatal injury.

(d) The number of violations paid, the number of delinquent violations, and the number of violations for which an initial review is requested. For the violations in which an initial review was requested, the report shall indicate the number of violations that went to initial review, administrative hearing, and de novo hearing, the number of notices that were dismissed at each level of review, and the number of notices that were not dismissed after each level of review.

(e) The costs associated with implementation and operation of the speed safety systems, and revenues collected by each jurisdiction.

(f) A racial and economic equity impact analysis, developed in collaboration with local racial justice and economic equity stakeholder groups.

22432. This article shall remain in effect only until January 1, 2027, and as of that date is repealed.

SEC. 5. The Legislature finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances with traffic speed enforcement in southern California, the Cities of Los Angeles, Oakland, and San Jose, and the City and County of San Francisco.

SEC. 6. The Legislature finds and declares that Section 4 of this act, which adds Section 22425 to the Vehicle Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

To protect the privacy interests of persons who are issued notices of violation under a speed safety systems pilot program, the Legislature finds and declares that the photographic, video, or other visual or administrative records generated by the program shall be confidential, and shall be made available only to alleged violators and to governmental agencies solely for the purpose of enforcing these violations and assessing the impact of the use of speed safety systems, as required by this act.

CORRECTIONS:

Heading—Last amended date.



SB-735 Vehicles: speed safety cameras. (2021-2022)

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Date Published: 03/10/2021 09:00 PM

AMENDED IN SENATE MARCH 10, 2021

CALIFORNIA LEGISLATURE— 2021-2022 REGULAR SESSION

SENATE BILL

NO. 735

Introduced by Senator Rubio
(Coauthor: [Senator Newman](#))

February 19, 2021

~~An act relating to vehicles.~~ *An act to amend Section 6276.44 of the Government Code, and to amend Sections 21455.6 and 40520 of, and to add Sections 212, 213, 22368, 40518.1, 40518.5, and 40518.6 to, the Vehicle Code, relating to vehicles.*

LEGISLATIVE COUNSEL'S DIGEST

SB 735, as amended, Rubio. Vehicles: speed safety cameras.

Existing law establishes a basic speed law that prohibits a person from driving a vehicle upon a highway at a speed greater than is reasonable or prudent given the weather, visibility, traffic, highway conditions, and in no event at a speed that endangers the safety of persons or property. ~~Existing law~~ *Existing law authorizes the use of automated traffic enforcement systems to monitor stops at specified locations, such as limit lines and intersections, but* does not expressly authorize the use of automated speed enforcement in this state. *Existing law establishes a pilot program for the adjudication of traffic infractions that does not require a personal appearance. The pilot program includes the creation of an online adjudicatory tool to determine a person's ability to pay the amount due.*

~~This bill would state the Legislature's intent to enact legislation that would authorize local jurisdictions to utilize speed safety cameras for the purpose of enforcing speed limits. The bill would make additional legislative findings in this regard:~~

The bill would authorize a local authority to use a traffic speed safety system, as defined, to enforce speed limits in a school zone. The bill would prescribe requirements for the operation of a traffic speed safety system, including, among other things, notice to the public, issuance of citations, and confidentiality of data. The bill would create an administrative proceeding for persons to pay or contest a citation captured by a traffic speed safety system and a procedure to appeal an adverse decision. The bill would impose a civil penalty for a violation. The bill would require the use of the online adjudicatory tool to determine a person's ability to pay that penalty and require that fees be collected pursuant to the process created in the pilot program described above.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority Appropriation: no Fiscal Committee: ~~no~~yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

- (a) Speeding is a prevalent problem in the state of California that leads to death and injury.
- (b) In 2018, 893 pedestrians were killed on California roadways and more than 14,000 pedestrians were injured.
- (c) Speeding in California has dramatically increased recently. The Department of the California Highway Patrol issued 2,493 citations for driving more than 100 miles per hour in the first month of the shelter-in-place orders due to the pandemic caused by the novel coronavirus 2019, from March 19, 2020, to April 19, 2020, ~~inclusive;~~ *inclusive*, compared with 1,335 citations for the same offense in the same period the previous year.
- (d) Speed safety cameras are a tool available to local governments around the country, including in Illinois, New York, Washington, and Arizona. This tool has proven to reduce speed related crashes, fatalities, and injuries.
- (e) Speed safety cameras have proven to reduce in-person enforcement in jurisdictions where they have been utilized while also maintaining safety.
- (f) Speed safety cameras are an effective tool that protects drivers, cyclists, and pedestrians by reducing speeding in areas where they are located.
- (g) Speed safety cameras are especially important in protecting school children, traveling to and from school.
- (h) Current state statute does not expressly authorize the use of this life-saving technology.
- (i) Local jurisdictions should be granted the authority by the Legislature to use speed safety cameras to protect our most vulnerable community members, including children in school zones.
- (j) Speed safety camera fines should be civil in nature so as not to unfairly burden violators with significant fines, loss of license, or loss of vehicle.
- (k) The amount of a speed safety camera fine should be reasonable and justifiable.
- (l) Courts adjudicating speed safety camera-enforced violations should implement use of an "ability-to-pay" calculator to ensure that speed safety cameras do not unfairly impact lower income communities.
- (m) Speed safety cameras should only be used to enforce speeding violations and the data captured by speed safety cameras should not be stored longer than needed for the purpose of the violation, and then should be destroyed.
- (n) Speed safety cameras should be located based on safety needs and should ensure equitable enforcement.

SEC. 2. (a) It is the intent of the Legislature to enact legislation that would authorize local jurisdictions to utilize speed safety cameras for the purpose of enforcing speed limits in areas where residents are most vulnerable, including school zones.

(b) It is the intent of the Legislature to enact legislation that would ensure that the speed safety camera programs will be done equitably and protect the privacy rights of Californians.

SEC. 3. *Section 6276.44 of the Government Code is amended to read:*

6276.44. Taxpayer information, confidentiality, local taxes, subdivision (i), Section 6254.

Tax preparer, disclosure of information obtained in business of preparing tax returns, Section 17530.5, Business and Professions Code.

Teacher, credential holder or applicant, information provided to Commission on Teacher Credentialing, confidentiality of, Section 44341, Education Code.

Teacher, certified school personnel examination results, confidentiality of, Section 44289, Education Code.

Telephone answering service customer list, trade secret, Section 16606, Business and Professions Code.

Timber yield tax, disclosure to county assessor, Section 38706, Revenue and Taxation Code.

Timber yield tax, disclosure of information, Section 38705, Revenue and Taxation Code.

Title insurers, confidentiality of notice of noncompliance, Section 12414.14, Insurance Code.

Tobacco products, exemption from disclosure for distribution information provided to the State Department of Public Health, Section 22954, Business and Professions Code.

Tow truck driver, information in records of California Highway Patrol, Department of Motor Vehicles, or other agencies, confidentiality of, Sections 2431 and 2432.3, Vehicle Code.

Toxic substances, Department of, inspection of records of, Section 25152.5, Health and Safety Code.

Trade secrets, Section 1060, Evidence Code.

Trade secrets, confidentiality of, occupational safety and health inspections, Section 6322, Labor Code.

Trade secrets, disclosure of public records, Section 3426.7, Civil Code.

Trade secrets, food, drugs, cosmetics, nondisclosure, Sections 110165 and 110370, Health and Safety Code.

Trade secrets, protection by Director of the Department of Pesticide Regulation, Section 6254.2.

Trade secrets and proprietary information relating to pesticides, confidentiality of, Sections 14022 and 14023, Food and Agricultural Code.

Trade secrets, protection by Director of Industrial Relations, Section 6396, Labor Code.

Trade secrets relating to hazardous substances, disclosure of, Sections 25358.2 and 25358.7, Health and Safety Code.

Traffic speed safety system, confidentiality of photographic records made by the system, Section 22368, Vehicle Code.

Traffic violator school licensee records, confidentiality of, Section 11212, Vehicle Code.

Traffic offense, dismissed for participation in driving school or program, record of, confidentiality of, Section 1808.7, Vehicle Code.

Transit districts, questionnaire and financial statement information in bids, Section 99154, Public Utilities Code.

Tribal-state gaming contracts, exemption from disclosure for records of an Indian tribe relating to securitization of annual payments, Section 63048.63.

Trust companies, disclosure of private trust confidential information, Section 1582, Financial Code.

SEC. 4. *Section 212 is added to the Vehicle Code, to read:*

212. A "notice of violation" means the mailed notice of a violation of Section 22348 or 22358.4 recorded by a traffic speed safety system authorized pursuant to Section 22368, and subject to citation as a civil violation under Section 40518.1.

SEC. 5. *Section 213 is added to the Vehicle Code, to read:*

213. A "traffic speed safety system" is a device that meets all of the following requirements:

(a) Is capable of producing a photographically recorded still or video image, or combination thereof, of a motor vehicle, or a motor vehicle being towed by another motor vehicle, including an image of the vehicle's license plate.

(b) Is capable of monitoring vehicle speed.

(c) Indicates on one or more images produced the date, time, and location of the motor vehicle traveling at speeds above the posted speed limit within 2,500 feet of the perimeter of a school.

SEC. 6. Section 21455.6 of the Vehicle Code is amended to read:

21455.6. (a) A city council or county board of supervisors shall conduct a public hearing on the proposed use of an automated enforcement system authorized under Section 21455.5 prior to authorizing the city or county to enter into a contract for the use of the system.

(b) (1) The activities listed in subdivision (c) of Section 21455.5 that relate to the operation of an automated enforcement system may be contracted out by the city or county, except that the activities listed in paragraph (1) of, and subparagraphs (A), (D), (E), or (F) of paragraph (2) of, subdivision (c) of Section 21455.5 may not be contracted out to the manufacturer or supplier of the automated enforcement system.

(2) Paragraph (1) does not apply to a contract that was entered into by a city or county and a manufacturer or supplier of automated enforcement equipment before January 1, 2004, unless that contract is renewed, extended, or amended on or after January 1, 2004.

~~(c) The authorization in Section 21455.5 to use automated enforcement systems does not authorize the use of photo radar for speed enforcement purposes by any jurisdiction.~~

SEC. 7. Section 22368 is added to the Vehicle Code, to read:

22368. (a) *For the purpose of enforcing speed limits in and around school zones, a traffic speed safety system may be placed by a local authority within 2,500 feet of the perimeter of a school, or on that part of a roadway located within 2,500 feet of the perimeter of an institution of higher education, or within 2,500 feet of the grounds of the perimeter of a building or property used by a school or institution of higher education where generally accepted traffic and engineering practices indicate that motor vehicle, pedestrian, or bicycle traffic is substantially generated or influenced by the school or institution of higher education building if the governmental agency utilizing the system identifies the system by signs posted within 500 feet along the approach of any roadway at which a traffic speed safety system is located. The advance warning signs shall notify motorists of the existence of the traffic speed safety system and shall comply with the Department of Transportation's California Manual on Uniform Traffic Control Devices. A rebuttable presumption exists that the signage was properly installed at the time of the alleged violation.*

(b) Prior to issuing a notice of violation under this section, a local authority utilizing a traffic speed safety system shall commence a program to issue only warning notices for 30 days. The local authority also shall make a public announcement of the traffic speed safety system at least 30 days prior to the commencement of the enforcement program.

(c) Only a governmental agency may operate a traffic speed safety system. A governmental agency that operates a traffic speed safety system shall do all of the following:

(1) Develop uniform guidelines for screening and issuing violations and for the processing and storage of confidential information, and establish procedures to ensure compliance with those guidelines.

(2) Perform administrative functions and day-to-day functions, including, but not limited to, all of the following:

(A) Establishing guidelines for the selection of a location.

(B) Ensuring that the equipment is regularly inspected.

(C) Certifying that the equipment is properly installed and calibrated on an annual basis, and is operating properly.

(D) Regularly inspecting and maintaining warning signs placed in accordance with subdivision (a).

(E) Maintaining controls necessary to ensure that only those violations that have been reviewed and approved by a governmental agency are delivered to violators.

(d) The activities listed in subdivision (c) that relate to the operation of the system may be contracted out by the governmental agency, if it maintains overall control and supervision of the system. However, the activities listed

in paragraph (1) and subparagraphs (A), (D), and (E) of paragraph (2), of subdivision (c) shall not be contracted out to the manufacturer or supplier of the traffic speed safety system.

(e) The printed representation of computer-generated information, video, or photographic images stored by a traffic speed safety system does not constitute an out-of-court hearsay statement by a declarant under Division 10 (commencing with Section 1200) of the Evidence Code.

(f) (1) Notwithstanding Section 6253 of the Government Code, or any other law, photographic records made by a traffic speed safety system shall be confidential, and shall be made available only to governmental agencies and only for the purposes of this article.

(2) Confidential information obtained from the Department of Motor Vehicles for the administration or enforcement of this article shall be held confidential, and shall not be used for any other purpose. Reasonable security procedures and practices appropriate to the nature of the information shall be implemented to protect the data captured by traffic speed safety systems from unauthorized access, destruction, use, modification, or disclosure.

(3) Speed safety cameras shall only be used to enforce speeding violations and the data captured by speed safety cameras shall not be stored longer than necessary for the enforcement of the violation, then, unless ordered by a court to do otherwise, it must be destroyed by shredding, erasing, or otherwise modifying the data to make it unreadable or undecipherable through any means.

(g) Notwithstanding subdivision (f), the registered owner or any individual identified by the registered owner as the driver of the vehicle at the time of the alleged violation shall be permitted to review the photographic evidence of the alleged violation.

(h) Photographic evidence may not include a photo of the driver's face. However, a violation shall not be dismissed solely because a driver's face was captured in the recorded images.

(i) A governmental agency that proposes to install or operate a traffic speed safety system shall not consider revenue generation, beyond recovering its actual costs of operating the system, as a factor when considering whether or not to install or operate a system within its local authority.

(j) A governmental agency shall consider the safety data and demographics of a community before installing a traffic speed safety system to ensure equitable system placement.

SEC. 8. *Section 40518.1 is added to the Vehicle Code, to read:*

40518.1. *(a) Notwithstanding any other law, a violation of Section 22348 or 22358.4 that is recorded by a traffic speed safety system authorized pursuant to Section 22368 shall be subject only to a civil penalty as provided in subdivisions (d) and (e). The notice of violation shall not be considered a moving violation, nor shall the violation result in the assessment of points against the license of the person found to be liable for the violation.*

(b) A written notice of violation shall be issued by a governmental agency on a form approved by the Judicial Council for an alleged violation of Section 22348 or 22358.4, recorded by a traffic speed safety system pursuant to Section 22368 and delivered by first-class mail within 30 days after obtaining the name and address of the vehicle owner to the current address of the registered owner of the vehicle on file with the department. A rebuttable presumption exists that the notice of violation was successfully delivered. Except as provided in paragraph (1) of subdivision (b) of Section 40520, and Section 40518.5, the registered owner of the vehicle shall be liable for payment of any civil penalty assessed for the violation.

(c) A notice of violation shall contain the following information:

(1) The name and address of the person alleged to be liable as the owner of the motor vehicle involved in the violation.

(2) The license plate number of the motor vehicle.

(3) The violation charged.

(4) The location, date, and time of the violation.

(5) The photographic image of the vehicle and vehicle license plate that is captured by the traffic speed safety system and information on how to view, through electronic means, the recorded image described in this section.

(6) A statement or electronically generated affirmation of a governmental agency employee who has reviewed the recorded image described in this section and determined that the motor vehicle violated the ordinance or resolution.

(7) A statement that the recorded image is prima facie evidence of a violation of Section 22348 or 22358.4.

(8) The amount of the civil penalty imposed for the violation along with the time, place, and manner for payment of the fine, including the date by which the owner is required to do all of the following:

(A) Pay the civil fine to the local governmental agency, if the owner of the vehicle chooses not to contest the violation. The date by which the civil penalty is required to be paid shall not be more than 30 days after the issuance date of the notice of violation, unless the owner contests the violation.

(B) Notify the governmental agency that the notice of violation is being contested. The date by which the request for a hearing to contest the notice of violation shall not be more than 30 days after the issuance date of the notice of violation.

(C) Notify the governmental agency that responsibility is being transferred to another individual who was operating the vehicle at the time of the violation. The date by which the civil penalty is required to be paid shall not be more than 60 days after the issuance date of the notice of violation, if a new notice is required to be sent to another person.

(9) The procedure under which the notice of violation may be contested, or the procedure and conditions under which responsibility for payment of the civil fine may be transferred to another individual who was operating the vehicle at the time of the violation.

(10) A statement that failure to timely pay, contest, or transfer responsibility to another shall constitute an admission that the owner is responsible, and that failure to pay a fine for which the owner is determined to be responsible shall result in the inability to obtain or renew the registration of the vehicle involved, unless and until the civil fine is paid pursuant to Chapter 1.5 (commencing with Section 40280) of this division.

(d) A manufacturer or supplier of a traffic speed safety system or the governmental agency operating the system shall not alter the notice of violation or any other form approved by the Judicial Council. If a form is found to have been materially altered, the violation based on the altered form may be dismissed.

(e) The amount of the civil penalty for a violation of Section 22348 or 22358.4 that is recorded by a traffic speed safety system authorized pursuant to Section 22368 shall not exceed one hundred fifty dollars (\$150).

(f) A manufacturer or supplier of a traffic speed safety system may contract with the governmental agency for the maintenance, operation, and administration of a traffic speed safety system program, including the processing and mailing of the notice of violation. However only a peace officer or a qualified employee of a law enforcement agency may affirm a violation occurred.

SEC. 9. Section 40518.5 is added to the Vehicle Code, to read:

40518.5. (a) A person receiving a notice of violation may contest liability by requesting an administrative hearing of the violation no later than 30 days following the mailing of the notice of violation. The request may be made by telephone, in writing, or in person. The administrative hearing shall be held within 90 calendar days following the receipt of a request for an administrative hearing. The person requesting the hearing may request one continuance, not to exceed 21 calendar days.

(b) The administrative hearing process shall include all of the following:

(1) The person requesting a hearing shall have the choice of a hearing by mail or in person. An in-person hearing shall be conducted within the jurisdiction of the issuing agency.

(2) If the person requesting a hearing is a minor, that person shall be permitted to appear at a hearing or admit responsibility for the violation without the necessity of the appointment of a guardian. The processing agency may proceed against the minor in the same manner as against an adult.

(3) The administrative hearing shall be conducted in accordance with written procedures established by the issuing agency and approved by the governing body or chief executive officer of the issuing agency. The hearing shall provide an independent, objective, fair, and impartial review of contested violations.

(4) The chief executive officer or governing body shall ensure the appointment of one or more examiners, other than law enforcement officers or persons who work in the law enforcement department, to conduct the hearings authorized by the section.

(5) The issuing agency shall not be required to produce any evidence other than the notice of violation or copy thereof, including the photograph of the vehicle's license plate, and information received from the Department of Motor Vehicles identifying the registered owner of the vehicle. The documentation in proper form shall be prima facie evidence of the violation.

(6) The examiner's decision following the administrative hearing may be personally delivered to the person by the examiner or sent by first-class mail.

(7) Following a determination by the examiner that a person has committed the violation, the examiner may, consistent with the written guidelines established by the issuing agency, allow payment of the civil penalty in installments, or an issuing agency may allow for deferred payment or allow for payments in installments, if the person provides evidence satisfactory to the examiner or the issuing agency, as the case may be, of an inability to pay the civil penalty in full. If authorized by the governing board of the issuing agency, the examiner may permit the performance of community service in lieu of payment of the civil penalty. The examiner shall utilize an ability-to-pay calculator, as authorized under Chapter 1.5 (commencing with Section 40280) of this division.

SEC. 10. Section 40518.6 is added to the Vehicle Code, to read:

40518.6. (a) Within 20 days after the mailing or delivery of the final decision described in subdivision (b) of Section 40518.5, the contestant may seek review by filing an appeal to the superior court, where the case shall be heard de novo, except that the contents of the issuing agency's file in the case on appeal shall be received in evidence. A copy of the notice of violation shall be admitted into evidence as prima facie evidence of the facts stated in the notice. A copy of the notice of appeal shall be served in person or by first-class mail upon the issuing agency by the contestant. For purposes of computing the 20-day period, Section 1013 of the Code of Civil Procedure shall be applicable. A proceeding under this subdivision is a limited civil case.

(b) The fee for filing the notice of appeal shall be pursuant to subdivision (b) of Section 70613 of the Government Code. If the appellant prevails, this fee shall be promptly refunded.

(c) The conduct of the hearing on appeal under this section is a subordinate judicial duty that may be performed by a commissioner or other subordinate judicial official at the direction of the presiding judge of the court.

(d) If a notice of appeal of the issuing agency's decision is not filed within the period set forth in subdivision (a), the decision shall be deemed final.

(e) If the decision is adverse to the contestant, the issuing agency may, promptly after the decision becomes final, proceed to collect the penalty.

SEC. 11. Section 40520 of the Vehicle Code is amended to read:

40520. (a) A notice to appear issued pursuant to Section 40518 *or a notice of violation issued pursuant to Section 40518.1* for an alleged violation recorded by an automatic enforcement system *or traffic speed safety system* shall contain, or be accompanied by, an affidavit of nonliability and information as to what constitutes nonliability, information as to the effect of executing the affidavit, and instructions for returning the affidavit to the issuing agency.

(b) (1) If a notice to appear *or a notice of violation* is sent to a car rental or leasing company, as the registered owner of the vehicle, the company may return the notice of nonliability pursuant to paragraph (2), if the violation occurred when the vehicle was either leased or rented and operated by a person other than an employee of the rental or leasing company.

(2) If the affidavit of nonliability is returned to the issuing agency by the registered owner within 30 days of the mailing of the notice to appear *or the notice of violation* together with the proof of a written rental agreement or lease between a bona fide renting or leasing company and its customer and that agreement identifies the renter or lessee and provides the driver's license number, name, and address of the renter or lessee, the agency shall cancel the notice *to appear or the notice of violation* for the registered owner to appear and shall, instead, issue a notice to appear *or a notice of violation* to the renter or lessee identified in the affidavit of nonliability.

(c) Nothing in this section precludes an issuing agency from establishing a procedure whereby registered owners, other than bona fide renting and leasing companies, may execute an affidavit of nonliability if the registered owner identifies the person who was the driver of the vehicle at the time of the alleged violation and whereby the issuing agency issues a notice to appear *or a notice of violation* to that person.

SEC. 12. *The Legislature finds and declares that Section 7 of this act, which adds Section 22368 of the Vehicle Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:*

In order to protect the personally identifiable information of California drivers, it is necessary that this act limit the public's right of access to that information.

IN THE SUPREME COURT OF CALIFORNIA

THE PEOPLE,)	
)	
Plaintiff and Respondent,)	
)	S201443
v.)	
)	Ct.App. 2/3 B231678
CARMEN GOLDSMITH,)	
)	Los Angeles County
Defendant and Appellant.)	Super. Ct. No. 102693IN
_____)	

Defendant was cited for failing to stop at a red traffic light at an intersection located in the City of Inglewood in violation of Vehicle Code section 21453. She was found guilty of the traffic infraction based on evidence of several photographs and a 12-second video. The evidence was generated by an automated traffic enforcement system (ATES), in common parlance referred to as a red light traffic camera. Her conviction was upheld on appeal by both the appellate division of the superior court and the Court of Appeal. We granted review to consider defendant's claim that the trial court improperly admitted the ATES evidence over her objections of inadequate foundation and hearsay. We conclude that the trial court did not abuse its discretion in finding the officer's testimony in this case provided sufficient authentication to admit the ATES evidence and that the ATES evidence was not hearsay. We affirm the judgment of the Court of Appeal.

BACKGROUND

A. Statutory authorization of ATES

Local governmental agencies are statutorily authorized to equip a traffic intersection with an ATES, if the system meets certain requirements. (Veh. Code, § 21455.5.) Specifically, the system must be identified by signs visible to approaching traffic that clearly indicate the system's presence and the traffic signal light governing the intersection must have a minimum yellow light change interval as set by the state Department of Transportation for the designated approach speed. (Veh. Code, § 21455.7.)

A city council or county board of supervisors proposing to install an ATES within its jurisdiction must conduct a public hearing on the proposal prior to entering into a contract for the use of an ATES. (Veh. Code, § 21455.6, subd. (a).) If the proposal is adopted, the local jurisdiction must at each affected intersection “commence a program to issue only warning notices for 30 days” and must “also make a public announcement of the automated traffic enforcement system at least 30 days prior to the commencement of the enforcement program.” (Veh. Code, § 21455.5, subd. (b); see *People v. Gray* (2014) 58 Cal.4th 901, 904.)

“Only a governmental agency, in cooperation with a law enforcement agency, may operate” an ATES. (Veh. Code, § 21455.5, subd. (c).) To operate an ATES, the governmental agency, in cooperation with law enforcement, must develop uniform guidelines for screening and issuing violation citations, as well as for processing and storing confidential information. (Veh. Code, § 21455.5, subd. (c)(1).) It must establish procedures to ensure compliance with such guidelines. (*Ibid.*) The governmental agency, in cooperation with a law enforcement agency, must also (a) establish guidelines for selection of a location, (b) ensure that the equipment is regularly inspected, (c) certify that the equipment is properly

installed and calibrated and is operating properly, (d) regularly inspect and maintain the warning signs, (e) oversee the establishment or change of signal phases and signal timing, and (f) maintain controls necessary to ensure that only those citations that have been reviewed and approved by law enforcement are delivered to violators. (*Id.*, subd. (c)(2)(A), (B), (C), (D), (E), & (F).)

The statutory scheme allows the governmental agency to contract out these described operational activities or duties “if it maintains overall control and supervision of the system.” (Veh. Code, § 21455.5, subd. (d).) But this is subject to an important qualification. The governmental agency may not contract out to “the manufacturer or supplier of the automated traffic enforcement system” certain of the described duties. (*Ibid.* [providing that the activities specified in Veh. Code, § 21455.5, subd. (c)(1) & (2)(A), (D), (E), & (F) may not be contracted out to the ATES manufacturer or supplier].) The only duties that may be contracted out to the ATES manufacturer or supplier are the activities of “[e]nsuring that the equipment is regularly inspected” and “[c]ertifying that the equipment is properly installed and calibrated, and is operating properly.” (Veh. Code, § 21455.5, subds. (c)(2)(B), (C), (d).)

A contract between a governmental agency and an ATES manufacturer or supplier entered into, renewed, extended or amended on or after January 1, 2004, is statutorily prohibited from including a “provision for the payment or compensation to the manufacturer or supplier based on the number of citations generated, or as a percentage of the revenue generated, as a result of the use of the equipment.” (Veh. Code, § 21455.5, subd. (h)(1); see *id.*, former subd. (g), as amended by Stats. 2003, ch. 511, § 1, p. 3925 [applicable at the time of defendant’s citation].)

B. The evidence submitted in this case

A notice to appear was issued to defendant pursuant to the City of Inglewood's implementation of the automated traffic enforcement statutes we have described. (Veh. Code, §§ 21455.5–21455.7.) The citation alleged that on March 13, 2009, defendant failed to stop at a red traffic light located at the intersection of Centinela Avenue and Beach Avenue in the City of Inglewood (Inglewood). Defendant entered a plea of not guilty.

At the court trial held before a traffic commissioner, only one witness testified. Dean Young, an investigator with the Inglewood Police Department, testified that he was assigned to the traffic division in red light camera enforcement, and had more than six years of experience in that assignment. Young testified that defendant's citation was the result of the red light camera program first implemented by Inglewood in 2003.

Young testified that Inglewood's ATES was operated by the police department, but was maintained by Redflex Traffic Systems, Inc. (Redflex). Based on his experience and the knowledge that he acquired from city engineers regarding how the traffic signals and system work and from Redflex regarding how the ATES works, Young testified that the computer-based digital camera system operates "independently" and records events occurring within an intersection after the traffic signal has turned red. Young stated that the ATES information is stored as it is "reported" on the hard disc of a computer at the scene. According to Young, Redflex technicians retrieve that computerized information periodically throughout the day through an Internet connection. A police officer then reviews all photographs before a citation is printed or mailed.

Young explained the photos and video images that are recorded and produced by the ATES as follows. There are three photographs taken, plus a 12-second video. The first photograph taken by the ATES camera, referred to as a

“previolation” photograph, shows the vehicle at or before the crosswalk or limit line for the intersection with the traffic signal shown in the background during its red phase. The second photograph, referred to as a “postviolation” photograph, shows the vehicle within the intersection either in the process of making a right turn or going straight through the intersection. The third photograph shows the vehicle’s license plate. A data bar is imprinted on all the photographs by the ATES to show the date, time, location, and how long the light had been red at the time of the photograph. The 12-second video shows the approach and progression of the vehicle through the intersection.

Young testified, based on the ATES evidence, that defendant’s violation occurred at the intersection of Centinela Avenue and Beach Avenue on Friday, March 13, 2009. It involved a “straight through movement” by defendant. Defendant objected that the photographs did not establish that she was the driver of the vehicle depicted in the photographs because the right eye and part of the forehead of the person shown in the photograph was obscured. The trial court stated that it was satisfied that the photograph depicted defendant as the driver.

Defendant then objected to Young’s testimony on the grounds of lack of foundation and hearsay. The trial court overruled the objections after defendant examined Young on voir dire. Young proceeded to testify that the data bar printed on the previolation photograph of defendant’s vehicle showed the traffic light had been red for 0.27 seconds and that defendant’s vehicle’s approach speed was 53 miles per hour at the time the photograph was taken. According to Young, in the postviolation photograph taken 0.66 second later, defendant’s vehicle was shown in the intersection while the signal light remained in the red light phase. Young testified that the 12-second video of defendant’s vehicle crossing the intersection began with the signal light in its green phase and showed the transitioning of the light phases, including a four-second yellow light.

Defendant challenged Young's characterization of the yellow light interval as being four seconds. Asked by the court to lay a foundation for his opinion regarding the yellow light interval, Young testified that he visually inspected the traffic signal at this intersection and each of the other camera-enforced intersections on a monthly basis to ensure that the yellow phase timing complies with the minimum guidelines established by California's Department of Transportation. According to Young, on February 16, 2009, and March 16, 2009, he conducted timing checks of the signal at this intersection, which showed averages of 4.11 and 4.03 seconds, respectively. He testified that these test results were well above the 3.9 seconds established by the Department of Transportation for a 40-mile-an-hour zone.

Based on this evidence, the trial court found beyond a reasonable doubt that defendant was guilty of failing to stop at a red signal light and imposed a fine of \$436.

DISCUSSION

Photographs and video recordings with imprinted data are writings as defined by the Evidence Code. (Evid. Code, § 250.)¹ To be admissible in evidence, a writing must be relevant and authenticated. (§§ 350, 1401.) The proffered evidence must be an original writing or otherwise admissible secondary evidence of the writing's content. (§§ 1520, 1521.) And it must not be subject to any exclusionary rule. (See, e.g., § 1200.)

Defendant contends the trial court erred in admitting the ATES evidence in this case because the prosecution failed to provide the foundational testimony

¹ All further statutory references are to the Evidence Code unless otherwise indicated.

necessary to authenticate it and because the evidence included inadmissible hearsay. We review claims regarding a trial court's ruling on the admissibility of evidence for abuse of discretion. (*People v. Alvarez* (1996) 14 Cal.4th 155, 203, 207; *People v. Lucas* (1995) 12 Cal.4th 415, 466.) Specifically, we will not disturb the trial court's ruling "except on a showing the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice." (*People v. Rodriguez* (1999) 20 Cal.4th 1, 9-10.) Applying this standard, we conclude that the trial court did not err in admitting the ATEs evidence over defendant's objections.

A. The ATEs evidence was adequately authenticated

Defendant argues that the trial court erred in overruling her objection to the ATEs evidence on the basis of inadequate foundation. We disagree.

Authentication of a writing, including a photograph, is required before it may be admitted in evidence. (§§ 250, 1401.) Authentication is to be determined by the trial court as a preliminary fact (§ 403, subd. (a)(3)) and is statutorily defined as "the introduction of evidence sufficient to sustain a finding that it is the writing that the proponent of the evidence claims it is" or "the establishment of such facts by any other means provided by law." (§ 1400.) The statutory definition ties authentication to relevance. As explained by the California Law Revision Commission's comment to section 1400, "[b]efore any tangible object may be admitted into evidence, the party seeking to introduce the object must make a preliminary showing that the object is in some way relevant to the issues to be decided in the action. When the object sought to be introduced is a writing, this preliminary showing of relevancy usually entails some proof that the writing is authentic — *i.e.*, that the writing was made or signed by its purported maker. Hence, this showing is normally referred to as 'authentication' of the writing."

(Cal. Law Revision Com. com., 29B pt. 4 West's Ann. Evid. Code (1995 ed.) foll. § 1400, p. 440.) Authentication is essentially a subset of relevance. (See *Lorraine v. Markel Amer. Ins. Co.* (D.Md. 2007) 241 F.R.D. 534, 539 (*Lorraine*); 2 Broun, McCormick on Evidence (7th ed. 2013) § 212, p. 5 (McCormick).)

As with other writings, the proof that is necessary to authenticate a photograph or video recording varies with the nature of the evidence that the photograph or video recording is being offered to prove and with the degree of possibility of error. (Annot., Authentication or Verification of Photograph as Basis for Introduction in Evidence (1950) 9 A.L.R.2d 899, 900.) The first step is to determine the purpose for which the evidence is being offered. The purpose of the evidence will determine what must be shown for authentication, which may vary from case to case. (2 McCormick, *supra*, § 221, pp. 82-83.) The foundation requires that there be sufficient evidence for a trier of fact to find that the writing is what it purports to be, i.e., that it is genuine for the purpose offered. (*People v. Valdez* (2011) 201 Cal.App.4th 1429, 1434-1435 (*Valdez*).) Essentially, what is necessary is a prima facie case. "As long as the evidence would support a finding of authenticity, the writing is admissible. The fact conflicting inferences can be drawn regarding authenticity goes to the document's weight as evidence, not its admissibility." (*Jazayeri v. Mao* (2009) 174 Cal.App.4th 301, 321.)

Here the ATES evidence was offered to show what occurred at a particular intersection in Inglewood on a particular date and time when the traffic signal at the intersection was in its red phase. The ATES evidence was offered as substantive proof of defendant's violation, not as demonstrative evidence supporting the testimony of a percipient witness to her alleged violation. We have long approved the substantive use of photographs as essentially a "silent witness" to the content of the photographs. (*People v. Bowley* (1963) 59 Cal.2d 855, 860.) As we stated in *Bowley*, "[t]o hold otherwise would illogically limit the use of a

device whose memory is without question more accurate and reliable than that of a human witness. It would exclude from evidence the chance picture of a crowd which on close examination shows the commission of a crime that was not seen by the photographer at the time. It would exclude from evidence pictures taken with a telescopic lens. It would exclude from evidence pictures taken by a camera set to go off when a building's door is opened at night.” (*Id.*, at p. 861.)

A photograph or video recording is typically authenticated by showing it is a fair and accurate representation of the scene depicted. (*People v. Gonzalez* (2006) 38 Cal.4th 932, 952; *People v. Cheary* (1957) 48 Cal.2d 301, 311-312.) This foundation may, but need not be, supplied by the person taking the photograph or by a person who witnessed the event being recorded. (*People v. Mehaffey* (1948) 32 Cal.2d 535, 555; *People v. Doggett* (1948) 83 Cal.App.2d 405, 409; 2 Witkin, Cal. Evidence (5th ed. 2012) Documentary Evidence, § 7, pp. 154-156 (Witkin).) It may be supplied by other witness testimony, circumstantial evidence, content and location. (*Valdez, supra*, 201 Cal.App.4th at p. 1435; *People v. Gibson* (2001) 90 Cal.App.4th 371, 383; see *People v. Skiles* (2011) 51 Cal.4th 1178, 1187; Witkin, *supra*, at pp. 154-155.) Authentication also may be established “by any other means provided by law” (§ 1400), including a statutory presumption. (Cal. Law Revision Com. com., *supra*, foll. § 1400, p. 440 [“The requisite preliminary showing may also be supplied by a presumption.”].)

The People argue that sections 1552 and 1553 provide such a presumption of authenticity for ATEs images and data. The People are correct that sections 1552 and 1553 are applicable here. These statutes’ presumptions partly, but not completely, supply the foundation for admission of ATEs evidence.

Subdivision (a) of section 1553 provides, as pertinent here, that “[a] printed representation of images stored on a video or digital medium is presumed to be an accurate representation of the images it purports to represent. . . . If a party to an

action introduces evidence that a printed representation of images stored on a video or digital medium is inaccurate or unreliable, the party introducing the printed representation into evidence has the burden of proving, by a preponderance of evidence, that the printed representation is an accurate representation of the existence and content of the images that it purports to represent.” Subdivision (a) of section 1552 provides a similar presumption for “[a] printed representation of computer information or a computer program.” In 2012, the Legislature added a subdivision (b) to both sections to expressly clarify the applicability of the statutes to printed representations of video or photographic images stored by an ATEs and printed representations of computer-generated information stored by an ATEs. (§§ 1552, subd. (b) [“Subdivision (a) applies to the printed representation of computer-generated information stored by an automated traffic enforcement system”], 1553, subd. (b) [“Subdivision (a) applies to the printed representation of video or photographic images stored by an automated traffic enforcement system”]; Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Sen. Bill No. 1303 (2011-2012 Reg. Sess.) as amended May 29, 2012, p. 4, par. 8; Assem. Com. on Judiciary, Analysis of Sen. Bill No. 1303 (2011-2012 Reg. Sess.) as amended June 26, 2012, p. 14.)²

Sections 1552 and 1553 were added to the Evidence Code as part of the 1998 legislation that repealed the best evidence rule (former § 1500) and adopted the secondary evidence rule (§§ 1520-1523; Stats. 1998, ch. 100, §§ 4, 5, pp. 634-

² Because the statutes were intended to be declarative of existing law, no question of retroactive application is presented. (*McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467, 471-472; see *Carter v. California Dept. of Veterans Affairs* (2006) 38 Cal.4th 914, 922-923, 930.)

635.)³ Under the secondary evidence rule, the content of a writing may now be proved either “by an otherwise admissible original” (§ 1520) or by “otherwise admissible secondary evidence.” (§ 1521, subd. (a); see *People v. Skiles, supra*, 51 Cal.4th at p. 1187.) Sections 1552 and 1553 permit the writings that they describe to be introduced as secondary evidence. Thus, the presumptions in sections 1552 and 1553 eliminate the basis for any objection that a printed version of the described writings is not the “original” writing.

Because sections 1552 and 1553 provide a presumption for both “the existence and content” of computer information and digital images that the printed versions purport to represent (§§ 1552, subd. (a), 1553, subd. (a)), the presumptions operate to establish, at least preliminarily, that errors in content have not been introduced in the course of printing the images and accompanying data. As the court in *People v. Hawkins* (2002) 98 Cal.App.4th 1428, 1450 (*Hawkins*) explained, the presumptions essentially operate to establish that “a computer’s print function has worked properly.” As applicable here, the presumptions provided by sections 1552 and 1553 support a finding, in the absence of contrary evidence, that the printed versions of ATEs images and data are accurate representations of the images and data stored in the ATEs equipment.

³ Section 1552 continues the provisions of former section 1500.5, subdivisions (c) and (d) without substantive change, except that the reference to “ ‘best available evidence’ ” in former section 1500.5, subdivision (c) is changed to “ ‘an accurate representation,’ ” “due to the replacement of the Best Evidence Rule with the Secondary Evidence Rule.” (Cal. Law Revision Com. com., 29B pt. 4 West’s Ann. Evid. Code (2014 supp.) foll. § 1552, p. 233.) Section 1553 continues a portion of former section 1500.6 without substantive change, except for a similar change in terminology. (Cal. Law Revision Com. com., 29B pt. 4 West’s Ann. Evid. Code (2014 supp.) foll. § 1553, p. 235.)

We reject defendant's contention that application of these presumptions violate her right to constitutional due process as described in *Western & Atlantic Railroad v. Henderson* (1929) 279 U.S. 639, 642-644. The court in *Henderson* held invalid a statutory rebuttable presumption in a civil case for lack of a rational connection between the ultimate fact presumed and the fact actually placed in evidence. (See *Lavine v. Milne* (1976) 424 U.S. 577, 585.) In the criminal context, however, a due process challenge to an evidentiary presumption requires us to distinguish between mandatory presumptions, which either can be conclusive or rebuttable, and permissive inferences. (*Francis v. Franklin* (1985) 471 U.S. 307, 313-315.) Mandatory presumptions will violate due process if they relieve the prosecution of the burden of persuasion on an element of the offense. (*Patterson v. New York* (1977) 432 U.S. 197, 215; see *Sandstrom v. Montana* (1979) 442 U.S. 510, 520-524.) Permissive inferences violate due process only if the permissive inference is irrational. (*Francis, supra*, at pp. 314-315; *Ulster County Court v. Allen* (1979) 442 U.S. 140, 157-163; *People v. Moore* (2011) 51 Cal.4th 1104, 1131-1132.) The rebuttable presumptions set forth in sections 1552 and 1553 affect the burden of producing evidence regarding a preliminary fact necessary for the admission of evidence. As their presumptions affect the admissibility of the described writings when offered by any party, but do not require any weight to be given to the evidence if admitted, sections 1552 and 1553 do not reduce the prosecution's burden of proof to show defendant's violation beyond a reasonable doubt. They establish only permissive inferences, which, being logically grounded on advances in technology, are not irrational. (*Francis, supra*, at pp. 314-315; *Moore, supra*, at p. 1132.)⁴ Contrary to defendant's

⁴ Defendant contends it would be arbitrary in this case to assume that the ATES evidence is reliable because Redflex has previously "falsified evidence." In

(Footnote continued on next page.)

argument, these presumptions do not deny defendant a fair opportunity to rebut the presumed accuracy or reliability of the offered evidence. (*Henderson, supra*, 279 U.S. at p. 642.)⁵

Although we reject defendant’s constitutional challenge, it is important to recognize that the presumptions in sections 1552 and 1553 do not in themselves fully supply the necessary foundation for admission of ATES evidence. The secondary evidence rule does not “excuse[] compliance with Section 1401 (authentication).” (§ 1521, subd. (c).) “[T]o be ‘otherwise admissible,’ secondary

(Footnote continued from previous page.)

support of this claim, defendant requested that we take judicial notice of documents she obtained from the Arizona secretary of state reflecting the investigation, and consequent revocation of the commission, of an Arizona notary public who was found to have improperly notarized a Redflex “deployment form” for a speed photo radar vehicle. It would be pure conjecture to conclude that all evidence generated by Redflex ATES technology and handled by Redflex employees for Inglewood is suspect because of the actions of a single errant notary public in a different state regarding a different type of technology and documentation. We have denied defendant’s request for judicial notice and reject her argument that the involvement of Redflex in this case requires a different constitutional conclusion.

⁵ Claiming that traffic court defendants appear almost universally in propria persona and that they lack the motive, means, or opportunity to engage in discovery prior to trial or to spend thousands of dollars on expert fees, defendant argues the presumptions stated in sections 1552 and 1553 deny traffic court defendants a fair opportunity to “repel” the presumptions. We will not speculate that traffic defendants lack motivation to contest their tickets. And, contrary to defendant’s claim, traffic defendants have sufficient means and opportunity to contest their alleged violation because individuals charged with infractions are accorded the same rights as individuals charged with misdemeanors to subpoena witnesses and documents, to present testimony and other evidence, and to cross-examine the prosecution’s witnesses. (Pen. Code, § 19.7 [“Except as otherwise provided by law, all provisions of law relating to misdemeanors shall apply to infractions . . .”].)

evidence must be authenticated.” (*People v. Skiles, supra*, 51 Cal.4th at p. 1187; see § 1401, subd. (b) [“Authentication of a writing is required before secondary evidence of its content may be received in evidence.”].)

Here, Young’s testimony was adequate to show that the ATES photographs at issue were from Inglewood’s ATES equipment located at the corner of Centinela and Beach Avenues. From his explanation regarding the independent operation of the ATES camera system, it can be reasonably inferred that the ATES system automatically and contemporaneously recorded the images of the intersection and the data imprinted on the photographs when it was triggered. Young was not asked anything about the city’s or the police department’s records or supervision of Redflex’s maintenance or certification of the equipment.⁶ Defendant does not argue that Young’s testimony was insufficient to demonstrate that the evidence was properly received in the normal course and manner of Inglewood’s operation of its ATES program. Finally, we note that the content of the photographs themselves may be considered and here the content supplied

⁶ Young was asked when the “photo system” was last calibrated. Young answered that “there is no calibration of this [photo] system.” Defendant argues that such testimony revealed Inglewood’s failure to comply with the statutory requirements that the ATES equipment be regularly inspected and certified to have been properly installed and calibrated and to be operating properly. (Veh. Code, § 21455.5, subs. (c)(2)(B), (C), d.) We do not read the testimony in this way. In context, it appears Young understood that question and the followup question regarding calibration to ask only about the connection between the ATES camera and the traffic signal. He responded that the systems operate independently and that the only connection is an electrical connection that lets the camera know that the light is in its red phase. Defense counsel did not clarify or pose further followup questions regarding calibration of the ATES system. Counsel did not ask any questions concerning Inglewood’s or the police department’s oversight of Redflex’s maintenance and certification of the installed ATES equipment at this intersection.

further support for a finding that the images were genuine.⁷ Indeed, at oral argument, defendant’s counsel conceded that the ATES photographs in this case actually depicted his client in the intersection. Accordingly, we conclude that, in conjunction with the operation of the presumptions of sections 1552 and 1553, sufficient evidence was submitted to the court to sustain a finding (§ 403, subd. (a)(3)) that the ATES evidence “is the writing that the [prosecution] claimed it is” (§ 1400) and the trial court properly exercised its discretion to admit the evidence.

Defendant claims, however, that in this case involving *digital* images it was necessary for the prosecution as part of its foundational showing to additionally present the testimony of a Redflex technician regarding the operation and maintenance of the system that generated the ATES evidence because digital images are more readily and inexpensively subject to manipulation, and yet at the same time, such manipulations are more difficult to detect, compared with an analog alteration. We disagree that the testimony of a Redflex technician or other witness with special expertise in the operation and maintenance of the ATES computers was required as a prerequisite for authentication of the ATES evidence.

Contrary to defendant’s assertion, the record contains no evidence that the ATES evidence was materially altered, enhanced, edited or otherwise changed;

⁷ Specifically, given Young’s testimony regarding how the ATES system operates, the fact that in this case it produced a photograph showing defendant driving her vehicle at or before the limit line with the signal light in its red phase and then another photograph of defendant driving her vehicle in the intersection with the signal light in its red phase, as well as a 12-second video showing defendant’s vehicle crossing the intersection and the transition of the traffic signal light phases, including a four-second yellow light, is circumstantial evidence that the system was working properly.

rather it consisted of entirely automatically produced photos and video and contemporaneously recorded data. No elaborate showing of accuracy is required. (See 2 McCormick, *supra*, § 227, p. 111 [accuracy of an individual computer's basic operations will not be scrutinized unless specifically challenged, and even perceived errors go to the weight of the evidence, not its admissibility].) We decline to require a greater showing of authentication for the admissibility of digital images merely because in theory they can be manipulated. (See *Owens v. State* (Ark. 2005) 214 S.W.3d 849, 854 [refusal to impose a higher burden of proof for admissibility of still photographs taken from a store surveillance camera's videotape merely because digital images are easier to manipulate].) We have not required testimony regarding the “ ‘acceptability, accuracy, maintenance, and reliability of . . . computer hardware and software’ ” in similar situations. (*People v. Martinez* (2000) 22 Cal.4th 106, 132, quoting *People v. Lugashi* (1988) 205 Cal.App.3d 632, 642; accord, *People v. Nazary* (2010) 191 Cal.App.4th 727, 755.) The standard foundational showing for authentication of a photograph, video, or other writing will suffice for ATEs images and data information.⁸

⁸ *People v. McWhorter* (2009) 47 Cal.4th 318, 364-367, and *State v. Swinton* (Conn. 2003) 847 A.2d 921, 942-945, on which defendant relies for her contention that expert testimony regarding the accuracy and reliability of the ATEs computer process should be required, are distinguishable because they involved computer-enhanced photographic images. Similarly, *People v. Duenas* (2012) 55 Cal.4th 1, 20-21, is inapposite because it involved a computer animation and the comments defendant relies on were directed at computer simulations. Computer animations and simulations are types of digital imaging technology distinctly different from the ATEs-generated evidence involved here. Finally, *People v. Beckley* (2010) 185 Cal.App.4th 509, 514-516, is distinguishable because the issue there concerned the admission of a photograph found on a social media Web site, which presented questions of accuracy and reliability different from the evidence here. These cases serve to demonstrate the need to carefully assess the specific nature of the photographic image being offered into evidence and the purpose for which it is

(Footnote continued on next page.)

We conclude that the trial court did not abuse its discretion in overruling defendant's objection of lack of foundation.

B. ATES evidence does not constitute hearsay

Defendant contends that some of the data bar information imprinted on the ATES photographs constitutes hearsay that does not come within either the business records or public records exception to the hearsay rule. She asserts that the trial court erred in overruling her objection raising that ground for exclusion of the evidence. We disagree.

As we have explained, the evidence before the trial court reflects that the digital photographs were taken automatically by the ATES. Admittedly, the ATES must be programmed to activate when certain criteria are met, but it is undisputed that at the time any images are captured by the digital image sensors in the ATES cameras, there is no Inglewood city employee, law enforcement officer or Redflex technician present watching the intersection and deciding to take the photographs and video.⁹ The ATES routinely monitors the intersection without

(Footnote continued from previous page.)

being offered in determining whether the necessary foundation for admission has been met.

⁹ Redflex has filed an amicus curiae brief with this court in which it describes its ATES technology in much more detail than provided to the trial court. We decline to consider the technical details of the ATES provided by Redflex in its brief. Not only is Redflex's description not a matter of "common knowledge" (§ 452, subd. (g)) or a proposition "not reasonably subject to dispute and . . . capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy" (*id.*, subd. (h)) so as to come within the parameters of permissible judicial notice, it would be inappropriate to take judicial notice of additional facts that the prosecution did not introduce at trial. (*People v. Davis* (2013) 57 Cal.4th 353, 360.)

human presence at the site. When the camera is activated and takes the video and the three digital photographs of the intersection, the computer also records various data regarding the captured incident, including the date, time, location, and length of time since the traffic signal light turned red. The information is imprinted on a data bar on the photographs. The photographs, video and data bar information are entirely computer produced.

Evidence Code section 1200 defines hearsay as “evidence of a *statement* that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated.” (§ 1200, subd. (a), italics added.) A statement, in turn, is defined as an “oral or written verbal expression or . . . nonverbal conduct *of a person* intended by him as a substitute for oral or written verbal expression.” (§ 225, italics added.) “ ‘Person’ includes a natural person, firm, association, organization, partnership, business trust, corporation, limited liability company, or public entity.” (§ 175.)

The ATES-generated photographs and video introduced here as substantive evidence of defendant’s infraction are not statements of a person as defined by the Evidence Code. (§§ 175, 225.) Therefore, they do not constitute hearsay as statutorily defined. (§ 1200, subd. (a).) Because the computer controlling the ATES digital camera automatically generates and imprints data information on the photographic image, there is similarly no statement being made by a person regarding the data information so recorded. Simply put, “[t]he Evidence Code does not contemplate that a machine can make a statement.” (*Hawkins, supra*, 98 Cal.App.4th at p. 1449; accord, *People v. Lopez* (2012) 55 Cal.4th 569, 583, agreeing with *United States v. Moon* (7th Cir. 2008) 512 F.3d 359, 362 [“ ‘the instruments’ readouts are not “statements” ’ ”] & *U.S. v. Washington* (4th Cir. 2007) 498 F.3d 225, 231 [“ ‘the raw data generated by the machines do not constitute “statements,” and the machines are not “declarants” ’ ”]; *U.S. v.*

Hamilton (10th Cir. 2005) 413 F.3d 1138, 1142-1143 [computer-generated header information on digital images does not constitute hearsay]; see Wolfson, “*Electronic fingerprints*”: *Doing Away with the Conception of Computer-Generated Records as Hearsay* (2005) 104 Mich. L.Rev. 151, 159-160.)

Our conclusion that the ATES evidence does not constitute hearsay is confirmed by recent legislative action intended to clarify the non-hearsay status of ATES evidence. (Assem. Com. on Judiciary, Analysis of Sen. Bill No. 1303 (2011-2012 Reg. Sess.), *supra*, p. 14.) As amended in 2012, Vehicle Code section 21455.5, subdivision (e), now specifically provides that “[t]he printed representation of computer-generated information, video, or photographic images stored by an automated traffic enforcement system does *not* constitute an out-of-court hearsay statement by a declarant under Division 10 (commencing with Section 1200) of the Evidence Code.” (Italics added.)¹⁰

Nevertheless, defendant argues that the ATES evidence is “unquestionably testimonial” and as a result, she contends, its admission violated her federal constitutional right to confrontation. As defendant later appears to acknowledge, *People v. Lopez*, *supra*, 55 Cal.4th at page 583, undermines both her hearsay and confrontation clause arguments. Consistent with *Lopez*, we conclude that our determination that the ATES evidence is not hearsay necessarily requires the rejection of defendant’s confrontation claims. (*Ibid.* [“Because, unlike a person, a machine cannot be cross-examined, here the prosecution’s introduction into evidence of the machine-generated printouts . . . did not implicate the Sixth Amendment’s right to confrontation.”].)

¹⁰ Again, because we find the statute to be declarative of existing law, no question of retroactive application is presented. (*McClung v. Employment Development Dept.*, *supra*, 34 Cal.4th at pp. 471-472.)

C. There is no reason to adopt a heightened requirement for red light camera traffic cases

Defendant contends that the dynamics of the traffic court system — which she contends routinely rushes defendants through trial of their cases before traffic commissioners who generally discount a defendant’s individual recollection of the events and accept the prosecution’s evidence as “gospel” — provides a basis for imposing and enforcing strict evidentiary requirements for obtaining red light camera convictions. Defendant asks that, in order to restore the public’s trust in the integrity of the traffic court system, we exercise our inherent powers to “regulate criminal procedure” by requiring “proper” testimony regarding “questionable” ATES photos and data prepared by Redflex before the photos and data may be admitted into evidence. Any other rule would, according to defendant, allow a relaxed standard for red light camera infractions.

Although defendant claims to be advocating an evidentiary standard commensurate with the standard applicable in other criminal contexts, she is in essence asking that we adopt a special rule for red light camera cases based on her suspicions regarding the operation of ATES by local jurisdictions contracting with Redflex. As we have earlier noted, the Penal Code provides that “[e]xcept as otherwise provided by law, all provisions of law relating to misdemeanors shall apply to infractions” (Pen. Code, § 19.7), but we find no legal ground for adopting *heightened* evidentiary requirements for infractions, specifically one type of alleged infraction — traffic violations in red light camera cases. Nor does the relative speed and informality of traffic court support imposing unique requirements for the admission of ATES evidence. Years ago we recognized that “it is in the interests of the defendant, law enforcement, the courts, and the public to provide simplified and expeditious procedures for the adjudication of less serious traffic offenses.” (*People v. Carlucci* (1979) 23 Cal.3d 249, 257.)

We decline to adopt special rules for the ATES digital evidence offered in trials of red light traffic camera cases.

CONCLUSION

The judgment of the Court of Appeal is affirmed.

CANTIL-SAKAUYE, C. J.

WE CONCUR:

BAXTER, J.
WERDEGAR, J.
CHIN, J.
CORRIGAN, J.
LIU, J.
KENNARD, J.*

* Retired Associate Justice of the Supreme Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

See next page for addresses and telephone numbers for counsel who argued in Supreme Court.

Name of Opinion People v. Goldsmith

Unpublished Opinion
Original Appeal
Original Proceeding
Review Granted XXX 203 Cal.App.4th 1515
Rehearing Granted

Opinion No. S201443
Date Filed: June 5, 2014

Court: Superior
County: Los Angeles
Judge: John Robert Johnson, Commissioner

Counsel:

Wilson, Elser, Moskowitz, Edelman & Dicker, Robert Cooper; Law Offices of John J. Jackman and John J. Jackman for Defendant and Appellant.

Kin Wah Kung as Amicus Curiae on behalf of Defendant and Appellant.

Law Offices of Joseph W. Singleton and Joseph William Singleton for Mishel Rabiean as Amicus Curiae on behalf of Defendant and Appellant.

The Law Office of Richard Allen Baylis, R.A. Baylis & Associates, R. Allen Baylis; The Ticket Dump and Patrick T. Santos as Amici Curiae on behalf of Defendant and Appellant.

Wilson, Elser, Moskowitz, Edelman & Dicker and Robert Cooper for David Martin as Amicus Curiae on behalf of Defendant and Appellant.

Cal Saunders, City Attorney; Best Best & Krieger, Dean R. Derleth, John D. Higginbotham and Kira L. Klatchko for Plaintiff and Respondent.

Joseph Straka, Interim City Attorney (Santa Ana), José Sandoval, Chief Assistant City Attorney, and Melissa Crosthwaite, Deputy City Attorney, for City of Santa Ana as Amicus Curiae on behalf of Plaintiff and Respondent.

Dapeer, Rosenblit & Litvak, William Litvak and Caroline K. Castillo for City of West Hollywood, City of Beverly Hills and City of Culver City as Amici Curiae on behalf of Plaintiff and Respondent.

Sheppard, Mullin, Richter & Hampton, Gregory P. Barbee, Michael D. Stewart, John M. Hynes, Jessica A. Johnson; Woodruff, Spradlin & Smart and Jason McEwen for Redflex Traffic Systems, Inc., and City of Garden Grove as Amici Curiae on behalf of Plaintiff and Respondent.

Richards, Watson & Gershon, T. Peter Pierce and Andrew J. Brady for League of California Cities as Amicus Curiae on behalf of Plaintiff and Respondent.

Counsel who argued in Supreme Court (not intended for publication with opinion):

Robert Cooper
Wilson, Elser, Moskowitz, Edelman & Dicker
555 South Flower Street, 29th Floor
Los Angeles, CA 90071
(213) 443-5100

Kira L. Klatchko
Best Best & Krieger
74-760 Highway 111, Suite 200
Indian Wells, CA 92210
(760) 568-2611

10/14/20 Public Safety on Traffic Enforcement

SUMMARY of the Oct 14 2020 10:00 AM Public Safety Committee Committee Meeting 1

EDITED TRANSCRIPT of the Oct 14 2020 1000 AM Public Safety Committee Committee Meeting 16

SUMMARY of the Oct 14 2020 10:00 AM Public Safety Committee Committee Meeting

Councillor Zondervan called the public safety committee to order and read the call of the meeting to discuss traffic enforcement and policy order 2020 number 178.

Councillor Zondervan stated that the committee was also joined by Mayor Siddiqui as well as the city manager, the police commissioner, and Mr. Barr, from traffic and transportation and an invited guest from the ACLU Mr. Rahsaan Hall and that he was expecting Professor Tracy Maclin from Boston University Law school to join later as well. He stated that the meeting was to talk about traffic enforcement and to hear from the ACLU about racial disparity in terms of traffic stops, and from Professor Maclin on fourth amendment issues with traffic stops as currently practiced. He stated that the meeting was not about having unarmed city staff members pulling over drivers in traffic and that the policy order that prompted this conversation was intended to start the conversation around alternatives to current traffic enforcement practices, so that we can reduce interactions between police and drivers in traffic. He stated that it was a two fold problem, racial disparities and the Fourth Amendment issues being the first and traffic enforcement practices not really protecting our safety on the roads being the second, with many incidents of traffic violations going unreported, and not prevented on a regular basis. He stated that a future hearing would be scheduled to discuss ways that traffic enforcement can help make our roads safer, perhaps considering automated enforcement and taking advantage of the fact that we do have a surveillance ordinance that can help us protect against some of the privacy issues that that presents as well.

City Manager Louis DePasqualle stated that he was happy to hear the meeting was not about unarmed staff ticketing (drivers) because he had a real concern about that. He stated that the city was looking hard at how to reduce its footprint when it comes to (providing police) services.

Police Commissioner Branville Bard stated that the chair had drastically changed the direction of the meeting and that the discussion he had planned on having was to point out that Mass. General Law doesn't allow (non-police to do traffic enforcement).

Joe Barr, Head of Traffic & Transportation stated that automated enforcement as part of our vision zero efforts had been discussed a lot, and that he saw it as a part of the solution, both to the problem of racial disparities in enforcement but also just generally to make our streets safer. He stated that he has

statistics and other information to share on how we can design automated enforcement to work well and be fairly administered.

Councillor Zondervan stated that he did not change the focus of the meeting, and that the policy order asks for alternatives to current traffic enforcement, which could include some level of automation, and it could also include some type of traffic regulation that are done by staff members, but that we are not contemplating unarmed staff members pulling drivers over in traffic. He stated that there are other interactions that could occur if someone is blocking a bicycle lane as an example, and there are infractions that could be observed by non-police that could be, if a citation is warranted, that citation could be issued by the police, but there are other ways to notify the driver if there is a problem, without (issuing) citations as well. He introduced Mr. Rahsaan Hall who is the director of the ACLU's racial justice program, a Reverend at St. Paul AME church in Cambridge, and the proud parent of a 2017 CRLS graduate.

Mr Hall stated that current policing structures are an impediment to public safety when racial disparities and racism are allowed to exist within the culture of policing. He stated that people who don't have contraband in their vehicles are subjected to racially motivated and racially biased stops and that the standards under law to challenge racially biased stops were too high, in part because of the substandard data and information that is available to allow an individual to challenge racially motivated pretextual stops. He stated that Cambridge is in a position to collect and analyze and report out robust data on its traffic stops. He stated that nationally, there are disparities in who gets stopped and that a recent 2020 report showed that black drivers comprised a smaller share of drivers stopped at night compared to during the day because the police can't see the drivers' race at night. He stated that Black and Latinx drivers are pulled over at twice the national average. He stated that Black and Latinx drivers are more likely to be subjected to prolonged stops and that Black drivers are more likely to have police threaten or use force against them. He stated that Black and Latinx drivers are more likely to have their vehicle searched than white drivers and that Black and Latinx drivers are more likely to be let go without the issuance of a citation. He stated that these disparities are true for searches of motor vehicles in Massachusetts. He stated that a 2017 Boston Globe story showed that 80% of vehicle searches during field interrogation observations were of Black drivers and that contraband is less likely to be recovered when the drivers are Black or Latinx. He stated that two thirds of the municipalities in Massachusetts were found to have disparities. He stated that there were significant racial disparities in the issuance of criminal motor vehicle citations in the state and that in some parts of Suffolk County, the disparities were 15 to one Black to White (drivers) for motor vehicle offenses, including in the Back Bay/Beacon Hill area. He stated that a 2020 Harvard study shows that there are significant disparities in who is charged with offenses and what types of sentences they receive and that the statistics are impacted by the over policing that happens in communities of color. He stated that for Cambridge stops, race data is not available and that from 2015 to 2018, 33% of those stops are for failure to stop or failure to yield which is a discretionary offense, so that there's no documentary proof that a motorist can use to show they're not being pulled over because of their race. He stated that not being able to identify race data leaves a huge gap in the analysis of what's happening in Cambridge in regards to traffic enforcement. He stated that the likelihood of black and Latinx motorists having longer stops, having stops that are more likely to turn hostile, having a stop that is more likely to result in their vehicle being searched, and the resulting embarrassment, harassment and disrespect that comes along with that and

humiliation for being stopped and for being pulled over for all of the people who have not violated the law that underscores the need and the urgency to make sure that this data is being collected that it is being published. He stated that ultimately, motor vehicle stops should be reduced as a means of law enforcement and public safety to stem the tide of racially biased policing.

In response to a question from Councillor McGovern, Commissioner Bard indicated that the Cambridge Police Department (CPD) wants to collect race data for traffic stops and is in the process of acquiring a new records management system that will allow CPD to analyze racial stop data, not just in vehicular stops, but also use of force, and pedestrian investigations, or other interrogations. He stated that most departments use something called partial population benchmarking, which means that, if for example, African Americans make up 19% of the population of a jurisdiction and are stopped at 17% or 20%, they'll say that no racial profiling exists. He stated that this analysis doesn't tell you if they stop African Americans and tend to hold them for 45 minutes, but they hold non minorities for seven minutes, on average, or that they stop African Americans for minor equipment violations, but only stop Caucasians or non minorities for serious moving violations, or that they search African American vehicles 25% of the time, and their non minority counterparts 1% of the time. He stated that agencies will use internal benchmarking, which means that they'll take an officer once a complaint has been made, and compare that officer versus similarly situated officers, and if there's no statistical difference, then no racial profiling exists, but that not everybody's going to catch somebody who's your most egregious offender. He stated that CPD already has the module built in the next record management system that will allow CPD to do a reason, result, duration analysis which looks at the three main components of a stop, the reason, the result and the duration, with subcategories in each of those. These would be quantified to allow for statistical comparisons to see if any difference exists across the police department, and between individual officers in how CPD treats individuals of different races. He stated that this will be a way to compare the amount of discretion an officer has in taking an action, and then weigh it versus a compelling governmental interest in that officer taking that same action. He gave an example of speeding, where the officer's discretion is the same, but there's a compelling governmental interest for an officer to stop someone going 30 miles an hour over the speed limit but not for an individual going one mile an hour over the speed limit. He stated this analysis would be protective of the public, and fair to the officers who go out and enforce the law.

In response to a question from Vice Mayor Mallon about next steps on the procedural dashboard Commissioner Bard stated that a free cash appropriation for the new records management system would come before the council in a couple of weeks. He stated that once the new system was implemented and began collecting data in the dashboard it would be available to the public with some interactivity for low level stuff like population benchmarking, but that the reasons, results, duration analysis would be real time and would allow CPD to look at the data and look at the individual officers and make any necessary interventions.

City Manager DePasquale stated that not this Monday coming, but the following Monday, the council would have that appropriation.

In response to a question from Vice Mayor Mallon, Commissioner Bard stated that the data would not be added to the annual Bridgestat report, because it would be continuously available.

In response to a question from Councillor Zondervan, Commissioner Bard stated that based on what the analysis showed, officers would receive training for minor infractions, and more severe actions for more egregious violations.

In response to a question from Councillor Zondervan about the impact on the driver, Reverend Hall stated that concern for drivers, particularly Black drivers comes straight from the headlines. The names that many of us are familiar with: Philando Castille who was pulled over during a pretextual stop. Walter Scott who was pulled over for a pretextual stop that led to him running from his car and being shot in the back. Samuel DuBose Who was killed in Cincinnati during a pretextual traffic stop. Sandra Bland, who was pulled over in Texas for a traffic violation. He stated that the data shows that black drivers in particular, but non-white drivers more generally, are more likely to have hostile interactions with police officers, and that there's a greater likelihood that police will use or threaten use of force and that these are primarily law abiding citizens who have not violated the law and don't deserve to be subject to pretextual stops, merely because of the color of their skin. He stated this was something that we should not tolerate and that we need to create more examples of how to do policing differently. He stated that there are close to 200 types of traffic infractions that can be committed and any time that law enforcement is able to engage and stop someone: tint, vehicle is too loud, failure to stop, failure to use a directional signal, busted tail light, failure to have an inspection sticker, unsafe lane change, and any number of things that we all do all the time. And that is weaponized by police suspecting someone of a crime, or someone looking out of place because of the color of their skin, to investigate via a traffic stop, and then find out if there's any contraband to recover, asking passengers in the vehicle to identify themselves, which they're not required to do, which heightens the tensions because people are beginning to understand and know their rights. And that leads to justification for law enforcement to give someone an exit order to get out of the vehicle. He stated that police can use an inventory search prior to towing a vehicle as a way to get into the vehicle to see if there's contraband and that these types of policing tactics are executed against people all of the time and when there's no contraband recovered, people are just let go or they're given a minimal citation for something that we do all the time and aren't necessarily subjected to enforcement actions for, so that level of discretion that the commissioner was talking about, is something that needs to be analyzed. He stated that the more data that there is for all the more number of stops, the better outcomes, better analysis we can get, and the greater impact on the way policing is curtailed and reformed.

Councillor Zondervan stated that he was pulled over very close to his home for an expired vehicle registration and that the officer was very polite but required him to renew his registration immediately or have the vehicle towed and he was not allowed to go home to take care of it. He stated that because of his privilege having a phone and a credit card he was able to register his car on the spot. But he observed an interaction with a black driver near his home, who was pulled over, and after a very long interaction, his vehicle was towed, and he was handed the license plates and the driver sat down on the curb and just hung his head with the two license plates in his hand. He stated that there's a deeper disparity here, where even when the traffic stop is handled properly, and nobody is rude or violent, there's still this burden on folks who don't necessarily have all the tools and equipment to take care of these situations, easily or on the spot, are then further burdened with financial and other penalties that result simply from them being in a economically disadvantaged situation. He stated that it was not good

enough to say: if there's a disparity we will address that; we really have to look at how do we reduce this impact, this burden on particularly low income and disadvantaged members of our community, who are disproportionately impacted? Not just in the frequency but just by the fact that they get pulled over or have this interaction that results in further burdens to them. He stated that this was the genesis of the policy order, to ask how we can reduce these interactions so that we reduce that burden, regardless of whether or not we have actual racial disparity in terms of frequency of stops in Cambridge.

In response to a question from Vice Mayor Mallon about what Cambridge can do, Reverend Hall stated that the police commissioner is interested in and committed to collecting data which can lead to some very interesting analysis. He stated that if it is a negligible percentage of all of the stops that recover contraband or dangerous criminals and weapons, those few isolated incidents do not justify the disruption and inconvenience, harassment and embarrassment to people who are stopped for no reason, or stopped on traffic enforcement that has a higher level of discretion, and there's evidence to suggest that either location or race or ethnic appearance had something to do with it based on an officer's history. He stated this analysis could also provide justification and support to proposed legislative changes to allow for non-police enforcement.

In response to a question from Vice Mayor Mallon about non-police enforcement of traffic safety like bike lane obstruction in other communities, Mr. Hall stated he was not aware of it but that we have to be mindful of the disparities in the types of how and where the alternatives are rolled out. Certainly there are benefits to less enforcement in some instances. But if that benefit is only bestowed on certain segments of the community, it's almost just as much of an injustice as having the enforcement.

In response to a question from Councillor Sobrino-Wheeler about privacy concerns related to automated enforcement, Mr. Hall stated that the ACLU has been in conversations in the past legislative session with some of the advocates who had been pushing for automated traffic enforcement as well as the lead sponsor and that there were some concerns that the ACLU raised around surveillance. He stated that when we automate surveillance technologies, it gives an unfair advantage to law enforcement and creates greater intrusion into our daily lives, and that there are some trade offs but that the ACLU has not at this point taken an official position on the legislation that has been proposed.

In response to a question by Councillor Zondervan about having non-police staff observing traffic infractions but not issuing the citations Mr. Hall stated that there is a way for making those referrals (to the police) and that law enforcement is authorized to enforce the laws but not mandated to enforce the laws all of the time. He stated that it is a conversation that needs to be had because there is an argument to be made that there is a benefit for being able to address uninsured drivers at the time it is become aware that they are uninsured. Because if they go out and get into an accident, who's going to be held accountable for it. He stated that with technology, for example, a scan of a license plate could be sent to the (police) department and immediately a citation could be issued, or an email or text message notification could be sent, and that plenty of platforms exist that can be explored.

In response to a question by Councillor McGovern about disparities in non-police employees asking people to move when obstructing a bike lane or double parking, Mr. Hall stated that if (racial) disparities resulting in violent, hostile police interactions are reduced by using non-police to enforce certain traffic

laws that would be an important improvement, but that in that case (racial) disparities would still need to be measured in order to manage and reduce those as well if they arose.

In response to a question by Councillor McGovern about how civilian traffic enforcement would work, Councillor Zondervan stated that we were not talking about non-police pulling over drivers in traffic because it's been established that only police officers have that authority, so that this scenario is out of bounds for this conversation. He stated that we want to reduce the number of scenarios where police are pulling people over. For example, do we really have to pull someone over if their taillight is broken, or can we send them a letter? Or if someone is double parked in the bike lane, do we really need a police officer to go and deal with that situation, or could we gently ask the person to move and if they don't move, then maybe we have to get the police involved; if someone's registration has expired, do we really need to pull them over in traffic and risk a stressful, potentially violent interaction or can we send them a letter?

Mr Barr stated in response to Councillor McGovern's comments about the city of Boston, that (the Cambridge traffic department) also has parking control supervisors do a limited amount of enforcement to clear bike lanes or bus stops, or other or no stopping zones, where those are considered safety violations. He stated that his staff do have vehicles, and they will ask people to move and that if they don't move, and it is in fact a parking violation, they would occasionally be issued a parking ticket, but that the primary goal is to get the person to move, but that this type of enforcement is limited, both because of staff capacity, and a limited number of officers who are in vehicles. He stated that his staff do have negative interactions with the public and don't have the same resources immediately on hand as a police officer if something does go wrong, and would have to call in the police at that point. He stated that he did not want to expose his staff to anything that could unexpectedly turn negative and that, unlike the police, they don't interact with motor vehicle operators or the public in general, on a regular basis, and so don't spend as much time focused on making sure that they are doing things in a way that's equitable. He stated that without the right training, he wouldn't want (enforcement) to become a significant part of their efforts, because otherwise, we could, again, just be recreating the types of problems that we're seeking to solve. He stated that there are options there (to increase traffic enforcement by non-police staff), but that we should embark on that very deliberately and carefully.

Councillor Zondervan stated that we would explore these (non-police traffic enforcement) alternatives in a future meeting, as well as improving traffic safety through road design in order to reduce the amount of enforcement that is needed.

Vice Mayor Mallon stated that she was disappointed in the call of the meeting, and the disrespect that has been shown to our staff in presenting and preparing for this meeting and that she hoped that for future conversations on this topic and other public safety topics that the chair shows a different level of respect and collaboration with our city staff.

Councillor Zondervan stated that he appreciated the feedback and that no disrespect was intended or shown and that he did reach out to Commissioner Bard about today's meeting and that he had not changed the topic of the conversation but had tried to clarify that we are not debating whether or not unarmed staff members should be pulling people over in traffic, and to the extent that the policy order

was not clear about that, he took ownership for not stating that more clearly, but that it would not be a productive direction for this conversation to go.

Commissioner Bard stated that it was a bit disingenuous for the chair to say that he had reached out and that the chair had sent an email asking whether or not he (the Commissioner) intended to have a presentation but not that the chair was planning to change the purpose and the topic of the meeting, and that he was disappointed by the way that the chair drastically changed the discussion for today. He stated that CPD are prepared to talk in depth about the topic that the chair pivoted to, but that it was reprehensible (to change the topic) and counterintuitive to productivity and that these public safety committee meetings sometimes are not productive for that reason and that he sees them as less than productive.

Councillor Zondervan stated that he appreciated the feedback, that he completely disagreed, but did not think it productive to continue this back and forth in the committee meeting, and that he would be happy to speak with the Commissioner about how to do this better going forward, but would like to focus this meeting on the topic that we are discussing.

Councillor McGovern stated that it's important when we file policy orders to say what it is we want, because that's what's in the order. So if we want a general discussion about traffic enforcement, then that's what the order should say.

In response to a question by Councillor McGovern about legal liability to the city if we don't pull somebody over City Solicitor Nancy Glowa stated that there could be some potential liability for the city, and that there have been negligence cases brought against municipalities or the state where failure to act on the part of the city may have been viewed as contributing to the cause of an accident. She stated that the statute about failure to drive a car with appropriate registration is something that, at least in practice, if not in the wording of the statute, is required to be remedied immediately, and that the officer could require the vehicle to be towed. She stated that it was a courteous response to allow the driver to contact the registry at that moment with their cell phone and a credit card and that she understood and appreciated Councillor Zondervan's point about the potential inequity involved with the fact that some people may have that opportunity, and some not. She stated that although an officer can issue a ticket if information is brought to them that they can reasonably rely upon, there is some question in the law about whether on these facts that information would be considered reliable even if it's brought to the officers attention. So there's some lack of clarity in this area of the law.

Commissioner Bard stated that if an officer observes somebody swerving across solid lines or an OUI (drunk driving) case, and the officer then allows the individual to proceed further, the city and that officer may be liable and negligent. There's a 2013 case, Commonwealth vs. Sweet. And it says that an officer who has no authority to issue a civil motor vehicle violation citation has no authority to stop the vehicle for committing such a violation. And then also, that there is a question as to whether the continued reliance on third party information would be reliable. So there are a lot of issues at hand here.

Councillor Zondervan introduced Dr. Tracy Maclin, a professor of constitutional law at Boston University. Professor Maclin has written extensively on the Fourth Amendment implications of current

traffic policing practices, as well as the disparate impacts of these practices on minority drivers in the US.

In response to a question from Councillor Zondervan about the historical background on the police having the legal right to search a person's vehicle without a warrant, Dr. Maclin replied that in 1925 in a case called *Carroll versus United States*, the Supreme Court ruled to allow police to search vehicles, when there is probable cause, that there might be evidence of a crime or contraband inside the vehicle, and that this allows a search of a vehicle without a warrant and that the law has continued to be applied in that way. He stated that he has argued that *Carroll* has been expanded, but that not every vehicle stop allows a search of a car. He stated that an officer can stop a vehicle, for a traffic violation, or some other offense, it could be a passenger not wearing a seatbelt, as long as the officer has probable cause or reasonable suspicion of a traffic offense or criminal activity. But the officer can't necessarily search that vehicle; they would have to have a separate probable cause that the vehicle contains contraband or evidence of a crime, or there's a reasonable suspicion that the vehicle has a weapon that might harm an officer or others nearby.

In response to a question from Councillor Zondervan as to what would constitute reasonable cause or reasonable suspicion, Dr. Maclin stated that the Supreme Court has refused to define precisely what probable cause is; all that they've been willing to say, and it goes back to the *Illinois versus Gates*, 1983 Supreme Court decision that probable cause means a substantial chance, a fair probability, that evidence of a crime or contraband will be found inside of a car. Probable cause the Supreme Court emphasized is not a preponderance of the evidence standard. Under the preponderance standard, courts typically say that requires 51%, and probable cause is less than that. Probable cause, according to the Supreme Court is not even a *prima facie* test. It's less than that. And that's all the court's been willing to say. In fact, there's a case in which again, Chief Justice Rehnquist said, we cannot precisely define what probable cause means. Or for that matter what reasonable suspicion means; there are no rigid rules, there are no bright line rules, there's no litmus test. He stated that his law students are just as frustrated as some of the members of the council might be with respect to a lack of a clear standard, but there's no clear standard for either probable cause or reasonable suspicion, but it's important to emphasize probable cause is less than 51%. And reasonable suspicion, which allows you to search a vehicle when you have reasonable suspicion to believe that there might be a weapon or some other item that would harm a police officer is less than probable cause. But as far as percentages, the Supreme Court has refused to give any percentage as to what either of those two terms mean. Police judgment and common sense are built into that probable cause standard; police are allowed to make decisions based on their experience, based on their training. But it can't be a hunch, and obviously, it cannot be arbitrary.

In response to a question from Councillor Zondervan about needing a warrant to inspect a home vs. a car, Dr. Maclin stated that the warrant requirement does not apply to automobiles. He stated that "plain view" of contraband or evidence of a crime, or a weapon will not allow the search of an individual's home, unless there's some exigency or other exception to the warrant. Plain view with respect to a vehicle will allow the police to search the car, because the warrant requirement does not apply to cars. He stated that this conflict was created long ago, by the *Carroll* case in 1925. Originally understood, *Carroll* was about two things, moving vehicles and the fact that if we don't stop the car and search it at

the time, we may never have a chance, because by the time we get a warrant, the car may have left the jurisdiction. The other concern with respect to peril was, again, that you had to have probable cause. Essentially, what the court has done today is eliminate the need for an exigency. All you need now to search a car is probable cause that there's evidence of a crime or contraband. The reasonable suspicion standard is a lower standard, but that's available only when an officer believes that there is a weapon or some other item inside the car that might be a harm to the officer or others. There's a case called Michigan versus Long, for example, in a 1983 Supreme Court decision where Long was driving at an excessive speed, and ran into a ditch. He got out of his car, the police asked him to go back and get his license and registration. And as he was approaching the car, the officer saw a knife inside the car. So before they let him get back in the car, they searched the car to see if there were any other weapons that might be used to harm the officer. And during the course of a lawful search for weapons, they found contraband, they found narcotics. The Supreme Court said that search was fine. And when Long said that he possessed the knife lawfully, that didn't matter. The knife was a potential threat to the officers. And because they had reasonable suspicion that the knife was in the car that allowed them to search the rest of the vehicle for any other weapons. And one of the little pieces, the court would tell you that the expectations of privacy that a person has in his or her home, they don't have in their car. It's not that they have no privacy interest in the car. There is a lesser expectation of privacy in the car. So that also, in part explains why the warrant requirement does not apply.

Dr. Maclin stated that as a matter of the fourth amendment, the Supreme Court is not going to require a warrant to search your car. But as a matter of state law, as a matter of local law and how folks in Cambridge want to do things, states and localities are always free to impose higher standards on their police officers. As a matter of federalism, states and localities are always free to impose higher standards, the Supreme Court sets the constitutional floor. States and localities can require warrants before car searches if they want.

Councillor Zondervan stated that the other potential remedy that we've been discussing today is reducing those interactions (between police and drivers), which can reduce the potential for these types of searches to even occur.

Dr. Maclin stated that the Supreme Court is well aware of (racial) profiling and the disproportionate stops of racial and ethnic minorities. In a case called Wren versus the United States, 1996, the Supreme Court said that so long as a police officer has probable cause that a traffic offense has been committed, they may stop that vehicle. What happened in Wren, two undercover police officers saw a vehicle commit a couple of traffic offenses. And under the District of Columbia police regulations, those undercover officers were not supposed to engage in routine traffic stops, or they were only supposed to engage in routine traffic stops if there was an emergency, which suggests it is not routine. So they were violating their own departmental regulations. The defense said it can't be reasonable if they're violating their own departmental regulations and the Supreme Court said we're not going to get into a discussion about whether if police violate their own regulations or their own state law that's going to implicate the Fourth Amendment. And one of the reasons is because you can have various departmental regulations across the nation that differ from one another. And the Fourth Amendment applies across the nation. So the fourth amendment can't turn on what a department says its officers can or cannot do. Wren and his companion were Black. And that was one of the reasons why they were stopped. The Supreme

Court said in a unanimous opinion, that the subjective intent of a police officer is irrelevant for fourth amendment purposes. If there is evidence of police stopping individuals based on their race or ethnicity, that's not constitutionally permissible, but the constitutional vehicle to attack that is not the Fourth Amendment, but the Equal Protection Clause of the 14th amendment. Now, there's a problem with that. And Scalia knew it when he wrote it, and the Supreme Court is well aware of it. In order to bring a successful 14th amendment equal protection case, you have to show that the officer had a specific intent to target the motorists based on their race. That is a very difficult standard to meet. And statistics alone will not satisfy that; you have to show that the officer was out to get a Black or Hispanic or Asian individual or motorist. So effectively, Wren gave the constitutional imprimatur for racial profiling, that it is very, very difficult to mount a successful Equal Protection Clause case. In other words, Wren says it doesn't matter under the Fourth Amendment, whether the cops had bad faith or subjectively intended to target a particular individual based on their race or gender or ethnicity. All that matters is did they have probable cause for the traffic stop? Now, that all being said, the state is free to again impose higher standards, or the city's free (to do that).

Meeting adjourned

[TOD](#)

EDITED TRANSCRIPT of the Oct 14 2020 1000 AM Public Safety Committee Committee Meeting

NOTE: Manually corrected by QZ but may still contain errors/inaccuracies/missing utterances and has been slightly edited for clarity to remove non-consequential utterances like e.g. "you know, um," etc.

Mon, 11/30 4:07PM • 1:59:32

SUMMARY KEYWORDS

vehicle, enforcement, traffic, police, commissioner, officer, cambridge, drivers, disparities, stop, probable cause, conversation, policing, pulled, fourth amendment, data, issue, city, question, meeting

SPEAKERS

Vice Mayor Alanna Mallon; Branville Bard, Police Commissioner; Anthony Wilson, Clerk; Councillor Quinton Zondervan, Chair; Councillor Marc McGovern; Councillor Jivan Sobrino-Wheeler; Louis DePasqualle, City Manager; Joe Barr, Head of Traffic & Transportation; Rahsaan Hall, ACLU; Nancy Glowa, City Solicitor; Tracy Maclin, BU Law Professor;

Anthony Wilson, Clerk 03:44

Good morning, Councillor Zondervan, you have a quorum and the time of the meeting has arrived.

Councillor Quinton Zondervan, Chair 03:53

Thank you, Mr. Clerk. I hereby call the public safety committee to order; the call of the meeting is to discuss traffic enforcement and policy order 2020 number 178. Governor's executive order, issued on March 12 2020, authorized the use of remote participation and meetings in the city's public bodies, in response to the threat posed to the public by the COVID-19 virus, and issued guidelines for the city's use of remote participation. In addition, having members of the council participate remotely. We have also set up zoom Teleconference for public comment. Please be aware that zoom is primarily being used for public comment. In order to watch the meeting, please tune in to channel 22 or visit the Open Meeting portal on the city's website. If you'd like to provide public comment, please visit the city council section of the city's webpage. instructions for how to sign up to speak are posted there. Once you've completed the signup procedure, you will receive a link to the zoom meeting. We will not allow any additional public Comments sign up after 10:30 Could you please take a role of the members?

Anthony Wilson, Clerk 05:07

Councillor Carlone. Absent

vice mayor Mallon present

present Councillor McGovern, present

present and Vice Mayor Mallon is the meaning clearly audible to you. Yes, it is. Thank you,

Councillor McGovern is the meeting clearly audible to you. It is

Councillor Sobrino-Wheeler, present and audible

Councillor, Zondervan, present and audible.

There are four members present.

Councillor Quinton Zondervan, Chair 05:45

Thank you. And with that all of today's votes will be by roll call. So, we will first hear from the public. Mr. Clerk, do we have anyone signed up for public comment?

Anthony Wilson, Clerk 06:02

One person signed up for public comment. The person's name is Queen, Cheyenne, Wade.

And I'm being told that she's not in the zoom.

Councillor Quinton Zondervan, Chair 06:17

Okay, we'll keep public comment open. And go back to that, if anyone joins us. I want to welcome everyone. Thank you for joining us. In addition to the committee, we're also joined by Mayor Siddiqui. from the council as well as city manager, the police commissioner, and Mr. Barr, from traffic and transportation. We also have a guest from the ACLU Mr. Rahsaan Hall, who I will introduce later in more detail. And I'm expecting to be joined by Professor Tracy Maclin from Boston University Law as well. So today's meeting, we're going to talk about traffic enforcement. And particularly, we'll hear from the ACLU about racial disparity in terms of traffic stops, and from Professor Maclin on fourth amendment issues with traffic stops as currently practiced. And I want to make it clear from the outset that what we're not talking about is having unarmed city staff members pulling over drivers in traffic. The policy order that prompted this conversation was intended to start the conversation around alternatives to current traffic enforcement practices, so that we can reduce interactions between police and drivers in traffic. And it's really a two fold problem. And today, we'll focus mostly on racial disparities

and the Fourth Amendment issues. And the other half of the problem is that our current traffic enforcement isn't really working very well, in terms of protecting our safety on the roads. We see many incidents of traffic violations that go unreported, or that are not prevented on a regular basis. And at a future hearing, we'll delve more into ways that we can do traffic enforcement that can help make our roads safer. So perhaps considering automated enforcement and taking advantage of the fact that we do have a surveillance ordinance, thanks to Councillor McGovern's work that can help us protect against some of the privacy issues that that presents as well. So today, we're really focused on racial disparity in traffic stops, and fourth amendment issues, which Professor Maclin will talk to us about as well. So Police Commissioner, I didn't know if you wanted to present anything or state anything before we get started

Branville Bard, Police Commissioner 10:11

The manager wanted to start off,

Louis DePasqualle, City Manager 10:14

I guess I could say a few words and then Joe Barr will say a few words. But I'm really happy to hear the start of the meeting is really not about the unarmed trained ticketing because we had a real concern about that; that's something we're uncomfortable with, however we clearly understand that we need to reform and I think on the October 5th letter we sent to the council, this is a city that really is looking hard at how do we reduce our footprint when it comes to services that we're doing. And I think that letter addressed a lot of those concerns. And we're going to have a committee set up in the very near future, hopefully next week to start this really moving. So we understand the issues. That one piece was our biggest concern. And it sounds like for now, that's not today's discussion. So from my point of view, I think that's excellent. We were going to have a little talk about the automated enforcement piece because we do think that is a piece that we could look into to help move in the direction that doesn't necessarily talk about untrained but gives us some relief, so based on the opening remarks, I don't know if Commissioner or Joe want to change their presentation to be honest so I'll leave that up to them but the discussion and the direction that we are going makes sense. So thank you. Commissioner.

Branville Bard, Police Commissioner 11:34

So I think the Councillor's opening drastically changes the discussion that we came here today to have; we came here to discuss a policy order that says one thing about creating this new group of unarmed, trained civilians and transferring traffic enforcement responsibilities to them, but then he says no, we are not here to discuss that one thing, we're here to discuss something else. That drastically changes the discussion, and interferes with our ability to be prepared and have a full discussion. I'll accept without protest that minorities are disparately impacted as a result of car stops; that's not even a point of contention. The point of the policy order was to remove traffic enforcement away from the police department and hand it over to another group. And so the discussion that I planned on having was to point out that Mass. General Law doesn't allow for that, but now that the Councillor says we're not here to discuss that, I don't even know how we can have a productive discussion when he changes what we're going to discuss in the opening minutes of the meeting.

Joe Barr, Head of Traffic & Transportation 12:55

So, I'll take heed of the fact that the chair said he wants to talk about automated enforcement at a different hearing which is obviously fine, I guess the only two things I'll say is 1) we've talked a lot about automated enforcement as part of our vision zero efforts and we certainly view that as a part of the solution, both to the problem of racial disparities in enforcement but also just generally, like the chair said, to make our streets safer and we have statistics and other information we can share (either today or at another meeting) on how we can design this to work well and be fairly administered and the other important point, being cognizant of the topic of racial disparities, it's really important to point out that just having automated enforcement doesn't necessarily solve for those problems, because you can deploy an automated enforcement system in a way that recreates many of the same problems that exist, if it's not done well, if it's not properly done with proper oversight, and proper transparency, so people can understand what's going on. And, particularly when you construct these in a way where it's not intended to be a money making venture, but it really is focused on safety, and fairness or equity, I think then that's where you can actually start to solve for both sets of problems simultaneously. So I think it's really important to make it clear to anyone that enforcement is a great tool, but it doesn't without the right thought process without the right oversight. I'm sure most of the folks listening know this, without the right oversight, it can just become another version of what we are trying not to do. And so I think it's important, both in the context of the surveillance ordinance, with privacy, and then whatever other structure needs to be in place to make sure that we don't recreate some of the same problems we already have, that there's oversight in it. transparency. So happy to talk more about that topic today or subsequent date, excited and happy to hear that that's something that folks are interested in and talking more about.

Councillor Quinton Zondervan, Chair 15:18

Thank you. And just to clarify, I did not change the focus of the policy order; the policy order asks for alternatives to current traffic enforcement, and that could include some level of automation, it could also include some type of traffic regulation that are done by staff members, but what I wanted to clarify at the beginning is that we are not contemplating unarmed staff members pulling drivers over in traffic; however there are other interactions that could occur if someone is blocking a bicycle lane as an example, and there are infractions that could be observed by non-police that could be, if a citation is warranted, that citation could be issued by the police, but there are other ways to notify the driver if there is a problem, without (issuing) citations as well. So, but again, we'll discuss those alternatives at another meeting because I do want to make sure that we are prepared for that discussion; today I've invited Mr. Rahsaan Hall from the ACLU; he's the director of their racial justice program. And he also is a Reverend at St. Paul AME church in Cambridge, and the proud parent of a 2017 CRLS graduate. So welcome, Mr. Hall. And we would love to hear from you.

Rahsaan Hall, ACLU 17:09

Thank you, Councillor Zondervan. And good morning to all the other council members. I appreciate this opportunity. And good morning Commissioner Bard, good to see you as always. I want to talk a little bit about how disparities in (traffic) stops really require a need to look at different modes of policing. And I'm certainly pleased that there is an openness to this conversation. And one of the reasons that I have so much respect for Commissioner Bard is because he understands how racially disparate policing happens. And that current policing structures are an impediment to public safety when racial disparities and racism are allowed to exist within the culture of policing. So even though there's maybe a little

awkwardness in the beginning of this conversation, I do feel that it can be a healthy and fruitful one that informs the ongoing conversations about where the city is going. And so in thinking about racially disparate policing practices, specifically as it relates to traffic enforcement, I am reminded of the late justice Ralph Gants, who not only was a giant of a legal thinker, but also a tremendous advocate for racial and social justice, but also a friend and in one of his last decisions about racial profiling and Commonwealth vs. Long he said that the prohibition against racial profiling must be given teeth and in that particular case of a motor vehicle stop in the city of Boston where an individual who was driving a Mercedes SUV was observed by police who decided to run the plate and found that the black man was driving and found that the vehicle was registered to a woman and that it didn't have an inspection sticker and that that then became the basis for stopping that vehicle. Then making inquiries of the driver and then taking him into custody and recovering a firearm out of the car. And immediately folks will say, well, there was a gun in the car. So that's a good thing that that stop happened because that gets a gun off the street. But what gets missed in these conversations is the people who don't have contraband in their vehicles and are subjected to racially motivated and racially biased stops. And the significance of this case is that it overturned or created a new standard for evaluating claims to suppress evidence based on violations of the equal protection laws. And so essentially, what Justice Gants was saying is that the standards that had previously existed under law to challenge racially biased stops, were too high, in part because of the substandard data and information that is available to allow an individual to challenge racially motivated pretextual stops and so on. I'll save you all my recitation of fourth amendment law in light of the fact that there is a BU law professor that will be here presenting to you, but the court said that providing statistical evidence sufficient to raise a reasonable inference that a motor vehicle stop was racially motivated, given the limitations of available police data, has proved infeasible for defendants and I think what's important for the City of Cambridge right now, absent what is available at the state level for data collection, Cambridge is in a position to collect and analyze and report out robust data on its traffic stops. And here's why. We understand that nationally, there are disparities and who gets stopped; a recent 2020 report show that over 95 million stops nationwide found that black drivers were on average stopped more than white drivers and that black drivers comprised a smaller share of drivers stopped at night and so that that veil of darkness test what that reveals is that when the police can't see the drivers race, then the number of stops of black people go down significantly. But during the day, when race is discernible, there are larger disparities and black drivers being stopped. In a 2014 book, entitled "pulled over" by Charles Epps and others it indicates that 12% of the nation's drivers are pulled over. But for black and Latinx drivers, that percentage doubles up to 24%. A 2017 open policing project at Stanford conducted nationwide analysis of traffic stops and searches and found that between 2011 and 2015, black drivers were stopped at nearly one and a half times the rate of white drivers. The other disparities that result from this is that black and Latinx drivers are more likely to be subjected to prolonged stops. Black and Latinx drivers specifically black drivers are more likely to have police threaten or use force against them. There's disparities in whose vehicle gets searched; the 2016 department of justice report indicated that black and Latinx drivers are more likely to have their vehicle searched than white drivers. And that same report showed that black and Latinx drivers are more likely to be given trivial reasons or no reasons for the stop and more likely to be let go without the issuance of a citation. And these are not just national disparities. These disparities are true for searches of motor vehicles in Massachusetts; data from the open policing project that looked at Massachusetts State Police showed that in most counties where data was reported non white drivers were searched more than white drivers. As a 2017 boston globe story

showed that 80% of vehicle searches during field interrogation observations were of black drivers. And the unfortunate thing about these disparities is that contraband is less likely to be recovered when the drivers are Black or Latinx. And that says to me one of two things or maybe both, that one you better have a damn good reason if you're stopping a white person, and or the way that policing happens is different in communities of color and that pretextual stops are used as a basis for that. And we know that to be true here in Massachusetts; there was the 2004 study that looked at disparities and stops statewide, two thirds of the municipalities were found to have disparities. They were in their issuance of citations, and they were required to collect data for an additional year, but they stopped happening after 2004. And we can't fool ourselves into believing that those disparities are just going to go away. The ACLU did a report in 2019 looking at disparities in charges that would not be prosecuted in Suffolk County. And what we saw is that a lot of charges that were dismissed, were motor vehicle offenses. But what was telling about that study is it showed that there were significant racial disparities in the issuance of criminal motor vehicle citations. In some parts of Suffolk County, the disparities were 15 to one black to white for motor vehicle offenses. And this is in the Back Bay/Beacon Hill area. And the 2020 Harvard study that just came out that looked at that looks at policing. And the criminal legal system shows that there are significant disparities in who is charged with offenses and what types of sentences they receive. But one of the things that the Harvard researchers pointed out is that the stats are impacted by the over policing that happens in communities of color. And so I'll bring it to a close by talking a little bit about my own experience as a suffolk county prosecutor. And I know that no, that's not Middlesex. But these trends and these practices are statewide. And that I knew that motor vehicle stops were used in a way to find out if someone was engaged in criminal conduct. And some of the statistics bear this out. When you look at Cambridge stops, that is stopped data that is publicly available, race data is not available, and the fact that there are these significant racial disparities nationally, and even in the state, we cannot believe that because many of us believe and feel that Cambridge is different, and that there are a lot of progressive values and liberal ideologies in Cambridge, that somehow we are devoid or exempt from the nature and practice of policing. When we look at the stops in Cambridge, from 2015 to 2018, 33% of those stops are for failure to stop or failure to yield. And the reason that this is significant, and is because if I have an inspection sticker, I have it or I don't, if my license is suspended, I have it or I don't, if my car is unregistered, it's either registered or it's not. But a failure to stop or failure to yield is such a discretionary offense, that there's no documentary proof that I can use as a motorist to contradict the claim that I'm just being pulled over for my race. And 33% outpaces almost every other type of stop. And to not be able to identify race data leaves a huge gap in the analysis of what's happening in Cambridge in regards to traffic enforcement. And when you think about the likelihood of black and Latinx motorists having longer stops, having stops that are more likely to turn hostile, having a stop that is more likely to result in their vehicle being searched, and the resulting embarrassment, harassment and disrespect that comes along with that and humiliation for being stopped and for being pulled over for all of the people who have not violated the law that underscores the need and the urgency to make sure that this data is being collected that it is being published. And ultimately, that motor vehicle and traffic enforcement is reduced as a means of law enforcement and public safety. And so to the extent that there is a conversation happening, about finding alternatives to traffic enforcement, that are non police, whether the Mass General laws allows it or not, Cambridge is creative enough and has enough resources, intellectual and otherwise, to think of a way to stem the tide of racially biased policing.

Councillor Marc McGovern 30:28

I appreciate you taking the national picture and bringing it down to Cambridge. One of the things you mentioned, that we track the reasons, the types of stops, but we don't track the race of the driver. So I guess, through you, Mr. Chair to the commissioner, I would think that would be an important piece of data for us to have so that we can monitor and be clear try to be sure that there aren't transgressions going on? Is that something we can collect?

Branville Bard, Police Commissioner 31:17

Yes, it's something that we can collect, and something that we already seek to collect, whether it was published between 2015 and 2018, I'm not sure. As I mentioned during our budget hearings we noticed a glitch with our current records management system that we believe some car stops, some vehicular investigations go unaccounted for. We're in the process, as you already know, of acquiring a new records management system, that will allow us to do some of the things that Mr. Hall spoke of,, we're looking to analyze, racial stop data, not just vehicular stop, but vehicular stop the way we use force, and pedestrian investigations, or other interrogations. So whatever your observations, and take the analysis to a different level. I believe that most of the metrics that are used, commonly across the country are really less than meaningful, meaning that the vast majority of your departments that track racial profiling data, they use something called partial population benchmarking, which means that, they'll say that, and I'm just gonna say African Americans make up 19% of the population of this jurisdiction. And when you look at the police's stop data, you'll see that they stopped African Americans at 17% or 20%. So therefore, no racial profiling exists. However, what it doesn't tell us is that when they stop African Americans that they tend to hold them for 45 minutes, but they hold non minorities for seven minutes, on average; it doesn't tell you that they stop African Americans for minor equipment violations, but only stop Caucasians or non minorities for serious moving violations. It doesn't tell you that they search African American vehicles 25% of the time, and their non minority counterparts 1% of the time. It doesn't tell you the whole picture of agencies using internal benchmarking, which means that they'll take an officer once a complaint has been made, and compare that officer versus similarly situated officers. And if here's no statistical difference, then they'll say, well, no racial profiling exists. But I think we all know right away that the problem there is not everybody's going to catch somebody who's your most egregious offender. So what we're going to do here, and we already have the module built, in the next record management system that we will have is we're going to do a reason, result, duration analysis. This looks at the three main components of a stop, the reason, the result and the duration and there's subcategories in each of those. And once you quantify it, you can make all types of statistical comparisons, but it will tell you what, if any difference exists, and how we, the City of Cambridge police department, and each individual officer, what if any difference exists and how we treat individuals of different races and what it will do is it'll be a way to compare that will basically take the amount of discretion an officer has in taking an action, and then weigh it versus a compelling governmental interest in that officer taking that same action. The easiest example to give is speeding. I think that we all know that there's a ton of discretion the officer has in stopping the individual for speeding. But there's a compelling governmental interest for an officer to stop someone going 30 miles an hour over the speed limit, I think we all want that individual stopped, but not necessarily the individual going one mile an hour over the speed limit. The discretion is the same. But the compelling governmental interest or societal interest in them taking that action, between the person going 30 miles an hour speed limit, and the person going one mile over the speed limit (is not the same). So what it

won't do is it won't miss identify an officer. So it is protective of the public, but it's fair to the officers who go out and enforce the law. So we're looking to do that. We started the Office of procedural justice. Two years ago, this records management system wasn't able to do the computations that we needed. The idea is to do it in real time without human interaction, and then post that information almost in real time, so to be as transparent as possible. I understand all the issues here about disparate impacts between law enforcement and vehicle stops, and all kinds of stops, and minority individuals. And I think that we're here looking to address that in a way that is not addressed anywhere in the country. And the hope of doing that here is that folks will see the level of protections that it can have, and demanding that same level of protection in their community. I've been to the Capitol with Mr. Hall and Representative Becker on multiple occasions to talk about the need for data collection. And it's important.

Councillor Alanna Mallon 37:39

First of all, thanks to Mr. Hall for coming today. And talking to us about the importance of this topic, I think you've provided a really great overview and some reading materials that we all need to read up on, as some next steps to the commissioner just on the subject of the dashboard. I just want to make sure I understand, because we have been talking about this since 2017. I just want to make sure what are the next steps on the dashboard that you've just been describing, which has a public facing portion to it, which would allow the public and anyone who is interested in the racial profiling data of stops to be able to pull from but it also is, as my understanding going to be used internally by the police department for disciplinary actions and trainings. I'm just curious, what are the next steps on that? When will we see that go live? I know we talked about it in the budget hearing. But I'm assuming there will be some kind of allocation that is coming to the city council for us to approve it.

Branville Bard, Police Commissioner 38:49

Through the chair, Vice Mayor, yes. So the next step is that we go for a free cash appropriation for the new records management system in a couple of weeks, I believe. The manager can tell you exactly when. Once that happens, then we're ready to go for them to begin implementation of the new records management system, the company has agreed to put the procedural justice module up as soon as possible within the implementation of the new records management system. Once that happens, and it begins collecting data in the dashboard to be public facing. There'll be some interactivity for low level stuff like population benchmarking, but the reasons results, duration analysis that'll be real time. Look at what if any differences exist. And that obviously you won't be able to interact with because then number is what it is, but it allows us to look at the data and look at the individual officers and make any necessary interventions that we need to.

Councillor Alanna Mallon 40:05

Thank you, Commissioner. I don't know if the city manager wants to speak to the free cash appropriation and when we might see that?

City Manager Louis DePasquale 40:12

Mr. Kale has been working with the commissioner and Christina Jacoby, and the target is not this Monday coming, but the following Monday, you would have that recommendation.

Councillor Alanna Mallon 40:23

Thank you, Mr. Manager. I've been very closely working on this with the commissioner since 2017, I've been very, very interested in making sure that the racial profiling and the data collection is happening in a very public way. And I know the commissioner, this is something that he has been himself wanting to implement here in Cambridge, because he knows how important it is. And I've been proud to partner with him and the city on making this happen. I just hope that once we see that free cash appropriation in two weeks, we can get this up and running. Because I think it's an important piece to this conversation, I think having the data is going to be critically important, especially if you're talking about interventions with individual police officers. I think that's what we're talking about today. So my last question to the commissioner, whether or not that information will be added to the compstat report, or if we will just be having regular meetings, on what that data is showing us?

Branville Bard, Police Commissioner 41:34

Through the chair, Madam Vice Mayor, it'll be every present, like every day it's there for public consumption. So I don't know if there's a need to add it to the Bridgestat report, but it'll be there for anyone to see, and it is far more comprehensive than doing a yearly report, although, I don't think it takes away from the need to do that yearly report. But I like the fact that, that (because it is) ever present that that transparency is there. And it forces us to take that look, whether we would want to or not, but we obviously want to make it transparent.

Councillor Quinton Zondervan, Chair 42:32

Thank you, Vice Mayor. I do have a question for the commissioner: when we finally have this dashboard in place and we're looking at this data, how does that inform us what to do differently; what kind of actions would we derive from this data to reduce the disparity that we're talking about?

Branville Bard, Police Commissioner 43:06

It would depend on what the information showed us. Obviously if it was something minor, then training would be in play, and (if it is) something more egregious then training and more severe actions, but it would depend on what the data said.

Councillor Quinton Zondervan, Chair 43:34

This question is more for Reverent Hall. Can you talk a little bit more about the impact on the driver as well as the police officer of these stops? The commissioner touched on this, it's not just about relative to the population, how often are people pulled over? It's also about the actual interaction. So even if we were to conclude from the data that black drivers are pulled over just the same, proportionally as often as white drivers. The impact on the driver is not the same.

Rahsaan Hall, ACLU 44:27

The obvious concern for drivers, particularly black drivers comes straight from the headlines. The names that many of us are familiar with: Philando Castille who was pulled over during a pretextual stop for bus detail like Walter Scott who was pulled over for a pretextual stop that led to him running from his car and being shot in the back. Samuel DuBose Who was killed in Cincinnati during a pretextual traffic stop Sandra Bland, who was pulled over in Texas for a traffic violation. And so the data shows that black drivers in particular, but non white drivers more generally, are more likely to have hostile interactions with police officers, and that there's a greater likelihood that police will use or threaten use

of force and, going beyond incidents of alleged criminal conduct, again, we need to ultimately be concerned with the people who have not engaged in criminal conduct. The people who are driving the streets every day who are law abiding citizens who have not violated the law and don't deserve to be subject to pretextual stops, merely because the law allows for it. There is a plethora of motor vehicle infractions. I mean, who on here has not ever done a rolling stop, and to think that you would then be subjected to being stopped by a police officer, or that you were more likely to be stopped by a police officer because of the color of your skin. And that's just something that we should not tolerate. And that we need to create more examples of how to do policing differently. As a black man, having been racially profiled myself on several occasions where I know, it's simply because I'm driving in a certain neighborhood, or that I'm stopped for going through a yellow light; yes, technically, I could be stopped for that. But the fact is that if I'm someone else somewhere else, I'm less likely to be stopped for these vehicle offenses. And that's why I think the other piece that is important is the need to collect data on all stops. The commissioner mentioned his willingness to come and testify and engage at the statehouse because we were pushing legislatively for the collection of traffic stop data, for all stops, not just the citations, because what we understand from the data that is available, is that black people are more likely to be let go without any type of enforcement action, again, because of the nature of policing. I harken back to my experience as a prosecutor, the number of motor vehicle stops that led to the recovery of contraband. So there is this built in justification as a policing tool, that we can stop people for any number of motor vehicle offenses, I think there's something like near close to 200 types of traffic infractions that can be committed and any time that law enforcement is able to engage and stop someone: tint, vehicle is too loud, failure to stop, failure to use a directional, busted tail light, failure to have an inspection sticker, unsafe lane change, like any number of things that we all do all the time. But if that is weaponized by police, to say: Here's somebody that I'm suspecting of a crime, or is looking out of place because of the color of their skin, and I'm going to investigate a stop, and then the duration of the stop, which we also know from the data is much longer, because I then want to find out if there's any contraband that I can recover; the questions asking passengers in the vehicle for them to identify themselves, which they're not required to do, which heightens the tensions because people are beginning to understand and know their rights. And that leads to justification for law enforcement to give someone an exit order to get out of the vehicle. The other thing that's interesting about the Commonwealth vs Long case that I started out talking about is the way that they get into the back seat is because they inquire of the driver and find out that he has a suspended license, and because it's a nice vehicle, and the officers are familiar with a so called high crime neighborhood, they didn't want to just leave the vehicle parked along the street. So they called a tow truck company to have it towed. But in order to do that, to have a vehicle towed, you have to conduct an inventory search. So nobody can accuse you of stealing anything. But that inventory search is the way that you get into the vehicle to see if there's contraband. And so these types of policing tactics are the things that are executed against people all of the time. And when there's no contraband recovered, people are just let go or they're given a minimal citation for something that we do all the time and aren't necessarily subjected to enforcement actions for, so that level of discretion that the commissioner was talking about, is something that needs to be analyzed. But the more data that there is for all the more number of stops, the better outcomes, better analysis we can get, the the greater impact on the way policing is curtailed and reformed.

Councillor Quinton Zondervan, Chair 50:18

Thank you. And, I've certainly had similar experiences myself as a driver. And I will say, I've never been mistreated by the Cambridge police. But certainly, I've had challenging interactions across the river. I'll leave it at that. But, I did have an experience in Cambridge that I want to talk about, briefly, because I think it underscores an even deeper disparity as well, that we haven't really touched on. I was actually pulled over very close to my home a couple of years ago, for an expired vehicle registration. And the officer was extremely polite, and very nice to me. But he said, you have to renew your registration right now, or I will have the vehicle towed. I asked him, and I'm literally spitting distance from my house, can I just go home and take care of it. And he said, No, we have to do it right now. And I was confused for a moment. and then I said: you mean, I have to go on my phone to the RMV and pay for the registration? And he said, Yes. So I pulled out my phone and got my credit card out, and I was able to register my vehicle. But it occurred to me that I had a lot of privilege, I have a phone, I have a credit card, and I have the ability to do that. Recently, I observed an interaction with a black driver near my home, who was pulled over, and after a very long interaction, his vehicle was towed, and he was handed the license plates. And he literally sat down on the curb and just hung his head. And all he had was the two license plates in his hand. And presumably, he was on his way to work or wherever he was going. And this is not how he planned his day. So you know, there's this deeper disparity here, where even when the traffic stuff is handled properly, and nobody is rude or violent, there's still this burden on folks who don't necessarily have all the tools and equipment to take care of these situations, easily or on the spot, are then further burdened with financial and other penalties that result simply from them being in an economically disadvantaged situation. So that's why I asked earlier about what actions we will take based on the data because it's not simple. It's not good enough to say: if there's a disparity we will address that; we really have to look at how do we reduce this impact, this burden on particularly low income and disadvantaged members of our community, who are disproportionately impacted? Not just in the frequency but just by the fact that they get pulled over or have this interaction that results in further burdens to them. So I don't know if Reverend Hall if you want to comment, or police commissioner, but that's really the genesis of this policy order was to say, how can we reduce these interactions so that we reduce that burden, regardless of whether or not we have actual racial disparity in terms of frequency of stops in Cambridge.

Anthony Wilson, Clerk 55:02

We don't have anyone for public comment. So we'll entertain a motion to close public comments. On the motion:

Councillor Carlone absent

vice mayor Mallon? Yes,

yes. Councillor McGovern. Yes.

Yes. Councillor Sobrino-Wheeler? Yes.

Yes. Councillor Zondervan? Yes.

Motion passes, four in favor, one absent.

Councillor Quinton Zondervan, Chair 55:33

Okay, so we won't be joined by Professor Maclin until 11:15 because he's teaching his class this morning. So if there's any further questions for Reverend Hall while we have him? Because I believe he does have to leave before we adjourn. Now will be the time to ask him.

Councillor Alanna Mallon 56:16

Mr. Hall, you mentioned in your opening statements, that Cambridge is full of smart people that could really work on this issue, even though Mass General law doesn't allow it. And I was wondering if you could expand on that a little bit, and what that means and what kind of creative things we could be thinking about if you had anything in mind.

Rahsaan Hall, ACLU 56:55

Sure. I think ultimately, the authority to enforce the law is something that is clearly delineated by statute. I think there's not a whole lot of creativity around that beyond an act of the legislature, which I think ultimately is something is a conversation that folks should be having. But you've already got a head start, in that you've got a commissioner who is interested in and committed to collecting data. And the beauty of having that data is that it can lead to some very interesting analysis. And when we talk about public safety, there is a narrative that exists out there that law enforcement is the only way to provide public safety when in reality, police often show up after the crime has been committed. There isn't for the amount of money that is spent on policing, how much of it is actually preventative of crime as opposed to responses to crime. So doing an analysis of the outcomes that come from traffic enforcement, the racial disparities, that impact certainly traffic safety is a legitimate concern, heaven forbid somebody's child is kid crossing an intersection, because it's just a terrible intersection that people kind of disrespected in this regard. So there is a practical reality for the need for some form of traffic enforcement. But what is the net benefit of all of the traffic enforcement that happens throughout the City of Cambridge, and the types of offenses that people are cited for and where that's happening? And so I think the more information that you have, and the greater analysis that is done on that information, gives you more fodder for creative ideations around what are the alternatives? Is it necessary that we enforce all of these traffic laws all of the time? And maybe the study, in fact, shows that, when we don't enforce it, there's an increase of accidents at a particular intersection. But with greater enforcement, traffic fatalities go down, but they show the math to the word. And I think that is what I mean by creatively looking at traffic patterns, looking at the amount of contraband that is recovered from traffic stops, compared to the overall number of stops. And if it's only a marginal percentage, right, because one of the arguments is pretextual stops save lives, because we've stopped murderers and rapists and dangerous people who are carrying trafficking drugs. Carrying illegal firearms, but if that is a negligible percentage of all of the stops that happen, do those few isolated incidents, justify the disruption and inconvenience, harassment and embarrassment to people who are stopped for no reason, or stopped on traffic enforcement that has a higher level of discretion, and there's evidence to suggest that either location or race or ethnic appearance had something to do with it based on an officer's history. So I think that is also what provides justification and support to proposed legislative changes, because going to the legislature and saying, we did a study of all of our vehicle stops. So we did a study of the net benefit of traffic enforcement and some of the detriments of traffic enforcement. And we've determined that if we were to, if we were able to authorize non law enforcement, traffic enforcement, we would get better results for the residents of Cambridge, and take that to the legislature. It begins the conversation. So that's what I meant by kind of being creative and capitalizing on the embarrassment of riches that the city has.

Councillor Alanna Mallon 1:01:32

Thank you for flushing that out a little bit. I think that was instructive and helpful. I know that in Boston, Councillor McGovern talks about this a lot. And we've had a lot of conversations when you talk about public safety, which in my mind is the safety of the public. So if we're talking about the safety of cyclists on our roads or pedestrians on our roads, and that's where a lot of enforcement, the City Council has, historically asked the police to do that type of enforcement to keep our cyclists and our pedestrian safe, moving people out of the bike lanes, making sure no one's running red lights. Councillor McGovern has suggested multiple times that in Boston, what they do is the traffic and police, traffic and parking have cars, where they move folks out of the bike lanes, they make sure people aren't in crosswalks. So it is traffic enforcement and public safety in that way. But you're not using police officers? Is that something that you've seen in other communities that works? What are other ways that we could make sure that we have that public safety, but making sure that it's safe for all around pedestrians and cyclists and vulnerable road users? Is Boston doing this in a meaningful way? And are there other communities? And would you recommend it as an alternative?

Rahsaan Hall, ACLU 1:03:02

I haven't done a close analysis of it. I am certainly aware of parking enforcement and their presence in the city. I have not observed myself that type of interaction as far as keeping the bike lanes clear, but I wouldn't be surprised if it's happening. That said, I wouldn't be surprised that it would only be happening in certain neighborhoods too. And so I think that's something that we have to be mindful of is the disparities in the types of how and where the alternatives are rolled out. Certainly there are benefits to less enforcement in some instances. But if that benefit is only bestowed on certain segments of the community, it's almost just as much of an injustice as having the enforcement.

Councillor Alanna Mallon 1:03:56

I believe that the times that he's brought it up, it's been around Boylston Street, in the neighborhoods where there's a whole lot of people double parking, running into a store grabbing something and that creates an unsafe environment for vulnerable road users. So I leave the port this time to my colleagues, but thank you for flushing out some of that additional information for us.

Councillor Jivan Sobrino-Wheeler 1:04:27

I was wondering with Reverend Hall here and we've worked with the ACLU on surveillance ordinance for Cambridge, automated enforcement, as one mechanism is brought up as a way to reduce racial disparity. And I think it also sort of raises other privacy concerns. I was just curious if This was something and you had looked at it or thought about?

Rahsaan Hall, ACLU 1:05:06

Yeah, we've certainly been in conversations in the past legislative session with some of the advocates who had been pushing for automated traffic enforcement as well as the lead sponsor. And so there were some concerns that we have raised around surveillance. Because when we automate surveillance technologies, it gives an unfair advantage to law enforcement and creates greater intrusion into our daily lives. Especially when we were thinking about as Commissioner pointed out there's a difference between going one mile over the speed limit and 10 miles over the speed limit, versus on the highway or in a residential neighborhood. And so to the extent that there is a net benefit in reducing racial disparities, there's also some trade offs. We haven't, at this point taken an official position on the

legislation that has been proposed, or in the conversations around it. And I would ultimately defer to my colleague, Kate Crockford, who heads our tech for liberty project, who is much more knowledgeable and has a deeper understanding of the surveillance and privacy issues at stake on that issue.

Councillor Quinton Zondervan, Chair 1:06:34

Thanks, just a couple of responses as well. So I am aware of some efforts in New York City to do some enforcement of things like bicycle lane obstruction, with non police, so through the traffic department. But there are definitely some issues with it. And it's not a widespread practice, in part, I think, because people tend to get really concerned about violent interactions and people disrespecting the staff, doing the enforcement. I often go up to drivers who are idling and I would, and talk with them about it. And it strikes me as something that we could certainly do more of and try out to see if we get better results. I also did speak with a lawyer that we were able to work with through the Justice Collaborative. And in terms of the legality. One, what they explained to us and understanding is similar is that the citations can only be issued by the police. But that doesn't prevent other staff, or even civilians from notifying people. So for example, if someone were to observe, then registration has expired, or the taillight is not working, the owner of the vehicle could be notified, they could be sent a letter, and that's not a citation. And so it doesn't necessarily require the police to do that. And similarly, if someone observes an infraction, they could notify the police that it happened, and then the police can issue the citation. So I don't think there's any real legal obstacle to having additional staff observing traffic infractions, or vehicle issues that could lead to improved safety without those staff, being the ones issuing the citations. But again, no better knowledge, if that's your understanding, as well.

Hall? 1:09:35

I think that there is a way for making those referrals and clearly, with law enforcement being authorized to enforce the laws, it does not mandate them to enforce the laws all of the time. And so I think that's a conversation that needs to be had because there is an argument to be made that there is a benefit for being able to address uninsured drivers at the time it is become aware that they are uninsured. Because if they go out and get into an accident, who's going to be held accountable for it. But I think that goes back to my earlier point around some analysis. and creative thinking about is the potential harm that comes from adverse police interactions. Does that outweigh the benefit of not non enforcement, but maybe lacks enforcement or deferred enforcement by having non sworn personnel making referrals. And, again, with technology, it's a scan of a license plate that is sent to the department and it's immediately issued a site to either a citation issue, or email sent or text message, there are plenty of platforms that exist out there, that can be explored. But ultimately, folks make the determination that now we got to get all these uninsured drivers off the street and make sure that they know if they are in an accident, people can be held accountable. So I think that's the some of again, some of the analysis and conversation that has to happen.

Councillor Marc McGovern 1:11:27

The vice mayor brought up what I mentioned before. Yeah, I was talking about the Boston traffic enforcement people. You know, they have cars that drive around. I was talking about Boylston Street where I was double parked for a second while my kid got out of the car and a Boston traffic vehicle came up behind me, flashed a light and said over the loudspeaker, you need to move. And they do that all the time in those areas. And it's not, I don't think they give tickets maybe, maybe for that matter. I

don't I never I've always moved when they've told me to do so. But, but something like that, in terms of that's a non police response. They're moving people along and clearing the bike lanes and the double Park but it's a non they don't the police, not the police. You know, my and I don't want to, I don't want to misquote the police commissioner. So he can chime in if I get this wrong. But I think you know, the other thing. The issue isn't so much about I don't think it is so much about the law, right? I mean, we do want if you're uninsured, regardless of your race, we don't want you driving an uninsured vehicle. Because if you get into an accident, that's a problem. It's really about the enforcement. And I really appreciate Mr. Hall talking about the rolling stops versus inspection sticker, right, and inspection, stickers cut and dry, you have it or you don't a rolling stop is open to interpretation. And if they see me doing it, how are they going to interpret that versus seen someone else do it? And so, but I wonder, even with this he even if we talk about a more civilian response, we're all inherently racist. And so that response is that response? Yes, it's not the police getting involved that certainly reduces the opportunity for a situation to escalate and someone to be searched and to be arrested. And that is certainly a worthy goal. But I also wonder if even if we had civilian traffic enforcement employees or whatever, that they too, wouldn't be inherently biased, because that's the society in which we live in. So in places where they have done this, and I assume there are other places that have done something like this, has there, have there been studies in terms of has it really decreased? The disparity? Again, the interaction is different, because you're not talking about an armed police officer. But in terms of the rate in which people are pulled over, has created more equity in that, or is it just a different group of people pulling over the same people that the police were pulling over?

Hall 1:14:34

That makes perfect sense to me, and I'm interested to hear what the commissioner has to say on it. But I haven't studied it. And so I'm not familiar, but I think that is part of the problem and I think what is important is the need to change the outcomes. And so one of the outcomes is certainly violent, hostile. Welcome to police enact interactions. But then the other are the other outcomes are the disparities. And so if the disparities are resulting in those violent hostile police interactions, we definitely want to be able to do something about that. And so by making it non law enforcement, I think that addresses the issue, but the disparities, you're right. And so that I think, and that's why the data is the need for data is important, because that's going to inform how it's happening, where it's happening, and to whom it's happening. Certainly training as a way to, to address it, as well. But the more data points, you can't manage what you don't measure. And so we need to be measured.

Councillor Marc McGovern 1:15:48

And do you, Mr. Chairman, where I sort of continue to get a little stuck. I mean, certainly it's not about the data. I mean, anyone who says that black and brown people don't get pulled over more often than white people has their head in the sand. And I don't know what you can do about that. I don't know. My guess is that that happens more often in Cambridge, as well, because although I think we do things better than a lot of places, we're not immune to this type of thing. I don't know, if we do it at a lower rate than the national average or at a higher rate that would, that would be interesting to find out. But where I sort of keep getting stuck is, again, how this would actually work. And, and sort of peeling back the onion a little bit and trying to put a scenario of if I'm driving down mass AV, towards Kendall Square, and I take that illegal left, onto prospect Street, which by the way, we could probably fund our entire city budget, if we had people out there pulling over cars, because it's non stop. You know, I take that turn,

and I have a non police traffic enforcement person, standing on the corner, not in a uniform waving at me to stop. You know? How does that how we are talking about this actually working? And if we're talking about taking pictures and license plates, and I mean, I come to the Zondervan I approach cars, and you know, you're a brave man, because you don't know what situation you're getting into. And there's probably some who you probably make some internal decision about who you're going to feel comfortable approaching and who you're not. Right. So I mean, this is all very complicated. I can't totally wrap my head yet around how a civilian traffic enforcement would work.

Councillor Quinton Zondervan, Chair 1:18:03

I do want to, again, make it clear that I'm certainly not suggesting that in the scenario that you just described, where someone makes an illegal left turn, that we would have an unarmed staff person, following them in their car, even with flashing lights or whatever and pulling them over. And, again, we've already established that they couldn't even legally give them a ticket, if they're not a police officer, so that scenario is out of bounds for this conversation because we're not suggesting that that would be handled differently than the way that it is now. What I'm suggesting is that we want to reduce the number of scenarios where police are pulling people over so, do we really have to pull someone over if their taillight is broken, or can we send them a letter? And maybe after we send them three letters, and they haven't fixed it we need to think about some other ways. and this is where Rev. Hall is encouraging us to be creative, but we're not suggesting that situations where someone is moving in traffic and we need to compel them to stop and issue them a citation that that would be handled by anyone other than the police. We're talking about all the other scenarios where we possibly could imagine a different way of dealing with it, like the example you brought up, someone double parked in the bike lane, do we really need a police officer to go and deal with that situation, or could we gently ask the person to move and if they don't move, then maybe we have to get the police involved; if someone's registration has expired, do we really need to pull them over in traffic and risk a stressful, potentially violent interaction or can we send them a letter that says, hey we're really kind of gentle in Cambridge. So we're just letting you know, your registration expired. If you drive through Boston, you might get pulled over. So you may want to take care of that. So just trying to imagine those scenarios where we could not pull people over. Can we implement those, but situations where we have no other choice? We would put loudly in Bolton, because we don't have any viable alternative.

Councillor Marc McGovern 1:20:46

Mr chair thank you, I appreciate that, because I keep coming back to the order which says specifically 'transferring primary traffic enforcement responsibility' so I guess better defining what that is, because primary traffic enforcement responsibilities, I may interpret it one way you are interpreting it something something different. So I think we need to be really clear with the policy orders in terms of what it is we're trying to address because that's open to interpretation as to what that means.

Councillor Quinton Zondervan, Chair 1:21:18

Thank you, I appreciate that and I agree with you and that's why we are having this conversation to refine it because certainly we don't have all the answers and as Mr. Hall has pointed out, we may have to think creatively about how to move forward because we've been doing things a certain way for a long time.

Joe Barr, Head of Traffic & Transportation 1:21:44

Yeah, thank you. I just wanted to mention in response to Councillor McGovern's comments about city, Boston, we do also have our parking control supervisors do a limited amount of that type of work, where they will fight, whether bike lanes or bus stops, or other or no stopping zones, where we consider them to be safety violations, they do have vehicles, and they will ask people to move and that they don't move. And it's and it is, in fact, a parking violation, which many of these are both, essentially a parking violation and a moving violation, we will occasionally issue a parking ticket, I would say the primary goal is to get the person to move, because if you don't, if you issue a parking ticket and don't and the vehicle to move, and you haven't, obviously, address the underlying problem have been blocking an area that's unsafe, I would say that it's limited, both because of staff capacity, and we only have a limited number of officers who were in vehicles. but we do have negative interactions with the public and we don't have the same resources immediately on hand as a police officer if something does go the wrong way, we'd have to call in the police at that point. We don't want to expose our staff to anything that could unexpectedly turn negative and we don't spend a lot of time, unlike the police, we don't interact with, motors, in the public on general, on a regular basis, we don't spend as much time focused on making sure that we are doing things in a way that's not equitable. And so I wouldn't want to sort of have that be without the right training, I wouldn't want to have that become a significant part of your efforts. Because otherwise, we could, again, just be recreating the types of problems that we're seeking to solve. So I think there are options there. But we embark on that very, sort of deliberately and carefully.

Councillor Quinton Zondervan, Chair 1:23:46

Think and as I mentioned, in the beginning, we will certainly explore these alternatives as well. In a future meeting, I just wanted to make sure that we really understood the problem first, and, and the reason for exploring these alternatives, what's not working with the way we're doing things currently, and then can other aspect of all of public safety, and particularly in terms of traffic that we haven't really discussed yet, is road design. And I know that traffic does a lot of work on that, which can also remove the opportunities for lots of interactions, like illegal left turns and things like that, and then have also reduced the amount of enforcement that we even need in order to prevent those movements. So I think that's another important part of this conversation that we'll need to have in terms of how can we do more than that, as well.

Rasaan Hall (leaves) 1:25:04

So I just thank you for the invitation. And thank you all for the conversation and the very insightful questions. And I appreciate the work that you all are doing.

Councillor Alanna Mallon 1:25:17

so I just wanted to speak to a theme that's been coming up which is that we're veering off topic of the conversation that we're having in the committee hearing today and I just want to read the call of the meeting: "The City Manager look into transferring primary traffic enforcement responsibilities from the Cambridge Police Department to unarmed, trained enforcement personnel in the Traffic & Parking Department, Department of Public Works, Health & Human Services, or another suitable department". So while I understand what the chair is trying to do which is set the table for having this future conversation I believe that we are not veering off topic of the publicly called call of the meeting and in fact it did seem like at the beginning of the meeting that the city staff still thought that was the call of this

meeting, and had fully prepared for that meeting. So I just want to call out that I am disappointed that the city staff was not brought into the fold of what this conversation was having; I think this is a challenging conversation to have and I'm willing to have it and I believe the city staff came in good faith today to have that conversation. However, in the first 4 minutes of the meeting it took a turn so I'm just going to be on record today saying that I'm fully disappointed in the call of this meeting, the meeting that we've had, and the disrespect that has been shown to our staff in presenting and preparing for this meeting and I hope that for future conversations on this topic and other public safety topics that the chair shows a different level of respect and collaboration with our city staff. I just want to say that on the record today because I'm fully committed as city councillor to coming to the table and being collaborative and being courageous as Mr. Hall said challenging assumptions, but we can't continue to have public safety meetings where our public safety team has not been fully prepped on these meetings. So I look forward to future conversations, I hope that they are different in the future; I hope that they are called properly so that the public is aware of what we're going to be talking about and the topics that will happen here. So I just felt the need to say that on the record.

Councillor Quinton Zondervan, Chair 1:27:58

Thank you, I appreciate the feedback. There is no disrespect intended or shown and I did reach out to Commissioner Bard about today's meeting as well and I don't believe that I have changed the topic of the conversation; what I tried to clarify is that we are not debating whether or not unarmed staff members should be pulling people over in traffic, and to the extent that the policy order was not clear about that, I take ownership of that, that's my fault, for not stating that more clearly, but here we are, and that's not the conversation I want to be having because that's not a productive direction for this conversation to go; so I'm trying to guide the conversation as best as I can.

Branville Bard, Police Commissioner 1:29:17

Mr chair, for you to say that you reached out to me is a bit disingenuous. Yesterday, you sent an email asking whether I intended to have a presentation. Not that you were going to change the whole purpose of the meeting and the topic of the meeting, so let's just be clear about that. I want to let you know that I'm disappointed by the way that you drastically changed the discussion for today. Obviously we are prepared to talk in depth about the topic that you pivoted to, but the fact that you did that is reprehensible and will piggyback on what the vice mayor said it's counterintuitive to productivity and these public safety committee meetings sometimes are not productive because of that very point; I see them as less than productive.

Councillor Quinton Zondervan, Chair 1:30:12

Thank you. Again I appreciate the feedback and I completely disagree, but I don't think it is productive to continue this back and forth in the committee meeting either, so I'm happy to speak with you about how we can do this better going forward, but I would like to focus this meeting on the topic that we are discussing.

Councillor Marc McGovern 1:30:50

Thank you, Mr. Chairman, I concur with the frustration, I think it's important that when we file policy orders, we say what it is we want, because that's what's in the order. So if we want a general discussion about traffic enforcement, then that's what the order should say. But I'm gonna move off of

that. I do have a question about and maybe this is for Ms. Glowa? Because I'm wondering not about the legality of who can pull somebody over. But if a police officer sees someone that has an expired registration sticker, and doesn't pull that person over, but instead, we send a letter to them saying, Hey, your registration expired, but if that person gets into an accident, or something happens, where that maybe could have been avoided if the police had actually stopped that person, is there any, I don't know how you'd prove it, but is there any legal liability to the city? Or certainly, there may be just some ethical liability. So because something could go wrong in that time, because if your registration expires I think that also means that my insurance lapses. And so if the officer doesn't stop somebody for that, and then that person gets into an accident. How does that impact the city? And I mean, I'm just curious if there are unintended consequences of doing something like that.

Nancy Glowa, City Solicitor 1:32:35

Those are excellent questions Councillor McGovern. There could be some potential liability for the city, there have been negligence cases brought against municipalities or the state where failure to act on the part of the city may have been viewed as contributing to the cause of an accident. I'm not sure that that cause of action would lie entirely based upon these facts. So that's something that we'd have to research further to give you more particulars about. I do think that, for example, the situation that Councillor Zondervan described at the beginning about being told he couldn't drive the remainder of the distance to his house, to register the car, but had to do so at that time. I believe that the statute about failure or to drive a car with appropriate registration is something that, at least in practice, if not in the wording of the statute, is required to be remedied immediately. And, in fact, I think that there might have been other less lenient possibilities, like simply asking the person to leave the car and having the car towed away. So it's actually a courteous response to allow the person to contact the registry at that moment with their cell phone and a credit card. I do understand and appreciate Councillor Zondervan's point about the potential inequity involved with the fact that some people may have that opportunity, and some not. But I do think that the laws are fairly strict around that. So I think that these raise a lot of questions. I also think the question about whether an officer can issue a ticket based upon what somebody else has reported to them. Although an officer can do so if information is brought to them that they can reasonably rely upon, there is some question in the law about whether on these facts that information would be considered reliable even if it's brought to the officers attention. So there's some lack of clarity in this area of the law and I would certainly welcome Commissioner Bart's comments more specifically as an experienced police officer dealing with those situations.

Councillor Quinton Zondervan, Chair 1:35:15

Thank you. We are joined by Professor Maclin. I do want to transition to that in a second but commissioner Bard if you wanted to respond.

Branville Bard, Police Commissioner 1:35:34

The legal analysis from the solicitor is spot on. To further answer Councillor McGovern's question, If you (observe?) somebody swerving across solid lines or an OUI case, and the officer then allows the individual to proceed further, you can understand the concept that the city and that officer may be liable and negligent. There's a 2013 case, Commonwealth vs. Sweet. And it says that an officer who has no authority to issue a civil motor vehicle violation citation has no authority to stop the vehicle for

committing such a violation. And then also, that there is a question as to whether the continued reliance on third party information would be reliable. So there are a lot of issues at hand here.

Councillor Quinton Zondervan, Chair 1:36:58

Thank you, Commissioner. And so let's hear from Dr. Tracy Maclin, a professor of constitutional law at Boston University. Professor Maclin has written extensively on the Fourth Amendment implications of current traffic policing practices, as well as the disparate impacts of these practices on minority drivers in the US, so thank you for joining us, professor. And if you could give us a little bit of historical background on how we got to where we are today with police essentially having the legal right to search a person's vehicle without a warrant? It is my understanding that it wasn't always this way. And it wasn't inevitable that we ended up here, especially given the Fourth Amendment.

Tracy Maclin 1:37:58

If you're asking about the authority of the police to search a car. True, it wasn't inevitable. But the court in a case called *Carroll versus United States*, and when I say the court, the Supreme Court of the United States, said that we're going to allow police to search vehicles, when there is probable cause, that there might be evidence of a crime or contraband inside the vehicle. Again, that was a 1925 case. And all that does allow as you point out a search of a vehicle without a warrant. Um, certainly the law has continued to be applied in that way. And some would argue as I have, that *Carroll* has been expanded, but that was the start of things. Now, not every traffic stop. Not every vehicle stop allows a search of a car, you can certainly stop a vehicle, and whether the stop is for a traffic violation, or some other offense, it could be a passenger not wearing a seatbelt. It could be many things in the traffic code, and I don't claim to be an expert on the Massachusetts traffic code. But the traffic code is quite large. But you can stop vehicles as long as you have probable cause or reasonable suspicion of a traffic offense or criminal activity. But you can't necessarily search that vehicle. You have to have a separate probable cause that the vehicle contains contraband or evidence or crime, or there's a reasonable suspicion that the vehicle has a weapon that might harm an officer or others nearby. So that in a very summery form is the fourth amendment authority that the police have to search vehicles.

Councillor Quinton Zondervan, Chair 1:40:15

Could you say a little bit more about what would constitute reasonable cause or reasonable suspicion; we talked a little bit earlier about the Cambridge police's efforts to establish a new case management system that will inform us about traffic stops and other stops and interactions by police. That would give us more data on potential racial disparities. But what's still not entirely clear to me is how would we know that there was indeed a probable cause or reasonable suspicion that allowed for the subsequent search of the vehicle?

Tracy Maclin 1:41:22

Well, you're asking a very good question. And I'm not sure you're gonna be happy with my answer. But the Supreme Court, United States has refused to define precisely what probable cause is; all that they've been willing to say, and it goes back to a case called *Illinois versus Gates*, which was the 1983 Supreme Court decision that probable cause means a substantial chance, a fair probability, that evidence of a crime or contraband will be found inside of a car. Now, this may be a little helpful. Probable cause the Supreme Court emphasized is not a preponderance of the evidence standard.

Some of you may know that under the preponderance standard, courts typically say that requires 51% probable cause is less than that. Probable cause, according to the Supreme Court is not even a prima facie test. It's less than that. And that's all the court's been willing to say. In fact, there's a case in which again, Chief Justice Rehnquist said, we cannot precisely define what probable cause means. Or for that matter what reasonable suspicion means; there are no rigid rules, there are no bright line rules. I hate to say it, but you kind of get a feel for what probable cause is, when you read the cases, but there's no litmus test. My law students are just as frustrated as some of the members of the council might be with respect to a lack of a clear standard, but there's no clear standard for either probable cause or reasonable suspicion, but it's important to emphasize probable cause is less than 51%. And reasonable suspicion, which allows you to search a vehicle when you have reasonable suspicion to believe that there might be a weapon or some other item that would harm a police officer is less than probable cause. But as far as percentages, the Supreme Court has refused to give any percentage as to what either of those two terms mean.

Councillor Quinton Zondervan, Chair 1:43:36

So it sounds like, based on your comments, that there's a conflict between current practice and the Fourth Amendment. And I guess the Supreme Court has effectively resolved that conflict by saying current practices are allowed?

Tracy Maclin 1:44:11

Probable cause is not a hunch. It has to be based on specific and articulable facts a hunch won't do. Now, police judgment and common sense are built into that probable cause standard; police are allowed to make decisions based on their experience, based on their training. But it can't be a hunch, and obviously, it cannot be arbitrary.

Councillor Quinton Zondervan, Chair 1:45:10

I'm certainly not a lawyer, but for example, if a police officer were to walk past the window of my house, and saw me carrying an automatic rifle, they couldn't bust in the door and say: give me that! They would have to get a warrant to inspect my home, if they believe that I didn't have a license to possess the weapon. But it sounds like if they look through the window of my car, after pulling me over, and they see a weapon on the back seat, they could go through the vehicle and obtain that without a warrant. Is that correct?

Tracy Maclin 1:46:05

Yes. That is the warrant requirement does not apply to automobiles. Your two hypotheticals involve what's known as plain view. Plain view of contraband or evidence of a crime, or a weapon will not get you into an individual's home, unless there's some exigency or other exception to the warrant. That's absolutely true. Plain view with respect to a vehicle will allow the police to search the car, because the warrant requirement does not apply to cars. So yes, I understand now, the conflict that you speak of. But that conflict was created long ago, that conflict was Carol, and that was 1925. And the court has no indication that it's going to back away from the Carroll standard. Originally understood, Carol was about two things, moving vehicles and the fact that if we don't stop the car and search it at the time, we may never have a chance, because by the time we get a warrant, the car may have left the jurisdiction. The other concern with respect to peril was, again, the probable cause you had to have probable cause.

Essentially, what the court has done today is eliminate the need for an exigency. All you need now to search a car is probable cause that there's evidence of a crime or contraband. Now, again, the reasonable suspicion standard is a lower standard, but that's available only when an officer believes that there is a weapon or some other item inside the car that might be a harm to the officer or others. There's a case called Michigan versus Long, for example, in a 1983 Supreme Court decision where Long was driving at an excessive speed, he ran into a ditch. He got out of his car, the police asked him to go back and get his license and registration. And as he was approaching the car, the officer saw a knife inside the car. So before they let him get back in the car, they searched the car to see if there were any other weapons that might be used to harm the officer. And during the course of a lawful search for weapons, they found contraband, they found narcotics. The Supreme Court said that search was fine. And when Long said, well, listen, I possessed a knife lawfully, it doesn't matter. The knife was a potential threat to the officers. And because they had reasonable suspicion that the knife was in the car that allowed them to search the rest of the vehicle for any other weapons. So reasonable suspicion, a lower standard, but it only can be utilized as far as the Fourth Amendment. Now, I'm not speaking of the Massachusetts Fourth Amendment law or article, I believe it's Article 12 of the Massachusetts constitution.

Councillor Quinton Zondervan, Chair 1:49:21

I believe what you're saying is that the apparent conflict in terms of not requiring a warrant was essentially resolved by the Supreme Court already in 1925. And that just carried over into the present day.

Tracy Maclin 1:49:45

And one of the little pieces, the court would tell you that the expectations of privacy that a person has in his or her home, they don't have in their car. It's not that they have no privacy interest in the car. There is a lesser expectation of privacy in the car. So that also, in part explains why the warrant requirement does not apply.

Councillor Quinton Zondervan, Chair 1:50:22

So it sounds like there's really very little hope of changing that established practice.

Tracy Maclin 1:50:41

As a matter of law. As a matter of the fourth amendment, you're right, the Supreme Court's not going to require a warrant to search your car. Now as a matter of state law, as a matter of local law and how folks in Cambridge want to do things, states and localities are always free to impose higher standards on their police officer. Now, again, I am not a state law or Massachusetts law expert. But as a matter of federalism, states and localities are always free to impose higher standards, the Supreme Court sets the constitutional floor. But state and localities if they want to say, Well, listen, we know the Supreme Court doesn't require warrants. But we want to require warrants before car searches, states and localities, they're free to do that tomorrow, they're free to do it today, if they want. There's no federal obstruction or federal rule that prevents the states from doing that, as a matter of their own law. They can raise the standard so to speak, they can't drop below the federal standard established by the Supreme Court, but the states are always free to impose higher standards on their officials.

Councillor Quinton Zondervan, Chair 1:51:56

The other potential remedy that we've been discussing today is reducing those interactions, which can reduce the potential for these types of searches to even occur.

Tracy Maclin 1:52:15

Same rule applies, you're free to do that, as a matter of constitutional law. There's nothing in the constitution that bars the states from imposing higher standards on their police officers.

Councillor Quinton Zondervan, Chair 1:52:32

Do any of my colleagues or staff have any questions or comments for Dr. Maclin. Hearing none; Professor Maclin, do you have any suggestions for us, for areas to explore in terms of potentially applying different standards in these situations?

Tracy Maclin 1:53:16

Without having heard of the meeting prior to my coming on the zoom. me. I'm reluctant. I'm happy to respond to any questions, but I don't want to weigh in on matters that I haven't heard others talk about. So I'm gonna decline that opportunity. Ah, you mentioned earlier, I thought I heard you talk about profiling and the disproportionate stops of racial and ethnic minorities. The Supreme Court's well aware of that. In a case called Wren versus the United States, a 1996 Supreme Court decision, that issue was front and center for the Supreme Court. And the Supreme Court said that so long as a police officer has probable cause that a traffic offense has been committed, they may stop that vehicle. What happened in Wren, two undercover police officers saw a vehicle commit a couple of traffic offenses. And under the District of Columbia police regulations, those undercover officers were not supposed to engage in routine traffic stops, or they were only supposed to engage in routine traffic stops if there was an emergency, which suggests it is not routine. So they were violating their own departmental regulations. The defense said well look this can't be reasonable if they're violating their own departmental regulations and the Supreme Court said look, we're not going to get into a discussion about whether if police violate their own regulations or their own state law that's going to implicate the Fourth Amendment. And, and one of the reasons is because you can have various departmental regulations across the nation that differ from one another. And the Fourth Amendment applies across the nation. So the fourth amendment can't turn on what a department says its officers can or cannot do. Now, an additional argument and this gets to your point about racial profiling. They said, Well, listen, Wren and his companion guy named Brown were Black. And that was one of the reasons why they were stopped. The Supreme Court said in a unanimous opinion, that the subjective intent of a police officer is irrelevant for fourth amendment purposes. Now, the court said, if there is evidence of police stopping individuals based on their race or ethnicity, that's not constitutionally permissible, but the constitutional vehicle to attack that is not the Fourth Amendment, but the Equal Protection Clause of the 14th amendment. Now, there's a problem with that. And Scalia knew it when he wrote it, and the Supreme Court is well aware of it. In order to bring a successful 14th amendment equal protection case, you have to show that the officer had a specific intent to target the motorists based on their race. That is a very difficult standard to meet. And statistics alone will not satisfy that; you have to show that the officer was out to get a Black or Hispanic or Asian individual or motorist. So effectively, Wren gave the constitutional imprimatur for racial profiling, that it is very, very difficult to mount a successful Equal Protection Clause (case against). In other words, Wren says it doesn't matter under the Fourth

Amendment, whether the cops had bad faith or subjectively intended to target a particular individual based on their race or gender or ethnicity. All that matters is did they have probable cause for the traffic stop? Now, that all being said, the state is free to again impose higher standards, or the city's free (to do that).

Councillor Quinton Zondervan, Chair 1:57:51

Thank you, that's been very instructive to me, and, again, really appreciate you joining us and helping us understand the constitutional basis for some of our current practices. Again, I'll open the floor. Any questions? If there are none, I will thank Professor Maclin again, and entertain a motion to adjourn. So moved. All right. Thank you again, Professor Maclin for joining us. I really appreciate it.

Anthony Wilson, Clerk 1:58:44

On the motion Councillor Carlone. Absent
vice mayor Mallon? Yes
yes. Councillor McGovern? Yes
yes. Councillor Sobrino-Wheeler? Yes
yes. Councillor Zondervan? Yes
Motion passes. Four in favor one.

Councillor Quinton Zondervan, Chair 1:59:01

Thanks, everyone for joining us.

[TOD](#)



City of Philadelphia

City Council
Chief Clerk's Office
402 City Hall
Philadelphia, PA 19107

**BILL NO. 180818
(As Amended, 3/4/19)**

Introduced September 20, 2018

**Councilmember Greenlee
for
Council President Clarke**

**Referred to the
Committee on Law and Government**

AN ORDINANCE

Providing for the submission to the qualified electors of the City of Philadelphia of the proposal set forth in a Resolution approved by Council proposing an amendment to The Philadelphia Home Rule Charter relating to the mandatory establishment and hiring of a new class of employees within the civil service system to be designated as "Public Safety Enforcement Officers"; setting forth the duties of such employees; and authorizing the appropriate officers to publish notice and to make arrangements for the special election.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. There shall be submitted for the approval or disapproval of the qualified electors of the City of Philadelphia at the election to be held May 21, 2019, the amendment to The Philadelphia Home Rule Charter contained in Resolution No. 180830 approved by Council on _____, 20__, and filed in the Office of the Clerk of Council.

SECTION 2. There shall be placed on the ballot the following question to be answered "Yes" or "No" by the qualified electors participating in the election:

Shall The Philadelphia Home Rule Charter be amended to require the establishment of "Public Safety Enforcement Officers" to assist the Police Department in regulating the flow of traffic; to enforce and assist the appropriate City officers in the enforcement of ordinances relating to the quality of life in the City's neighborhoods; and to perform such other related duties as the Managing Director or Council may require?

City of Philadelphia

BILL NO. 180818, as amended continued

SECTION 3. The Clerk of Council is hereby directed to (i) certify to the Board of Elections, within five days of this Ordinance becoming law, a copy of this Ordinance and Resolution No. 180830; and (ii) to have printed in pamphlet form, in sufficient number for general distribution, the proposed amendment to The Philadelphia Home Rule Charter as set forth in Resolution No. 180830 together with the ballot question set forth in Section 2 of this Ordinance.

SECTION 4. The Clerk of Council is hereby directed to cause to be published one time, during the three (3) weeks preceding the election on May 21, 2019, in three (3) newspapers of general circulation in the City and in The Legal Intelligencer, the proposed amendment to The Philadelphia Home Rule Charter, together with the ballot question set forth in Section 2 of this Ordinance; and further, at such other time and in such other manner as the Clerk may consider desirable.

SECTION 5. The Mayor is hereby authorized and directed to issue a proclamation giving at least thirty (30) days' notice of such election. The Clerk of Council shall cause a copy of the proclamation to be published in at least two (2) newspapers of general circulation in the City, and in The Legal Intelligencer, once a week for three consecutive weeks during the period of thirty days prior to the election. One such publication may be combined with the publication of the notice required by Section 4 of this Ordinance.

SECTION 6. The appropriate officers are authorized and directed to take such action as may be required for the holding of an election on the ballot question set forth in Section 2 of this Ordinance as provided for by the laws of the Commonwealth of Pennsylvania.



Cambridge City MA

Policy Order POR 2020 #178

The City Manager look into transferring primary traffic enforcement responsibilities from the Cambridge Police Department to unarmed, trained enforcement personnel in the Traffic & Parking Department, Department of Public Works, Health & Human Services, or another suitable department

Information

Department:	City Clerk's Office	Sponsors:	Councillor Quinton Zondervan, Councillor Jivan Sobrinho-Wheeler
Category:	Policy Order		

Attachments

[Printout](#)

Body

- WHEREAS: Routine traffic stops [disproportionately](#) impact Black and Brown drivers, who are pulled over and searched more often than white drivers, leading to potentially stressful interactions with the police; and
- WHEREAS: This racist outcome is not the result of biases by individual officers, although those may play a role, but rather is primarily the result of systemic biases, including over-policing in Black neighborhoods, and training of police officers to be hypervigilant and to expect violent resistance, despite such incidents being very [rare](#); and
- WHEREAS: The presence of an armed police officer during a routine traffic stop raises the tension of the encounter unnecessarily and can itself lead to conflict, causing harmful stress to both parties and [damaging](#) the relationship between police and the community; and
- WHEREAS: Routine traffic enforcement can be conducted by unarmed employees of the city, which would reduce the possibility of violence during such encounters; and
- WHEREAS: The police would still be responsible for apprehending known criminals, dangerous or erratic drivers, and other related situations that clearly go beyond routine traffic enforcement; now therefore be it
- ORDERED: That the City Manager look into transferring primary traffic enforcement responsibilities from the Cambridge Police Department to unarmed, trained enforcement personnel in the Traffic & Parking Department, Department of Public Works, Health & Human Services, or another suitable department; and be it further
- ORDERED: That the City Manager be and hereby is requested to report back to the City Council on this matter as soon as possible.

Meeting History

Jul 27, 2020 5:30 PM Video	City Council	Special Meeting	Draft
by Vice Mayor Mallon			
RESULT:	CHARTER RIGHT		Next: 9/14/2020 5:30 PM
Sep 14, 2020 5:30 PM Video	City Council	Regular Meeting	Draft

Referred to public safety committee

RESULT: REFERRED TO COMMITTEE [8 TO 1]

YEAS: Dennis J. Carlone, Patricia Nolan, Jivan Sobrinho-Wheeler, Alanna Mallon, Marc C. McGovern, Sumbul Siddiqui, E. Denise Simmons, Quinton Zondervan

NAYS: Timothy J. Toomey

Oct 14, 2020 10:00 AM Video **Public Safety Committee Meeting**

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Unarmed Traffic Stops: Correspondence with Other Municipalities

Jurisdiction	Unarmed Officers?	What they can do	What they can't do
UK Contact: Nicola Bell (Regional Director, Southeast UK Highways)	Uniformed and unarmed, patrol in marked cars	-Control traffic flow -Call police if they witness illegal activity -Respond to accidents -Manage traffic for major public events	-Law enforcement -Traffic stops -Issue citations
New Zealand Contact: National Police Media Team	<i>No longer</i>	They were absorbed into the National Police in 1992 out of concerns for officer safety and administrative efficiency	
Cambridge, MA Contact: Jivan Sobrnho-Wheeler, Quinton Zondervan	<i>Proposal for unarmed traffic patrol</i>	Massachusetts law dictates that citations can only be issued by a sworn officer. The program is on hold until the law is amended.	
Berkeley, CA Contact: Tano Trachtenberg	Ordinance passed that precludes police from enforcing minor traffic violations	CA Penal Code 830 delineates that only sworn officers can issue traffic citations. The program is on hold until the law is amended to allow for civilian patrols.	
Philadelphia, PA Contact: none.	Ordinance was passed in 2019, it is unclear if it is in effect.	-Issue citations -Regulate traffic flow	-Carry guns -Make arrests
California	Speed Cameras	In February 2021 AB550 was introduced and would allow the use of speed cameras for enforcement. The ACLU has voiced opposition.	
California	Red Light Cameras	Red light cameras are legal, but citations are issued by mail, unenforceable, and have no impact on the driver's DMV record.	

RACIAL &
IDENTITY
PROFILING
ADVISORY
BOARD

ANNUAL
REPORT
20
21

RACIAL AND IDENTITY PROFILING ADVISORY (RIPA) BOARD

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DAMON KURTZ, Vice President, Peace Officers Research Association of California; *Representative of the Peace Officers Research Association of California*

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COMMISSIONER WARREN STANLEY, Commissioner, California Highway Patrol; *Representative of the California Highway Patrol*

ANGELA SIERRA, Attorney Advisor, California Department of Justice, Division of Operations; *Designee of the Attorney General of California*

BRENDON WOODS, Alameda County Public Defender; *Representative of the California Public Defenders Association*

The Racial and Identity Profiling Advisory (RIPA) Board would like to thank the following staff from the California Department of Justice for their assistance and contributions to this report:

Editors

California Department of Justice, Civil Rights Enforcement Section (CRES)

Domonique C. Alcaraz, Deputy Attorney General, CRES
Allison S. Elgart, Deputy Attorney General, CRES
Tanya Koshy, Deputy Attorney General, CRES
Kendal Micklethwaite, Deputy Attorney General, CRES
Aisha Martin-Walton, Retired Annuitant, CRES
Anna Rick, Associate Governmental Program Analyst, CRES

California Department of Justice, California Justice Information Services Division (CJIS)

Rachael Brooks, Research Analyst, Research Center
Tiana Osborne-Gauthier, Research Analyst, Research Center
Evelyn Reynoso, Research Analyst, Research Center
Dr. Trent Simmons, Research Associate, Research Center
Kevin Walker, Research Associate, Research Center

Additional Editors and Contributors

Erin Choi, Program Manager, CJIS
Kimberly Hewitt, Field Representative, CJIS
Anthony Jackson, Senior Legal Analyst, CRES
Kenneth Keating, Staff Services Manager, CJIS
Joanne Kemmer, Field Representative, CJIS
Audra Opdyke, Assistant Director, CJIS
Alison Steen, Field Representative, CJIS
Christine Sun, Special Assistant to the Attorney General, Executive Office
George Whitby, Information Technology Supervisor, CJIS

Project Supervisors

Nancy A. Beninati, Supervising Deputy Attorney General, Civil Rights Enforcement Section
Dr. Tiffany Jantz, Research Data Supervisor, Research Center

The RIPA Board would like to thank this year's outgoing Board members Sheriff David Robinson, Micah Ali, Oscar Bobrow, Pastor J. Edgar Boyd, Andrea Guerrero, Edward Medrano, Douglas Oden, Timothy P. Silard, and Timothy Walker for their tremendous contributions and pioneering work on the Racial and Identity Profiling Advisory Board.

The RIPA Board looks forward to working with newly appointed Commissioner of the California Highway Patrol Amanda Ray, who will replace Commissioner Warren Stanley, who has retired from the California Highway Patrol after over 38 years of service. We will miss Commissioner Stanley and we wish him a long and happy retirement.

The RIPA Board thanks Alfred Palma from the California Department of Justice for his diligence and for serving as the travel coordinator to the Board since its inception.

The RIPA Board thanks the Commission on Peace Officer Standards and Training (POST) for its partnership and looks forward to continuing to build on this collaboration.

The RIPA Board thanks Jack Glaser, Ph.D., Professor, Goldman School of Public Policy, University of California, Berkeley; and Emily Owens, Ph.D., Professor, Department of Criminology, Law and Society and Department of Economics, University of California, Irvine, for their expertise and guidance in preparing this year's report.

The RIPA Board appreciates the participation of community members, advocates, members of law enforcement, researchers, and other stakeholders. Public participation is essential to this process, and the RIPA Board thanks all Californians who have attended meetings, submitted letters or email, and otherwise engaged with the work of the Board. We thank the public for continuing its engagement with the RIPA Board as we switched to a 100% virtual platform in light of the COVID-19 pandemic. We look forward to receiving the invaluable input from the public and hope to see you in person again in the near future.

The RIPA Board acknowledges the many challenges facing our communities in 2020, including COVID-19, and wishes everyone a happy and safe 2021!

EXECUTIVE SUMMARY	5
INTRODUCTION	18
EXPLICIT BIAS, IMPLICIT BIAS, AND OTHER DRIVING FORCES FOR STOP DATA DISPARITIES	23
ANALYSIS OF 2019 STOP DATA	32
Stop Data Demographics	33
Calls for Service	38
Actions Taken During Stop by Officers	40
Result of Stop	43
Tests for Racial/Ethnic Disparities	45
Use of Force Analysis	53
Report-Specific Analyses	57
RACIAL AND IDENTITY PROFILING POLICIES AND ACCOUNTABILITY	84
Accountability Systems	86
Wave 2 Agency Bias-Free Policing Policies Review	92
Wave 1 Agency Bias-Free Policing Policies Review Follow-Up	98
CALLS FOR SERVICE AND BIAS BY PROXY	101
Responding to Bias-Based Calls for Service	102
Responding to a Mental Health Crisis	107
CIVILIAN COMPLAINTS: POLICIES AND DATA ANALYSES	118
Wave 2 Civilian Complaint Form Review	129
Early Intervention Systems	134
LAW ENFORCEMENT TRAINING RELATED TO RACIAL AND IDENTITY PROFILING	143
Diversity in Law Enforcement	146
California Commission on Peace Officers Standards and Training (POST)	148
RELEVANT LEGISLATION ENACTED IN 2020	155
CONCLUSION	159

EXECUTIVE SUMMARY

California’s Racial and Identity Profiling Advisory Board (Board) is pleased to release its fourth Annual Report (“Report”). The Report provides recommendations from the Board for all stakeholders – law enforcement agencies, policymakers, Commission on Peace Officer Standards Training (POST), community members, and advocates – to push for policy reform, rooted in best practices, to help all law enforcement agencies eliminate racial and identity profiling and improve law enforcement and community relations. This year’s Report analyzes, for the first time, a full year of Racial and Identity Profiling Act (RIPA) stop data, from January 1, 2019 to December 31, 2019, from Wave 1 and 2 agencies. In addition to analysis of the stop data, the Report provides recommendations that can be incorporated by law enforcement agencies to enhance their policies, practices, and trainings on topics that intersect with bias and racial and identity profiling.

Recommendations for Law Enforcement Agencies

Policies: The Board has drawn from a range of law enforcement, academic, governmental, and nonprofit organizations with expertise in addressing racial and identity profiling to provide recommendations to law enforcement agencies. These recommendations do not represent the full extent of best practices, but they provide a starting point upon which agencies can build.

Accountability is a key aspect for effective policing, especially with respect to the elimination of bias. This year’s Report identifies the primary categories that make up accountability systems, and the Board hopes to continue its research with the goal of recommending best practices for each category in future years. The Report also continues the Board’s work from its 2020 Report with a review of bias-free policing policies for Wave 2 agencies and a follow-up review of the changes made by Wave 1 agencies after last year’s review.

The Report also contains recommendations related to calls for service. The Board provides an exemplar agency policy on preventing bias by proxy, provides ideas for protocols to approach calls for service that may be bias-based, and recommends that agencies adopt their own policy and train both dispatchers and officers on this important subject. For example, the Report discusses a research-based approach referred to as “adding friction” – or causing officers or community members to pause before reporting suspicious activity or initiating a stop – and discusses how that approach can help curb racial profiling. Moreover, the Report looks at how law enforcement agencies have historically responded to mental health crises and examines several types of crisis intervention strategies from around the country for law enforcement to consider with their community stakeholders.

Civilian Complaints: Agency-level information regarding the numbers of civilian complaints (2016-2019) is provided for Wave 1 and 2 reporting agencies. Additionally, the Board has included a review of the Wave 2 agencies’ complaint forms, a discussion of Early Intervention Systems (EIS) to identify and “flag” at-risk behavior by officers and intervene where necessary, and a discussion of feedback received from law enforcement agencies regarding the actions they have taken in response to the Board’s recommendations about complaint procedures.

The Board recommends that law enforcement agencies (LEAs) investigate all complaints fairly and thoroughly and communicate that commitment to the public. To achieve this, agencies must ensure members of the public and employees can easily submit complaints and that there is a system for recording and tracking them. The Board recommends that agencies identify ways to increase the community's involvement in considering the creation or expansion of independent civilian complaint review boards and community-centered mediation resources.

AB 953 Survey: To better understand how law enforcement has used the data analysis and recommendations presented by the Board in its last three reports, the California Department of Justice ("Department") surveyed Wave 1, 2 and 3 agencies. The survey also looked at how agencies engaged in RIPA data analysis and other actions taken by agencies to advance the goals of RIPA. The responses received from 25 of those agencies helped the Board to identify actions that LEAs are taking to advance the goals of RIPA.

Survey questions generally addressed the following areas:

- Use of Board recommendations and findings;
- Use of stop data for accountability purposes;
- Adoption of model bias-free policing policy language;
- Actions taken in response to best practices recommendations regarding civilian complaint procedures and forms; and
- Stop data analysis practices and resources.

The agency responses to the survey are presented throughout the Report and in Appendix E. The Board hopes that this information will be a valuable tool to help identify agency accountability and the positive ways that law enforcement has used the Board's Report to implement policy reform. For example, several law enforcement agencies reported that they reviewed the stop data with multiple levels of staff at their agencies and were using the Report to analyze concerning trends or patterns in their own stop data.

Recommendations for Community Members

The Report contains recommendations that advocates and community members can use to engage with policymakers and law enforcement to improve policies and accountability. The Board hopes that community members will work with law enforcement and policymakers to implement community-based solutions generally, and specifically, to respond to mental health related emergencies and develop community-centered approaches for responding to bias-based incidents. The Board encourages communities to engage with law enforcement to implement its recommendations for best practices for bias-free policing policies, civilian complaints, and accountability highlighted in the Report. The Board appreciates and thanks all of the members of the community for attending Board meetings and providing public comment and hopes community members will continue to provide the rich ideas and discussion at future meetings.

Recommendations for Policymakers

To reduce the disparities between groups who are more and less likely to come into contact with law enforcement, the Board urges policymakers to engage with impacted communities to prioritize housing, education, health care, and broader criminal justice system reforms, in addition to changes to law enforcement agency practices. The Board further recommends that policymakers fund and prioritize community-based solutions to respond to health-related emergencies and socioeconomic issues, such as being unhoused. In the Report, the Board has included eight examples of crisis intervention strategies. This research has laid the groundwork for the Board to develop best practices and model policy recommendations for crisis response in 2021. The Board recommends that the Legislature continue oversight of Mental Health Services Act funding and examine how counties are using Public Safety Realignment funding for community-based services instead of law enforcement activities to meet the rehabilitation goals under state law.

The Board recommends that policymakers require law enforcement agencies to adopt policies addressing bias by proxy and mandate basic training and continuing education courses on bias by proxy prevention for police dispatchers and officers. The Board recommends that policymakers strengthen data collection regarding bias-based calls for service, and study programs for responding to bias-based calls that focus on accountability and repairing the harms caused by these calls. Additionally, the Board recommends that the legislature increase the frequency with which in-service officers receive training to prevent racial and identity profiling practices.

Regarding civilian complaints, the Board renews its request for the legislature to address the conflict between state and federal law by amending Penal Code section 148.6, as the requirements set out by the Penal Code can have a chilling effect on the submission of civilian complaints.

Recommendations for POST

This year several Board members had the opportunity to review two trainings related to racial and identity profiling that were in the pre-production stage within POST, an independent state agency that is tasked with providing minimum selection and training standards for California law enforcement. One of the Board's statutory duties is to work with POST on training recommendations related to racial and identity profiling. This year, the Board recommends that POST emphasize the various perspectives of communities impacted by profiling. The training should include prominent components on officer accountability, officer reporting obligations and protections, and active bystander or peer intervention skills. The Board recommends that the training incorporate evidence-based research and data illustrating the disparate treatment of racial and other identity groups. The Board also recommends that officers receive training to mitigate the influence of bias on their behavior.

The Board reiterates the importance of dispatchers receiving mandatory training on how to identify and handle bias-based calls for service. The Board recommends that POST consider including a three-step protocol that includes "adding friction" for addressing bias-based calls for officer and dispatcher training.

The Board appreciates POST’s participation at Board meetings and receiving POST’s invitations to assist in the development of some of the trainings related to racial and identity profiling; however, the Board recommends formalizing a collaboration schedule, which will allow the Board to work closely with POST throughout the development and production process for future courses and course updates.

Potential Sources of Disparities Observed in the Stop Data

Consistent with the Board’s mandate to evaluate and eliminate racial and identity profiling in policing, the Report explores several potential driving forces shaping the patterns of stop data disparities revealed in the last two years of data collection. The Report discusses explicit bias, including recent examples of racist social media postings by law enforcement officers, and how this unchecked explicit bias may lead to some of the stop data disparities we have observed. The Report further summarizes several studies that may explain how implicit biases may shape officers’ interactions. Officers who are unaware of or not actively working to overcome their biases may consequently rely on them in their decision-making and interactions with the public and this could be a contributing factor in the disparities shown in the stop data. The Report contextualizes the issues of explicit and implicit biases within the larger systemic structural inequities that influence the frequency with which officers interact with people of certain races, ethnicities, or identities.

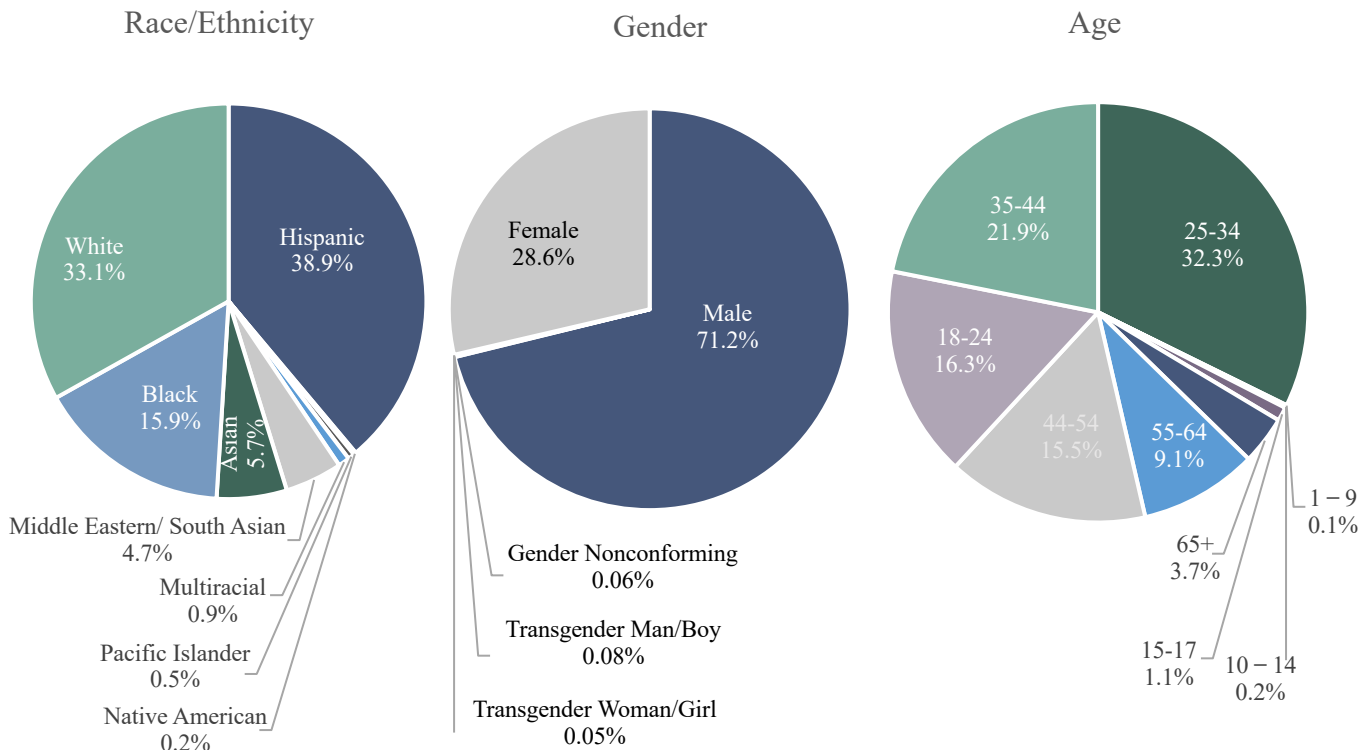
Given the multiple possible sources of disparities observed in the stop data, the Report encourages a multi-pronged approach and provides examples of ways agencies can reduce explicit and implicit bias. The Board also invites other stakeholders to think broadly – beyond the confines of law enforcement reform – about how to reduce inequities in other systems that directly or indirectly contribute to the disparities in the stop data.

Findings Regarding RIPA Stop Data

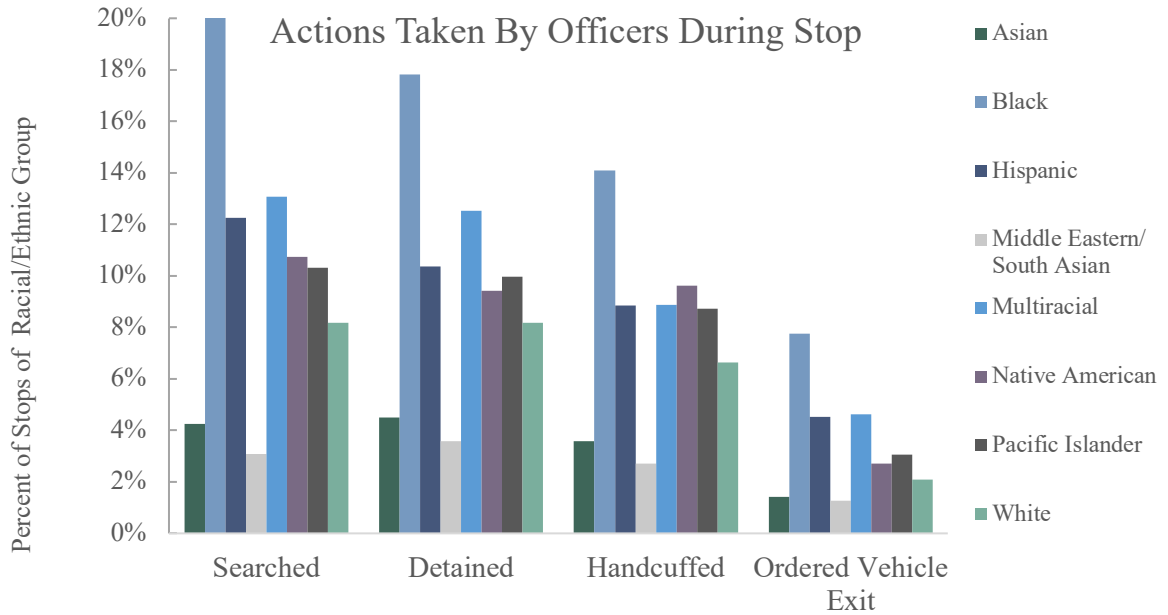
The 15 largest law enforcement agencies in California, referred to as Wave 1 and Wave 2 agencies in this Report, collected data on pedestrian and vehicle stops and submitted these data to the Department.¹ Reporting agencies collected data on 3,992,074 million stops between January 1, 2019 and December 31, 2019. The California Highway Patrol conducted the most stops (54.4%) of all reporting agencies, which was expected given the size and geographic jurisdiction of the agency and its primary mission with respect to highway safety. Below are some highlights from this year’s analysis:

- Individuals perceived to be Hispanic (38.9%), White (33.1%), or Black (15.9%) comprised the majority of stopped individuals; officers stopped individuals of the other five racial/ethnic groups enumerated in the stop data form collectively in 12.1% of stops.
- Individuals perceived to be between the ages of 25 and 34 (32.3%) constituted the largest proportion of stopped individuals of any one age group.

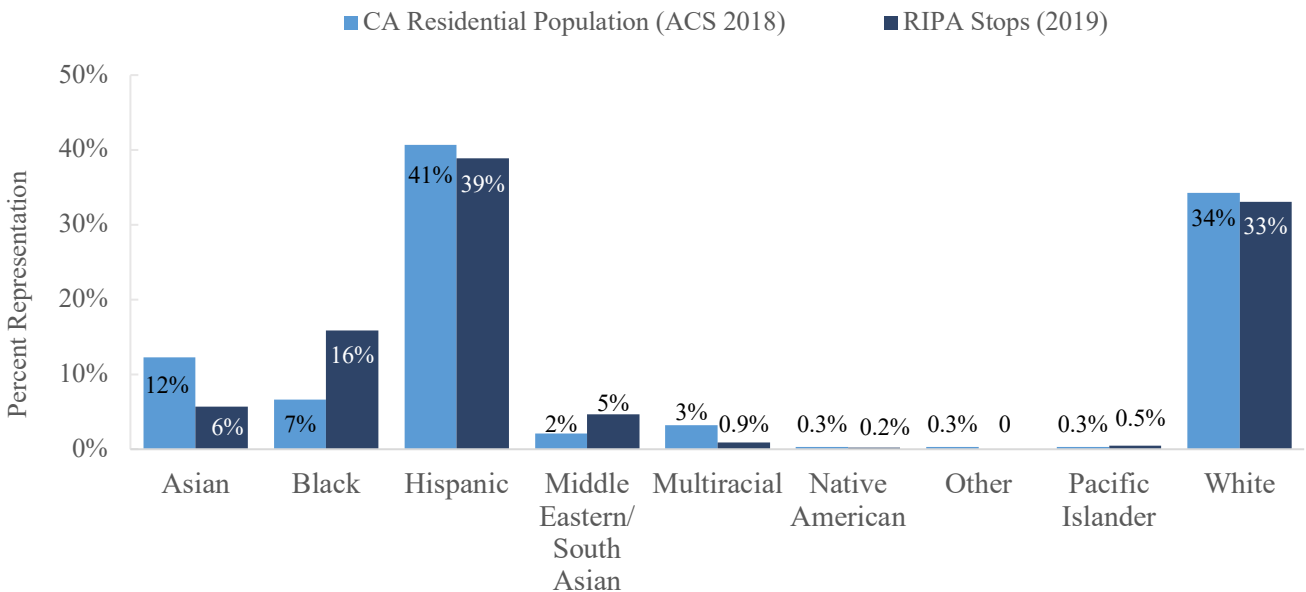
¹ Wave 1 agencies are the eight largest agencies in the state, which were required to start submitting stop data to the Department by April 1, 2019. Wave 2 agencies are the seven next largest agencies, which were required to start submitting stop data to the Department by April 1, 2020.



- Less than 1 percent of stopped individuals were perceived to be LGBT.
- Officers perceived 1.1 percent of the individuals they stopped to have one or more disabilities. Of those perceived to have a disability, the most common disability reported by officers was a mental health condition (63.3%).
- The most commonly reported reason for a stop across all racial/ethnic groups was a traffic violation (85.0%), followed by reasonable suspicion that the person was engaged in criminal activity (12.1%).
- Officers searched, detained on the curb or in a patrol car, handcuffed, and removed from vehicles more Black individuals than White individuals, despite stopping more than double the number of White individuals (1,322,201) than Black individuals (635,092).

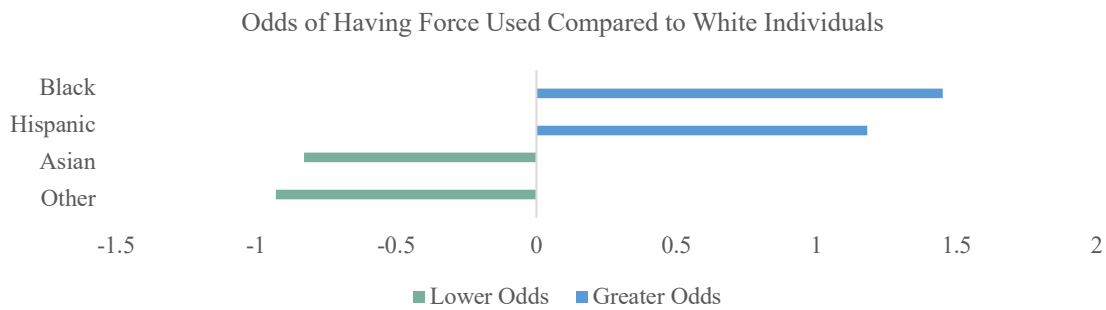


- To provide context for the racial distribution of stopped individuals, the Board compared the stop data distribution to residential population data from the United States Census Bureau from 2018, the most recent available year at the time of the analysis. Black individuals represented a higher proportion of stopped individuals than their relative proportion of the population in the ACS dataset.

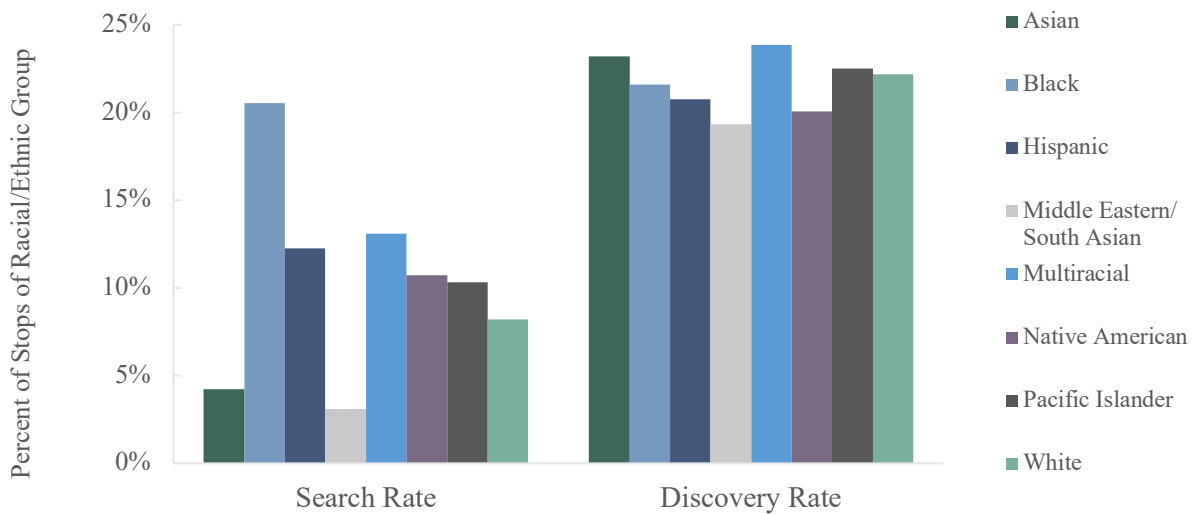


- Results of the Veil of Darkness analysis indicated that darkness (when it is presumably more difficult to perceive an individual's identity) decreased the rates at which Black and Hispanic individuals were stopped compared to White individuals.

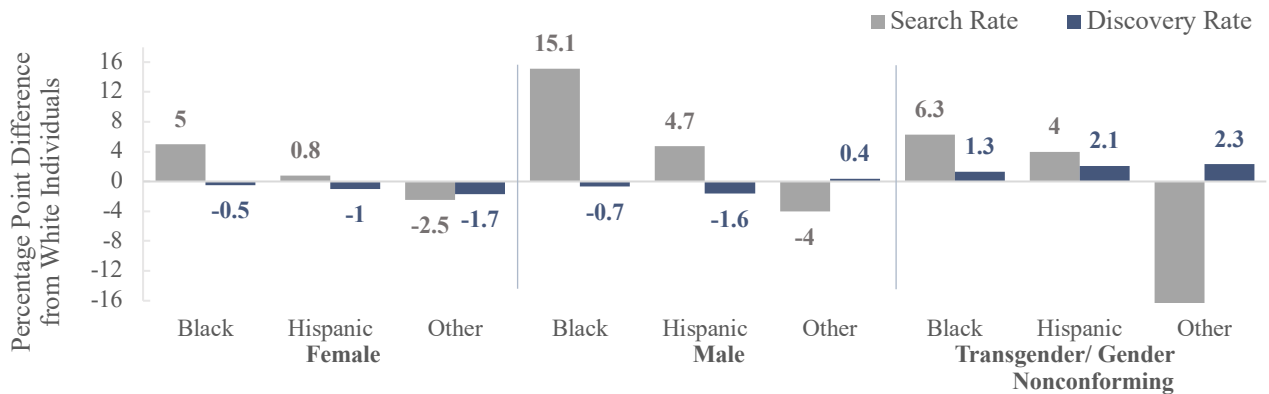
- Black and Hispanic individuals were more likely to have force used against them compared to White individuals, while Asian and other individuals were less likely. Specifically, compared to White individuals, the odds of having force used during a stop were 1.45 times and 1.18 times greater for Black and Hispanic individuals, respectively, than White individuals. The odds of force being used during stops of Asian or Other individuals were 0.83 and 0.93 times lower, respectively, compared to White individuals.



- Search discovery rate analyses showed that individuals perceived as Black, Hispanic, and Native American had higher search rates despite having lower rates of discovering contraband compared to individuals perceived as White.

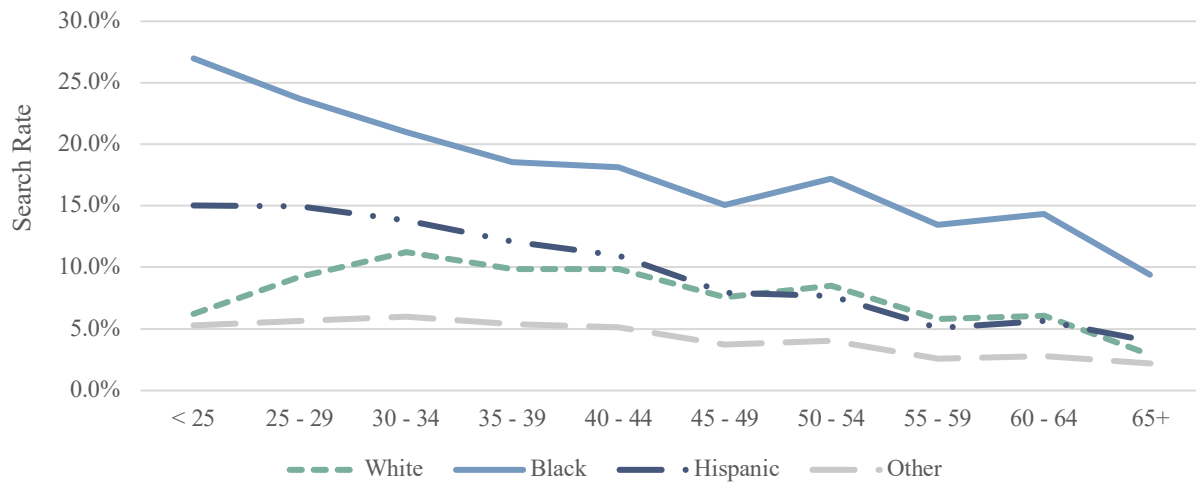


- A vast majority of stopped individuals were perceived as either (cisgender) male (71.2%; 2,841,218) or (cisgender) female (28.6%; 1,143,261), with all other gender groups collectively constituting less than 1 percent of the data. Within each gender group, Black and Hispanic cisgender males and cisgender females had higher search rates but lower discovery rates in comparison to White cisgender males and females. Black and Hispanic transgender/gender nonconforming individuals had higher search and discovery rates than White transgender/gender nonconforming individuals.

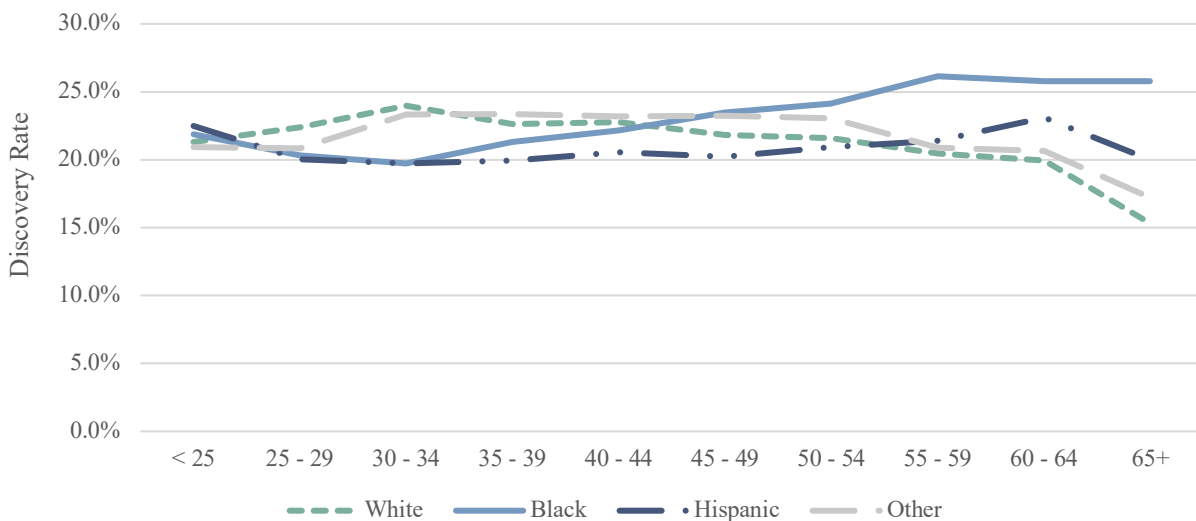


- In comparison to White individuals (47.0%), individuals from all other racial/ethnic groups (Black, Hispanic, and Other) perceived to have a mental health condition had higher search rates (52.8% - 56.3%). Black and Hispanic individuals perceived to have other types of disabilities had higher search rates than White individuals perceived to have other types of disabilities. Additionally, Black and Hispanic individuals perceived to have no disability had higher search rates in comparison to White individuals perceived to have no disability.
- The proportion of searched individuals that fall within each age category generally decreases as the age categories get higher; officers perceived over 50% of individuals they searched to be less than 40 years old, and over 80% of individuals they searched to be less than 55 years old. Black individuals were searched at the highest rate of all the race/ethnicity groups for all age categories. For the younger age groups, racial/ethnic disparities were larger, while disparities in search discovery rates were smaller. The data show that officers searched younger Black and Hispanic individuals at rates that were disproportionately high when compared to younger White individuals, despite discovering contraband or evidence from younger Black, Hispanic, and White individuals during a comparable proportion of these stops.

Search Rates by Race/Ethnicity and Age

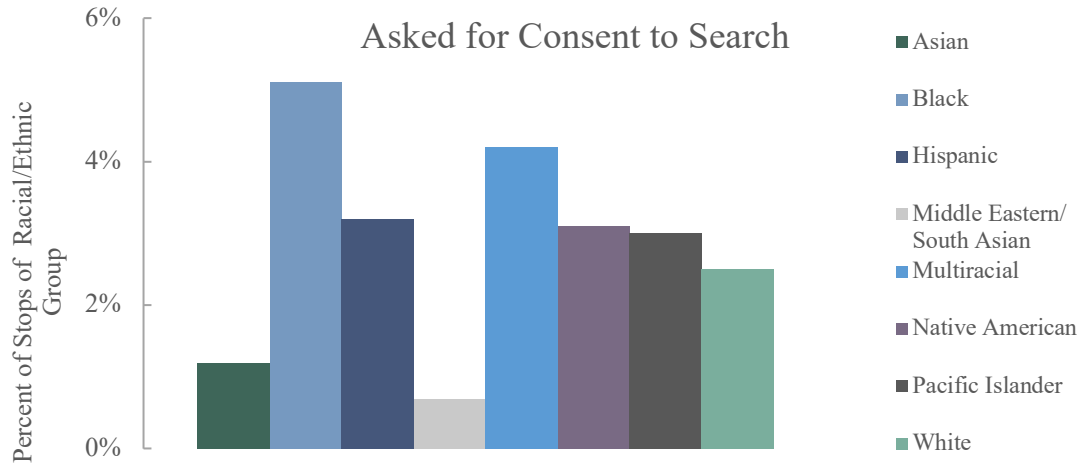


Discovery Rates by Race/Ethnicity and Age

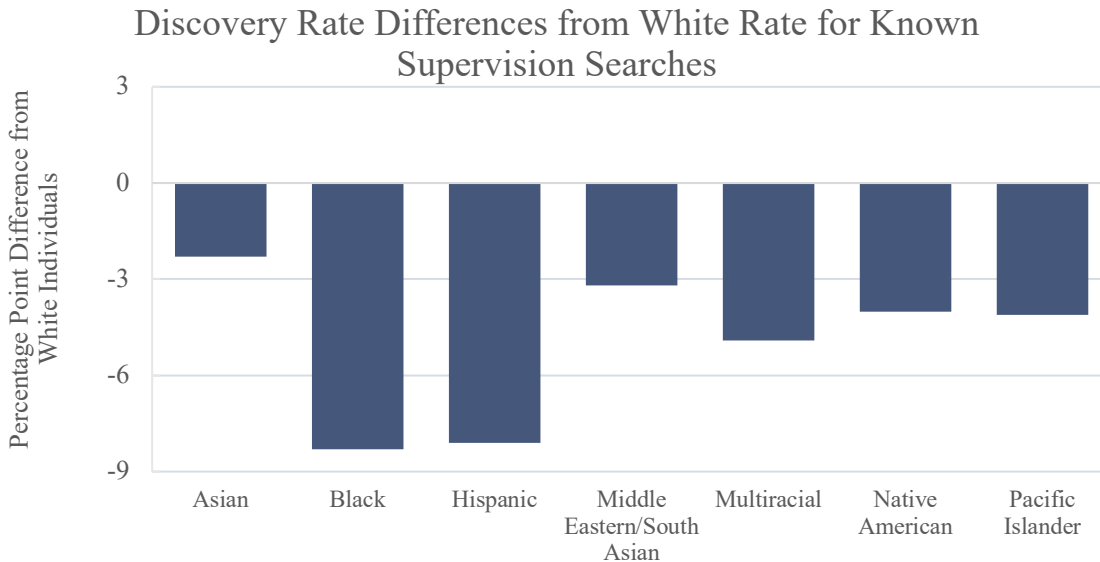


- The proportion of stopped individuals whom officers asked for consent to perform a search varied widely between racial/ethnic groups, from a low of 0.7% of Middle Eastern/South Asian individuals to a high of 5.1% of Black individuals. Officers asked for consent to search Black individuals (5.1%) at twice the rate that they asked White individuals (2.5%). Officers also performed “consent only” searches (where the only basis for the search was that the stopped individual provided consent) of Black individuals (2.4%) at a rate twice the rate they performed these consent only searches of White individuals (1.2%). Despite having higher consent only search rates than White

individuals, Black and Hispanic individuals had lower rates of discovery of contraband or evidence for consent searches than White individuals.



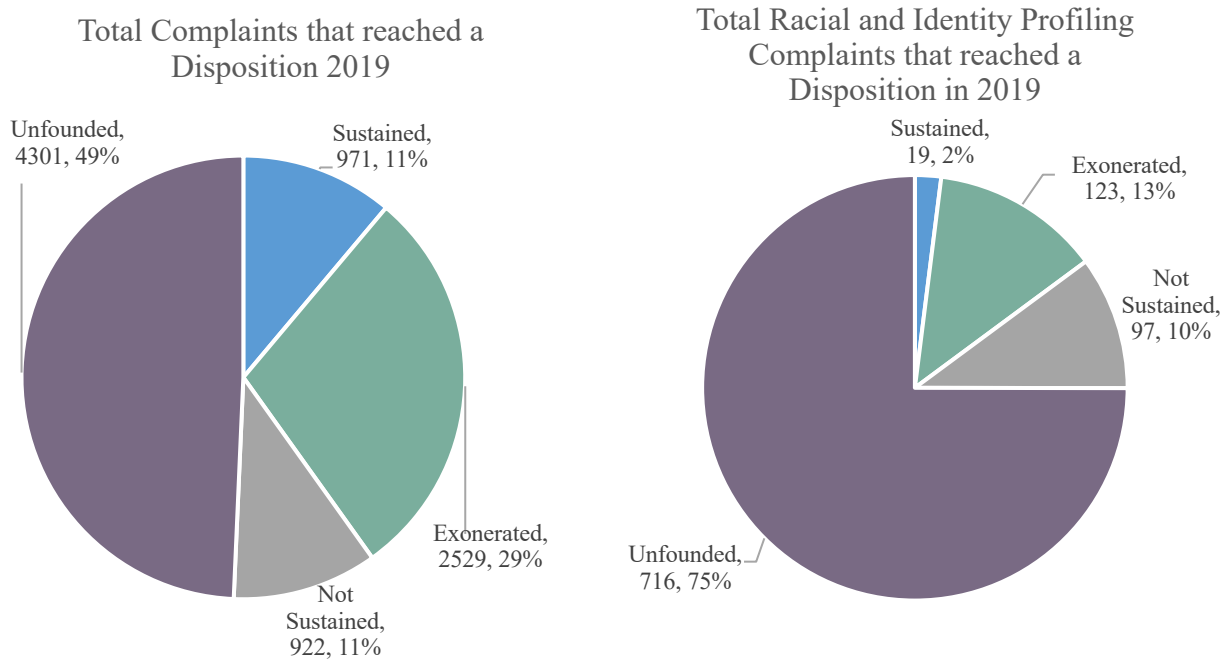
- Stopped individuals perceived to be Black had the highest proportion of any racial/ethnic group stopped based on the officer’s knowledge that the person was on probation, parole or other supervised status (1.2%), while Middle Eastern/South Asian individuals (0.1%) had the lowest proportion. The proportion of stopped individuals whom officers reported they searched based solely upon a search condition of supervision varied between racial/ethnic groups, from a low of 0.2% of Middle Eastern/South Asian individuals to a high of 3.4% of Black individuals. The discovery rates for these condition-of-supervision searches were lower for all racial/ethnic groups of color than they were for White individuals.



Findings Regarding Civilian Complaint Data

The Report includes an analysis of complaints of racial or identity profiling received in 2019 by the 452 law enforcement agencies subject to RIPA's stop data reporting requirements. Of these agencies, 146 (39.7%) reported 1,153 complaints alleging racial or identity profiling, 955 of which reached disposition in 2019. The figure below displays the proportions of complaints reported by stop data reporting agencies that reached disposition in 2019 broken down by disposition type.

Disposition Distribution of 2019 Complaints



Complaint Disposition Key

Sustained: investigation disclosed sufficient evidence to prove truth of allegation in complaint by preponderance of evidence.

Exonerated: investigation clearly established that employee's actions that formed basis of allegations in complaint were not a violation of law or agency policy.

Not sustained: investigation failed to disclose sufficient evidence to clearly prove or disprove complaint's allegation.

Unfounded: investigation clearly established that allegation is not true.

Agency-Level Data Snapshot: 2019 Civilian Complaints for Wave 1 and 2 Agencies

Table 1 displays civilian complaint totals broken down for Wave 1 and 2 agencies. The table provides the following information: the total number of complaints reported; the number of complaints reported alleging racial or identity profiling; and the number of sworn personnel each agency employed in 2019.²

Table 1: Complaints Reported in 2019 by Agency

Reporting Wave	Agency	Total Complaints Reported	Total Profiling Complaints Reported	Total Sworn Personnel
1	California Highway Patrol	353	21	7,230
1	Los Angeles County Sheriff's Department	1,010	68	9,565
1	Los Angeles Police Department	2,205	426	10,002
1	Riverside County Sheriff's Department	33	0	1,788
1	San Bernardino County Sheriff's Department	113	39	1,927
1	San Diego County Sheriff's Department	214	74	2,601
1	San Diego Police Department	102	25	1,764
1	San Francisco Police Department	842	0	2,279
2	Fresno Police Department	231	13	806
2	Long Beach Police Department	182	9	817
2	Oakland Police Department	1,215	36	740
2	Orange County Sheriff's Department	129	11	1,888
2	Sacramento County Sheriff's Office	205	5	1,348
2	Sacramento Police Department	146	6	678
2	San Jose Police Department	205	36	1,150

² Sworn personnel totals are calculated from the information contained within the Law Enforcement Personnel file available at <https://openjustice.doj.ca.gov/data>. The DOJ collects the Law Enforcement Personnel data through a one-day survey taken on October 31 of each reporting year.

Conclusion

The Board remains committed to fulfilling the promise of the Racial and Identity Profiling Act to eliminate racial and identity profiling and improve law enforcement-community relations. The stop data results demonstrate there is significant work to be done to prevent further disparities in who is stopped, how they are treated when stopped, and the outcomes of those stops. The Board hopes that all stakeholders will review its data analyses and recommendations – rooted in evidence-based best practices – regarding bias-free policing, bias by proxy, civilian complaint processes and forms, accountability, and early intervention, and explore crisis intervention models to inform data-driven policy and practice reforms.

INTRODUCTION

“A man dies when he refuses to stand up for that which is right. A man dies when he refuses to stand up for justice. A man dies when he refuses to take a stand for that which is true.”

– Martin Luther King Jr.

It has now been five years since the passage of the Racial and Identity Profiling Act of 2015 and more than four years since the Racial and Identity Profiling Advisory (RIPA) Board first convened to begin its work to eliminate racial and identity profiling and improve diversity and racial and identity sensitivity in law enforcement.³ The RIPA Board began its work in July of 2016 amidst a backdrop of painful high-profile shootings involving the police. Even though years have passed and important reforms were enacted, we find ourselves in a similar position today, facing more painful incidents of officer shootings and excessive force disproportionately affecting Black, Indigenous, and other people of color. As our nation is grappling with these incidents and the crisis due to the COVID-19 global pandemic, our country is in a pivotal time.

The work to eliminate racial and identity profiling, as well as improve law enforcement and community relations, is continuous. From its inception, the RIPA Board laid an important foundation for collecting data on police behavior during stops, reviewing complaint processes, analyzing police training courses, reviewing law enforcement policies on bias, and addressing emerging practices regarding calls for service, bias by proxy, gender equity, and the deployment of police to respond to people experiencing mental health crises.

Given the current climate in our country, we recognize now more than ever the urgency of the RIPA Board’s pioneering work on the elimination of bias and racial profiling in policing. With several new members joining our Board this year, we are well poised to continue the work before us. The Board is comprised of academics, community representatives, clergy, policy and legal advocates, and law enforcement leaders, who not only create a forum for the Board and the public to discuss strategies for improving police practices, but also put those strategies into practical solutions. The Board’s work is enhanced by the diverse perspectives, backgrounds, and areas of expertise of its members. Together, the Board and its stakeholders share the common goals of improving law enforcement-community relations, building trust, making policing equitable, and striving to make all Californians feel respected and safe. This mission can only be achieved through collaboration, transparency, and accountability. The Board’s goal is to drive policy to reform policing and positively impact everyone.

Law Enforcement’s Role in History

Law enforcement agencies and officers serve an important public safety role in our society, but over the course of history, the role of police has expanded more and more into addressing underlying social problems and inequities in our communities.⁴ Author Alex S. Vitale posits that part of our misunderstanding about the nature of policing is that we cannot turn police officers

³ Cal. Pen. Code, § 13519.4, subd. (j)(1).

⁴ Donella, *How Much Do We Need the Police*, NPR (June 3, 2020)

<<https://www.npr.org/sections/codeswitch/2020/06/03/457251670/how-much-do-we-need-the-police>> (as of Dec. 14, 2020).

into friendly community outreach workers when police have the legal capacity to use violence in situations where the average citizen would be arrested.⁵ Thus, when our policymakers delegate certain community caretaking functions, the use of violence increases, because police are trained and equipped to utilize tools of force: control holds, handcuffs, pepper spray, electronic stun weapons, and guns, ultimately leading to arrest and incarceration.⁶

Given the nature of policing in the United States, it is not much of a leap to understand why many individuals have a fear of police, and, as such, this fear should be a part of the discussion about policing in this country. This fear is experienced, spoken about, and passed on from generation to generation, and it is very real, especially for Black, Indigenous, and other people of color. Some of this fear stems from the history of policing in this country, and in particular, Slave Patrols, which were in effect from 1704 in some southern states until the end of the Civil War.⁷ The duties of those officers were to uphold the institution of slavery to benefit the White majority, and their policing activities included searching quarters, dispersing gatherings, and preventing and suppressing uprisings of enslaved people.⁸ Southerners began to see Slave Patrols as the true instrument of law enforcement,⁹ and their role was to oppress enslaved Black people to protect the property rights of Whites without regard for the welfare of Black Americans.

Throughout American history, law enforcement has also been deployed in other contexts to enforce unjust laws and policies, including the forcible removal of Indigenous communities from their native lands, the arrest of suffragettes working for women's right to vote,¹⁰ Japanese internment,¹¹ the criminalization of the LGBTQ community,¹² and the targeting of immigrants by local and federal authorities.¹³ In addition, there are numerous examples of law enforcement officers meeting peaceful protestors with force and aggression.¹⁴ The use of law enforcement to suppress the rights of marginalized and disempowered groups is a thread that has unfortunately continued for centuries in America, and it is often felt most significantly by heavily-policed communities. Both these images of police misconduct and the history of law

⁵ *Ibid.*

⁶ *Ibid.*

⁷ Kappeler, *A Brief History of Slavery and the Origins of American Policing*, Eastern Ky. U. (Jan. 7, 2014) <<https://plsonline.eku.edu/insidelook/brief-history-slavery-and-origins-american-policing>> (as of Dec. 14, 2020); see also Waxman, *How the U.S. Got its Police Force*, Time (May 18, 2017) <<https://time.com/4779112/police-history-origins/>> (as of Dec. 14, 2020) (policing in American developed differently depending on the region and community [rural/urban]).

⁸ Hansen, *Slave Patrols: An Early Form of American Policing* (July 10, 2019) National Law Enforcement Museum <<https://lawenforcementmuseum.org/2019/07/10/slave-patrols-an-early-form-of-american-policing/>> (as of Dec. 14, 2020).

⁹ *Ibid.*

¹⁰ Wild, *c. 1910-1920 Suffragettes vs. Police: The Women Prepared to go to Prison for the Vote* (Jan. 12, 2015) Mashable. <<https://mashable.com/2015/01/12/suffragettes-vs-police/>> (as of Dec. 14, 2020).

¹¹ See, e.g., *Korematsu v. United States* (1944) 323 U.S. 214.

¹² See, e.g., *Bowers v. Hardwick* (1986) 478 U.S. 186; History, *Stonewall Riots* (June 26, 2020) <<https://www.history.com/topics/gay-rights/the-stonewall-riots>> (as of Dec. 14, 2020).

¹³ National Immigration Law Center, *SB 1070 Four Years Later* (April 23, 2014) <<https://www.nilc.org/issues/immigration-enforcement/sb-1070-lessons-learned/>> (as of Dec. 14, 2020); National Immigration Law Center, *President Trump's Raids on Immigrant Communities* (Feb. 27, 2017) <<https://www.nilc.org/issues/immigration-enforcement/trump-raids-on-immigrant-communities/>> (as of Dec. 14, 2020).

¹⁴ *What the 1960s can teach us about modern-day protests* (Interview with Omar Wasow, Professor at Princeton U.), NPR News Hour (May 31, 2020) <<https://www.pbs.org/newshour/show/what-the-1960s-can-teach-us-about-modern-day-protests>> (as of Dec. 14, 2020).

enforcement's role in American society from its inception remain in the forefront of the public's mind.

Today's law enforcement personnel did not create these historical fears in our communities, yet the fear exists. In order to repair and heal those wounds, police must acknowledge and work within the context of that negative history and systemic violence that has and continues to be directed at marginalized communities. Our police and our communities can, however, change that fear with every interaction. Respect and dignity among individuals should prevail even if someone is taken into custody.

The Board's hope is that fear, panic, dread, anxiety, and distrust will not continue to be the first emotions that arise when an individual sees someone in a police uniform. We raise this dark history because systemic change is not solely about reactive policy change; it also requires a long-term commitment to reconsider the way things have been done and develop new models to move forward.

The Call for Justice

The year 2020 has been unprecedented in so many respects, but in particular with respect to widespread frustration against law enforcement. In March, Breonna Taylor was killed in her Louisville, Kentucky apartment as she lay asleep in bed when officers entered her home in a botched "No Knock" search warrant. The month of May brought the horrific death, captured on video, of George Floyd in Minneapolis, Minnesota.¹⁵ In June, Rayshard Brooks was killed by police in Atlanta, Georgia, and in August, Jacob Blake was shot multiple times in the back and partially paralyzed in Kenosha, Wisconsin. These acts of violence all resulted in protests, curfews, backlash, and calls from the community for justice.

This year we have seen unprecedented numbers of people marching across the globe in support of Black Lives Matter. Law enforcement agencies, academics, governmental entities, community members, and advocates have begun to examine their own biases and how to implement reforms, fund community-based solutions, and engage in other actions that will result in a more inclusive society. Local, state, and federal governments have made commitments to listen – but it will take bold action at all levels of government to change the core problems that lead to systemic injustice.

How Data Can Create Change

The RIPA Board's analysis of the data collected will help identify racial and identity profiling and inform concrete actions or policies that can eliminate disparities. Law enforcement agencies and officers are required to submit information on stops made by officers, including their perceptions regarding the identities of the persons stopped, actions taken during the stops, and the stops' outcomes. In this year's annual report, as in previous years, the RIPA Board shares

¹⁵ Officer Chauvin, who is White, kept his knee on Mr. Floyd's neck for at least eight minutes and 15 seconds. A video analyzed by the New York Times shows that Chauvin did not remove his knee even after Mr. Floyd lost consciousness and for a full minute and 20 seconds after paramedics arrived at the scene. (Hill et al., *How George Floyd Was Killed in Police Custody*, New York Times (May 31, 2020) <<https://www.nytimes.com/2020/05/31/us/george-floyd-investigation.html>> (as of Dec. 14, 2020).

detailed findings for the public, law enforcement, and other government officials, including analyses, review, and recommendations regarding:

- Civilian complaint data associated with stops made by officers;
- Law enforcement training on racial and identity profiling;
- Policies and practices used by law enforcement agencies across the state; and
- Evidence-based research on the impact of implicit bias and explicit bias in policing.¹⁶

The data collected includes several categories: 1) information regarding the stop, 2) information regarding the officer’s perception of the person stopped, and 3) information regarding the officer themselves. Table 1 shows in detail each element officers are required to report.¹⁷

Table 1: Officer Reporting Requirements

<i>Information Regarding Stop</i>
<ol style="list-style-type: none"> 1. Date, Time, and Duration 2. Location 3. Reason for Stop 4. Was Stop in Response to Call for Service? 5. Actions Taken During Stop 6. Contraband or Evidence Discovered 7. Property Seized 8. Result of Stop
<i>Information Regarding Officer’s Perception of Person Stopped</i>
<ol style="list-style-type: none"> 1. Perceived Race or Ethnicity 2. Perceived Age 3. Perceived Gender 4. Perceived to be LGBT 5. Limited or No English Fluency 6. Perceived or Known Disability
<i>Information Regarding Officer</i>
<ol style="list-style-type: none"> 1. Officer’s Identification Number 2. Years of Experience 3. Type of Assignment

¹⁶ Cal. Pen. Code, § 13519.4, subd. (j)(3)(D).

¹⁷ For more information on the specific data collected, see State of California Department of Justice (2017) AB 953: Template Based on the Final Regulations <<https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/regs-template.pdf>> (as of Dec. 14, 2020).

This is the first year the Board has a full year’s worth of data collected from the 15 largest law enforcement agencies in California regarding the perceived race or identity of the person stopped. We hope law enforcement across the state will use the RIPA stop data and the Board’s recommendations and analyses to strengthen their policies and practices — and, in turn, better serve our communities. In the coming years, nearly every law enforcement agency within the state of California will be responsible for collecting this information.

Table 2: Collection and Reporting Deadlines by “Wave”

Reporting Wave	Size of Agency	Data Collection Begins	Data Must be Reported to DOJ	Approx. # of Agencies
1	1,000+	July 1, 2018	April 1, 2019	8
2	667-999	Jan. 1, 2019	April 1, 2020	7
3	334-666	Jan. 1, 2021	April 1, 2022	10
4	1-333	Jan. 1, 2022	April 1, 2023	400+

The findings in this year’s report show similar disparities to last year’s report and reveal some key findings. In stops with discretionary searches, it was more probable for Black and Hispanic individuals to be searched compared to White individuals, despite also being less likely to be found in possession of contraband or evidence. In other words, officer searches of non-White individuals tended to be less successful at finding contraband or evidence, even though they were searched more often. Black individuals not only had the highest rate of being searched by police, but also the highest rate of being detained on the curb or in a patrol car, handcuffed, and removed from a vehicle by order.

This report provides a unique opportunity and obligation for a public Board like the RIPA Board to speak and to act. Now is the time for bold and aggressive leadership by law enforcement Chiefs, Sheriffs, and Commissioners to use this data and their resources to help reduce the inequality and adverse outcomes experienced by individuals because of their race, ethnicity, identity, or disability. It also provides opportunities for legislators to make needed legislative changes identified by the Board. With new data coming in every year, it is time to redouble our efforts for the future. The time is now to build on the foundation laid by the Board and push forward to create the changes our communities demand. The RIPA Board will continue to be vigilant, visible, and outspoken in working towards this change.

EXPLICIT BIAS, IMPLICIT BIAS, AND OTHER DRIVING FORCES FOR STOP DATA DISPARITIES

The RIPA Board’s mandate is to evaluate and eliminate racial and identity profiling in policing. Penal Code section 13519.4 subdivision (e) defines racial and identity profiling as “the consideration of, or reliance on, to any degree, actual or perceived race, color, ethnicity, national origin, age, religion, gender identity or expression, sexual orientation, or mental or physical disability in deciding which persons to subject to a stop or in deciding upon the scope or substance of law enforcement activities following a stop, except that an officer may consider or rely on characteristics listed in a specific suspect description.”

How we understand the problem of racial and identity profiling shapes where we look for solutions, and therefore, it is critical to evaluate the factors that give rise to disparities in the first place. RIPA stop data collected in 2018 and 2019 reveal patterns of disparities in law enforcement interactions with civilians. As revealed in the 2020 report, individuals perceived to be Black were searched at nearly three times the rate of individuals perceived to be White.¹⁸ Similarly, officers arrested individuals perceived to be Black at nearly 1.6 times the rate as individuals perceived to be White.¹⁹ In order to encourage lasting, holistic, and proactive policy change, it is important to confront the driving forces behind such disparities. Below the Board looks at two likely driving forces – implicit and explicit biases.

Implicit Bias

Implicit biases held by law enforcement officers may explain differential treatment of certain races and identity groups. Implicit biases arise from the natural functioning of the human brain and refer to the beliefs or attitudes a person holds that can shape their understanding, actions, and decisions in an unconscious manner.²⁰ Relying on their implicit biases, individuals may make unconscious associations in an attempt to quickly make sense of a complex, highly evolving environment.²¹

Implicit biases are shared by the general public and, in recent years, they have become a common part of the national dialogue on race and law enforcement reform. When implicit biases are rooted in negative stereotypes of particular races, ethnicities, or other identities, they may cause people to act in ways that can have a negative impact on others. This is true even if a person’s implicit bias conflicts with their consciously-held or self-professed beliefs.²²

¹⁸ See Racial and Identity Profiling Advisory Board, Supplemental Technical Report 2020 (“2020 RIPA Technical Report”) (2020) p. 10 <<https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-tech-report-2020.pdf>> (as of Dec. 14, 2020).

¹⁹ *Id.* at p. 45.

²⁰ Bennett, *Introduction to Implicit (Unconscious) Bias* (2019) 89 *The Advoc.* (Texas) 35, 35.

²¹ Krieger Hamilton, *The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity* ((1995) 47 *Stan. L. Rev.* 1161, 1187 [citing Vinacke, *Stereotypes As Social Concepts* (1957) 45 *J. Soc. Psychol.* 229, 229].

²² Richardson, *Police Efficiency and the Fourth Amendment* (2012) 87 *Ind. L.J.* 1143, 1148.

In the context of policing, implicit biases may help explain some of disparities seen in stops.²³ For example, studies show that people’s attention is drawn more quickly to Black individuals, especially young Black men, than to White individuals.²⁴ Researchers reason that this “attentional bias” relates to people’s unconscious belief – formed as the result of inaccurate societal messaging, policies, and practices – that Black men are threatening,²⁵ and people pay more attention to faces that are stereotypically associated with threat.²⁶ Relatedly, researchers have also observed that when White participants view Black faces, there is increased activity in the regions of the brain associated with threat and fear processing, disgust reactions, and social stereotyping.²⁷ This attentional bias and brain activity associated with threat and fear, among other processes, may explain disproportionate stops of Black individuals in some jurisdictions. That is, officers may have an attentional bias towards Black individuals, and may experience brain activity associated with threat and fear processing, which causes the officers to pay more attention to Black individuals and, in turn stop them at disproportionate rates.

Another study of more than 950 online participants demonstrated that people inaccurately perceive Black men as larger, and for some participants, as more threatening than similarly-sized White men.²⁸ In these types of studies, the race of the participant typically does not have much of an impact as to the perception of Black men’s size, reflecting that what is affecting a person’s perception is *exposure* to the stereotype (e.g., from having lived in a society that has created and broadly reinforced negative stereotypes about certain identities) rather than necessarily agreeing with the stereotype on a conscious level.²⁹ In one experiment, researchers showed participants a series of color photographs of White and Black male faces and asked them to estimate each man’s height and weight based on the face alone.³⁰ Participants – regardless of race – estimated the Black men to be larger than White men.³¹ White participants also judged the Black men as more capable of harm.³² Participants, in turn, judged that use of force against Black men was more justified than the force used against White men.³³ In

²³ Our discussion generally focuses on implicit bias as it relates to Black and White individuals because research has primarily focused in that area. The Board acknowledges there is a significant need for research on implicit bias as it relates to people of other races, ethnicities, and identities.

²⁴ Richardson, *Police Efficiency and the Fourth Amendment* (2012) 87 Ind. L.J. 1143, 1150 [citing Trawalter, et al., *Attending to Threat: Race-Based Patterns of Selective Attention* (2008) 44 J. Experimental Soc. Psychol. 1322, 1324].

²⁵ *Ibid.*

²⁶ Guillermo, et al., *Attentional Biases Toward Latinos* (2016) 38 *Hisp. J. of Behav. Sci.*, 264, 274 <[http://psych.colorado.edu/~jclab/pdfs/Guillermo%20&%20Correll%20\(2016\)%20attention%20to%20latinos.pdf](http://psych.colorado.edu/~jclab/pdfs/Guillermo%20&%20Correll%20(2016)%20attention%20to%20latinos.pdf)> (as of Dec. 14, 2020).

²⁷ Specifically, the amygdala, the anterior insula, and the anterior temporal lobe regions of the brain—which are involved in threat processing, disgust reactions, and social stereotyping, respectively—are activated when White participants view Black faces. Salmanowitz, *Unconventional Methods for A Traditional Setting: The Use of Virtual Reality to Reduce Implicit Racial Bias in the Courtroom* (2016) 15 *U.N.H.L. Rev.* 117, 123 [citations omitted].

²⁸ See generally Wilson, et al., *Racial Bias in Judgments of Physical Size and Formidability: From Size to Threat* (2017) 113 *J. Personality and Soc. Psychol.* 59.

²⁹ *Id.* at pp. 74-75.

³⁰ *Id.* at p. 63.

³¹ *Id.* at pp. 70-71.

³² *Id.* at pp. 69-70. Notably, Black participants did not judge Black men as more capable of harm, leading researchers to posit that while Black participants hold onto the same “size stereotypes,” they do so without the “associated group-based threat.” *Id.* at 70. In other words, “Black targets presumably are judged [by Black participants] as larger merely as a result of stereotypes, and not because of a threat looming mechanism.” *Id.*

³³ *Id.* at pp. 70-71.

another experiment, participants estimated men with darker skin and more “prototypically” Black facial features to be larger than similarly-sized men with lighter skin and less “prototypically” Black facial features.³⁴ These results suggest that societal messaging can affect what an individual may unconsciously perceive to be true or not true about a particular group.

Other studies have also shown that people implicitly and inaccurately associate Black individuals with crime, due to broader societal messaging, policies, and practices that shape unconscious biases. Priming people with an image of a Black person’s face sped up participants’ visual processing of crime-related objects, while priming them with an image of a White person’s face slowed down their processing of those same crime-related objects.³⁵ Specifically, researchers studied how long it took White male participants to recognize blurred objects slowly becoming clearer after they were first subliminally primed with either White faces or Black faces (e.g., were shown the images so quickly as to not be able to consciously report having even seen them). It took participants less time to recognize crime-related objects (e.g., knife or gun) after they viewed Black faces than after they viewed White faces.³⁶ Moreover, this association between Black individuals and crime is bidirectional; “Black faces and Black bodies can trigger thoughts of crime, [and] thinking of crime can trigger thoughts of Black people.”³⁷

These unconscious negative responses to Black individuals may conflict with a person’s consciously-held beliefs³⁸ and may shape a variety of law enforcement interactions. For example, an officer may not have racist views toward Black individuals, but nonetheless may stop this group more frequently because the officer is acting on unchecked implicit bias that causes them to pay closer attention to Black individuals even if there is no criminal behavior.³⁹ Indeed, the RIPA 2019 stop data shows that the search rates for Black individuals were higher than for White individuals, despite the fact that the discovery rate of contraband/evidence was higher for White individuals.⁴⁰ This suggests that officers suspect Black individuals of carrying weapons more frequently than White individuals and thus search Black individuals at a higher rate even if the data does not support such an association.⁴¹

³⁴ Wilson, et al., *Racial Bias in Judgments of Physical Size and Formidability: From Size to Threat* (2017) 113 J. Personality and Soc. Psychol. 59, 70-72.

³⁵ “‘Priming’ is a cognitive phenomenon that reveals how exposing people to photos, symbolic representations, or members of stereotyped groups activates a vast network of stereotypes about that group. Psychologists define priming as the incidental activation of knowledge structures, such as trait concepts and stereotypes, by the current situational context.” Smith, et al., *The Impact of Implicit Racial Bias on the Exercise of Prosecutorial Discretion* (2012) 35 Seattle U. L. Rev. 795, 798 [citation and internal quotation marks omitted].

³⁶ Eberhardt, et al., *Seeing Black: Race, Crime, and Visual Processing* (2004) 87 J. Personality & Soc. Psychol. 876, 881 <<https://web.stanford.edu/~eberhard/downloads/2004-SeeingBlackRaceCrimeandVisualProcessing.pdf>> (as of Dec. 14, 2020).

³⁷ *Id.* at p. 876.

³⁸ Jolls, et al., *The Law of Implicit Bias* (2006) 94 Cal. L. Rev. 969, 970-71 [citing Greenwald, et al., *Implicit Bias: Scientific Foundations* (2006) 94 Calif. L. Rev. 945, 955-56].

³⁹ Richardson, *Police Efficiency and the Fourth Amendment* (2012) 87 Ind. L.J. 1143, 1150 [citing Trawalter, et al., *Attending to Threat: Race-Based Patterns of Selective Attention* (2008) 44 J. Experimental Soc. Psychol. 1322, 1324].

⁴⁰ See Table 5, Discovery-rate analysis, at p. 61.

⁴¹ Eberhardt, et al., *Seeing Black: Race, Crime, and Visual Processing* (2004) 87 J. Personality & Soc. Psychol. 876, 881 <<https://web.stanford.edu/~eberhard/downloads/2004-SeeingBlackRaceCrimeandVisualProcessing.pdf>> (as of Dec. 14, 2020).

Explicit Bias

Another factor that may contribute to disparities in stop data is explicit bias. The following examples demonstrate that, despite state law and agency policies that strictly prohibit bias-based policing, there are officers who display explicit biases against individuals of certain racial or identity groups. And, as a result, these individuals may act on their biases in deciding who to stop and how to interact with the individuals they stop.

Explicitly racist or bigoted social media posting among law enforcement appears to be a widespread problem nationwide, as brought to light by advocates, including The Plain View Project. The Plain View Project, formed in 2016, examined the Facebook accounts of 2,900 officers from eight departments across the country and an additional 600 retired officers from those same departments, and now maintains an active database.⁴² The Plain View Project found thousands of troubling Facebook posts that included racist or otherwise offensive language. As a result, several departments conducted investigations of their officers.⁴³ The Philadelphia Police Department, for example, placed 72 officers on administrative leave while it conducted an investigation.⁴⁴

California agencies have likewise had to address explicit bias within their ranks. As one example, the partner of an active San Jose Police Department officer earlier this year detailed the existence of a private Facebook group, “10-70DSJ,” where former and current SJPd officers have exchanged racist posts for years.⁴⁵ In this Facebook group, one retired officer described Black Lives Matter activists as “racist idiots,” “un-American” and “‘enemies’ that the police ‘swore an oath against.’”⁴⁶ An active officer commented in another post that “black lives don’t really matter.”⁴⁷ Another retired officer posted a fake advertisement for “Sharia Barbie,” a barbie wearing a hijab and with a black eye that “comes with jihab [sic], bruises, & Quran [with] stoning accessories available for additional purchase.” That same retired officer once commented that he would “re-purpose the hijabs into nooses.”⁴⁸ Similarly, an officer who at the time of the exposé taught “race-bias policing” in the Training Unit, posted an image that stereotyped all Muslims as terrorists.⁴⁹ The San Jose Police Department has since placed four officers on administrative leave pending an investigation, and the Santa Clara County District Attorney’s Office dismissed 14 criminal cases involving the officers who posted in the Facebook

⁴² The Plain View Project, About the Project <<https://www.plainviewproject.org/about>> (as of Dec. 14, 2020).

⁴³ Andone, *This group found thousands of offensive Facebook comments by police. Here's what you should know*, CNN.com (June 20, 2019) <<https://www.cnn.com/2019/06/20/us/plain-view-project-what-is/index.html>> (as of Dec. 14, 2020).

⁴⁴ *Ibid.*

⁴⁵ Paulsen, *Racism and Hate behind the Blue Wall: Exposing Secret Law Enforcement Facebook Group* (June 26, 2020) <<https://blog.usejournal.com/racism-and-hate-behind-the-blue-wall-exposing-secret-law-enforcement-facebook-groups-6cf23a596a98>> (as of Dec. 14, 2020); ABC7 News, *4 San Jose police officers put on leave amid investigation into alleged racist Facebook posts* (June 28, 2020) <<https://abc7news.com/san-jose-police-department-report-news-sjpd-facebook/6275266/>> (as of Dec. 14, 2020).

⁴⁶ ABC7 News, *4 San Jose police officers put on leave amid investigation into alleged racist Facebook posts* (June 28, 2020) <<https://abc7news.com/san-jose-police-department-report-news-sjpd-facebook/6275266/>> (as of Dec. 14, 2020).

⁴⁷ Paulsen, *Racism and Hate behind the Blue Wall: Exposing Secret Law Enforcement Facebook Group* (June 26, 2020) <<https://blog.usejournal.com/racism-and-hate-behind-the-blue-wall-exposing-secret-law-enforcement-facebook-groups-6cf23a596a98>> (as of Dec. 14, 2020).

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

group because the integrity of those cases were compromised by the racist posts.⁵⁰ Other California agencies, such as the Los Angeles County Sheriff’s Department and San Francisco Police Department, have also had to address biased social media posted by their deputies and officers.⁵¹

These examples of explicit biases among law enforcement agencies – both nationwide and in this state – suggest that the problem is far more widespread than most people might believe. Critically, these examples trigger a deeper concern about affiliations with white supremacist and extremist groups. Indeed, the Federal Bureau of Investigation cautioned that “[d]omestic terrorism investigations focused on militia extremists, white supremacist extremists, and sovereign citizen extremists often have identified active links to law enforcement officers...”⁵²

These affiliations have a real world impact on the communities officers are tasked with serving and protecting. In a highly publicized set of incidents, Philadelphia Police Department officers did not intervene when violent mobs, mostly comprised of White men, attacked Black Lives Matter protestors earlier this year.⁵³ Officers in the same department also socialized with men wearing Proud Boys regalia and carried a Proud Boys flag at a “Back the Blue” party at the Fraternal Order of Police Lodge.⁵⁴

While the exact scale of explicit racism in law enforcement agencies is difficult to measure, there are numerous examples to suggest a significant problem that could negatively impact officers’ interactions with the public. Indeed, these examples raise concerns about “[w]ho might be sitting in jail because what looked like an objective stop, what looked like a clean interaction, may actually have been driven by bigotry.”⁵⁵ Thus, any efforts to address stop data disparities would necessarily need to look at the forms, and scope, of explicit bias within individual law enforcement agencies.

Systemic Disparities May Feed into Stop Data Disparities

While explicit and implicit biases may be contributing factors to the disparities found in stop data, they are a part of a larger complex of driving forces. That is, explicit and implicit biases

⁵⁰ KPIX 5, *Santa Clara County DA Dismisses Cases Involving Officers Who Posted Racist Facebook Messages* (Oct. 22, 2020) <<https://sanfrancisco.cbslocal.com/2020/10/22/santa-clara-county-da-dismissing-cases-officers-racist-facebook-messages/>> (as of Dec. 14, 2020).

⁵¹ Chabria, *When cops abuse social media, the results are explosive: ‘One post can become a movement,’* Los Angeles Times (Oct. 13, 2020) <<https://www.latimes.com/california/story/2020-10-13/cops-social-media-dangerous-combo-era-racial-reckoning>> [describing a Facebook post by a Los Angeles County Sheriff’s Captain, stating that Andres Guardado, a Salvadoran American killed by a deputy in Gardena, “chose his fate”] (as of Dec. 14, 2020); Fuller, *San Francisco Police Chief Releases Officers’ Racist Texts*, N.Y. Times (April 29, 2016) <<https://www.nytimes.com/2016/04/30/us/san-francisco-police-orders-officers-to-complete-anti-harassment-class.html>> (as of Dec. 14, 2020).

⁵² Federal Bureau of Investigation, Counterterrorism Policy Directive and Policy Guide (April 1, 2015) 89 <<https://assets.documentcloud.org/documents/3423189/CT-Excerpt.pdf>> (as of Dec. 14, 2020); Levin, *White supremacists and militias have infiltrated police across US, report says*, The Guardian (Aug. 27, 2020) <<https://www.theguardian.com/us-news/2020/aug/27/white-supremacists-militias-infiltrate-us-police-report>> (as of Dec. 14, 2020).

⁵³ German, *White Supremacist Links to Law Enforcement are an Urgent Concern*, Brennan Center (Sept. 1, 2020) <<https://www.brennancenter.org/our-work/analysis-opinion/white-supremacist-links-law-enforcement-are-urgent-concern>> (as of Dec. 14, 2020).

⁵⁴ *Ibid.*

⁵⁵ ABC7 News, *4 San Jose police officers put on leave amid investigation into alleged racist Facebook posts* (June 28, 2020) <<https://abc7news.com/san-jose-police-department-report-news-sjpd-facebook/6275266/>> (as of Dec. 14, 2020).

may, in part, explain individual officer behavior, but there are other systemic factors that impact certain racial, ethnic, and other identity groups that help to explain stop disparities in the aggregate.⁵⁶ Biases and systemic inequities found in other systems, and the interconnectedness of those other systems with the criminal justice system, may result in officers interacting more frequently with people from certain races, ethnicities, and identities, which in turn renders those individuals more vulnerable to certain types of treatment by officers during those interactions.⁵⁷ Any analysis of stop data disparities – and the policies to address those disparities – should take into account underlying systemic inequalities. Indeed, overlooking the systemic contributing factors to racial disparities “can guide policy attitudes and preferences in ways that perpetuate [those very] disparities.”⁵⁸

Larger Societal Constructs Render Some People More Vulnerable to Police Interactions

Larger systemic and social oppression can inform officers’ decisions – both directly and indirectly – to interact more with certain groups and in different ways, and thus lead to stop data disparities. Criminal behavior alone cannot explain those disparities.⁵⁹ For example, changing demographics of a city may drive local governing bodies to increase police presence in Black and Latinx neighborhoods, which, in turn, increases the likelihood that officers have more contacts with people in those neighborhoods.⁶⁰ Further, the changing demographics of a neighborhood may increase calls for service driven by explicit or bias by proxy,⁶¹ as discussed in more detail later in this Report (page 83).

One study observed that development in certain neighborhoods in New York City was associated with an increase in low-level arrests in the same neighborhoods.⁶² Specifically, these neighborhoods saw between 0.2 percent and 0.3 percent more discretionary arrests with every 5 percent increase in their property values.⁶³ Another analysis found that a neighborhood in Harlem – where the White resident population increased from 2 percent to 10 percent in just six years between 2000 and 2016 and the median home values almost doubled (adjusted for

⁵⁶ Hetey, et al., *The Numbers Don’t Speak for Themselves: Racial Disparities and the Persistence of Inequality in the Criminal Justice System* (2018) 27(3) *Current Directions Psychol. Sci.* 183, 185 <<https://journals.sagepub.com/doi/pdf/10.1177/0963721418763931>> (as of Dec. 14, 2020).

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ For example, a study of stops by Oakland Police Department found that Black individuals were stopped, searched, handcuffed, and arrested at higher rates than White individuals, and this disparity remained significant, even after researchers controlled for neighborhood crime rates and racial demographics. (Stanford SPARQ, *Strategies for Change: Research Initiatives and Recommendations to Improve Police Community Relations in Oakland, Calif.* (2016) <<https://stanford.app.box.com/v/Strategies-for-Change>> (as of Dec. 14, 2020).

⁶⁰ Beck, *Policing Gentrification: Stops and Low-Level Arrests during Demographic Change and Real Estate Reinvestment* (Jan. 8, 2020) 19:1 *City and Community* 245, 248 <<https://onlinelibrary.wiley.com/doi/full/10.1111/cico.12473>> [describing a study that found that gentrification in New York City was associated with more police stops] (as of Dec. 14, 2020).

⁶¹ Johnson, *Co-Opting the Police: What can be done about “Profiling by Proxy?”* (Apr. 2, 2019) Nat. Police Foundation <<https://www.policefoundation.org/co-opting-the-police-what-can-be-done-about-profiling-by-proxy/>> (as of Dec. 14, 2020).

⁶² Beck, *Policing Gentrification: Stops and Low-Level Arrests during Demographic Change and Real Estate Reinvestment* (Jan. 8, 2020) 19:1 *City and Community* 245, 248 <<https://journals.sagepub.com/doi/pdf/10.1111/cico.12473>> (as of Dec. 14, 2020).

⁶³ *Ibid.* Specifically, neighborhoods saw an increase of 0.2 percent for “order-maintenance” arrests, which are arrests for quality-of-life offenses “like disorderly conduct, property damage, or trespassing,” and an increase of 0.3 percent for “proactive” arrests, which are arrests that are “not easily visible” and require an officer “to pursue and search a suspect” such as “drug possession, weapon possession, and driving while intoxicated.” *Id.* at p. 247.

inflation) – received 3,000 quality-of-life complaints in one block between 2015 and 2017, up from just 130 complaints in the previous three years.⁶⁴ As these studies suggest, larger social forces have an impact on policing and may explain some stop data disparities. All stakeholders should be aware of these dynamics when seeking to reduce disparities and achieve reforms.

Other systemic inequities may also lead members of certain racial and identity groups to live in poverty, which itself results in “a substantially higher rate of involvement with the juvenile and criminal justice systems”⁶⁵ because of the disproportionate policing of lower-income neighborhoods.⁶⁶ Transgender individuals, for example, are more likely to live in poverty and experience higher unemployment and homelessness than cisgender individuals because they face systemic discrimination in education, employment, and housing.⁶⁷ Transgender individuals, in turn, may be more likely than cisgender individuals to participate in underground economies (such as sex work) to survive.⁶⁸ Doing so renders them more vulnerable to arrests for “quality of life” crimes.⁶⁹

After a person becomes entangled in the criminal justice system, additional systemic barriers keep them further entrenched in the system.⁷⁰ Research demonstrates that a “criminal record has a significant negative impact on hiring outcomes, even for applicants with otherwise appealing characteristics,” and Black applicants with a record saw a 60 percent drop in the likelihood of getting a callback or job offer – twice the same drop-off for otherwise identical White applicants with a record (30 percent).⁷¹ Individuals with criminal records also face serious barriers to housing. Federal law, for example, prohibits persons convicted of certain crimes from securing public housing and other forms of federally-assisted housing.⁷² And, many landlords routinely exclude individuals with criminal records from private housing.⁷³ In sum, job

⁶⁴ Vo, *They Played Dominoes Outside Their Apartment For Decades. Then The White People Moved In And Police Started Showing Up*, BuzzFeed (June 29, 2018) <<https://www.buzzfeednews.com/article/lamvo/gentrification-complaints-311-new-york>> (as of Dec. 14, 2020).

⁶⁵ U.S. Dept. of J., Nat. Inst. of Corrections, Policy Review and Development Guide, Lesbian, Gay, Bisexual, Transgender, and Intersex Persons in Custodial Settings (2015) <https://info.nicic.gov/sites/info.nicic.gov/lgbti/files/lgbti-policy-review-guide-2_0.pdf> (as of Dec. 14, 2020).

⁶⁶ See, e.g., Stolper, Community Service Society, *New Neighbors and the Over-Policing of Communities of Color* (Jan. 6, 2019) <<https://www.cssny.org/news/entry/New-Neighbors>> (as of Dec. 14, 2020).

⁶⁷ See generally Grant et al., National Center for Transgender Equality & National Gay and Lesbian Task Force, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (2011) <https://transequality.org/sites/default/files/docs/resources/NTDS_Exec_Summary.pdf> (as of Dec. 14, 2020).

⁶⁸ Carpenter, et al., *Walking While Trans: Profiling of Transgender Women by Law Enforcement, and the Problem of Proof* (2017) 24 Wm. & Mary J. Women & L. 5, 38, n. 40.

⁶⁹ *Ibid.*

⁷⁰ For example, prosecutors are less likely to plea bargain with and offer a reduction in charges to Black defendants than White defendants, and when they do offer plea bargains, prosecutors are more likely to include prison time for Black defendants. Similarly, federal prosecutors are twice as likely to charge Black defendants with offenses that carry a mandatory minimum sentence than similarly situated White defendants. (Avery, et al., *Racial Bias in Post-Arrest and Pretrial Decision Making: The Problem and A Solution* (2019) 29 Cornell J.L. & Pub. Pol’y 257, 265 [citations omitted].)

⁷¹ Pager, et al., *Sequencing Disadvantage: Barriers to Employment Facing Young Black and White Men with Criminal Records* (2009) 63 Annals of Am. Acad. of Pol. and Soc. Sci., 195, 199 <https://scholar.harvard.edu/files/pager/files/annals_sequencingdisadvantage.pdf> (as of Dec. 14, 2020).

⁷² National Housing Law Project, *An Affordable Home on Reentry* (2018) pp. 7-8 <<https://www.nhlp.org/wp-content/uploads/2018/08/Reentry-Manual-2018-FINALne.pdf>> (as of Dec. 14, 2020).

⁷³ Crowell, *A Home of One’s Own: The Fight Against Illegal Housing Discrimination Based on Criminal Convictions, and Those Who are Still Left Behind* (2017) 95 Tex. L. Rev. 1103, 1105-06.

and housing insecurity can push a person further into poverty and, in turn, increase their interactions with law enforcement.

Criminal Justice System Involvement and the Impact on the Type of Policing Actions Taken

Moreover, once involved in the system, the type of interactions a person subsequently has with law enforcement may create additional disparities. Mass incarceration and other disparities in the criminal justice system disproportionately impact Black individuals. Black individuals, for example, account for 30 percent of those on probation or parole.⁷⁴ The waiver of Fourth Amendment protections against unwarranted searches and seizures is a fairly standard probation or parole supervision term, which permits officers to search a supervised person *without* probable cause and based on their discretion.⁷⁵ The RIPA 2018 stop data showed that individuals perceived to be Black were almost three times as likely to be searched as individuals perceived to be White. In 23.9 percent of stops involving a search of a person perceived to be Black, the officer provided the basis for search as a condition of their supervision; in comparison, officers conducted the same type of searches on only 18.8 percent of individuals perceived to be White.⁷⁶ These disparities invite further research into whether officers assume that Black individuals are on supervision (e.g., have a criminal record), and in turn ask Black individuals about their supervision status more frequently than they ask White individuals.⁷⁷ The Board hopes to delve into this question more deeply in next year's report.

Policy Decisions to Reduce Stop Data Disparities

Because there are likely multiple sources of the disparities we observe, effectively reducing these disparities will necessarily require a multi-pronged approach. One prong would be to address explicit bias. Law enforcement agencies, for example, could use the background check

⁷⁴ The Pew Charitable Trusts, *Community Supervision Marked by Racial and Gender Disparities* (Dec. 6, 2018) <<https://www.pewtrusts.org/en/research-and-analysis/articles/2018/12/06/community-supervision-marked-by-racial-and-gender-disparities>> (as of Dec. 14, 2020); Chanin, et al., *Traffic Enforcement Through the Lens of Race: A Sequential Analysis of Post-Stop Outcomes in San Diego, California* (2018) 29(6-7) *Crim. Justice Pol. Rev.* 561, 564 <https://spa.sdsu.edu/documents/Traffic_enforcement.pdf> (as of Dec. 14, 2020).

⁷⁵ See generally *United States v. Knights* (2001) 534 U.S. 112; *Samson v. California* (2006) 547 U.S. 843.

⁷⁶ See 2020 RIPA Technical Report, *supra* note 18, at p. 11; see also Chanin, *supra* note 74, at pp. 564-65 ["Similarly, officer discretion is used in determining whether a driver or passenger is on probation or parole. In each case, this discretionary authority may be applied differently based on driver race On the other hand, once it is determined that a driver/passenger is on probation or parole, the officer has full legal authority to conduct a search. Indeed, Ridgeway (2006) notes that departmental policy in some jurisdictions advises officers to conduct these searches. Moreover, people of color—and men especially— are disproportionately more likely to be on parole or probation relative to the general population Together, these factors complicate efforts to make meaning of any disparities identified in Fourth waiver searches."]

⁷⁷ In one notable example, an off-duty Black officer was pulled over by fellow officers in his predominantly Black neighborhood for a minor traffic violation and was first asked whether he was on probation or parole. The situation escalated to the point where officers slammed the off-duty officer to the ground. The off-duty officer sued and the court concluded that the officers' actions could be viewed by a jury as motivated by the off-duty officer's race. The court reasoned that the question about supervision status was not relevant to a traffic stop and that a "reasonable juror could conclude that this occurred because [the off-duty officer] was an African American man driving in a predominantly African American neighborhood . . ." (*Adamson v. City of San Francisco* (N.D. Cal. Sept. 17, 2015) No. 13-CV-05233-DMR, 2015 WL 5467744, at *8.) The court allowed the off-duty officer to proceed with a Ralph Act claim, which provides that "[a]ll persons within [California] have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property" because of race. (Cal. Civ. C. §§ 51.7(a), 51(b).)

included as part of the hiring process to evaluate explicit biases,⁷⁸ and monitor agency-issued cell phones and computers to ensure employees do not use those devices to exchange racist or other offensive content. Additionally, in an approach similar to The Plain View Project, agencies could proactively conduct a review of their personnel’s social media to identify problematic behavior and discipline officers to demonstrate to the entire agency that racist or bigoted viewpoints are not tolerated.⁷⁹

Another component of a multi-pronged approach is for law enforcement agencies to work to manage how implicit biases affect officers’ behavior through training and education.⁸⁰ Managing implicit biases improves policing and is consistent with the tenets of procedural justice.

As noted above, efforts to reduce disparities observed in stop data cannot be limited to rooting out officers with explicit biases or finding ways for officers to override their implicit biases. Rather, addressing biases among individual officers should be components of a larger, more comprehensive approach to reducing stop data disparities. Any meaningful effort to address stop data disparities must recognize and address the structural dimensions of those disparities. For example, law enforcement agencies can also train officers on the impact urban development has on policing, including how it can lead to increased stops or arrests in a particular neighborhood, and on how to use critical thinking skills to recognize whether a call for service is premised by bias by proxy, rather than on criminal activity.⁸¹ Law enforcement agencies should take other steps to remove structural practices that contribute to misconceptions about race and identity; for example, agencies can decline to post mug shot photographs.⁸²

Further, responsibility to address disparities extends beyond law enforcement. Policymakers must contextualize these disparities and acknowledge that others within the broader criminal justice system, including attorneys and judges, play a part in creating and maintaining structural inequities that increase the frequency of law enforcement’s interactions, including stops, with certain racial and identity groups. The Board urges policymakers to prioritize not only changes to law enforcement agency practices, but also to policies involving housing, education, health care, and criminal justice in order to remediate the disparities created by these and other systems.

⁷⁸ Of course, it is possible that these vetting efforts could drive bias further underground; that is, officers might be able to hide their explicit biases by knowingly providing “appropriate” answers in the hiring process to evade scrutiny. Agencies should be mindful of this concern when determining measures to evaluate officers for bias in the hiring process.

⁷⁹ The Plain View Project, About the Project <<https://www.plainviewproject.org/about>> (as of Dec. 14, 2020).

⁸⁰ Two ways agencies can do this is by increasing positive contacts with members of a group against whom a person is biased and “counter-stereotyping,” which involves exposure to information that contradicts a stereotype of a group. Both strategies disrupt the neural pathways that associate members of a group with a certain negative stereotype. (Paterson & Edwards, *Implicit Injustice: Using Social Science to Combat Racism in the United States*, 2015 Harv. J. Racial & Ethnic Just. Online 1, 20–21 (2015) [citing Calvin Lai, *Reducing implicit racial preferences*, 143 J. Experimental Psychology 1765, 1766].)

⁸¹ See Racial and Identity Profiling Advisory Board, Annual Report 2020 (Jan. 1, 2020) pp. 54-57 <<https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2020.pdf>> (as of Dec. 14, 2020).

⁸² Egelko, *San Francisco to Stop Releasing Suspect Mug Shots in Effort to Prevent Racial Bias*, S.F. Chronicle (July 1, 2020) <<https://www.sfchronicle.com/crime/article/San-Francisco-police-to-stop-releasing-suspect-15379672.phps>> (as of Dec. 14, 2020).

ANALYSIS OF 2019 STOP DATA

In 2019, the 15 largest law enforcement agencies in California collected data on 3,992,074 pedestrian and vehicle stops and submitted these data to the DOJ.⁸³ These data include information regarding more stops than were collected the previous year because the 2019 data includes records from both Wave 1 and Wave 2 agencies from January 1 to December 31, 2019. The 2018 RIPA stop data only included the eight largest agencies in California and records submitted between July 1 and December 31, 2018. These differences are significant and should be considered if data comparisons are made between these two years.

All of the data collected include demographic information of stopped individuals, as *perceived by the officer*, as well as a range of descriptive information designed to contextualize the reason for the stop, actions taken during the stop, and resolution of the stop. The purpose of collecting these data is to document law enforcement interactions with the public and determine whether certain populations are subject to disparate treatment during stops based upon the officer's perception of that person's identity.

Individuals may self-identify *differently* than how an officer may perceive them. This distinction is critical to the purpose of collecting these stop data and reflects the primary task assigned to the Board, which is to eliminate racial and identity profiling -- based on how *officers perceive* someone -- and improve diversity and racial and identity awareness in law enforcement. This is the context under which RIPA data should be analyzed and interpreted.

For this year's report, the Board presents stop data analyses in three different sections:

1. The first section provides a breakdown of each identity group followed by their rates of experiencing stop outcomes.
2. The second section attempts to create benchmarks (i.e., reference points) by which to compare the stop data results and measure disparities. These benchmarks include comparisons to residential population data and tests for equality of outcomes at different points during the stop. These outcome-based tests explore search outcomes, the impact of daylight (i.e., when it might be easier to see race or other identity characteristics) on who is stopped, and the rates of force used by law enforcement.
3. The third section focuses on the intersections of race/ethnicity by gender, age and disability type. The third section also explores search and discovery rates specifically for consent and supervision searches.

⁸³ Gov. Code § 12525.5(g)(2) defines a "stop" as any detention by a peace officer of a person, or any peace officer interaction with a person in which the peace officer conducts a search, including a consensual search, of the person's body or property in the person's possession or control.

1.1 Stop Data Demographics

1.1.1 Identity Demographics of those Who Were Stopped

Officers collect perceived identity-related information on six key demographics: race/ethnicity, gender, age, lesbian-gay-bisexual-transgender (LGBT) identity, English fluency, and disability. Officers are *not* permitted to ask individuals to self-identify for RIPA stop data collection purposes. Thus, all demographic data in this report reflects the perceptions of officers and may differ from how some stopped individuals self-identify.

Race/Ethnicity. Officers perceived the highest proportion of individuals they stopped to be Hispanic (38.9%; 1,552,485), followed by White (33.1%; 1,322,201), Black (15.9%; 635,092), Asian (5.7%; 228,790), Middle Eastern/South Asian (4.7%; 187,128) and all other groups (1.7%; includes 0.5% or 21,092 Pacific Islander, 0.2% or 8,271 Native American, and 0.9% or 37,015 Multiracial individuals). Officers may select multiple racial/ethnic categories per individual when recording stop data. All stopped individuals perceived to be part of multiple racial/ethnic groups were categorized as Multiracial, to avoid counting the same stopped individual in multiple racial/ethnic groups.

Gender. RIPA regulations contain five gender categories, including male, female, transgender man/boy, transgender woman/girl, and gender nonconforming.⁸⁴ A vast majority of stopped individuals were perceived as either (cisgender) male (71.2%; 2,841,218) or (cisgender) female (28.6%; 1,143,261), with all other groups collectively constituting less than 1 percent of the data.⁸⁵

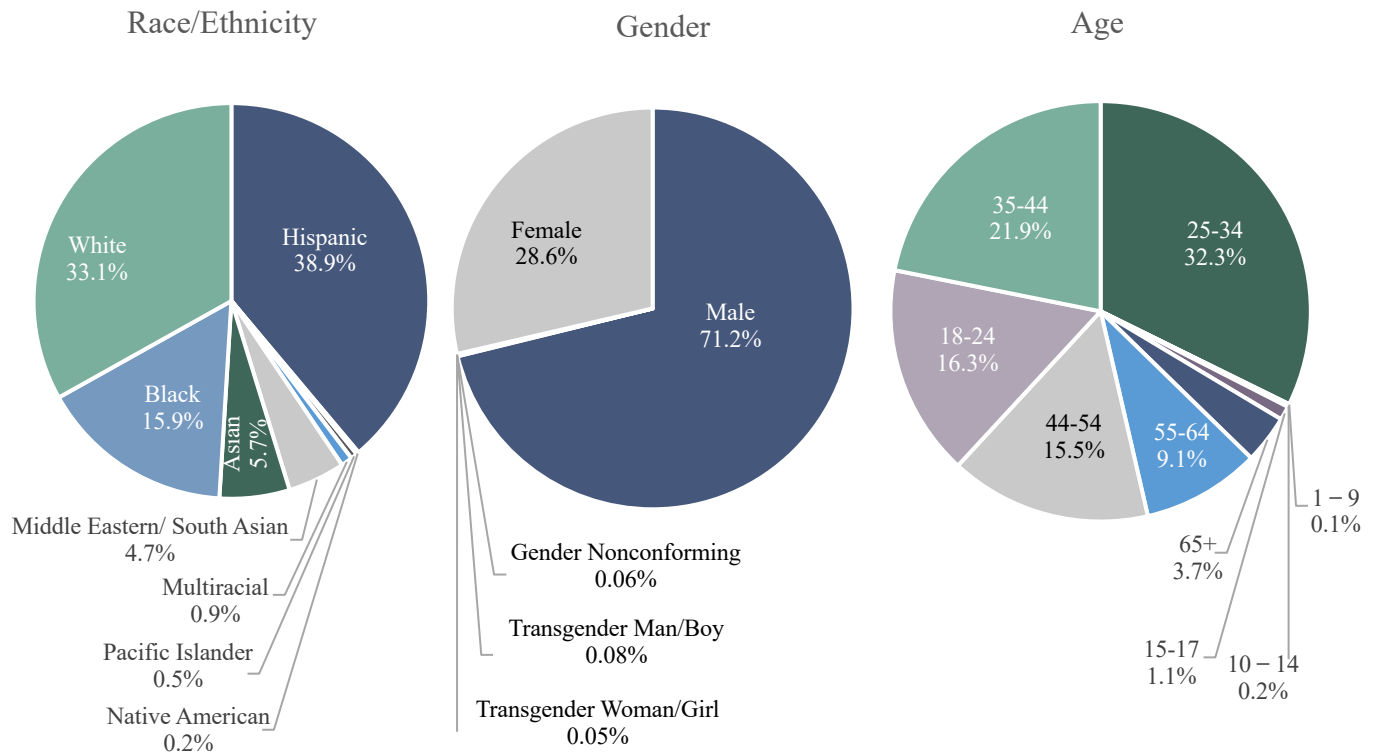
Age. Individuals perceived to be between the ages of 25 and 34 were stopped more than any age group (32.3%; 1,288,541). Individuals perceived to be below the age of 10 accounted for the smallest proportion (<0.1%; 1,927) of stopped individuals amongst all the age groups.⁸⁶

⁸⁴ These categories match those found in the regulations informing RIPA stop data collection (Cal. Code Regs., tit. 11, § 999.226, subd. (a)(5)(A)(1-5)). For the purposes of this report, “male” refers to cisgender males and “female” refers to cisgender females.

⁸⁵ The other groups were perceived as follows: transgender man/boy (0.08%; 3,294), transgender woman/girl (0.05%; 1,870), and gender non-conforming (0.06%; 2,431).

⁸⁶ Stopped individuals perceived to be less than 10 years of age constituted less than one of every 500 individuals stopped. However, the Department is currently exploring the possibility that, in some cases, officers may have (1) incorrectly recorded the age of these stopped individuals (i.e. typographical errors) or (2) recorded data in cases that are not reportable under Section 999.227 (b) of the RIPA regulations (i.e. recording data for young passengers not suspected of committing a violation whom also did not have reportable actions taken towards them).

Figure 1. Race/Ethnicity, Gender, and Age Distributions of 2019 RIPA Stop Data



LGBT. Stops of individuals perceived to be LGBT comprised less than 1 percent (26,382) of the data.⁸⁷

Limited English Fluency. Officers perceived approximately 4.1 percent (164,907) of stopped individuals to have limited or no English fluency.

Disability. Officers perceived 1.2 percent (46,035) of the individuals they stopped to have one or more disabilities. Of those perceived to have a disability, the most common disability reported by officers was mental health condition (63.3%; 29,124).⁸⁸

1.1.2 Primary Reason for Stop

Officers may only report one reason for stop and it must be the *primary* reason. In instances where multiple reasons may apply, officers can only select the primary reason that informed their decision to initiate a stop. Officers may select from eight different primary reasons for stop which include both pedestrian and vehicle stops. The most common reason provided for a stop was a traffic violation (85%), followed by reasonable suspicion that the individual stopped was engaged in criminal activity (12.1%).⁸⁹ The law requires an officer to have reasonable

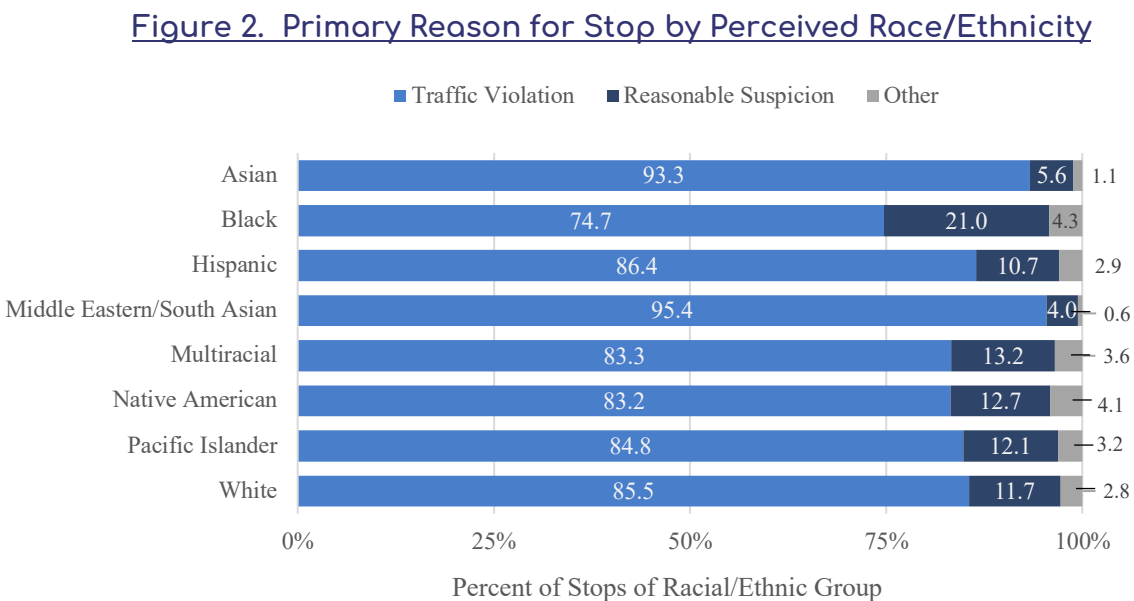
⁸⁷ Officers perceived 0.66 percent of stopped individuals to be LGBT.

⁸⁸ Individuals perceived to have multiple disabilities—including mental health conditions—are not included in this statistic.

⁸⁹ Although officers may have reasonable suspicion when initiating stops for traffic violations, the regulations state that officers should not select the “reasonable suspicion” value when the reason for stop is a traffic violation. Instead, officers should select the “traffic violation” value as the primary reason for stop (Cal. Code Regs. tit. 11 § 999.226, subd. (a)(10)(A)(2)).

suspicion before they can detain/stop an individual. Reasonable suspicion is a legal standard in criminal law that requires an officer to point to specific articulable facts that would lead a reasonable person to believe that a crime is, was, or is about to occur. Reasonable suspicion to stop someone is also established whenever there is any violation of law. Reasonable suspicion requires more than just an officer having a hunch that the person committed a crime, but is a lesser standard than probable cause, which is required to arrest someone.⁹⁰ All other reasons for the stop collectively made up less than 3 percent of the data and are categorized together for the purposes of graphical representation in the following sections.⁹¹

Race/Ethnicity. Out of all the racial/ethnicity groups in the data, Middle Eastern/South Asian individuals had the highest proportion of their stops reported as traffic violations (95.4%) and the lowest proportion of their stops reported as reasonable suspicion (4%). Black individuals had the lowest proportion of their stops reported as traffic violations (74.7%) and the highest proportion of their stops reported as reasonable suspicion (21%). Black individuals had the highest proportion of any racial/ethnic group (4.3%) of their stops reported in the categories grouped together as “Other” in Figure 2, while Middle Eastern/South Asian individuals had the lowest proportion (0.6%) of their stops fall into these categories.

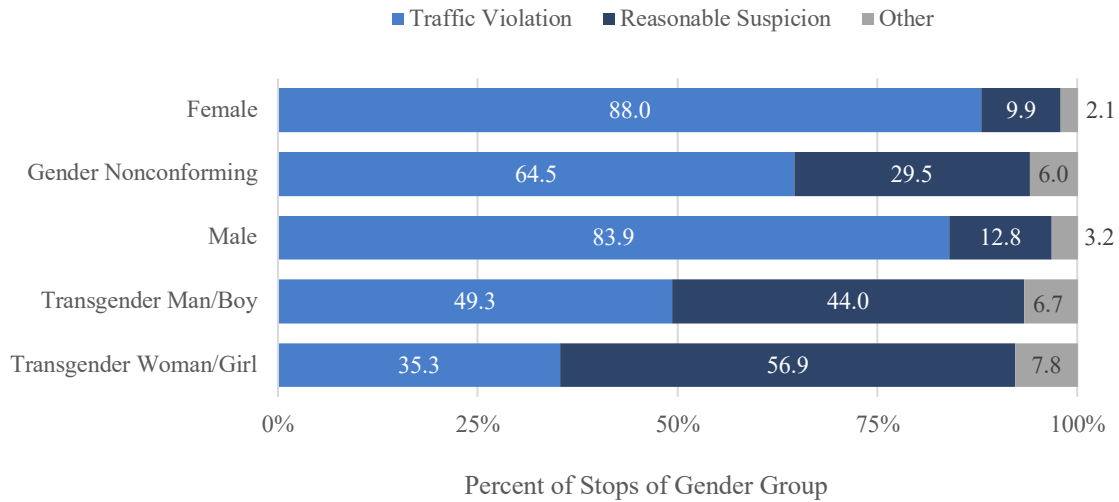


⁹⁰ “Reasonable suspicion” is currently being used to capture stops where an officer suspects criminal activity, but also stops where officers initiate contact for community caretaking purposes without suspecting an individual of criminal activity because no distinct value exists within the RIPA regulations for solely community caretaking contacts. Approximately 4.9 percent of stops initiated for reasonable suspicion were due to community caretaking functions. Given the small percentage, community caretaking stops were not separated out from the reasonable suspicion stops. This designation in the regulations was not meant to suggest that homelessness and people with mental health conditions are engaging in criminal activity; rather, the DOJ is aware of this issue and working on a resolution.

⁹¹ Other reasons for stop that the officer could report included consensual encounter resulting in a search (1.1%), mandatory supervision (0.7%), warrants/wanted person (0.7%), truancy (0.4%), investigation to determine whether student violated school policy (<0.1%), and possible violations of the Education Code (<0.1%).

Gender. Females had the highest proportion of their stops reported as traffic violations (88.0%) and the lowest proportion of their stops reported as reasonable suspicion (9.9%). Transgender women/girls had the lowest proportion of their stops reported as traffic violations (35.3%) and the highest proportion of their stops reported as reasonable suspicion (56.9%).

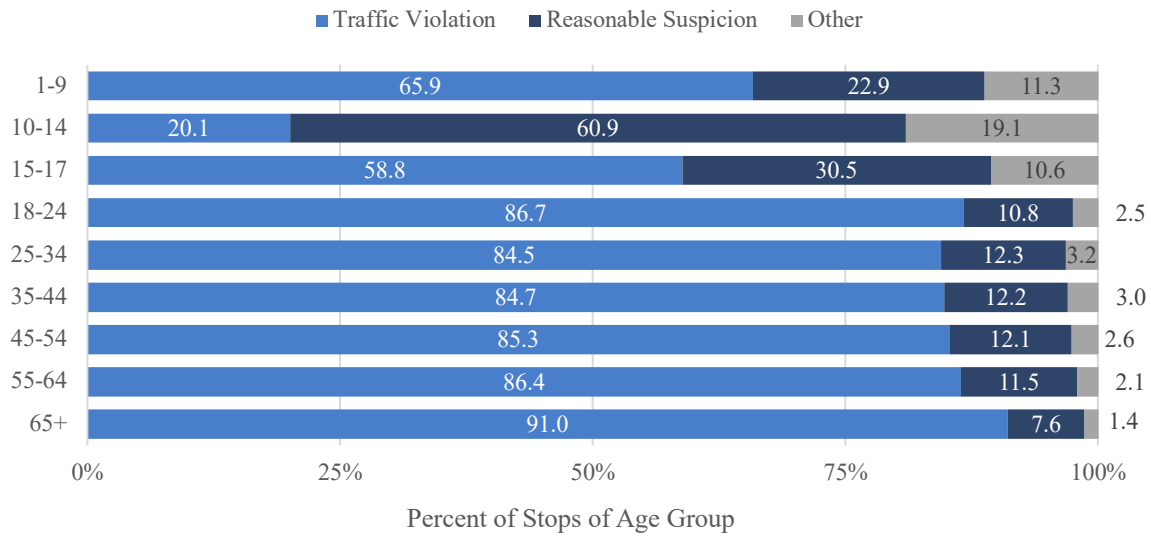
Figure 3. Primary Reason for Stop by Perceived Gender



Age. Individuals perceived to be 65 years or older had the highest proportion of their stops reported as traffic violations (91.0%) and had the lowest proportion of their stops reported as reasonable suspicion (7.6%). Individuals perceived to be between the ages of 10 and 14 had the lowest proportion of their stops reported as traffic violations (20.1%) and the highest proportion of their stops be reported as reasonable suspicion (60.9%).⁹²

⁹² The data shows an unexpected number of reported traffic violations for people too young to hold a provisional permit or driver’s license. This could partially be explained cases where officers (1) incorrectly recorded the age of the stopped individuals, (2) recorded data for passengers in the vehicles they stop, or (3) recorded violations of bicycle or motorized scooter laws.

Figure 4. Primary Reason for Stop by Perceived Age Group



LGBT. Individuals perceived to be LGBT had a lower proportion of their stops reported as traffic violations (61.8%) and a higher proportion of their stops reported as reasonable suspicion (31.9%) than individuals who officers did not perceive to be LGBT (85.2% traffic violations and 11.9% reasonable suspicion).

Limited English Fluency. Individuals perceived to have limited English fluency had a lower proportion of their stops reported as traffic violations compared to individuals whom officers perceived to be fluent in English (83.1% and 85.1%, respectively). The opposite was true of reasonable suspicion stops where individuals perceived to have limited English fluency had a higher proportion of their stops reported under this category than individuals perceived as English fluent (14.8% and 11.9%, respectively).

Disability. Stopped individuals perceived as having a disability had a lower proportion of their stops reported as traffic violations (18.8%) and a higher proportion of their stops for reasonable suspicion (69.6%) than those not perceived to have a disability (85.8% traffic violations and 11.4% reasonable suspicion).⁹³

⁹³ Part of the reason why individuals perceived to have a disability have a much higher proportion of their stops reported as reasonable suspicion stops than individuals not perceived to have a disability is due to how community caretaking contacts are currently captured within the RIPA data. As mentioned in note 90, stops for community caretaking are captured in the reasonable suspicion data element. Only 0.3 percent of individuals without a disability were stopped for community caretaking purposes, compared to 22.5 percent of stopped individuals with a disability.

1.2 Calls for Service

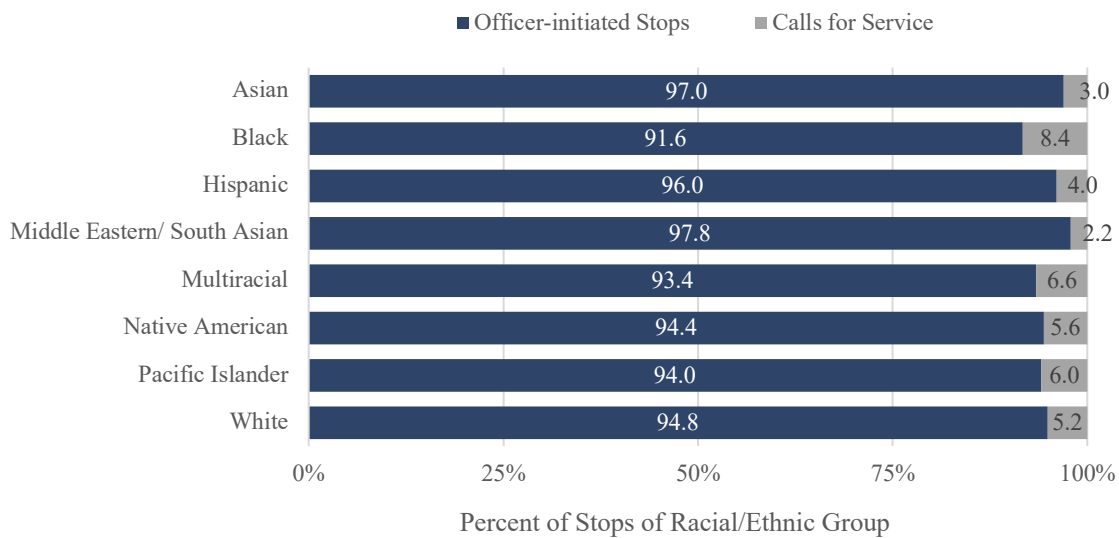
RIPA regulations require that officers indicate if a stop was made in response to a call for service, radio call, or dispatch.⁹⁴ Officers reported making stops in response to calls for service approximately 5 percent of the time.⁹⁵

Race/Ethnicity. Stops were initiated in response to a call for service at the highest rates for Black individuals (8.4%) and the lowest rates for Middle Eastern/South Asian individuals (2.2%).

Key Terms

- Call for service – a stop made in response to a call for service, radio call or dispatch
- Officer-initiated – a stop not made in response to a call for service, radio call or dispatch

Figure 5. Call for Service Status by Perceived Race/Ethnicity

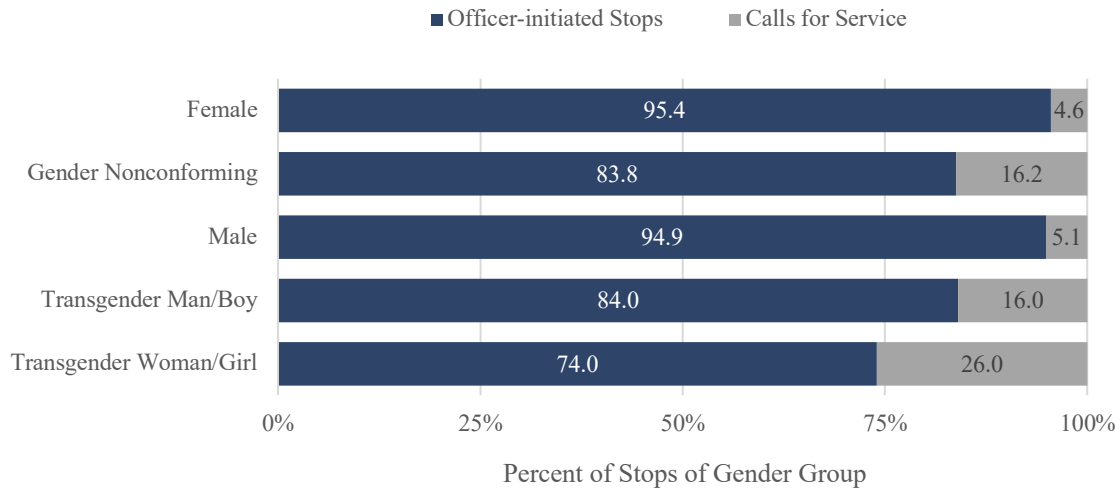


Gender. Stopped individuals perceived to be transgender women/girls had the highest rate of being stopped in response to a call for service (26.0%) while stopped individuals perceived to be female had the lowest rate (4.6%).

⁹⁴ An interaction that occurs when an officer responds to a call for service is only reported if it meets the definition of a “stop” as set forth in section 999.224, subd. (a)(14) of the RIPA regulations. A call for service is not a reason for stop value under the RIPA regulations. Rather, officers indicate whether or not a stop was made in response to a call for service in addition to providing a primary reason for stop (Cal. Code Regs, tit. 11 § 999.226, subd. (a)(11)).

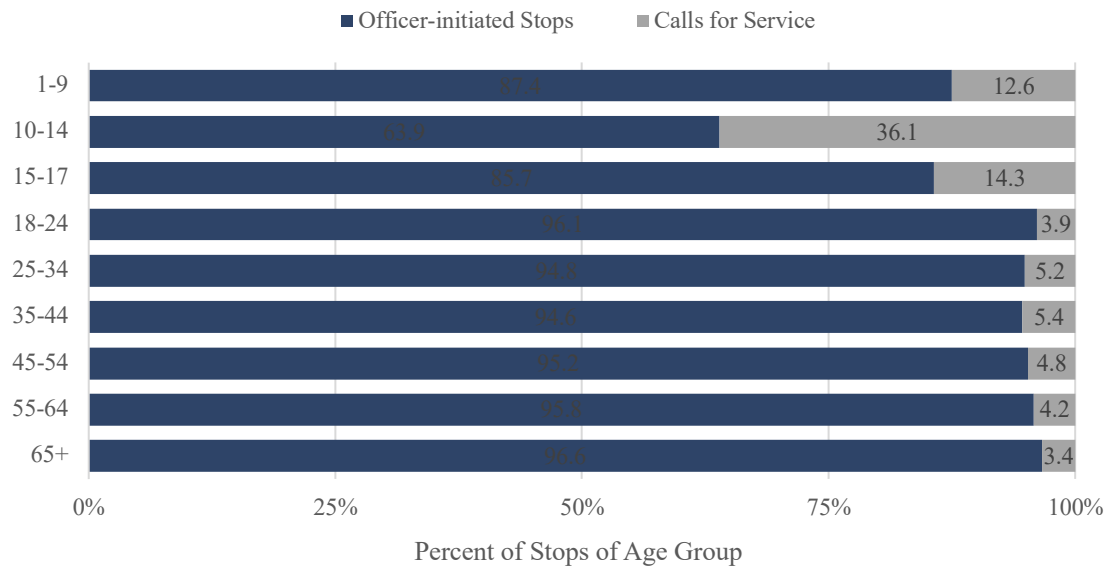
⁹⁵ Given that stops for traffic violations constitute a majority of the data, but are less prone to be made in response to a call for service, these analyses were also conducted while excluding data from stops where officers indicated that the primary reason for the stop was a traffic violation. See Appendix Table A.3 for all statistics.

Figure 6. Call for Service Status by Perceived Gender



Age. Stopped individuals perceived to be between the ages of 10 and 14 had the highest rate of being stopped in response to a call for service (36.1%) whereas individuals aged 65 or higher had the lowest rate (3.4%).

Figure 7. Call for Service Status by Perceived Age Group



LGBT. Stopped individuals perceived as LGBT had a higher rate (15.4%) of being stopped in response to a call for service than individuals whom the officers did not perceive to be LGBT (4.9%).

Limited English Fluency. Stopped individuals whom officers perceived to have limited or no English fluency had a higher rate of being stopped in response to a call for service (6.4%) compared to English fluent individuals (4.9%).

Disability. Stopped individuals perceived as having a disability had a substantially higher rate of being stopped in response to a call for service (47.9%) compared to those whom officers did not perceive to have a disability (4.5%).

1.3 Actions Taken During Stop by Officers

Officers can select up to 23 different actions taken during the stop, (which do not include the actions categorized as stop results, such as arrest). These actions include, for example, asking someone to exit a vehicle, conducting a search, and handcuffing someone (separate from arresting that person). A stopped individual may have multiple reported actions taken towards them in a single stop. Overall, an average of 0.5 actions were taken by officers during a stop and actions were taken on 19.0% of stopped individuals.⁹⁶ Put another way, officers did not submit any reportable actions taken during the majority of the stops they conducted. Looking only at stops in which actions were recorded, the average number of recorded actions taken by officers was 2.5. The average number of actions taken during stops was also calculated for each identity group and can be found in Appendix A.5.⁹⁷

Across all stops, the most common action taken by officers was a search of property or person (11.3%), followed by curbside or patrol car detention (10.2%), handcuffing (8.4%)⁹⁸, and verbally ordered removal from a vehicle (3.9%).⁹⁹ Each other action was reported for less than 2 percent of individuals stopped.¹⁰⁰

Race/Ethnicity. Compared to other races/ethnicities, stopped individuals perceived to be Black had the highest rate of being searched (20.5%), detained on the curb or in a patrol car (17.8%), handcuffed (14.1%), and removed from a vehicle by order (7.7%). Officers searched, detained on the curb or in a patrol car, handcuffed, and removed from vehicles more Black individuals than White individuals, despite stopping more than double the number of White individuals than Black individuals.¹⁰¹ Stopped individuals perceived to be Middle Eastern/South Asian had the lowest rate for each of these actions (ranging between 1.3 and 3.6%).

⁹⁶ See Appendix Tables A.6 through A.9 for breakdowns by identity group for all other actions taken during stops, including those where no actions were taken.

⁹⁷ See Appendix Table A.4 for all descriptive statistics.

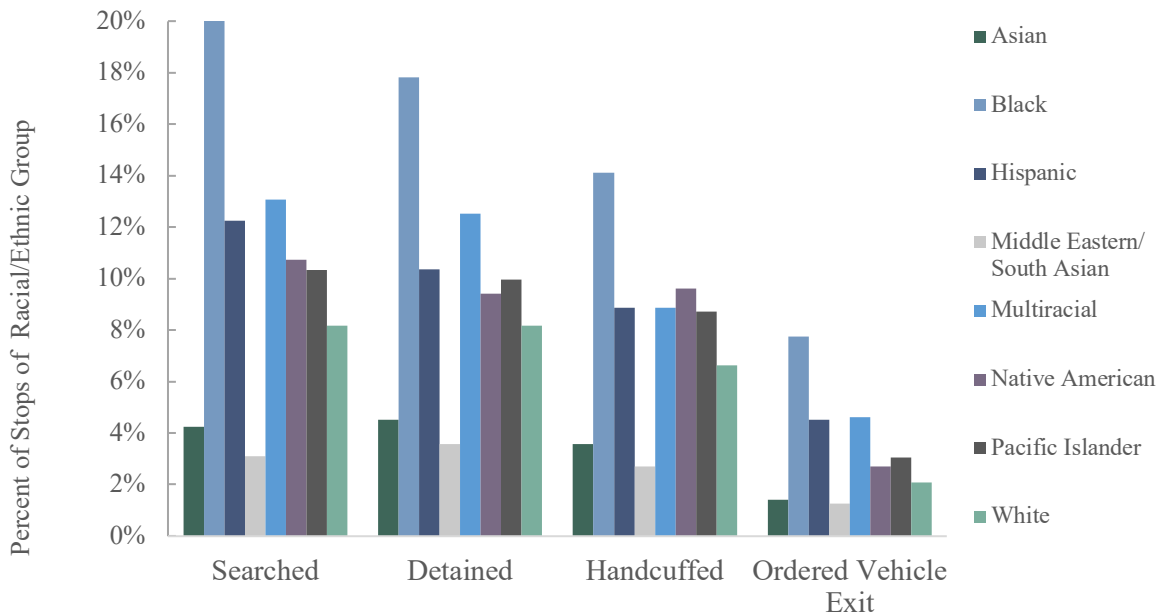
⁹⁸ A report of “handcuffing” an individual in this section does not mean that the officers arrested the individual. Section 1.4 of this chapter discusses arrests. Additionally, Appendix Table A.10 displays what percentage of individuals handcuffed had each of the following three stop results: arrested, no action taken, and result of stop other than an arrest or no action taken. Of the individuals handcuffed, officers arrested 58.1 percent, took some other form of action for 32.5 percent, and took no action towards 9.4 percent of individuals.

⁹⁹ Searches of person or property are captured in separate data fields and were combined for this analysis. Curbside and patrol car detainments are also recorded in distinct data fields and were combined.

¹⁰⁰ Other actions include: person removed from vehicle by physical contact (0.2%), field sobriety test (1.5%), canine removed from vehicle or used to search (<0.1%), firearm pointed at person (0.4%), firearm discharged (<0.1%), electronic control device used (<0.1%), impact projectile discharged (<0.1%), canine bit or held person (<0.1%), baton or other impact weapon (<0.1%), chemical spray (<0.1%), other physical or vehicle contact (0.4%), person photographed (0.5%), asked for consent to search person (2.7%), received consent to search person (80.0%), asked for consent to search property (1.7%), received consent to search property (71.2%), property seized (0.8%), vehicle impounded (1.2%), written statement (<0.1%), or none (81.0%).

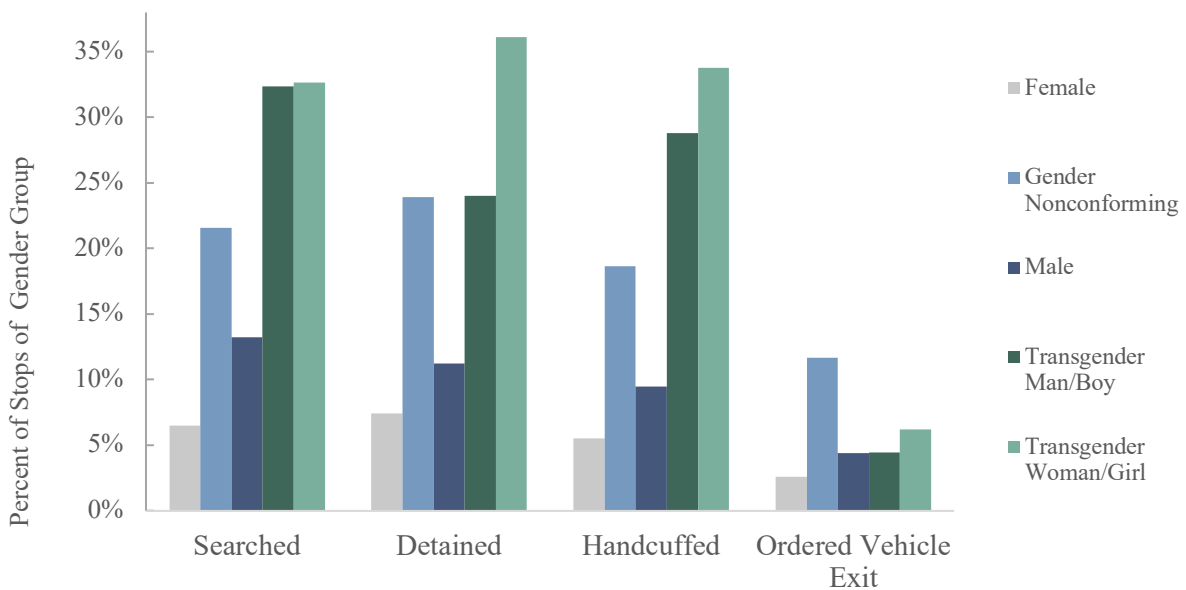
¹⁰¹ See Appendix Table A.5 for a breakdown of the number of stopped individuals from each identity group and actions taken during the stop.

Figure 8. Actions Taken During Stop by Perceived Race/Ethnicity



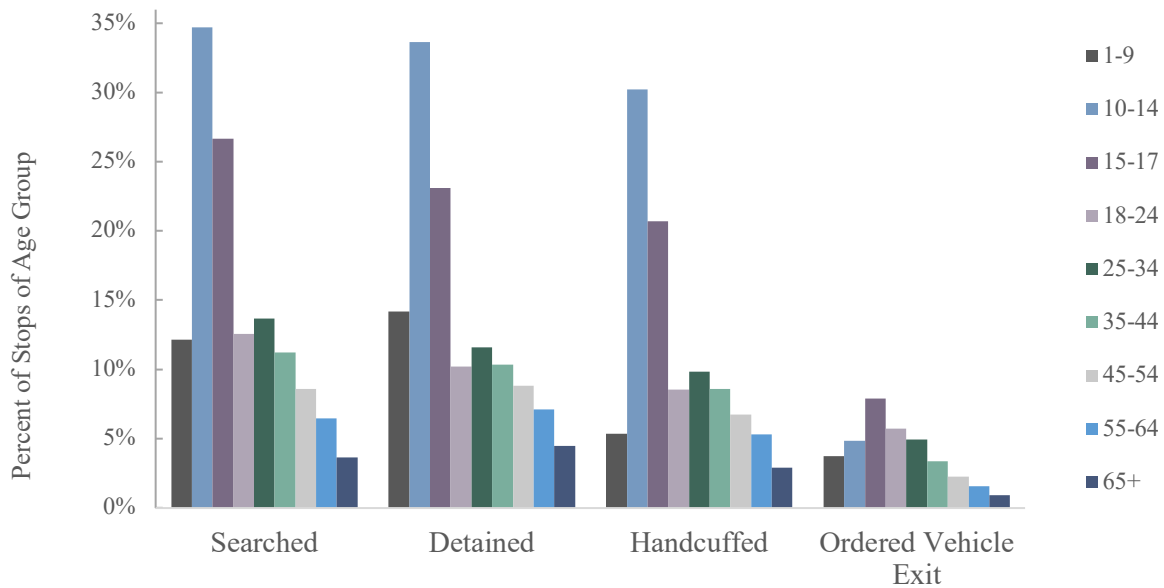
Gender. Stopped individuals perceived as transgender women/girls had the highest rate of being searched (32.6%), detained on the curb or in a patrol car (36.1%), and handcuffed (33.7%); gender-nonconforming individuals had the highest rates of being removed from a vehicle by order (11.7%). Stopped individuals perceived as (cisgender) females had the lowest rate for each of these actions (ranging from 2.6 to 7.4%).

Figure 9. Actions Taken During Stop by Perceived Gender



Age. Stopped individuals perceived to be between the ages of 10 and 14 had the highest rate of being searched (34.7%), detained on the curb or in a patrol car (33.6%), and handcuffed (30.2%), while those perceived to be between 15 and 17 had the highest rates of being removed from a vehicle by order (7.9%). Those aged 65 or higher consistently had the lowest rate for each of these actions (ranging from 0.9 to 4.5%).

Figure 10. Actions Taken During Stop by Perceived Age Group

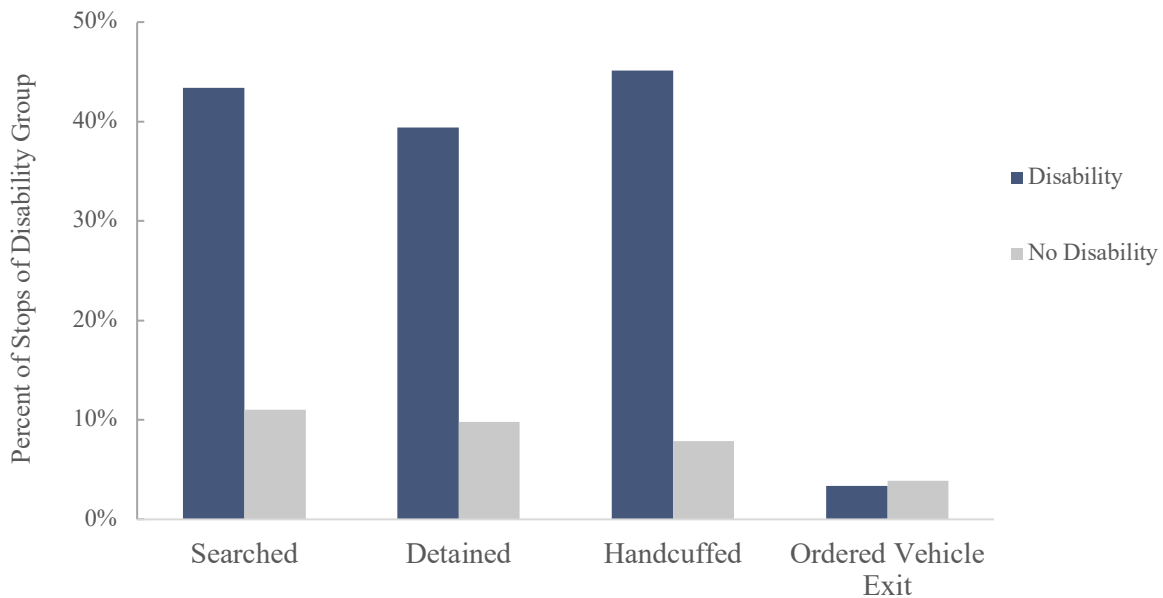


LGBT. Stopped individuals perceived to be LGBT also had a higher rate of being searched (21.9%), detained on the curb or in a patrol car (20.8%), handcuffed (20.1%), and removed from a vehicle by order (4.7%) than individuals not perceived to be LGBT (11.3% searched, 10.1% detained, 8.3% handcuffed, 3.9% removed from vehicle by order).

Limited English Fluency. Stopped individuals perceived to have no or limited English fluency had a higher rate of being searched (13.5%), detained on the curb or in a patrol car (11.5%), handcuffed (10.9%), and removed from a vehicle by order (5.3%) than those perceived to speak English fluently (searched 11.2%, detained 10.1%, handcuffed 8.3%, removed from vehicle by order 3.8%).

Disability. Individuals perceived to have a disability were searched (43.4%), detained on the curb or in a patrol car (39.4%), and handcuffed (45.1%) at a rate higher than those perceived not to have a disability (searched 11.0%, detained 9.8%, and handcuffed 7.9%). Stopped individuals perceived to have a disability had a lower rate of being removed from a vehicle by order (3.4%) compared to those who were not perceived as having a disability (3.9%).

Figure 11. Actions Taken During Stop by Perceived Disability Group



1.4 Result of Stop

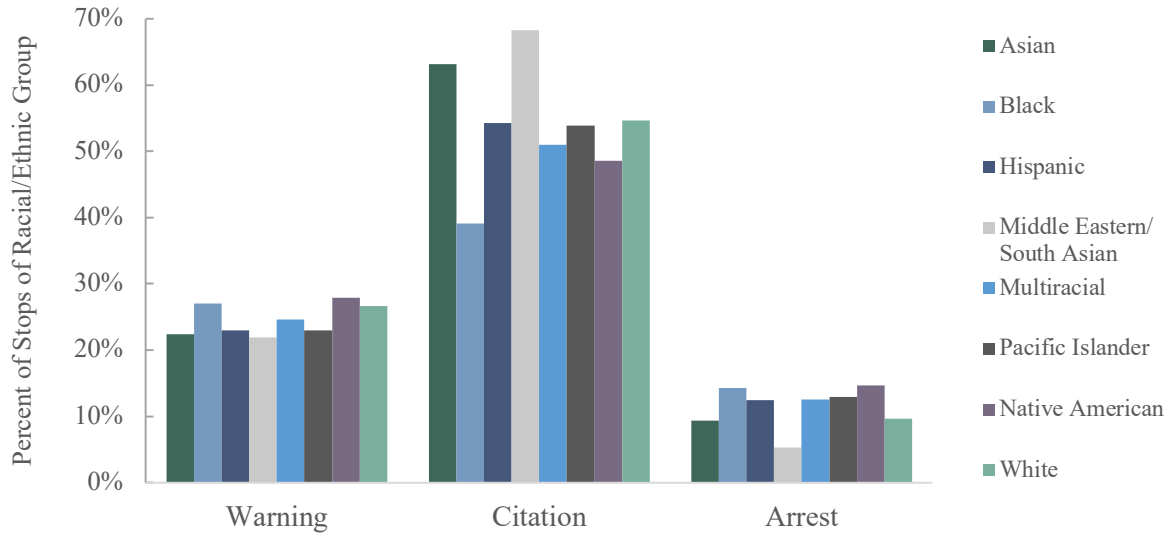
Officers can select up to 11 different stop disposition (or outcome) categories when recording stop data. Officers may select multiple dispositions per stop where necessary (e.g., an officer cited an individual for one offense and warned them about another). Individuals were most often issued a citation (53.1%), followed by a warning (24.8%), and then arrest (11.3%).¹⁰² Each of the other results represented less than 10 percent of the data.¹⁰³

Race/Ethnicity. Compared to other races/ethnicities, stopped individuals perceived as Middle Eastern/South Asian had the highest rate of being cited (68.3%), while individuals perceived to be Native American had the highest rate of being warned (28.0%) or arrested (14.7%). Stopped individuals perceived as Black had the lowest rate of being cited (39.1%) whereas stopped individuals perceived as Middle Eastern/South Asian had the lowest rate of being warned (21.9%) or arrested (5.3%).

¹⁰² Arrests here include three different result types: in-field cite and release (4.8% of stopped individuals), custodial arrest without a warrant (5.0% of stopped individuals), and custodial arrest with a warrant (1.7% of stopped individuals). It is possible for multiple arrest conditions to apply to the same individual in a single stop.

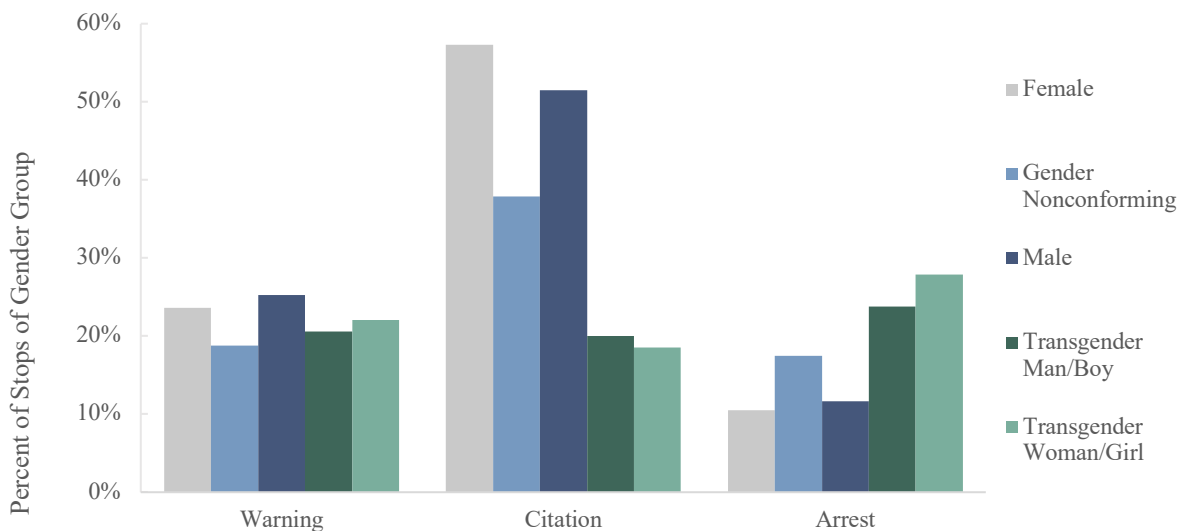
¹⁰³ Other result categories included no action (8.0%), field interview card completed (5.6%), noncriminal/caretaking transport (0.4%), contacted parent/legal guardian (0.1%), psychiatric hold (0.7%), contacted U.S. Department of Homeland Security (<0.1%), referred to a school administrator (<0.1%), or referred to a school counselor (<0.1%).

Figure 12. Stop Result by Perceived Race/Ethnicity



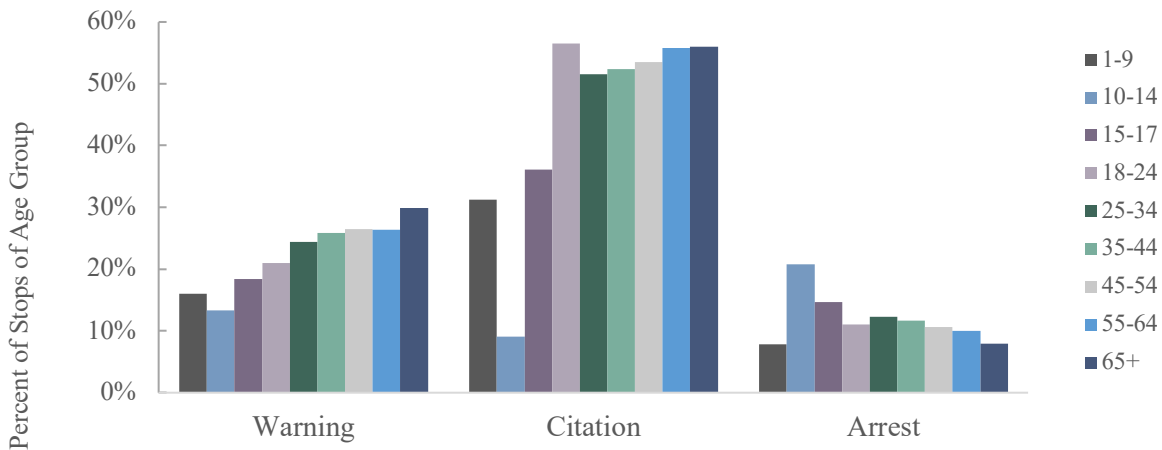
Gender. Citation rates ranged from 18.5 percent of stopped individuals perceived as transgender women/girls to 57.3 percent of stopped individuals perceived as (cisgender) females. Warning rates ranged from 18.8 percent of stopped individuals perceived as gender nonconforming to 25.3 percent of stopped individuals perceived as (cisgender) males. Finally, compared to other gender identities, stopped individuals perceived as transgender women/girls had the highest rate of being arrested (27.9%) while stopped individuals perceived as (cisgender) females had the lowest rate (10.5%).

Figure 13. Stop Result by Perceived Gender



Age. Citation rates for those who were stopped ranged from 9.1 percent for individuals perceived as 10 to 14 year olds to 56.5 percent of individuals perceived as 18 to 24 year olds. Warning rates across age groups of stopped individuals ranged from a low of 13.3 percent of individuals perceived as 10 to 14 years old to a high of 29.9 percent of individuals perceived as 65 and older. Compared to other age groups, stopped individuals perceived as 10 and 14 also had the highest rate of being arrested (20.7%) while stopped individuals perceived as 1 to 9 year olds had the lowest rate (7.8%).¹⁰⁴

Figure 14. Stop Result by Age Group



LGBT. Stopped individuals perceived as LGBT had a lower rate of being cited (33.9%) or warned (21.1%) while having a higher rate of being arrested (22.4%) than individuals whom officers did not perceive to be LGBT (cited 53.2%, warned 24.8%, arrested 11.3%).

Limited English Fluency. Stopped individuals officers perceived to have no or limited English fluency had a lower rate of being cited (51.8%) while having a higher rate of being warned (25.3%) or arrested (13.4%) when compared to individuals perceived to speak English fluently (cited 53.2%, warned 24.8%, arrested 11.2%).

Disability. Stopped individuals perceived as having a disability had lower rates of being cited (9.5%) or warned (14.6%) and higher rates of being arrested (20.2%) than those perceived to not have a disability (cited 53.6%, warned 24.9%, arrested 11.2%).

1.5 Tests for Racial/Ethnic Disparities

There is no consensus in the literature about what analyses are best for identifying racial profiling or racially biased policing and no single approach is perfect. For this reason, the following section contains multiple commonly used analyses designed to identify differences in

¹⁰⁴ The unexpectedly high number of arrests for individuals perceived to be below 15 years of age may partially be explained by incorrectly recorded age values, but we cannot know for sure.

various elements of police stops across the perceived racial/ethnic identities of stopped individuals. These tests for racial/ethnic disparities include:

- a comparison to residential population data;
- an analysis of search discovery rate;
- an analysis of stop frequencies by time of day; and
- an analysis examining use of force rates.

Each of these analyses tests for racial/ethnic disparities in a different manner. As a result, each type of analysis will have its own methodological strengths and weaknesses. A detailed description of the methodology for each analysis in this section is available in Appendix B, along with discussions of some considerations and limitations for each analytical approach.¹⁰⁵

1.5.1 Residential Population Comparison

Comparing stop data to the underlying residential population is a commonly used methodology. An assumption of this type of comparison is that the distribution of who is stopped would be similar to who resides within a comparable geographic region. However, this is not always the case, as people may travel a considerable distance from where they live for a number of reasons (e.g., to go to work, visit family). Here, the Board used residential population demographics from the United States Census Bureau's 2018 American Community Survey (ACS) to provide a benchmark for what might be the expected demographic breakdown of the 2019 stop data.¹⁰⁶ For example, we would expect approximately a third of the individuals stopped by law enforcement to be White since White individuals constitute approximately a third of the population in the regions of California served by the Wave 1 and Wave 2 agencies. It is important to note that disparities between stop population proportions and residential population proportions for each racial/ethnic group can be caused by several factors which include, but are not limited to, potential differences in offending rates and officer bias.

Apart from the CHP, none of the Wave 1 and 2 agencies conduct operations widely across the entire State of California. Accordingly, the ACS demographic estimates were adjusted to better represent the jurisdictions of law enforcement agencies whose data are included in this report, rather than comparing against the whole state population.¹⁰⁷

Figure 15 displays the racial/ethnic distribution of stopped individuals from the 2019 RIPA Stop Data alongside the weighted distribution from the ACS. These analyses were repeated for all reporting municipal agencies, excluding California Highway Patrol, and for each individual agency; those individual results can be found in Appendix Table C.1. As explained above, all

¹⁰⁵ See Racial and Identity Profiling Advisory Board, Annual Report 2020 (Jan. 1, 2020) pp. 30-31 <<https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2020.pdf>> (as of Dec. 14, 2020).

¹⁰⁶ 2019 ACS data were not available at the time these analyses were performed.

¹⁰⁷ See Appendix B.1 for a full description of the methodology.

race/ethnicity data reported under RIPA is based on officer perceptions, while the ACS data is self-reported.¹⁰⁸

Overall, the disparity between the proportion of stops and the proportion of residential population was greatest for Multiracial and Black individuals.¹⁰⁹ Multiracial individuals were stopped 70.7 percent less frequently than expected, while Black individuals were stopped 140.9 percent more frequently than expected.¹¹⁰ The proportion of stops corresponding to White individuals most closely matched estimates from residential population data (3.44% less frequent than expected). Compared to White individuals, the greatest disparities between stop data and residential population data estimates occurred for Black and Multiracial individuals. The disparity for Black individuals was 2.5 times as great as the disparity for White individuals. For Multiracial individuals, the disparity was 0.3 times as great as the disparity for White individuals.

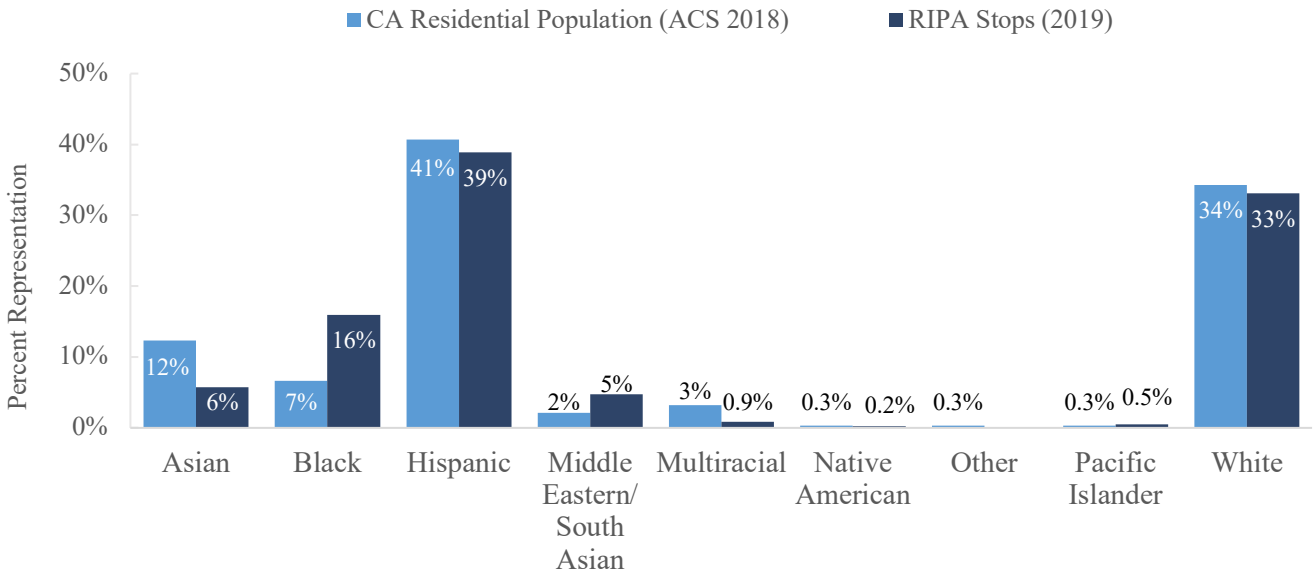
This indicates that Black individuals were significantly more likely to be stopped relative to their share of the residential population—compared to White individuals—while Multiracial individuals were significantly less likely to be stopped. After excluding California Highway Patrol records from the analysis, the data continued to show the greatest disparities in these estimates for Multiracial and Black individuals. Compared to White individuals, the disparity between stop data and residential population estimates for all municipal agencies increased for all groups except for Asian and Middle Eastern/South Asian individuals.

¹⁰⁸ See Appendix B.1 for further discussion of the limitations to this type of analysis.

¹⁰⁹ See Appendix Table C.1 for all descriptive statistics.

¹¹⁰ Stop data classifying the race/ethnicity of stopped individuals is based upon officer perception. Some research indicates that it is more difficult to classify the race of multiracial individuals than to classify the race of monoracial individuals and that people may often classify multiracial individuals as monoracial. See Chen & Hamilton, *Racial Ambiguities: Racial categorization of multiracial individuals* (2012) 48 J. of Experimental Social Psychology 152; Iankilevitch et al., *How Do Multiracial and Monoracial People Categorize Multiracial Faces?* (2020) 11(5) Soc. Psychological and Personality Science 688.

Figure 15. Residential Population Comparison to Stop Data



1.5.2 Discovery-rate Analysis

These data show police generally search each racial/ethnicity group at different rates. Researchers have developed an empirical test for distinguishing how much of this disparity may be explained by biased officer behavior. The test attempts to measure the efficiency of searches by comparing the rate at which contraband or evidence is discovered across racial/ethnicity groups. One assumption of the test is that if officers are less likely to find contraband after searching people of a particular identity group, then those individuals are objectively less suspicious and may be searched, at least in part, because of their perceived identity.¹¹¹ Using this framework, we tested for differential treatment by conducting comparisons of search and discovery rates across identity groups.¹¹²

Descriptive Analysis. Overall, officers searched 11.3 percent of all stopped individuals and they discovered contraband or evidence in 21.4 percent of those searches. Search and discovery rates varied widely between racial/ethnic groups. Specifically, search rates ranged from 3.1 percent of stopped individuals perceived as Middle Eastern/South Asian to 20.5 percent of stopped individuals

Discovery Rates

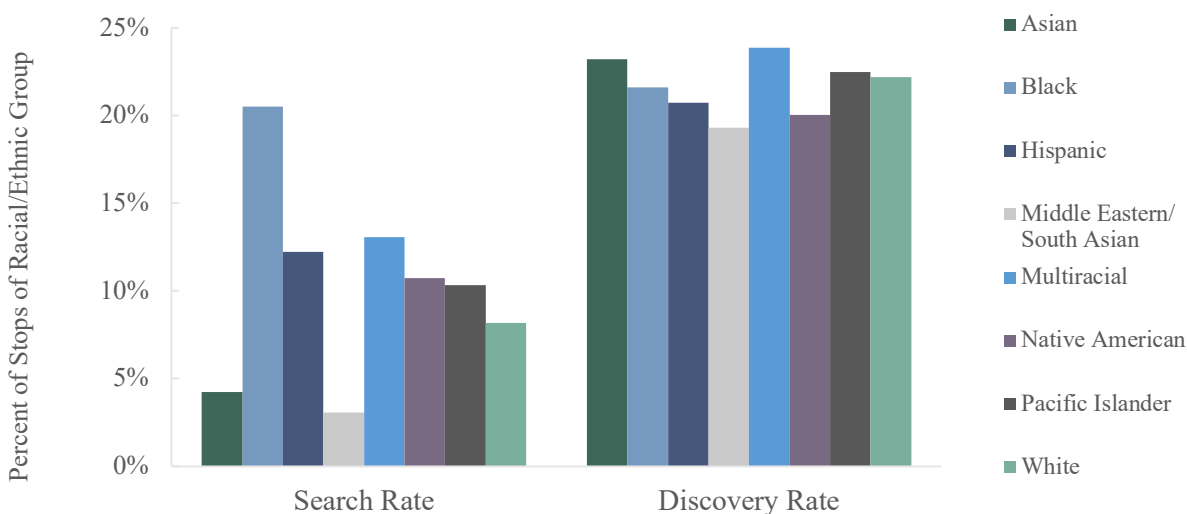
These analyses measure the rates at which contraband or evidence is discovered in stops where a search was performed. In the 2020 RIPA report, these analyses were called “search yield rates.” They are also often referred to in research literature as “hit rates.” The Board believes that “discovery rates” is a more transparent term than “search yield rates” and that it helps speak more directly to the data being analyzed, given that these analyses make use of data element referred to as “Contraband or Evidence *Discovered*” in the RIPA regulations.

¹¹¹ See Appendix B.2 for a discussion of the limitations to this type of analysis.

¹¹² Knowles et al., *Racial Bias in Motor Vehicle Searches: Theory and Evidence* (2001) 109 J. Pol. Econ. 203.

perceived as Black. Individuals perceived as White were searched 8.2 percent of the time. The 12.3 percentage point difference in search rates between stopped Black and White individuals had the following impact: although officers stopped 687,109 more individuals perceived to be White than individuals perceived to be Black, officers searched 22,096 more Black individuals than White individuals.¹¹³ Search discovery rates did not vary as widely between racial/ethnic groups as did search rates. Discovery rates ranged from 19.3 percent of stopped individuals perceived as Middle Eastern/South Asian individuals to 23.9 percent of stopped individuals perceived as Multiracial. The discovery rate for stopped individuals perceived as White was 22.2 percent.

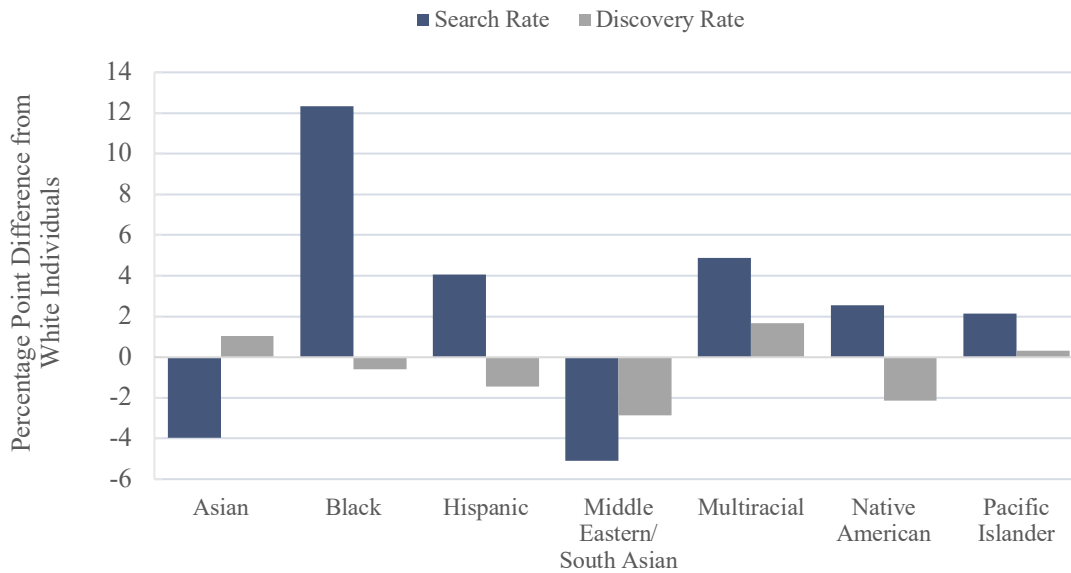
Figure 16. Search and Discovery Rates by Perceived Race/Ethnicity



For this Report, we compared the search and discovery rates for each group to those for individuals perceived as White. All racial/ethnic groups of color had higher search rates than individuals perceived as White, except for individuals perceived as Asian and Middle Eastern/South Asian. Discovery rates were also lower for most groups compared to individuals perceived as White; those perceived as Pacific Islander, Asian, or Multiracial had higher discovery rates. Individuals perceived as Black, Hispanic, and Native American had higher search rates despite having lower rates of discovering contraband compared to individuals perceived as White.

¹¹³ Officers searched more individuals perceived to be Hispanic (190,167) than individuals perceived to be White (108,248). However, officers also stopped more Hispanic individuals (1,552,485) than White individuals (1,322,201) but not Black individuals (635,092).

Figure 17. Racial/Ethnic Disparities in Search and Discovery Rates



Multivariate Analysis. To consider how multiple variables (i.e., multivariate), alongside the perceived race/ethnicity of the stopped individual, are associated with decisions by officers to search and whether officers discovered contraband or evidence, these data were also analyzed using statistical models.¹¹⁴ One key consideration is the level of discretion available to officers in their decision to conduct a search in the first place. Some searches are based on protocol and are often required under departmental policy, such as during an arrest, vehicle inventory, or search warrant; these administrative types of searches afford little to no discretion to the officer in their decision to initiate a search. Other types of searches are conducted in situations where more discretion is available to the officer and are likely based on some subjective threshold of suspicion that contraband or evidence may be found. Examples of these types of searches include those conducted because an officer smelled contraband or when officers suspect the individual of having a weapon. Previous research has shown that these discretionary searches tend to be conducted disparately, and individuals of certain racial/ethnic groups of

Statistical Significance Testing

These tests provide a common framework for evaluating evidence provided by data against a specific hypothesis. For example, the hypothesis tested by the discovery-rate analysis is, “Searches of stopped individuals from racial/ethnic groups of color and White individuals are equally likely to reveal contraband.” But, if the test provides strong enough evidence that disparities between groups are larger than can reasonably be explained by chance alone, then we can say that our findings are *statistically significant*. In other words, the evidence provided by the data renders as very low the likelihood that chance explains the resulting disparity.

¹¹⁴ See Appendix B.2 for a full description of the methodology.

color have a greater chance of being subjected to discretionary searches.¹¹⁵ As such, the multivariate analysis was applied to (1) search rates overall, (2) discovery rates during discretionary searches, and (3) discovery rates during administrative searches.

The results showed multiple statistically significant differences in search and discovery rates across racial/ethnicity groups, especially when comparing individuals perceived as Black or Hispanic to individuals perceived as White (see Table 3). Compared to White individuals, it was more probable for Black (+1.8% points) and Hispanic (+0.4% points) individuals to be searched despite being less likely to be found in possession of contraband or evidence in stops with discretionary searches (-1.9% points and -1.3% points, respectively).¹¹⁶ However, the difference in discovery rates between White and Black individuals during stops with administrative searches was not statistically significant. Asian individuals (-2.1% points) and those from racial/ethnic groups that were combined together¹¹⁷ (-1.8% points) were also less likely to be searched compared to White individuals, but did not have a significant difference in the rate of contraband or evidence discovered during stops with discretionary searches.¹¹⁸ Both Hispanic individuals (-1.3% points) and those from the combined group (-2.9% points) were less likely to have contraband or evidence discovered in stops with administrative searches. These analyses were repeated for all municipal agencies excluding California Highway Patrol and for each individual agency alone in order to consider the impact of different locales on the findings; these results can be found in the Appendix.¹¹⁹

Table 3. Summary of Multivariate Discovery Rate Analysis Findings by Race/Ethnicity

Group	Search Rates	Discovery Rates	
		Discretionary Searches	Administrative Searches
Asian	*** ↓ 2.1%	↓ 0.7%	↓ 0.8%
Black	*** ↑ 1.8%	*** ↓ 1.9%	↓ 0.4%
Hispanic	*** ↑ 0.4%	*** ↓ 1.3%	*** ↓ 1.3%
Other	*** ↓ 1.8%	↓ 1.1%	*** ↓ 2.9%

Note. Values represent percentage point difference compared to the rate for White individuals, with arrows indicating the direction of the difference. Statistically significant disparities are indicated with asterisks; *** p < 0.001; ** p < 0.01; * p < 0.05.

¹¹⁵ Ridgeway, *Assessing the Effect of Race Bias in Post-traffic Stop Outcomes Using Propensity Scores* (2006) 22 J. Quantitative Criminology 1.

¹¹⁶ See Appendix Table C.2.1.1 for model statistics.

¹¹⁷ Individuals perceived to be Middle Eastern/South Asian, Multiracial, Native American, or Pacific Islander were combined into one group in order to gain the statistical power needed to conduct these multivariate analyses.

¹¹⁸ See Appendix Table C.2.2.1 for model statistics.

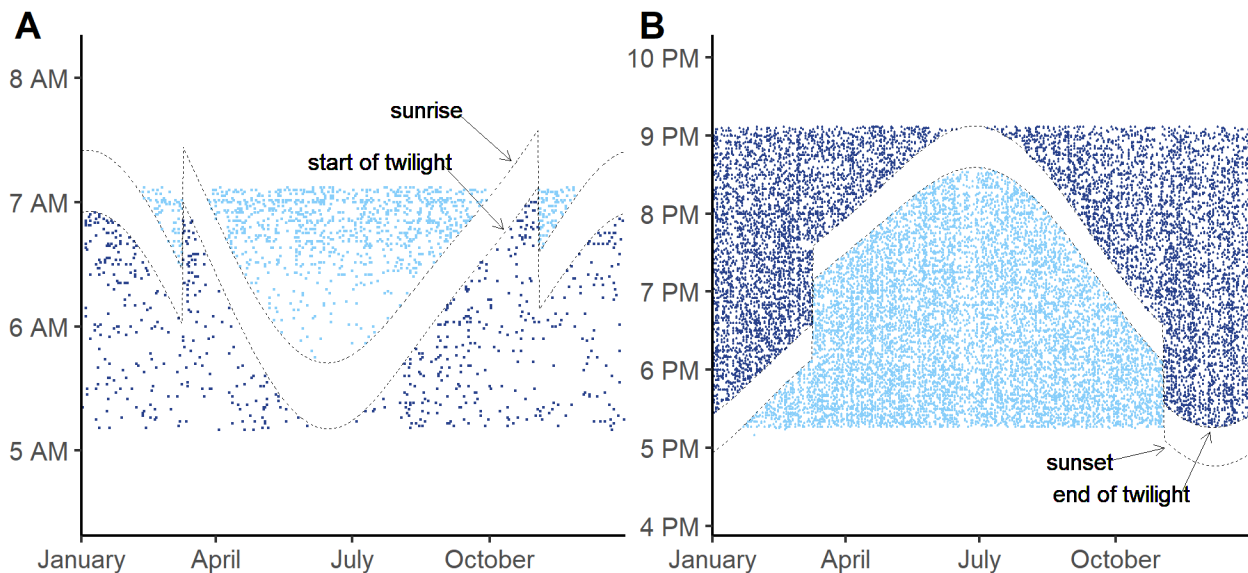
¹¹⁹ See Appendix Tables C.2.1.1, C2.2.1 and C.2.3.1 for model statistics.

1.5.3 Veil of Darkness Analysis

A key problem in exploring racial disparities is establishing the proper benchmark against which to compare the racial/ethnic distribution of individuals stopped by law enforcement. One approach presumes that it may be more difficult for police to perceive the race/ethnicity of an individual prior to stopping them after dark than during daylight. In other words, to the extent that it is harder to identify someone at night, we would expect darkness to decrease the likelihood that individuals of racial/ethnic groups of color are disproportionately stopped relative to White individuals. This hypothesis is called the veil of darkness (VOD) which has been used by researchers to test for racial/ethnic disparities in law enforcement encounters.

The Intertwilight Period. The most conventional version of the VOD approach, followed here, is to only examine vehicle stops that occur during the intertwilight period. The reason for this is that the intertwilight period spans the hours of the day that are light during one part of the year and dark during the other because of daylight saving time; this period occurs twice on any given day, once around dawn and once around dusk. Stops made during the lighter portion of this period (i.e., after sunrise but before sunset) are compared to stops made during the darker portion of this period.¹²⁰ Figure 18 shows an example of both morning and evening intertwilight periods for stops made in Sacramento using RIPA data.

Figure 18. Morning and Evening Intertwilight Periods for Sacramento



Notes: Each dot represents a single stop made by law enforcement in Sacramento on a given day and time. Light blue dots represent stops made during daylight. Dark blue dots represent stops made after dark. Only stops made

¹²⁰ Civil twilight is defined as the illumination level sufficient for most ordinary outdoor activities to be done without artificial lighting before sunrise or after sunset. Therefore, it is dark outside when civil twilight ends; civil twilight ends when the sun is six degrees below the horizon.

within the morning (A) and evening (B) intertwilight periods were included in the analysis. Stops made between the start of civil twilight and sunrise (white band) were excluded from the morning intertwilight period. Stops made between sunset and the end of civil twilight (white band) were excluded from the evening intertwilight period. Stops that occurred within the white-banded area were excluded because the lighting conditions during this period are more difficult to classify as either dark or light. Discontinuities in the curves in March and November reflect Daylight Saving Time adjustments.

Multivariate Analysis. These analyses take into account how multiple variables (e.g., time of day, location) may contribute to disparities in stops made in the dark compared to those in the light.¹²¹ As mentioned previously, this analysis only includes data for individuals stopped for traffic violations during the morning and evening intertwilight periods.¹²² Stops made in response to a call for service were also excluded from this analysis because officers utilized information from a third party (e.g., dispatcher or caller) when making the decision to stop the individuals in these cases; the VOD test is best applied to stops where officers are making stops solely based on their own judgement. These filtering criteria were applied to the data in order to approximate the conditions under which the VOD hypothesis would be most accurate. Finally, the four racial/ethnic groups who were least frequently stopped were combined into a single group to increase statistical power for the test; these groups included individuals perceived to be Middle Eastern/South Asian, Multiracial, Native American, and Pacific Islander.

The results showed that some racial/ethnic groups were stopped at different rates, relative to White individuals, depending on visibility conditions. Darkness decreased the rates at which Black (-0.5% points) and Hispanic (-1.4% points) individuals were stopped compared to White individuals; individuals from the racial/ethnic groups that were combined together (-0.8% points) also collectively had lower rates of being stopped during darkness.¹²³ Given the large number of stops submitted by California Highway Patrol as compared to the municipal agencies, the analyses were repeated while excluding CHP data. This analysis continued to show darkness decreasing the probability of being stopped during the intertwilight period for Black (-1.5% points) and Hispanic (-1.0% points) individuals.¹²⁴ These results suggest that individuals of certain racial/ethnic groups of color may be more likely to be stopped when it is easier to perceive their race/ethnicity. These disparities could reflect biased police behavior or the effect of some factor that is not yet being considered by this test.¹²⁵

1.6 Use of Force Analysis

California law provides that “[a]ny peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance.”¹²⁶ State law strictly provides when an officer may reasonably use deadly force; it is universally accepted that deadly force is the

¹²¹ See Appendix B.3 for a full description of the methodology.

¹²² Traffic Violations include all categories of “Reason for Stop” defined under Section 999.226, subd. (a)(10)(A)(1) of the RIPA Regulations.

¹²³ See Appendix Table C.3 for model statistics.

¹²⁴ See Appendix Table C.3 for model statistics.

¹²⁵ See Appendix B.3 for a discussion of the limitations surrounding VOD.

¹²⁶ Cal. Pen. Code, § 835a, subd. (b).

highest level of force that an officer could use.¹²⁷ However, there are no guidelines in California as to what constitutes the range or continuum of force between the lowest level of force and deadly force. Additionally, the specific data elements collected under RIPA have never been adapted to reflect any existing use-of-force continuum.

The Board offers two approaches for examining use of force across racial/ethnic groups.¹²⁸ The first uses a modified version of a use-of-force continuum from the National Institute of Justice to compare escalating levels of force between racial/ethnicity groups.¹²⁹ The second applies a statistical test to determine whether force was used disparately between White individuals and individuals from racial/ethnic groups of color. These data show that use of force is generally rare in California and is reported in about one percent of stops. However, the Board recognizes that, despite the low occurrence rate relative to other actions that officers take during stops, the gravity of the outcomes of many incidents that involve uses of force necessitates the examination of these data for disparate outcomes.

Use-of-force Continuum. Of the 23 actions that officers can report for RIPA, at least nine constitute types of force. These nine actions have been divided into three separate categories based on the level of force used, including lethal, less-lethal, and other physical or vehicle force. Table 4 displays what actions taken by officers during stops were grouped into each of the level of force categories.¹³⁰ Lethal use of force was used against 0.004 percent (154) of stopped individuals. Less-lethal force was used against 0.4 percent (16,795) of stopped individuals. Actions constituting limited force were used against 0.6 percent (23,795) of stopped individuals.

¹²⁷ *Ibid.*

¹²⁸ The California Department of Justice issues a Use of Force Incident Reporting Annual Report, also known as the URSUS Report (see <<https://data-openjustice.stg.doj.ca.gov/sites/default/files/2020-06/USE%20OF%20FORCE%202019.pdf>> (as of Dec. 14, 2020)). However, the types of use of force incidents covered by the URSUS Report are more narrowly defined than the incidents collected and reported under RIPA.

¹²⁹ See National Institute of Justice, The Use-of-Force Continuum <<https://nij.ojp.gov/topics/articles/use-force-continuum>> (as of Dec. 14, 2020).

¹³⁰ Section 999.226, subd. (a)(12)(A)(15) of the RIPA regulations defines the “Other physical or vehicle contact” data element within the “Action Taken by Officer During Stop” variable. Officers are instructed to select this data element when they use a number of different use of force types, such as hard hand controls or forcing someone to the ground. This data element is also what officers are instructed to select when they utilize a carotid restraint. The Department has previously noted that carotid restraints often involve a needlessly high risk of causing unnecessary and accidental serious bodily injury (see Cal. Dept. of J., Sac. Police Dept. Rep. and Recommendations (2019), pp. 16, 25, 78 <<https://oag.ca.gov/system/files/attachments/press-docs/spd-report.pdf>> (as of Dec. 7, 2020)). However, since carotid restraints are not distinguished from the other types of force captured under the “Other physical or vehicle contact” data element, it is possible that some instances when officers used this type of force are categorized under the other physical or vehicle force category in these analyses. This categorization is a reflection of how the data are collected under the RIPA regulations and not a reflection of the Department’s view on the use of carotid restraints.

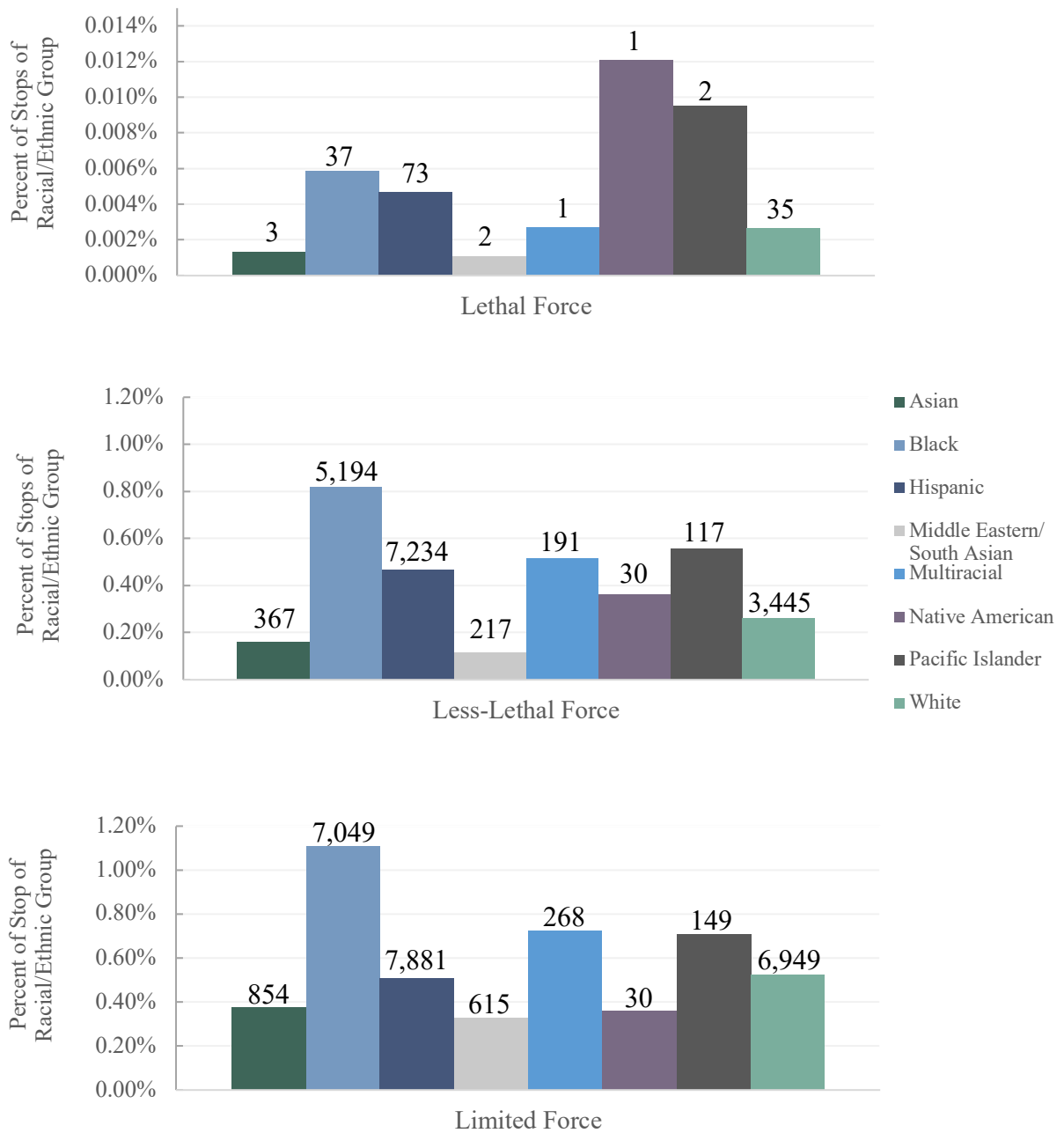
Table 4. Use of Force Categories and Applicable RIPA Actions

Lethal force	Less-lethal force	Other physical or vehicle force
<ul style="list-style-type: none"> • Firearm discharged or used 	<ul style="list-style-type: none"> • Electronic control device used • Impact projectile discharged or used • Canine bit or held person • Baton or other impact weapon used • Firearm pointed at person¹³¹ • Chemical spray used 	<ul style="list-style-type: none"> • Person removed from vehicle by physical contact • Other physical or vehicle contact. This refers to any of the following contacts by the officer, when the purpose of such contact is to restrict movement or control a person’s resistance: any physical strike by the officer; instrumental contact with a person by an officer; or the use of significant physical contact by the officer.

Less than 0.1 percent of stopped individuals from each racial/ethnic group had lethal force used against them. The total number of individuals who had lethal force used against them by perceived racial/ethnic group included three Asian, 37 Black, 73 Hispanic, two Middle Eastern/South Asian, one Native American, two Pacific Islander, 35 White, and one Multiracial individual. Black individuals had the highest rates of less-lethal force (0.8%) and other physical or vehicle force (1.1%) used by officers against them during a stop, while Middle Eastern/South Asian individuals had the lowest rates (0.1% and 0.3%, respectively).

¹³¹ California Government Code section 12525.2, subdivision (b)(4), requires the California Department of Justice to annually collect data related to certain types of force. The Department of Justice classifies the threat of a firearm as a type of force that must be reported to the Department per URSUS. (See Use of Force Incident Reporting (July 2019) Data Elements and Values Defined, p. 7 <https://data-openjustice.stg.doj.ca.gov/sites/default/files/dataset/2019-07/URSUS%202018%20Context_062519.pdf> (as of Dec. 14, 2020)). Given that the threat of a firearm is inherent to the intentional pointing of a firearm at another person, pointing a firearm was classified as a use of force in this set of analyses, for consistency with other use of force reporting within California. Not all agency policies in California categorize pointing a firearm at a person as a reportable use of force.

Figure 19. Use of Force Rates by Perceived Race/Ethnicity



Multivariate Analysis. To consider the impact of the stopped individuals' perceived race/ethnicity and multiple other factors on whether any use of force occurred during a stop, these data were analyzed using statistical models.¹³² Data for the four racial/ethnic groups least frequently stopped by officers were combined into a single group to increase the sample size for the test; these groups included Middle Eastern/South Asian, Multiracial, Native American, and Pacific Islander individuals.

¹³² See Appendix B.4 for a full description of the methodology.

The analysis showed that Black and Hispanic individuals were more likely to have force used against them compared to White individuals, while Asian and other individuals were less likely. Specifically, compared to Whites, the odds of having force used during a stop were 1.45 times and 1.18 times greater for Black and Hispanic individuals, respectively. The odds of force being used during stops of Asian or other individuals were 0.83 and 0.93 times lower, respectively, compared to White individuals.¹³³ Excluding the data from California Highway Patrol, which contributed a majority of the stop data records, had little impact on these disparities.¹³⁴

1.7 Report-Specific Analyses

1.7.1 Intersectional Analyses

The Board recognizes that many aspects of an individual's identity may intersect, resulting in different experiences during encounters with law enforcement. Disparities in stop frequencies and outcomes between racial/ethnicity groups, for example, may be best explained when considering how the outcomes for perceived race/ethnicity intersect with a person's perceived gender. Accordingly, the search discovery rate analysis was extended to racial/ethnic group comparisons within gender and disability groups.

Reminder Regarding Identity Group Data

Gov. Code § 12525.5(b)(6) states, “[t]he perceived race or ethnicity, gender, and approximate age of the person stopped, provided that the identification of these characteristics shall be based on the observation and perception of the peace officer making the stop, and the information shall not be requested from the person stopped.” This means that identity characteristics collected under RIPA are a reflection of officer perception, rather than self-identification by stopped individuals. It is important to note that stopped individuals may self-identify differently than how an officer perceives them.

1.7.1.1 Race/Ethnicity by Gender

Less than 1 percent (7,595) of individuals stopped in 2019 were perceived to be transgender or gender nonconforming. Among the stopped individuals perceived to be transgender or gender nonconforming, 43.4 percent were perceived to be a transgender man/boy, 32.0 percent were perceived to be gender nonconforming, and the remaining 24.6 percent were perceived to be a transgender woman/girl. Data for transgender and gender nonconforming individuals were combined due to low numbers, in order to increase statistical power. Thus, the following three gender groups will be discussed in the analyses: (cisgender) male, (cisgender) female, transgender/gender nonconforming.

¹³³ See Appendix Table C.4 for model statistics.

¹³⁴ See *ibid.*

Descriptive Analysis. Officers searched 6.5 percent of (cisgender) females they stopped and discovered contraband or evidence during 20.9 percent of these stops where they conducted searches. Among all racial/ethnicity groups, Black and Hispanic (cisgender) females were searched at a higher rate (10.7% and 6.5% respectively) in comparison to White (cisgender) females (5.7%). Despite having higher search rates, Black and Hispanic (cisgender) females had lower search discovery rates (21% and 20.5% respectively) than White (cisgender) females (21.5%). (Cisgender) females from the combined racial/ethnic groups had lower search (3.2%) and discovery rates (19.8%) in comparison to White (cisgender) females.

Approximately 13.2 percent of (cisgender) males were searched by officers and contraband or evidence was discovered on 21.5 percent of (cisgender) males whom officers searched. Black (24.5%) and Hispanic (cisgender) males (14.1%) had higher search rates in comparison to White (cisgender) males (9.4%) while (cisgender) males from the combined racial/ethnic groups had lower search rates (5.4%). Despite having higher search rates, Black and Hispanic (cisgender) males whom officers searched had lower discovery rates (21.7% and 20.8% respectively) in comparison to White (cisgender) males (22.4%). (Cisgender) males from the combined racial/ethnic groups had the highest discovery rate (22.8%).

Officers searched 29 percent of the transgender/gender nonconforming individuals they stopped; they discovered contraband or evidence on 20.2 percent of transgender/gender nonconforming individuals whom they searched. Despite large differences in search rates, discovery rates in the stops of individuals perceived to be transgender/gender nonconforming were similar to the discovery rates in stops of individuals perceived to be cisgender. Across racial/ethnic groups, search rates varied greatly amongst individuals whom officers perceived to be transgender/gender nonconforming. Hispanic and Black transgender/gender nonconforming individuals had higher search rates (36.7% and 34.4% respectively) than White transgender/gender nonconforming individuals (30.4%), while transgender/gender nonconforming individuals from the combined racial/ethnic groups had lower search rates (12.9%). Discovery rates for White transgender/gender nonconforming individuals were lower (18.8%) than the discovery rates for all other racial/ethnic groups for transgender/gender nonconforming individuals (20.1% - 21.1%).

Figure 20. Search Rates by Perceived Race/Ethnicity and Gender

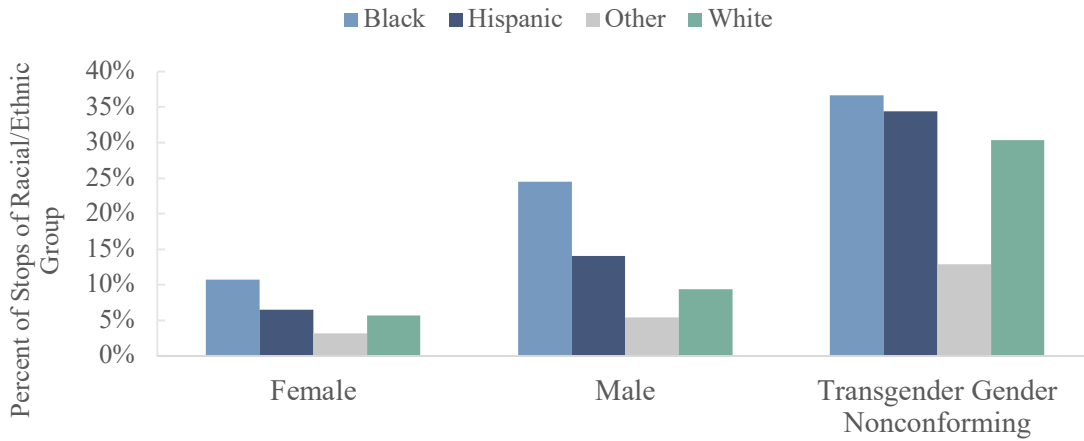


Figure 21. Discovery Rates by Perceived Race/Ethnicity and Gender

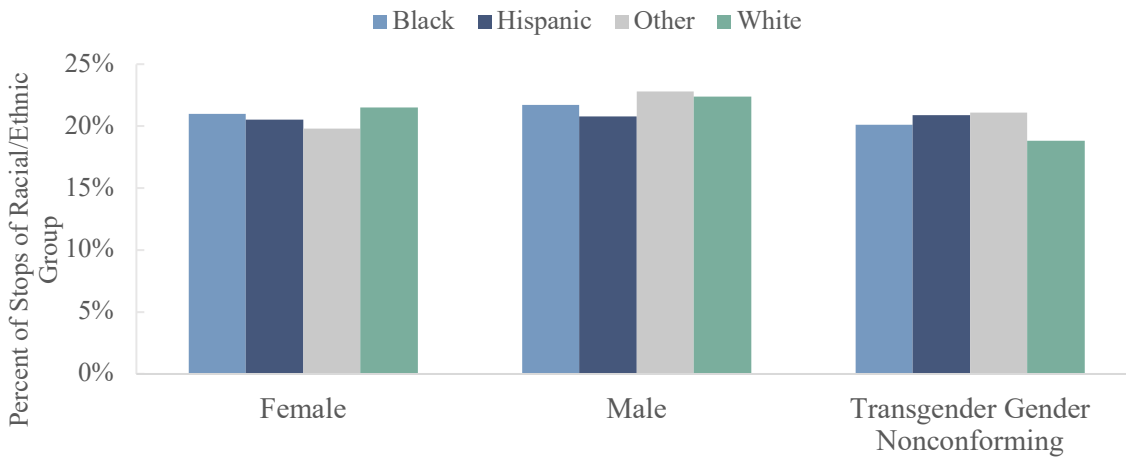
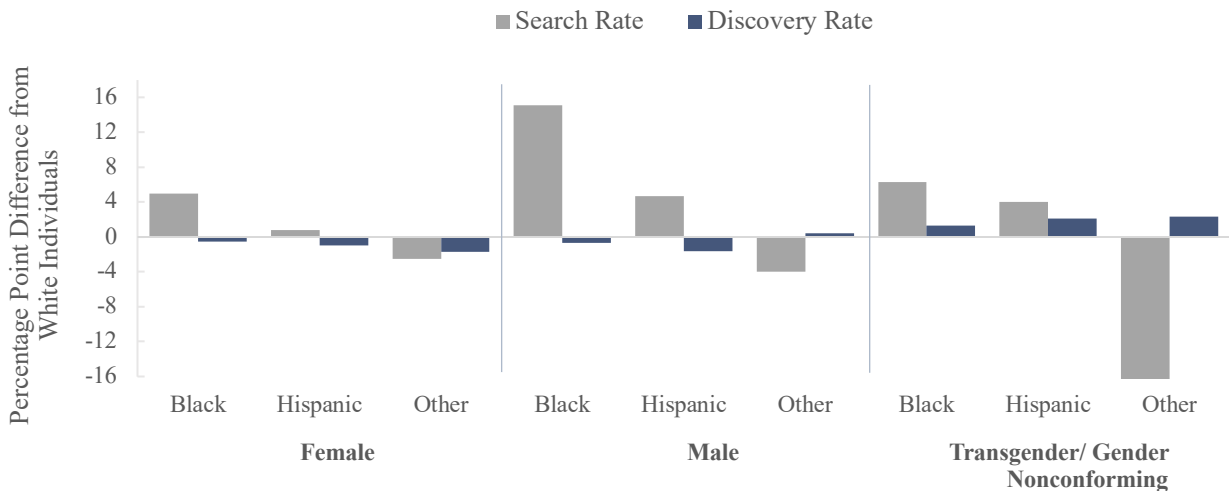


Figure 22. Racial/Ethnic Disparities in Search and Discovery Rates by Gender



Multivariate Analysis. The descriptive analyses show racial/ethnic disparities in search and discovery rates within each perceived gender group of stopped individuals. To consider how multiple variables, including the perceived race/ethnicity of the stopped individuals of each gender category, are associated with decisions by officers to search and whether officers discovered contraband or evidence, these data were analyzed using multivariate statistical models.¹³⁵ As with the previous discovery-rate analysis, the multivariate analysis was applied to (1) search rates overall, (2) discovery rates during discretionary searches, and (3) discovery rates during administrative searches (see Table 5).

The results of these analyses showed statistically significant differences when comparing Black and Hispanic (cisgender) males to White (cisgender) males.¹³⁶ Black and Hispanic (cisgender) males were more likely to be searched (+2.2% points and +0.7% points respectively) than White (cisgender) males, while also being less likely to have contraband or evidence discovered (-1.7% points and -1.0% points respectively) during stops with discretionary searches. Hispanic (cisgender) males were also less likely to have contraband or evidence discovered (-1.3% points) in stops with administrative searches in comparison to White (cisgender) males; no statistically significant differences in administrative search discovery rates were observed between White and Black (cisgender) males. While (cisgender) males from the combined racial/ethnic groups were less likely to be searched (-2.2% points) than White (cisgender) males, the tests did not yield statistically significant differences for discretionary or administrative search discovery rates.

Officers were more likely to search (+0.2% points) and were less likely to discover contraband or evidence during stops in which they conducted discretionary searches of Black (cisgender) females than White (cisgender) females (-3.4% points). The difference in discovery rates during stops with administrative searches between Black and White (cisgender) females was not statistically significant. Hispanic (cisgender) females were less likely to be searched (-0.4% points) and had lower discretionary and administrative discovery rates (-2.2% and -2.5% points, respectively) than White (cisgender) females. Officers were less likely to search (cisgender) females from the combined racial/ethnic groups (-1.3% points) and less likely to discover contraband or evidence during stops with administrative searches (-3.3% points) in comparison to White (cisgender) females. There were no statistically significant differences in discovery rates for discretionary searches between (cisgender) females within the combined racial/ethnic groups and White (cisgender) females.

¹³⁵ See Appendix B.2 for a full description of the methodology.

¹³⁶ See page 50 for a simplified definition of statistically significant.

Table 5. Summary of Multivariate Discovery Rate Analysis Findings by Perceived Race/Ethnicity and Gender

Group		Search Rates	Discovery Rates	
			Discretionary Searches	Administrative Searches
Male	Black	*** ↑ 2.2%	*** ↓ 1.7%	↓ 0.4%
	Hispanic	*** ↑ 0.7%	*** ↓ 1.0%	*** ↓ 1.3%
	Other	*** ↓ 2.2%	↓ 0.9%	↓ 1.3%
Female	Black	* ↑ 0.2%	*** ↓ 3.4%	↓ 0.8%
	Hispanic	*** ↓ 0.4%	** ↓ 2.2%	*** ↓ 2.5%
	Other	*** ↓ 1.3%	↓ 1.0%	* ↓ 3.3%
Transgender/ Gender Nonconforming	Black	↑ 0.3%	↑ 7.4%	↑ 7.4%
	Hispanic	↑ 1.9%	↓ 3.6%	↑ 11.0%
	Other	↓ 1.6%	↓ 18.0%	↓ 4.8%

Note. Values represent percentage point difference compared to the rate for White individuals, with arrows indicating the direction of the difference. Statistically significant disparities are indicated with asterisks; *** p < 0.001; ** p < 0.01; * p < 0.05.

1.7.1.2 Race/Ethnicity by Disability

Analyses were also repeated for the intersection of perceived racial/ethnicity and disability groups. Less than 2 percent (46,035) of individuals stopped in 2019 were perceived to have a disability. The most common perceived disability was a mental health condition; officers reported mental health condition as the disability type for 63.3 percent of stopped individuals perceived to have a disability.¹³⁷ Due to relatively small numbers of stopped individuals perceived to have some of the disability types, disability groups were categorized into the following three groups to increase statistical power: no disability, mental health condition, and other disability.¹³⁸

Descriptive Analysis. Overall, police officers searched 51.8 percent of stopped individuals who were perceived to have a mental health condition, and contraband or evidence was discovered on 12.5 percent of these individuals whom officers searched. In comparison to White individuals (47.0%), individuals from all other racial/ethnic groups (Black, Hispanic, and Other) perceived to have a mental health condition had higher search rates (52.8% - 56.3%). For

¹³⁷ Individuals perceived to have multiple disabilities—including cases where one of the disabilities is a mental health condition—are not included in this statistic.

¹³⁸ The “other” types of disabilities include the following disability groups: blind (4.9%), deafness (15.4%), developmental disability (8.9%), hyperactivity disorder (0.2%), multiple disabilities (20.9%), speech impairment (13.3%), and other (36.6%). Percentages presented in parentheses in the preceding sentence are relative to the total number (16,911) of individuals categorized into the “other” disability group for these analyses.

discovery rates, all other racial/ethnic groups perceived to have a mental health condition had higher discovery rates (12.5% - 13.4%) than those who were White (11.3%).

Officers searched 28.9 percent (4,887) of individuals perceived to have other types of disabilities and discovered contraband or evidence during 20.7 percent of stops where they performed a search. Black and Hispanic individuals perceived to have other types of disabilities had higher search rates (36.2% and 33.9% respectively) in comparison to White individuals perceived to have other types of disabilities (24.9%). Discovery rates were higher for Black individuals perceived to have other types of disabilities (22.5%) than for White individuals (20.3%). Hispanic individuals perceived to have other types of disabilities had lower discovery rates (20.0%) compared to White individuals. Individuals perceived to have other types of disabilities from the combined racial/ethnic groups had lower search (16.5%) and discovery rates (18.7%) than White individuals.

Officers searched 11 percent (432,183) of individuals with no perceived disabilities and discovered contraband or evidence on 21.7 percent of these individuals. Across racial/ethnic groups, Black and Hispanic individuals with no perceived disabilities were searched at a higher rate (20% and 12% respectively) than White individuals with no perceived disability (7.8%). Black and Hispanic individuals with no perceived disabilities also had lower discovery rates (21.9% and 20.9% respectively) when compared to White individuals with no perceived disability (22.8%). Individuals with no perceived disabilities from the combined racial/ethnic groups were searched at a lower rate (4.5%) but had a higher discovery rate (22.9%) than White individuals.

Figure 23. Search Rates by Perceived Race/Ethnicity and Disability.

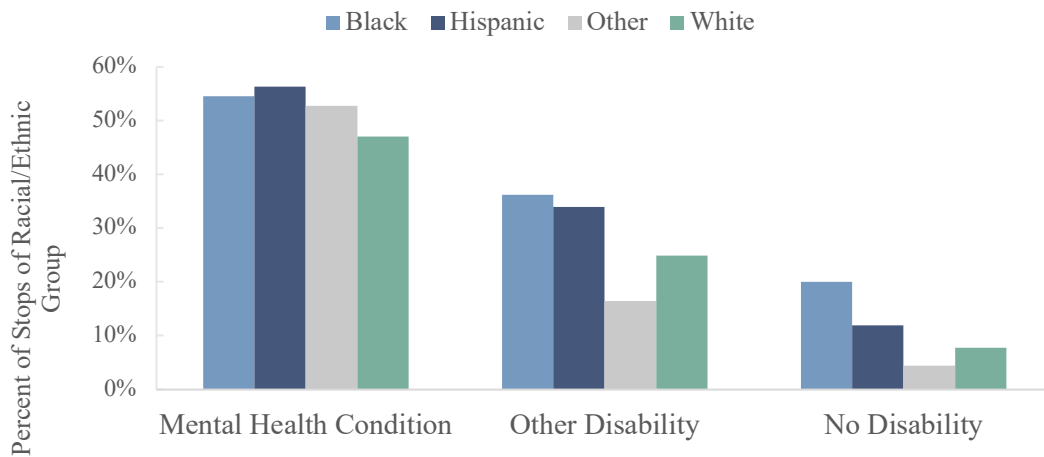


Figure 24. Search Discovery Rates by Perceived Race/Ethnicity and Disability.

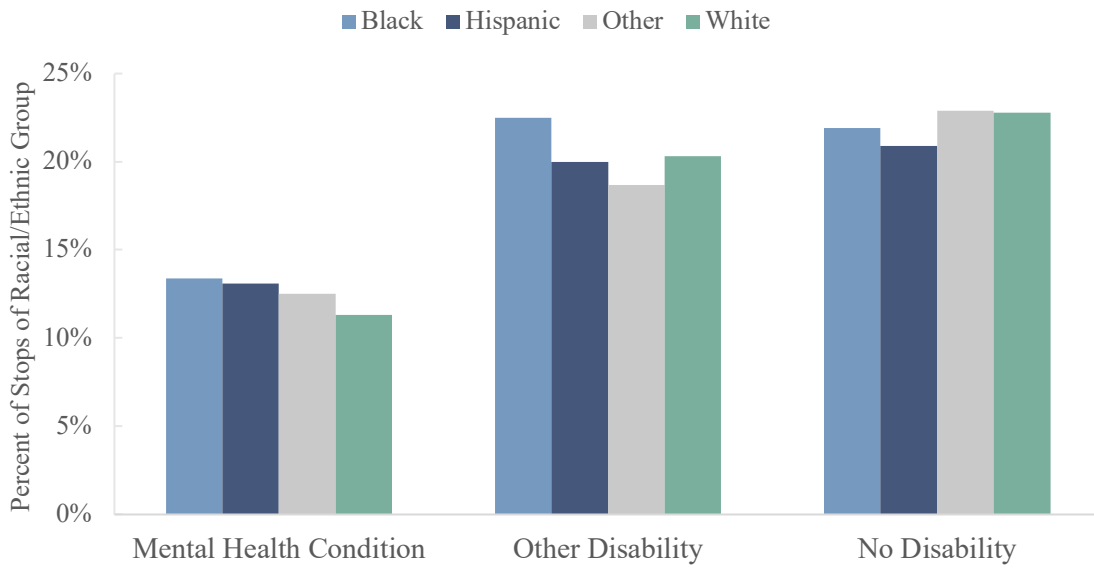
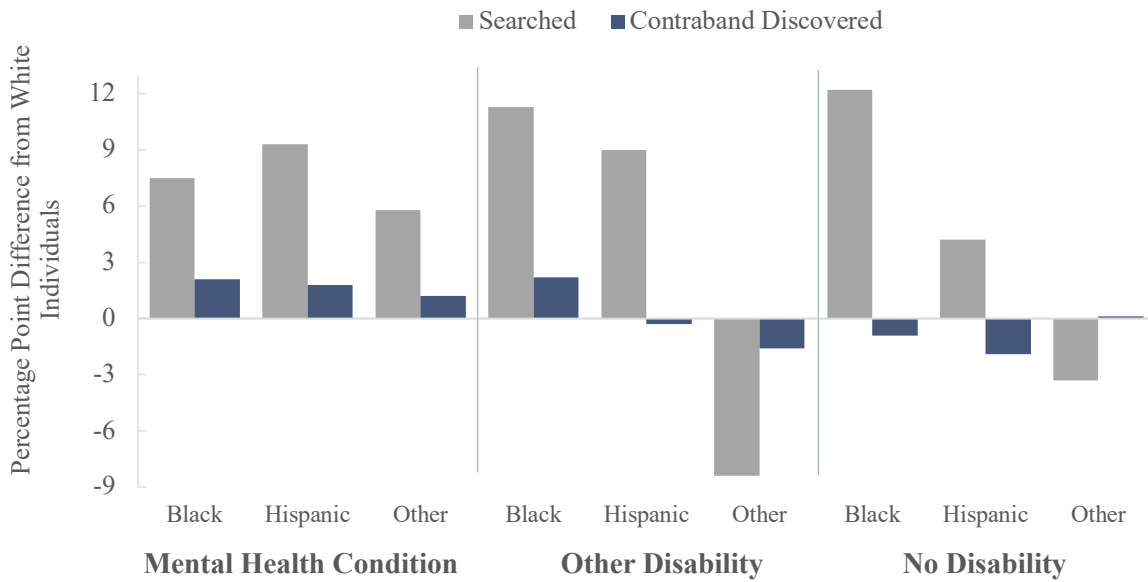


Figure 25. Racial/Ethnic Disparities in Search and Discovery Rates by Disability Group



Multivariate Analysis. As with the race/ethnicity by gender analyses, multivariate analyses were used to help consider how multiple variables, including the race/ethnicity of the stopped individuals of each disability category, are associated with officers' decisions to search and the likelihood of discovering contraband or evidence.¹³⁹ The multivariate analysis was applied to (1) search rates overall, (2) discovery rates during discretionary searches, and (3) discovery rates during administrative searches (see Table 6).

Results for administrative searches revealed that Black individuals perceived to have a mental health condition were more likely to have contraband or evidence discovered (+5.9% points) than White individuals perceived to have a mental health condition. However, for search rates and discretionary search discovery rates, the analysis found no statistically significant differences between White and Black individuals perceived to have a mental health condition. Similarly, no statistically significant differences were found in search or discovery rates (either discretionary or administrative) for Hispanic individuals or for individuals from the combined racial/ethnic groups perceived to have a mental health condition. Additionally, tests did not yield any statistically significant differences in the search or discovery rates for those perceived to have an "other" type of disability for Black individuals, Hispanic individuals, or individuals from the racial/ethnic groups that were combined.¹⁴⁰

For discretionary searches, Black and Hispanic individuals with no perceived disabilities were more likely to be searched (+1.8% points and +0.7% points respectively) but less likely to be found in possession of contraband or evidence (-2.2% points and -1.6% points respectively) than White individuals with no perceived disabilities. However, for administrative searches, no significant disparities in discovery rates were found between Black and White individuals with no perceived disabilities. For administrative searches, Hispanic individuals with no perceived disabilities were less likely to have contraband or evidence discovered (-1.3% points) in comparison to White individuals with no perceived disabilities. Individuals from the combined racial/ethnic groups with no perceived disabilities were less likely to be searched (-1.8% points) in comparison to White individuals with no perceived disabilities. For administrative searches, individuals from the combined racial/ethnic groups with no perceived disabilities were less likely to have contraband or evidence discovered (-1.8% points) in comparison to White individuals with no perceived disabilities. For the discretionary search discovery rate, no statistically significant differences were found between individuals with no perceived disabilities from the combined racial/ethnic groups and White individuals with no perceived disabilities.

¹³⁹ See Appendix B.2 for a full description of the methodology.

¹⁴⁰ See Appendix Table C.2.3.3 for model statistics.

Table 6. Summary of Multivariate Discovery Rate Analysis Findings by Perceived Race/Ethnicity and Disability

Group		Search Rates	Discovery Rates	
			Discretionary Searches	Administrative Searches
Mental Health	Black	↑ 1.1%	↓ 0.3%	** ↑ 5.9%
	Hispanic	↑ 2.0%	↑ 2.0%	↑ 1.5%
	Other	* ↑ 3.0%	↓ 2.2%	↑ 1.8%
None	Black	*** ↑ 1.8%	*** ↓ 2.2%	↓ 0.5%
	Hispanic	*** ↑ 0.7%	*** ↓ 1.6%	*** ↓ 1.3%
	Other	*** ↓ 1.8%	↓ 0.8%	** ↓ 1.8%
Other Disability	Black	↑ 2.7%	↑ 7.0%	↑ 10.6%
	Hispanic	↑ 1.0%	↓ 3.4%	↑ 3.9%
	Other	↓ 0.0%	↓ 7.8%	↓ 6.7%

Note. Values represent percentage point difference compared to the rate for White individuals, with arrows indicating the direction of the difference. Statistically significant disparities are indicated with asterisks; *** p < 0.001; ** p < 0.01; * p < 0.05.

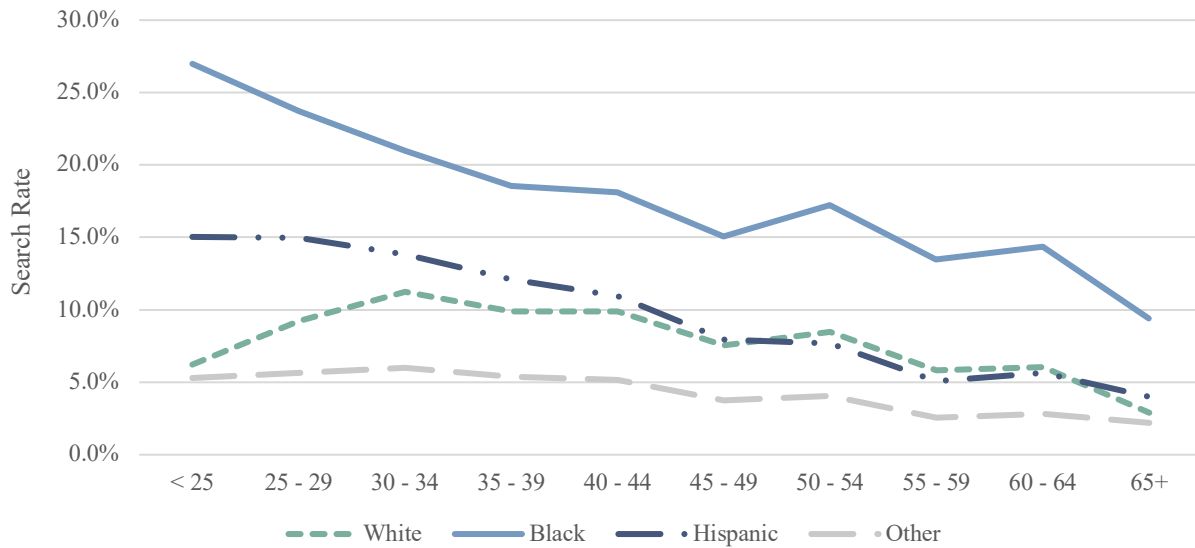
1.7.1.3 Search and Discovery Rates by Perceived Race/Ethnicity and Age

The following section examines search and discovery rates by perceived race/ethnicity and age. Findings generally indicated that younger individuals were searched at a higher rate than older individuals. Individuals between the ages of 25 to 29 were searched at the highest rate (14.0%), followed by individuals less than 25 years old (13.7%); individuals 65 years of age or older were searched at the lowest rate (3.6%).

Examining search rates by race/ethnicity and age, Black individuals less than 25 years old were searched at the highest rate (27.0%) within their racial/ethnic group. Recall that Black individuals were searched at the highest rates out of all racial/ethnic groups. Hispanic individuals younger than 25 years of age were searched at a higher rate (15.0%) than other age groups within their racial/ethnic group. For White individuals and individuals from the Other racial/ethnic group, individuals between the ages of 30 and 34 were searched at the highest rates (11.2% White; 6.0% Other).¹⁴¹

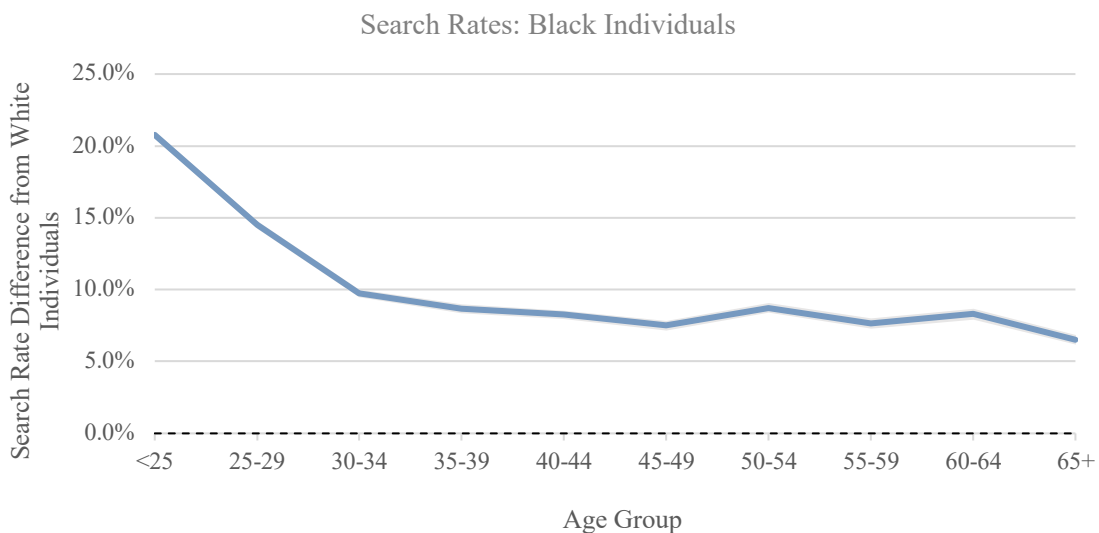
¹⁴¹ As with the previous intersectional analyses, stopped individuals perceived to be Asian, Middle Eastern or South Asian, Native American, Pacific Islander, or Multiracial were combined into the “Other” category.

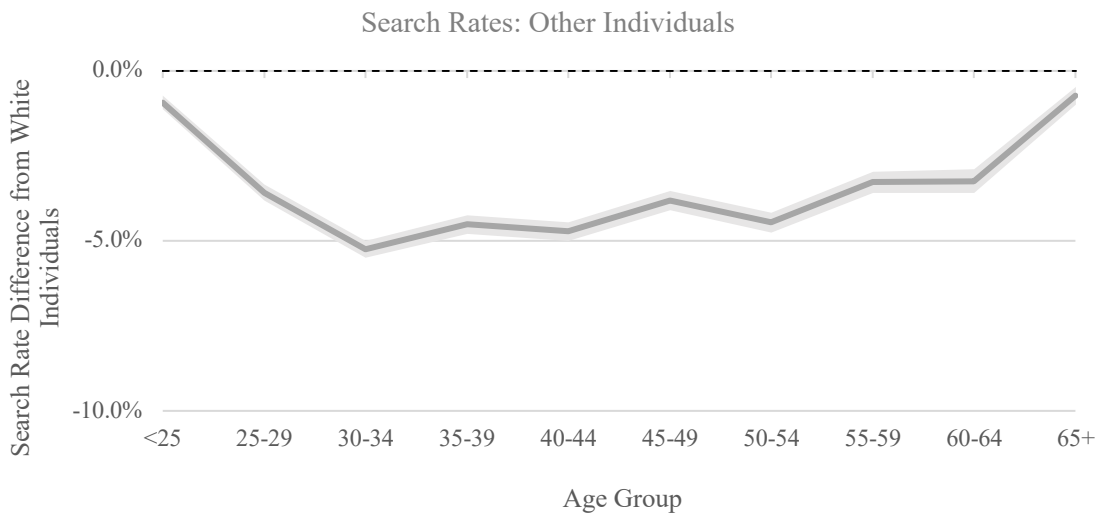
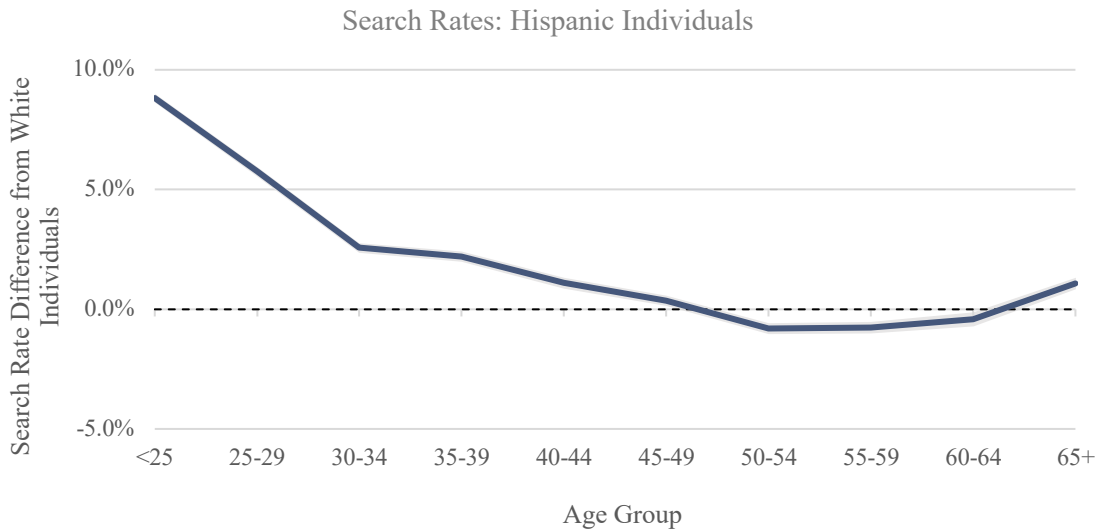
Figure 26. Search Rates by Perceived Race/Ethnicity and Age



Search rates were also calculated as difference scores between each racial/ethnic group and White individuals. Black individuals had higher search rates than White individuals in every age group. Officers searched a higher proportion of Hispanic individuals whom they stopped than White individuals for all age ranges less than 50 years old. Individuals from other combined racial/ethnic groups had lower search rates than White individuals in all age groups.

Figure 27. Search Rate Differences by Perceived Race/Ethnicity and Age



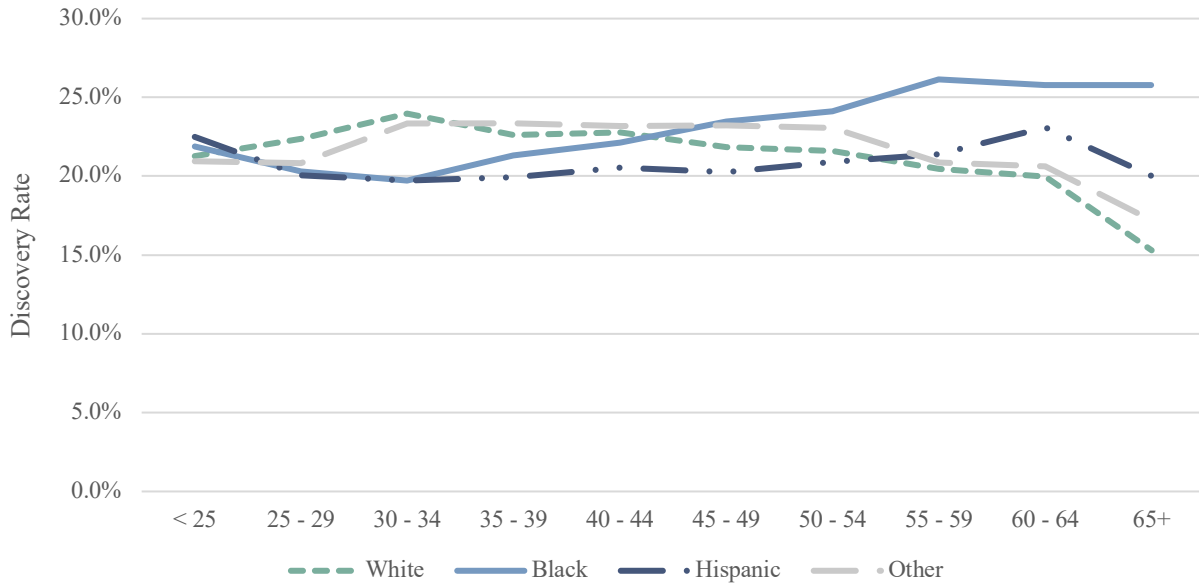


The differences in discovery rates across race/ethnicity and age were not as large as the racial/ethnic differences for search rates. White individuals had the widest range in discovery rates across age groups, while Hispanic individuals had the smallest range.¹⁴² Discovery rates for Black individuals started out lower and increased with age, ranging from 19.7 percent for individuals between the ages of 30 and 34 to 26.1 percent for individuals between the ages of 55 and 59. Discovery rates for Hispanic individuals were less variable across age groups and ranged from a low of 19.7 percent for individuals between the ages of 30 and 34 to a high of 23.1 percent for individuals between the ages of 60 and 64. For White individuals, discovery rates generally decreased across age groups and ranged from 15.3 percent for individuals 65 years of age and older to 24.0 percent for individuals between the ages of 30 and 34. For the category consisting of all combined remaining racial/ethnic groups, discovery rates ranged from

¹⁴² The discovery rate range across the age categories was 6.4 percent for Black individuals, 3.4 percent for Hispanic individuals, 6.1 percent for individuals from the grouped race/ethnicity category, and 8.7 percent for White individuals.

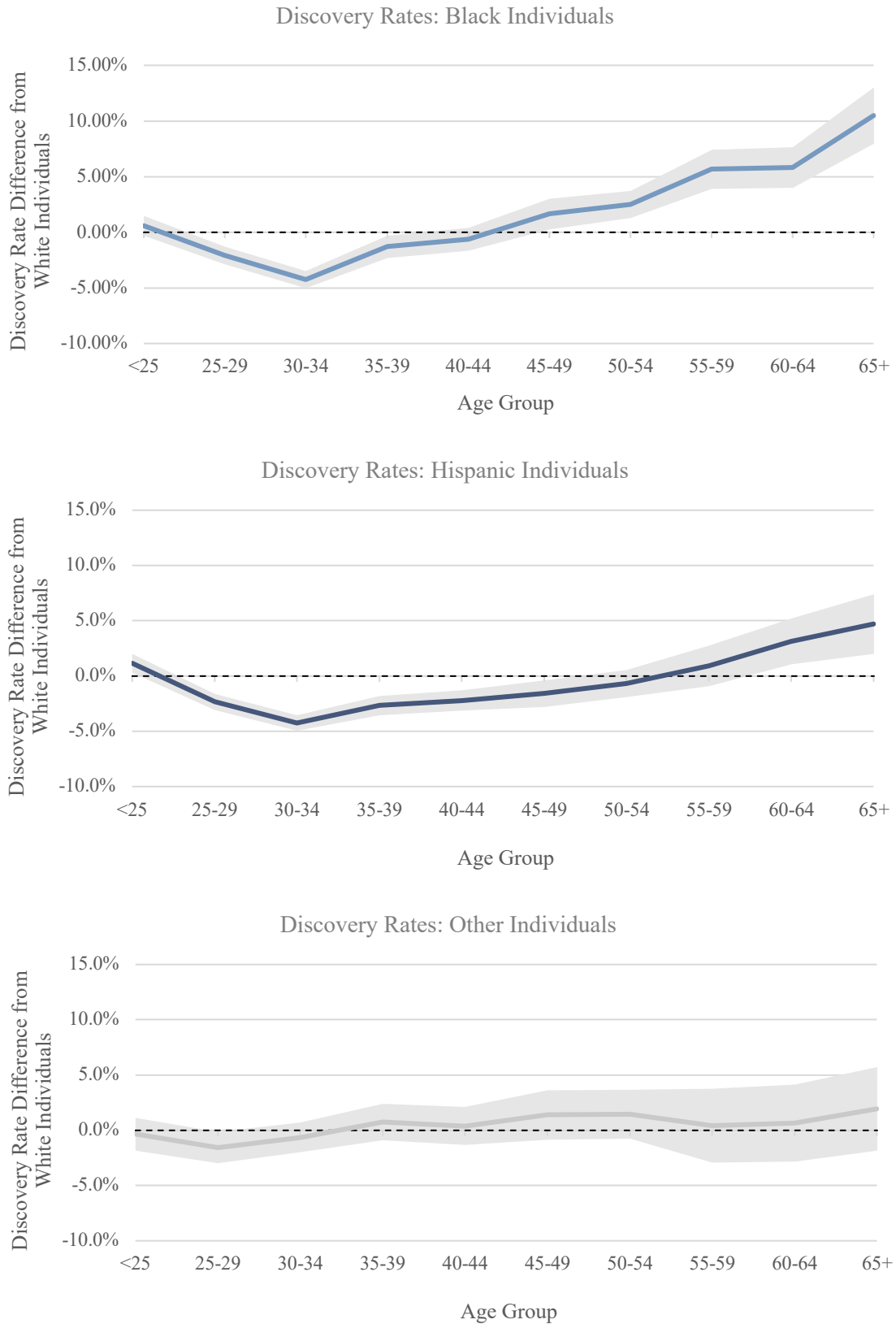
17.2 percent for individuals 65 years of age and older to 23.4 percent for individuals between the ages of 35 and 39.

Figure 28. Discovery Rates by Perceived Race/Ethnicity and Age



Discovery rates were also calculated as differences between each racial/ethnic group and White individuals. It is possible that differences in discovery rates will occur by chance. The more data that is collected for RIPA, the more confident we can be about the generalizability of the findings. Confidence intervals, shown in the gray shaded regions, include a range of plausible values that discovery rates could take with more data. If zero is not contained in the confidence interval, then we can say that the difference is large enough to rule out chance. As shown in the following figure, there do not seem to be significant differences in discovery rates between individuals in the Other group and White individuals. However, for Black individuals, discovery rates appear to be lower than rates for White individuals between the ages of 25 and 39, and higher for individuals aged 45 and above. Hispanic individuals had lower discovery rates than White individuals between the ages of 25 and 49, and higher rates from age 60 and older.

Figure 29. Discovery Rate Differences by Perceived Race/Ethnicity and Age



1.7.2 Consent Search and Discovery Rates

One type of search, called a “consent search,” occurs when a police officer requests permission to search an individual’s person, car, or residence and the person agrees voluntarily. A discretionary search occurs when an officer does not suspect any specific criminal wrongdoing warranting a search, but asks for consent to search nonetheless.¹⁴³ In this context, a person has the right to decide whether to give the officer permission to search.¹⁴⁴ Many individuals agree to searches because they do not know that they can refuse the search or mistakenly believe that they must allow the search because the police are asking them to submit to one.

In the RIPA data, officers may indicate whether they asked for consent to search in two separate data fields: “Asked for consent to search person” and “Asked for consent to search property.” Officers may also indicate whether they received consent to perform a search from the stopped individual. The rate at which officers asked for consent to perform a search ranged from 0.7 percent of stopped individuals perceived to be Middle Eastern/South Asian to 5.1 percent of stopped individuals perceived to be Black. Officers who asked individuals for consent to perform a search reported the highest rates of consent given for White individuals (89.4%) and the lowest rates for Black individuals (66.3%).¹⁴⁵ Of stops where officers indicated individuals consented to a search, Hispanic individuals were searched at the highest rates (78.1%) while Pacific Islander individuals were searched at the lowest rates (68.9%). The descriptive statistics for all groups and analyses discussed in this section is found in the Appendix.¹⁴⁶

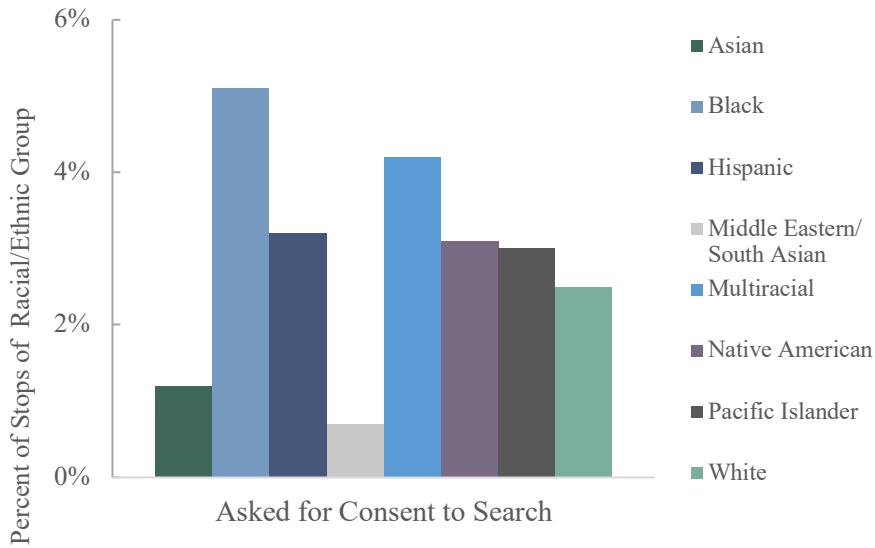
¹⁴³ See *Fla. v. Royer* (1983) 460 U.S. 491, 497.

¹⁴⁴ See *U. S. v. Drayton* (2002) 536 U.S. 194, 202.

¹⁴⁵ See Appendix Table A.12 for consent rates by race/ethnicity.

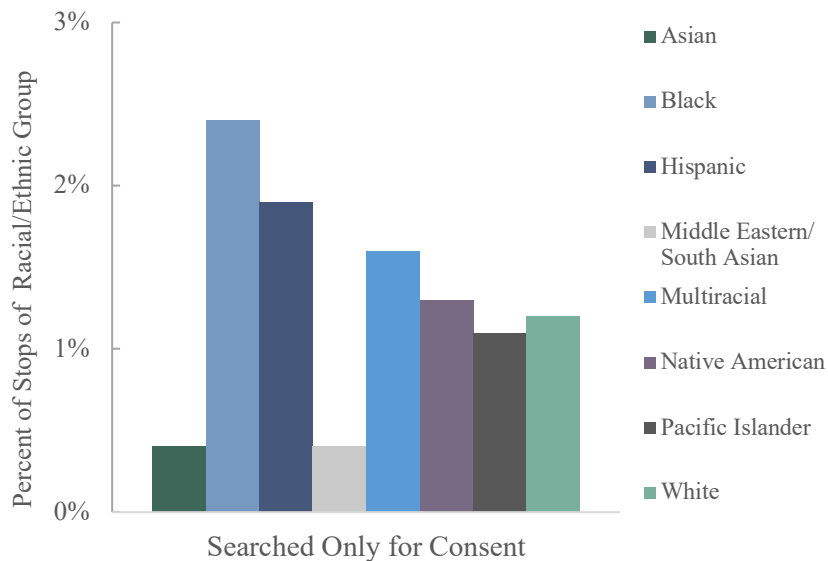
¹⁴⁶ See Appendix A.12 for all descriptive statistics.

Figure 30. Stopped Individuals Asked for Consent to Search by Perceived Race/Ethnicity



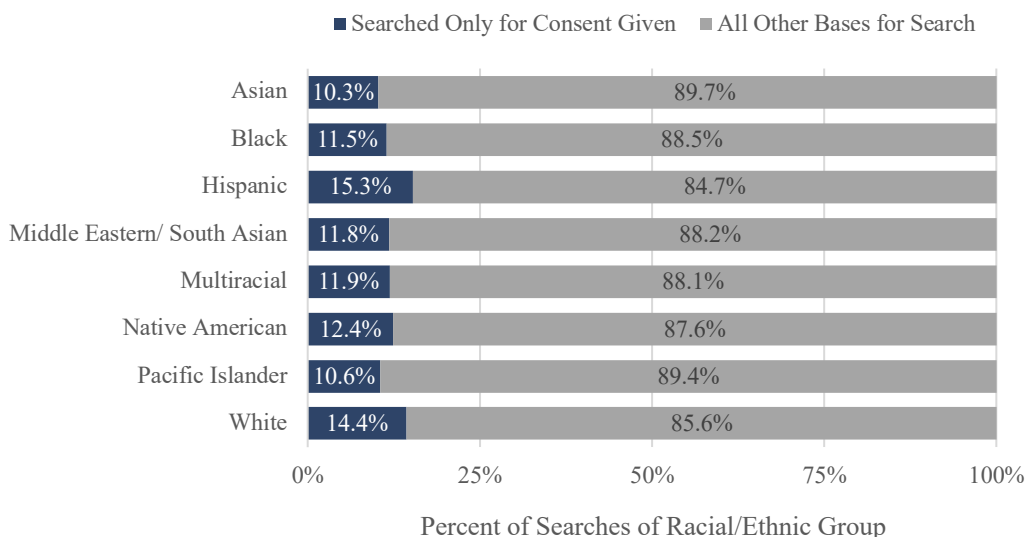
Under RIPA, officers must indicate the basis for the search by selecting up to 13 different criteria, including consent given. When applicable, officers may indicate that they had multiple bases for performing a search. However, officers provided “consent given” as the sole basis for the searches they performed for 62,323 (1.6%) stops. The rate at which these “consent searches” occurred varied considerably for each racial/ethnic group, ranging from 0.4 percent of Asian individuals to 2.4 percent of Black individuals who were stopped; the rate for Black individuals was almost six times the rate for Asian individuals.

Figure 31. Stopped Individuals Searched Only for Consent by Perceived Race/Ethnicity



A part of this disparity might be explained by differences in the rates at which each group is searched by law enforcement generally, but not necessarily by differences in the proportion of all searches that officers conducted for consent only. In fact, the proportion of each group’s searches based solely on consent were less variable than other types of searches. Asian individuals (10.3%) had the lowest proportion of their searches conducted only for consent while Hispanic individuals had the highest proportion (15.3%); the rate for Hispanic individuals was roughly 1.5 times the rate of Asian individuals. As mentioned in earlier discussion, when asked by officers, not all racial/ethnic groups gave consent to searches at the same rate. Differences in consent rates can have an effect on differences in the proportion of all searches that were for consent only. For example, Black individuals had a lower rate of giving consent for searches when asked than all other racial/ethnic groups. This likely drove down the proportion of searches that were for consent only for Black individuals below what it would have been, had black individuals consented at higher rates.

Figure 32. Proportion of Searches Conducted Only for Consent by Perceived Race/Ethnicity



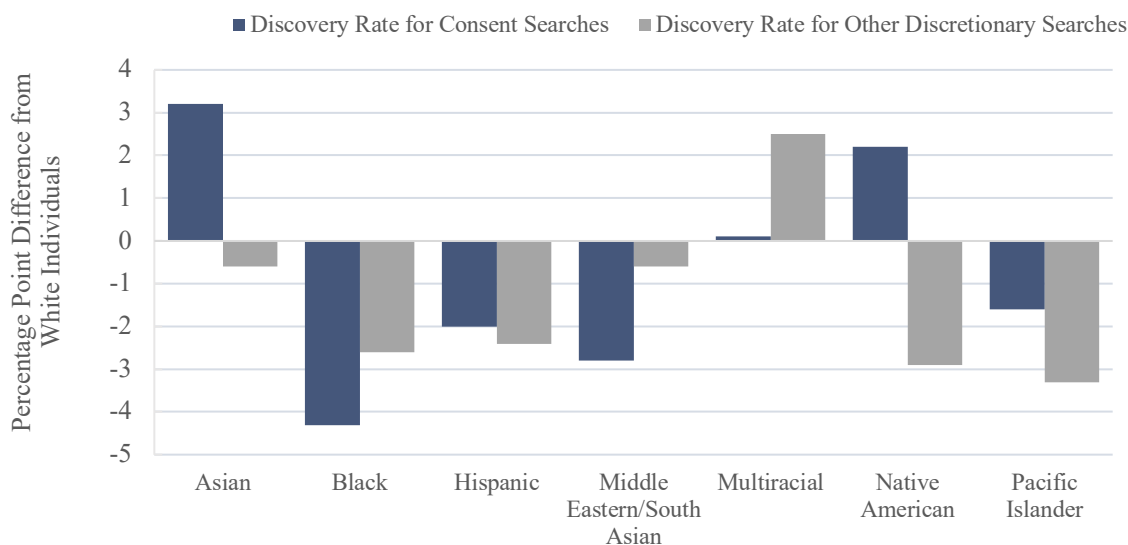
Previous analyses in this report have focused on discovery rates for discretionary searches overall, which included consent searches. In this section, discovery rates are presented and compared only for consent searches and for discretionary searches that exclude consent given as a basis for search.¹⁴⁷ However, it is important to note that—unlike many other types of searches—consent only searches do not include an element that may establish probable cause, which likely impacts the interpretation of these discovery rates.

For consent searches, discovery rates were highest for Asian individuals (16.5%) and the lowest for Black individuals (9.0%). For discretionary searches that exclude consent given as a basis for search, discovery rates were highest for Multiracial individuals (26.4%) and lowest for Pacific Islander individuals (20.6%). These results indicate that discovery rates between racial/ethnic

¹⁴⁷ These discretionary search analyses exclude searches where the individual gave consent in combination with other search bases.

groups were more variable for consent searches than for other discretionary searches. Consent searches also generally had lower discovery rates than other discretionary searches. Discovery rates are presented in the following figure for each racial/ethnic group as differences from White individuals; White individuals had a discovery rate of 13.3 percent for consent searches and 23.9 percent for other discretionary searches. In comparison, contraband or evidence was discovered in 12,102 (21.3%) stops of Black individuals involving other discretionary searches.

Figure 33. Discovery Rate Differences for Consent Searches and Other Discretionary Searches by Perceived Race/Ethnicity



Given the disparities in consent only searches and discovery rates, and that neither state nor federal law requires officers to suspect any criminal wrongdoing before they request consent to search a person or their property, an obvious question is raised: should individuals be subjected to a search if, based on the officer’s perception, the individual is innocent of engaging in apparent criminal activity? Some states, including Minnesota,¹⁴⁸ New Jersey,¹⁴⁹ and Rhode Island,¹⁵⁰ have imposed rules on consent searches, either through their legislature or court rulings.¹⁵¹ For example, New Jersey’s Senate Judiciary Committee in 2001 found that the

¹⁴⁸ See *State v. Fort* (Minn. 2003) 660 N.W.2d 415, 416.

¹⁴⁹ See *State v. Carty* (2002) 170 N.J. 632 [finding that consent searches violated the state constitution and holding that evidence seized as a result of consent search in the absence of reasonable suspicion shall be suppressed.]

¹⁵⁰ See R.I. Gen. Laws, § 31-21.2-5 (the state also requires reasonable suspicion for police to use a drug sniffing dog) [(“a) Unless there exists reasonable suspicion or probable cause of criminal activity, no motor vehicle stopped for a traffic violation shall be detained beyond the time needed to address the violation. Nothing contained herein shall prohibit the detention of a motor vehicle for a reasonable period of time for the arrival of a canine unit or subsequent criminal investigation, if there is reasonable suspicion or probable cause of criminal activity; (b) No operator or owner-passenger of a motor vehicle shall be requested to consent to a search by a law enforcement officer of his or her motor vehicle which is stopped solely for a traffic violation, unless there exists reasonable suspicion or probable cause of criminal activity.”)]

¹⁵¹ Am. Civ. Liberties Union Foundation, Campaign Against Racial Profiling (Apr. 2006) Consent Search Bans <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.aclu.org%2Ffiles%2Fimages%2Fasset_upload_file125_28283.doc> (as of Dec. 14, 2020).

“possible utility of consent searches is outweighed by the violations of civil rights accompanying their abuse”¹⁵² and recommended that the state prohibit such searches. Additionally, agencies in California have limited the use of consent searches. From 2001 to 2006,¹⁵³ the CHP issued a moratorium on consent searches of vehicles after evidence presented in a class action lawsuit showed that Hispanic or Latinx individuals were three times as likely to be searched and Black individuals were twice as likely to be searched than those identified as White.¹⁵⁴ The Board hopes to review the data surrounding consent searches and analyze this issue further in future reports.¹⁵⁵

1.7.3 Supervision Search and Discovery Rates

In California, there are multiple forms of state and local supervision, including parole,¹⁵⁶ probation,¹⁵⁷ post-release community supervision (PRCS),¹⁵⁸ and mandatory supervision.¹⁵⁹ If a person is on supervision, they may be searched by officers only if it is an explicit term of the

¹⁵² N.J. Sen. Judiciary Com., Rep. of the N.J. Sen. Judiciary Com. Investigation of Racial Profiling and the N.J. State Police (June 11, 2001) p. 87 <<https://www.njleg.state.nj.us/RacialProfiling/sjufinal.pdf>> (as of Dec. 14, 2020).

¹⁵³ Since 2006, however, the department has resumed the practice of conducting consent searches.

¹⁵⁴ *Rodriguez v. Cal. Highway Patrol* (N.D. Cal. 2000) 89 F. Supp. 2d 1131; Am. Civ. Liberties Union of Northern Cal., ACLU of Northern CA Hails Landmark Racial Profiling Settlement (Feb. 27, 2003) <<https://www.aclu.org/press-releases/aclu-northern-ca-hails-landmark-racial-profiling-settlement>> (as of Dec. 14, 2020).

¹⁵⁵ This year, Ken Barone and Dr. Matthew Ross, from The Institute for Municipal and Regional Policy (IMRP) at Central Connecticut State University, presented to the RIPA Stop Data Subcommittee on data analysis methodologies. Since 2011, they have been conducting stop data analysis of law enforcement agencies in Connecticut and several other states. The Board believes that these types of analyses are important to help agencies develop data-driven strategies to eliminate racial and identity profiling. One such data-driven example the researchers shared involved the practice of consent searches within the Hamden Police Department. The researchers from IMRP discovered a significant disparity in the race/ethnicity of individuals asked for consent to search and a low yield rate of contraband discovered from those searches. In response, the Hamden Police Chief prohibited consent searches. After this policy change, the racial/ethnic disparity in the stop data regarding who was searched significantly decreased and the search yield rate increased dramatically from 7 percent to close to 80 percent. Again, this shows how the data can be used to direct resources toward effective policing strategies. Subsequently, the state of Connecticut passed legislation that significantly limited consent searches. The new law provides, in part, that “[n]o law enforcement official may ask an operator of a motor vehicle to conduct a search of a motor vehicle or the contents of the motor vehicle that is stopped by a law enforcement official solely for a motor vehicle violation” (2020 Bill Text Conn. H.R. 6004A § 21 (21)(a)(1)). The Board would like to examine this and other data-driven strategies in future years.

¹⁵⁶ Parole is a period of supervision that follows a state prison sentence and the person remains under the control of the California Department of Corrections and Rehabilitation’s Division of Adult Parole Operations. People on parole are supervised by parole agents, and must follow certain requirements or “conditions” of parole. Cal. Code Regs., tit. 15, § 2355; Root & Rebound, *What are the main types of supervision in California?* <<https://roadmap.rootandrebound.org/parole-probation/introduction/what-are-the-main-types-of-supervision-in-californ/>> (as of Dec. 14, 2020).

¹⁵⁷ “Probation is a type of supervision that a judge orders at trial as *part of the original sentence*, either as an alternative to incarceration OR in addition to incarceration.” Root & Rebound, *What are the main types of supervision in California?* <<https://roadmap.rootandrebound.org/parole-probation/introduction/what-are-the-main-types-of-supervision-in-californ/>> (as of Dec. 14, 2020). Probation can be formal (meaning the individual has to check in with a probation officer) or informal (meaning there is no assigned probation officer). Cal. Pen. Code, § 1203.

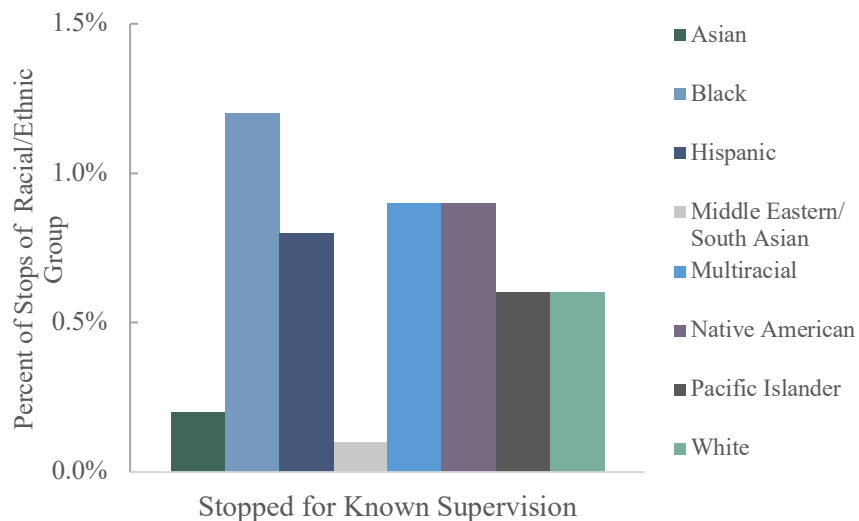
¹⁵⁸ PRCS is a form of supervision when the individual released from state prison after incarceration for a non-violent, non-serious, non-sexual crime is placed under supervision by county probation officers, instead of being placed on state parole. Cal. Pen. Code § 3450; Cal. Code Regs., tit. 15, §§ 3079-3079.1.

¹⁵⁹ “Mandatory Supervision is a form of supervision provided for through a process called ‘split sentencing,’ a judge can split the time of a sentence between a jail term and a period of supervision by a county probation officer.” Root & Rebound, *What are the main types of supervision in California?* <<https://roadmap.rootandrebound.org/parole-probation/introduction/what-are-the-main-types-of-supervision-in-californ/>> (as of Dec. 8, 2020); Cal. Pen. Code § 1170 (h)(5)(B).

person’s supervision conditions.¹⁶⁰ Further, sometimes conditions of supervision allow for search of specific items – such as a cellphone – while others do not.¹⁶¹

In 2019, Wave 1 and 2 agencies reported making 28,015 (0.7%) stops where the primary reason for stop was that the stopped individual was known to be on parole, probation, PRCS or mandatory supervision (hereafter collectively referred to as “known supervision”).¹⁶² Stopped individuals perceived to be Black had the highest proportion of their group stopped for known supervision (1.2%) while Middle Eastern/South Asian individuals (0.1%) had the lowest proportion. A majority (76.6%) of individuals who were stopped for known supervision were searched. Black individuals stopped for known supervision had the highest rates of being subject to a search (79.5%) while Native American individuals had the lowest rates (64.9%).¹⁶³ The descriptive statistics for all groups and analyses discussed in this section may be found in the Appendix.¹⁶⁴

Figure 34. Individuals Stopped for Known Supervision by Perceived Race/Ethnicity



¹⁶⁰ *People v. Sanders* (2003) 31 Cal. 4th 318, 333; *People v. Reyes* (1998) 19 Cal. 4th 743, 750-754; *In re Jaime P.* (2006) 40 Cal. 4th 128.

¹⁶¹ *U.S. v. Lara* (9th Cir. 2016) 815 F.3d 605, 610; see also *Riley v. Cal.* (2014) 573 U.S. 373, 403.

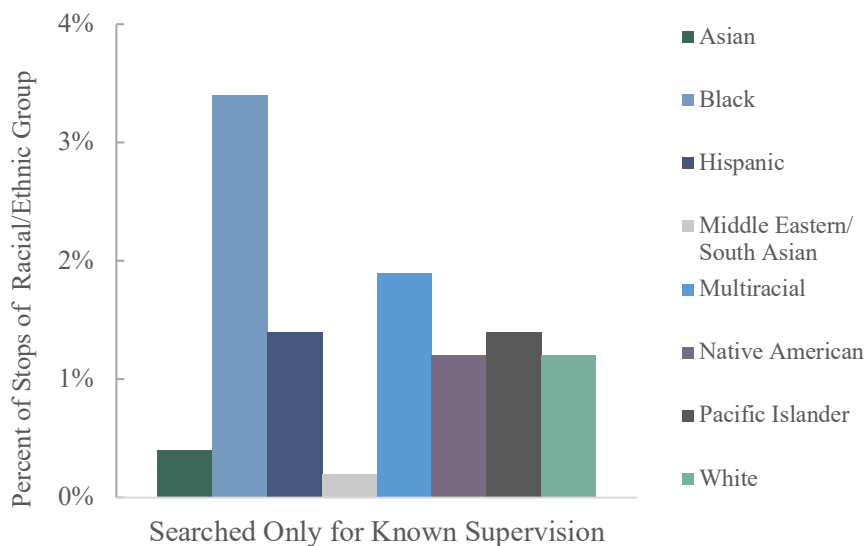
¹⁶² RIPA data regulations define the “known supervision” primary reason for stop category as, “Known to be on parole/probation/PRCS/mandatory supervision.” The regulations indicate that “[t]he officer shall select this data value if the officer stopped the person because the officer knows that the person stopped is a supervised offender on parole, on probation, on post-release community supervision (PRCS), or on mandatory supervision. The officer shall not select this data value if the officer learns that the person has this status only after the person is stopped,” (Cal. Code Regs, § 999.226, subd. (a)(10)(A)(3)). Under the law in California, an officer must know that the individual is under supervision and that they have a specific search condition *prior* to conducting a supervision related search. A search made without awareness of whether the individual is under supervision, and when there is no other legal basis for search, cannot be justified by the officer’s later-acquired knowledge that the individual is under supervision. *People v. Sanders* (2003) 31 Cal. 4th 318, 333; *People v. Reyes* (1998) 19 Cal. 4th 743, 750-754; *In re Jaime P.* (2006) 40 Cal. 4th 128. Moreover, if evidence is obtained as the result of that unjustified search, it will be suppressed or excluded from any court proceeding. *People v. Sanders* (2003) 31 Cal. 4th 318, 335.

¹⁶³ Search rates in stops made for known supervision for all racial/ethnic groups: Asian (78.5%), Black (79.5%), Hispanic (77.6%), Middle Eastern/South Asian (75.4%), Multiracial (76.6%), Native American (64.9%), Pacific Islander (71.4%), and White (72.0%).

¹⁶⁴ See Appendix Table A.13 for all descriptive statistics.

Under the RIPA regulations, officers may only indicate that the *reason for stop* was known supervision when the officer knew this information prior to initiating the stop. However, officers can indicate supervision status as a basis for search regardless of when this status is learned. As such, only 28,015 individuals were stopped for known supervision, but 96,328 individuals were searched due to their supervision status. In cases where an officer performs a search pursuant to a condition of supervision, the officers must indicate that a basis for the search was “Condition of parole/probation/PRCS/mandatory supervision” (hereafter collectively referred to as “condition of supervision”). Condition of supervision was the sole search basis reported for 63.5 percent of these searches while the other 36.5 percent included additional search bases in combination with condition of supervision. Rates of searches where the only basis was known supervision varied between racial/ethnic groups; rates ranged from 0.2 percent of Middle Eastern/South Asian individuals to 3.4 percent of Black individuals who were stopped. Middle Eastern/South Asian individuals (7.6%) also had the lowest proportion of their searches conducted solely due to a condition of supervision while Black individuals had the highest number and proportion (21,905; 16.8%) of their searches occur for this reason. In comparison, 15,328 searches (14.2%) were conducted solely due to a condition of supervision for White individuals.

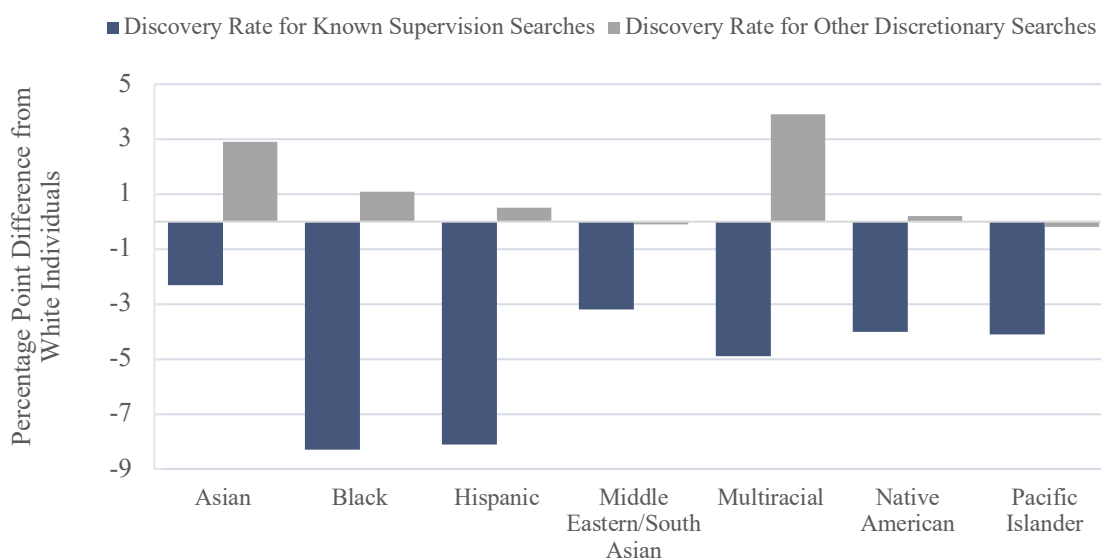
Figure 35. Stopped Individuals Searched Only for Condition of Supervision by Perceived Race/Ethnicity



Discovery rates in this section are reported for condition of supervision searches alone and for discretionary searches that exclude condition of supervision as a basis for search. Overall, discovery rates for condition of supervision searches alone (17.4%) were lower than discovery rates for other discretionary searches (20.0%). For condition of supervision searches, discovery rates were highest for White individuals (23.4%) and lowest for Black individuals (15.1%), a difference of 8.3 percentage points from the highest to the lowest rate. Officers discovered contraband during stops with condition of supervision searches of White individuals more times (3,584) than during stops with condition of supervision searches of Black (3,314) and Hispanic

(3,267) individuals, despite officers performing thousands more searches of this type for Black and Hispanic individuals (21,905 and 21,386 searches, respectively) than for White individuals (15,328 searches).¹⁶⁵ For discretionary searches that exclude condition of supervision as a basis for search, Multiracial individuals (23.2%) had the highest discovery rates while Pacific Islander individuals (19.1%) had the lowest rates, a range of 4.1 percent. These results show that discovery rates between racial/ethnic groups were more variable for known supervision searches than for other discretionary searches. Additionally, known supervision searches generally had lower discovery rates than other discretionary searches. The rates are also presented for each racial/ethnic group as differences from White individuals in the following figure; White individuals had a discovery rate of 23.4 percent for condition of supervision searches and 19.3 percent for other discretionary searches.

Figure 36. Discovery Rates for Condition of Supervision Searches and Other Discretionary Searches by Perceived Race/Ethnicity



How is Law Enforcement Using RIPA Data?: Survey Responses Regarding Stop Data Analysis

To find out how law enforcement agencies are using RIPA data, the Department surveyed Wave 1, 2, and 3 agencies in summer 2020. The agencies' responses helped the Board to understand the impact of the data analysis and Board recommendations within law enforcement agencies and to identify the actions agencies are taking to advance the goals of RIPA.

The survey was distributed to 15 Wave 1 and Wave 2 agencies and 11 Wave 3 stop data collection agencies. Wave 1 and Wave 2 agencies were included in the full survey (26

¹⁶⁵ See Appendix Table A.13 for condition of supervision search and discovery rates.

questions), and Wave 3 agencies were included in the portions that did not pertain to data analysis (13 questions), as they had not yet begun collecting data at the time of the survey.

Survey questions addressed:

- use of Board recommendations and findings;
- use of stop data for accountability purposes;
- adoption of model bias-free policing policy language;
- actions in response to best practices recommendations regarding civilian complaint procedures; and
- stop data analysis practices and resources.

Appendix Tables E.2 and E.3 provide the list of questions asked in each survey.

As of October 29, 2020, 25 of the 26 agencies surveyed had responded; the only agency that did not respond was Sacramento County Sheriff's Office. For the responding agencies, a captain or lieutenant answered for fourteen agencies, other command staff responded for seven agencies, and an administrator, program analyst, program manager, or IT supervisor responded for four agencies. Frequencies were calculated for each question requiring a 'Yes' or 'No' response. Qualitative content analyses were conducted to identify and summarize themes and patterns manifested in the responses to open-ended questions.

Long Beach Police Department, San Bernardino County Sheriff's Department, San Diego County Sheriff's Department, San Diego Police Department, and San Francisco Police Department indicated that they used the stop data analyses in the 2020 RIPA Board Report to identify trends in their stop data. Long Beach, Los Angeles, and San Diego Police Departments indicated that they used the Report to develop additional analyses aimed at identifying patterns in their stop data.

“SDPD has looked at the stop data provided in the Annual Report to develop analysis related to low/high discretionary stops, specifically related to the Department's procedures and culture, yield rates, and post-stop outcomes”
- San Diego PD

“The Department is using the Report as a guide in its review and analysis of its data to identify trends and patterns”
– Long Beach PD

Ten of the 14 Wave 1 and 2 agencies that responded reported that they analyze stop data.

Agencies Reported That They Analyze Stop Data		
California Highway Patrol	Oakland PD	San Diego PD
Long Beach PD	Orange County SD	San Francisco PD
Los Angeles County SD	San Bernardino County SD	
Los Angeles PD	San Diego County SD	

Agencies Specified That They Analyze the Following			
Reason for Stop	Actions Taken during Stop	Data regarding Searches	Result of Stop
Los Angeles PD	Orange County SD	Oakland PD	Los Angeles PD
Oakland PD	San Bernardino SD	Orange County SD	Oakland PD
Orange County SD	San Francisco PD	San Diego PD	Orange County SD
San Bernardino SD		San Francisco PD	San Bernardino SD
San Diego PD			San Diego PD
San Francisco PD			San Francisco PD

The San Francisco Police Department additionally reported that they analyzed complaints of bias. The Oakland Police Department indicated that they conduct analyses with respect to race and the Orange County Sheriff’s Department indicated that they conduct analyses of stops and perceived age, English proficiency, LGBT identity, gender, race, and disability.

Los Angeles Police Department, San Bernardino County Sheriff’s Department, San Diego County Sheriff’s Department, and San Diego Police Department indicated that they use population estimates for benchmark comparisons. Los Angeles Police Department reported that they additionally use crime statistics and suspect description data for comparison. San Francisco Police Department reported using trends over time and geographic districts for benchmark comparisons. California Highway Patrol indicated that they are currently collecting data on all public contacts, including non-discretionary contacts (e.g., traffic crashes, disabled motorists, etc.), to use as more precise benchmarks.

“The annual report is useful, and provides solid recommendations and insights into other agencies and data, but local analysis is essential to advancing the goals of RIPA. Also, this analysis has to be done by outside groups that begin in a position of neutrality, have expertise, and credibility” - San Diego PD

“SFPD conducted analysis to better understand search hit rate by type of search as compared to sister agencies across the state” - San Francisco PD

The Survey also asked law enforcement agencies whether they collected any data in addition to what is required by RIPA. Six of the 14 Wave 1 and 2 agencies that responded indicated that they collect additional data elements other than those mandated by RIPA regulations. Long Beach and Sacramento Police Departments reported that their stop data collection includes whether the perception of the identity characteristics of the stopped person was made prior to the detention. Long Beach Police Department also indicated that they collect the following data elements: “Does the person live in Long Beach?”, “Attending a Special Event?”, “Is this Event Action Plan Related Activity?” Los Angeles Police Department reported they require officers’ explanation of the reason for stop to include a description of the violation or code. Oakland Police Department indicated that their data collection includes whether the reason for stop was “intelligence led” and information about the officers’ regularly assigned squad and assigned squad specifically at the time of the stop. San Diego Police Department reported that they collect data for field interviews and data about the beat where the stop occurred. San Francisco Police Department indicated that they collect additional data elements when there is a use of force.

*“SDPD requires any field interview to be documented in RIPA, and does not allow the officer to document it as a consensual contact. Field Interviews give the impression the person contacted is not free to leave and the data collected is entered into a database”
- San Diego PD*

California Highway Patrol and Long Beach Police Department indicated that they are inquiring about working with an academic institution and Los Angeles and Oakland Police Departments reported they are already working with an academic institution to analyze their data. San Diego Police Department and San Diego County Sheriff’s Department both indicated that they have contracted with a non-profit research organization for an independent analysis of their data.

“The Sheriff’s Department contracted with the Center for Police Equity (CPE). They are an outside non-profit research company. CPE is currently reviewing the data. Once they are finished the findings will be released to the department and the public” - San Diego County SD

“We have engaged outside academics (two separate groups), the Inspector General’s Office, and have created a RIPA Steering committee made of Department and Civilian members” – Los Angeles PD

Eleven of the 14 Wave 1 and 2 agencies that responded indicated that they review stop data with staff.

“There are a couple levels of discussion; one involves members of the Chief’s Executive Committee which looks at broad trends and patterns. Data has also been discussed with supervisors, and officers, as well as with community groups”
- San Diego PD

“The department is currently reviewing the data set with Executive Staff to analyze benchmarks and trends and identify next steps”
- Long Beach PD

“Statistics for officers with the most stops are reviewed at monthly Risk Management meetings at the Area level.”
- Oakland PD

“Information and data analysis was provided to commanders with talking points to share with the community and discuss at briefings.”
- San Bernardino County SD

Ten of the 14 Wave 1 and 2 agencies that responded indicated that they analyze stop data. Six of the 14 Wave 1 and 2 agencies that responded indicated that they shared their findings with the public (Los Angeles County SD, Los Angeles PD, San Bernardino County SD, San Diego County SD, San Diego PD, and San Francisco PD). Los Angeles Police Department, San Diego County Sheriff’s Department and San Francisco Police Department indicated that they make agency-generated reports available to the public. San Bernardino County Sheriff’s Department reported having created a data dashboard.

Several agencies indicated that they share their findings with external oversight bodies. The Los Angeles County Sheriff’s Department reported sharing their findings with the Office of Inspector General for Los Angeles County and the Civilian Oversight Commission for Los Angeles County. The Los Angeles Police Department also stated that they are working with the Office of the Inspector General. Oakland Police Department indicated that they are working with a federal monitoring team and San Francisco Police Department reported presenting their findings to the San Francisco Police Commission.

“Findings were captured in the Department’s public quarterly reporting, and presented to the SFPD’s Commission ... The police commission is interested in both in using the data to provoke public policy discussions and, increasingly, in contributing analytic questions that the data may help answer.”
- San Francisco PD

Agencies Reported Using the Following Approaches to Hold Staff Accountable for the Submission of Stop Data

Departmental Policy	Management-Level Officer Review	Internal Audit Procedures
CHP San Francisco PD	CHP Oakland PD Riverside County SD San Bernardino County SD	Los Angeles County SD San Diego PD

*“The LASD regularly audits stops and back seat detentions within the Antelope Valley stations’ response area. The entire contact is analyzed along with how the call was cleared...The LASD internal audits for all stations within the Department are posted for the public on-line and shared with the Office of Inspector General for Los Angeles County and the Civilian Oversight Commission for Los Angeles County.
– Los Angeles County SD*

*“Riverside County Sheriff has built a compliance verification tool for command staff and their management teams to use.”
– Riverside County Sheriff*

*“Daily reviews are conducted by watch commanders to ensure compliance and deficiencies are corrected immediately”
- San Bernardino SD*

*“SDPD developed internal inspection procedures to make sure stop data is accurate, collected and submitted”
– San Diego PD*

Six agencies (Bakersfield PD, Fresno PD, Long Beach PD, Los Angeles County SD, Riverside County SD, San Francisco PD) indicated that there were some barriers to analyzing the data or exporting it to analyze it, including difficulty in creating reports, auditing the data, or integrating the data collection systems with other departments systems. Five agencies indicated that additional funding for staff and other resources was necessary to conduct stop data analyses (CHP, Sacramento PD, San Bernardino County SD, San Diego County SD, San Diego PD).

Agencies identified additional resources that would assist them in analyzing their stop data. Fresno Police Department indicated that additional training would be helpful. San Francisco Police Department indicated that model analyses would be helpful and San Diego County Sheriff’s Department specified that guidelines for “Veil of Darkness” analysis would be helpful.

Agencies were asked about some of the challenges they encountered with data analysis. CHP reported that the volume of data being collected, maintained, and reviewed is challenging (since CHP stopped more than 2 million individuals in 2019). Los Angeles County Sheriff’s

Department determined that a more robust internal auditing ability is required for their reporting system. San Francisco Police Department reported that commute/tourist/daytime population considerations present a challenge for the analysis of population benchmarks (e.g., while the population of San Francisco is approximately 800,000 residents, this number can balloon to 1.5 million during the day). Long Beach Police Department also indicated that it had been challenging to identify benchmark data sets.

Four agencies provided comments regarding the data elements included in the regulations. Oakland Police Department commented that the regulations regarding the reporting of community caretaking incidents should be changed and San Francisco Police Department commented that the use of geocoding to report the precise locations of stops should be allowed. San Jose Police Department commented that a data element should be added to report the actions taken by the person who was stopped, for example the actions taken by a subject preceding an officer's use of force. San Diego Police Department commented that a data element regarding officers' perception of whether the person stopped was unhoused should be added.

RACIAL AND IDENTITY PROFILING POLICIES AND ACCOUNTABILITY

Any police action based on racial profiling or other biases alienates the public, fosters distrust of police, and undermines legitimate law enforcement efforts. For this reason, it is imperative that every California law enforcement agency have a strong commitment to bias-free policing throughout their policies and practices. In advancing its goal to eliminate racial and identity profiling in law enforcement, the Board has taken its charge to “work in partnership with state and local law enforcement agencies to review and analyze racial and identity profiling policies and practices across geographic areas in California” very seriously.¹⁶⁶

Survey: State and Local Policies and Accountability

In an effort to qualitatively measure the impact of RIPA on law enforcement agency’s policies and accountability, the Survey conducted by the Department contained questions regarding agency’s policies. Some of the findings include:

- 24 of the 25 agencies that responded to the survey indicated that they have a bias-free policing policy. The agency that did not have an existing policy, Los Angeles World Airport PD, indicated that they were in the process of developing one. Half of the agencies with a bias-free policing policy indicated that they adopted some portion of the model language provided in the RIPA Board 2020 Annual Report.

Agencies that Reported Adoption of Some Portion of the RIPA Board’s Model Bias-Free Policing Policy Language	
CHP	Orange County Sheriff
Santa Clara Sheriff	San Bernardino County Sheriff
Fresno Police	San Diego County Sheriff
Kern County Sheriff	San Diego Police
Long Beach Police	San Francisco Police
Los Angeles County Sheriff	San Jose Police

¹⁶⁶ Cal. Pen. Code, §13519.4, subd. (j)(3)(C).

- Agencies reported various methods of holding staff accountable to their bias-free policing policy, including conducting investigations, providing additional training, and taking other corrective actions or discipline.

Agencies Reported Using the Following Approaches to Hold Staff Accountable and Respond to Non-Compliance with Bias-Free Policing Policies

Conduct Investigations when Violations Are Reported or Identified	Provide Additional Training	Other Corrective Action or Discipline
Bakersfield Police Fresno Police Kern County Sheriff Los Angeles County Sheriff Los Angeles Police Orange County Sheriff Riverside County Sheriff San Diego County Sheriff San Diego Police San Jose Police Ventura County Sheriff	Alameda County Sheriff Bakersfield Police CHP Kern County Sheriff San Bernardino County Sheriff	Alameda County Sheriff Bakersfield Police CHP Kern County Sheriff Long Beach Police Riverside Police San Bernardino County Sheriff San Diego Police San Francisco Police Ventura County Sheriff

“All staff is held accountable and takes yearly training updates in this area. All supervisors are further instructed on how to hold subordinates accountable for their actions. The City and County of San Francisco have departments established which monitor and encourage racial diversity and training for all city/[county] employees.” – San Francisco Sheriff

*“Any employee of our Department can report violations to our Internal Affairs Unit or the City of San Jose, Independent Police Auditor's Office”
- San Jose Police*

- 13 of the 25 agencies surveyed indicated that they have a civilian review board. Of those agencies, five reported discussing the RIPA Board’s findings with their civilian review boards.

Agencies that Reported Having a Civilian Review Board		Agencies that Reported Discussing the RIPA Board’s Findings or Recommendations with Their Civilian Review Board
CHP Long Beach Police Los Angeles County Sheriff Los Angeles Police Oakland Police Orange County Sheriff Riverside Police	San Diego County Sheriff San Diego Police San Francisco Police San Jose Police Santa Clara County Sheriff Stockton Police	CHP Los Angeles County Sheriff Los Angeles Police San Diego Police San Francisco Police

- Only a few agencies reported community engagement as a part of the main actions that they have undertaken to adopt the Board’s recommendations. These included San Bernardino County SD and the Riverside Police Department. Riverside PD indicated that they developed a Chief’s Advisory Board to receive input and advice from community stakeholders.
- Six of the ten LEAs that indicated that they analyze stop data reported sharing their findings with the public (Los Angeles County SD, Los Angeles PD, San Bernardino County SD, San Diego County SD, San Diego PD, San Francisco PD).

*“Findings are made public through quarterly statistical reporting and shared within the department”
- San Francisco Police*

“All sworn and non-sworn members are provided information related to RIPA data ... Additionally, the information is posted on the department website, so the public has access to it.” - San Diego County Sheriff

Accountability Systems

Now that the Board has a better understanding of existing accountability and supervisory review within agencies to ensure adherence to bias-free policing, the Board plans to develop and identify best practices to inform model accountability policies in future reports. The overwhelming theme in the Board’s research was that accountability does not require a single policy, but rather, a comprehensive accountability *system*. To understand how a law enforcement agency holds its officers and agency accountable to prevent bias and profiling, the Board acknowledges it will also need to examine a series of policies that specifically govern prompt and appropriate remediation of bias-based policing.

Given the importance of accountability in policing, the Board hopes to conduct in-depth research and consult with experts to develop best practices in this subject area. To build a foundation, the Board has begun reviewing evidence-based best practices devoted to accountability. Toward that end, the Board identified categories commonly used that make up

accountability systems, including: (1) data tracking and transparency, (2) early intervention systems, (3) video technology, (4) supervisory oversight, (5) clear policies and pathways, (6) misconduct complaints, (7) discipline, (8) community-based accountability, (9) recruitment, hiring, and promotions, and (10) performance evaluations. These categories and recommended best practices will be developed and explored in the future, and they do not represent the full range of best practices an agency could or should adopt; they aim to provide a foundation upon which the Board can expand in future reports. The Board emphasizes that law enforcement agencies should also collaborate with their communities to ensure accountability measures are relevant to their specific needs. The Board also welcomes input from all stakeholders on areas of interest and specific best practices upon which it should focus.

1. Data Tracking and Transparency

Foundational to any accountability system is data collection and data tracking. Data should be collected on various types of police actions – not just use of force or arrests, but also, for example, the type and number of civilian complaints or adverse comments lodged, failure to activate body worn cameras, vehicle crashes, failure to attend or complete training, and/or any investigations of an officer. The Board recognizes that the specific data a law enforcement agency decides to collect (in addition to what is already required by RIPA) should result from stakeholder engagement. Data collection and tracking is critical because it allows agencies to take inventory of individual or systemic trends in behavior that may need to be addressed and corrected. The Board will explore how data can be used for oversight of individual officers, first-line supervisors, and entire precincts or units. It is essential that this data be accessible to the public, which has a vested interest in ensuring non-biased based policing.

2. Early Intervention Systems

Best practice recommendations on Early Interventions Systems (EIS) is contained in the Civilian Complaint Section (see page 134 of this Report) because the Board’s Civilian Complaints Subcommittee is doing a broader evaluation of EIS.

3. Video Technology

One area for exploration is the use of video technologies, like body worn cameras, and any effect in reducing use of force. In a recent study, researchers found that during shifts where officers used cameras and followed agency protocol more closely, use of force fell by 37 percent when compared to camera-free shifts. Researchers also found that during shifts where officers used cameras and tended to use their discretion instead of following agency protocol, police use of force actually rose 71 percent higher than camera-free shifts.¹⁶⁷ It is clear that use of video technology is not itself a quick fix, and as an accountability tool, it is only as effective as the policies and protocols in place and the oversight of officer adherence to those policies and protocols. Further, it is not enough for agencies to have the technology; agencies must *make use* of the technology. For example, on October 27, 2020, the Los Angeles Office of the Inspector General (OIG) released a data analysis report that focused on officer-initiated stops in

¹⁶⁷ RAND Corporation, RAND Europe, Body-Worn Cameras Associated with Increased Assaults Against Police, and Increase in Use-of-Force if Officers Choose When to Turn on Body-Worn Cameras (May 17, 2016) <<https://www.rand.org/news/press/2016/05/17.html>> (as of Dec. 14, 2020).

2019 (a total of 672,569 stops) to assess the accuracy of officer reporting and to better understand the driving forces behind some of disparities in stop data.¹⁶⁸ After a qualitative review of 190 stops in connection with video footage, the Los Angeles OIG found that the stop data reports were “fully accurate” in only 61 percent of the stops.¹⁶⁹ This example makes clear that the camera technology can be useful as an accountability tool if agencies conduct follow-up and review rather than relying solely on the technology being activated to hold officers accountable. The Board will continue to explore best practices around the use of such technology.

4. Supervisory Oversight

Strong accountability systems include a sufficient number of supervising officers, adequate training for effective supervision, and workloads that allow supervisors to be effective in their oversight responsibilities. Supervisory staff should be proactive, engaged, and consistent in their supervision of line officers. It is critical that there are clear policies outlining what supervisory review looks like and how it will be done. Not only should there be strong supervision of line officers, but agency command staff should also effectively oversee their first-line supervisors to ensure accountability at all levels. Supervisors must be held directly accountable for the quality and effectiveness of their supervision, including whether supervisors identify and effectively respond to misconduct and ensure that officers effectively engage with the community.

Some specific issues that the Board intends to review and consider for future recommendations include having a supervisor at the scene of a use of force or a civilian complaint; reviewing arrest reports, officer activity reports, or other incident reports for the day in conjunction with any video footage for accuracy in reporting and adherence to law and policy; ways to investigate and document use of force incidents; how to provide counseling, support, and direction to officers; and commending and highlighting positive interactions to reinforce these behaviors.

Other areas that the Board intends to review and consider for future recommendations relate to supervision of first-line supervisors, and include leadership training on techniques for effectively guiding and directing officers and promoting effective and constitutional police practices; evaluating written reports, including identification of canned or conclusory language that is not accompanied by specific facts; evaluating officer behavior in video footage and officer reports or data submissions; investigating officer uses of force and identifying corrective measures; building community partnerships and guiding officers on this requirement; handling of allegations of officer misconduct; and leadership development and modeling positive behavior.

¹⁶⁸ Los Angeles Office of the Inspector General, Review of Stops Conducted by the Los Angeles Police Department in 2019 (Oct. 27, 2020) p. 1 <https://a27e0481-a3d0-44b8-8142-1376cfbb6e32.filesusr.com/ugd/b2dd23_d3e88738022547acb55f3ad9dd7a1dcb.pdf> (as of Dec. 14, 2020).

¹⁶⁹ *Id.* at p. 48.

For example, with regard to evaluating officer behavior in video footage and officer reports, in the previously mentioned OIG report, the review included a statistical analysis of RIPA stop data, review of civilian complaint data on racial profiling, and a qualitative review of 190 stops in connection with video footage.¹⁷⁰ When comparing the 190 stop data reports to body worn or in-car camera footage, the Los Angeles OIG found that in only 61 percent of the stop data reports was the data “fully accurate.”¹⁷¹ In the other 39 percent of the stops, the Los Angeles OIG found various issues that contributed to inaccuracies, such as failing to report all actions taken, all individuals stopped, or reporting an incorrect stop or search bases.¹⁷² In light of the Los Angeles OIG’s findings, it recommended that the Los Angeles Police Department change some of its policies – including its bias-free policing policy – to adopt language from RIPA and make it clear that racial profiling is prohibited not only in the initial decision to stop or not stop an individual but in various other types of activities as well.¹⁷³ This kind of in-depth review also allowed the Los Angeles OIG to identify places where officers were not following agency policy on body worn camera activation or stops and searches, identify where officers may need additional training on law and policy, and offer specific actions for the Los Angeles Police to take to help reduce the disparities in stops.¹⁷⁴ It also demonstrates the importance of thorough supervisory oversight to make sure officers are reporting data accurately. The Board will explore this interconnected topic of data integrity and supervisory auditing in a future report.

5. Clear Policies and Pathways

While it is evident that any department policy on bias-free policing or ensuring adherence to bias-free policing should be crystal clear to line officers, first-line supervisors, and all other staff, the Board will examine how to ensure that there are no doubts about what an agency prohibits and to impel agency action when an officer does not adhere to its policies. Policies should also make clear the departmental expectations and hold officers to the highest standards of integrity. Eliminating racial and identity profiling in policing is no small task; it requires a clear prohibition on bias-based policing and a thorough understanding by everyone in the agency that a violation of policy and failure to report misconduct will not be tolerated. However, explicit policies alone will not ensure accountability. The Board will also examine best practices to ensure that there are pathways for officers to report their peers’ behavior (including confidentially or anonymously) and avenues to elevate their report if their first-line supervisor does not take action.

¹⁷⁰ See generally Los Angeles Office of the Inspector General, Review of Stops Conducted by the Los Angeles Police Department in 2019 (Oct. 27, 2020) <https://a27e0481-a3d0-44b8-8142-1376cfbb6e32.filesusr.com/ugd/b2dd23_d3e88738022547acb55f3ad9dd7a1dcb.pdf> (as of Dec. 14, 2020).

¹⁷¹ *Id.* at p. 48.

¹⁷² *Id.* at pp. 48-49.

¹⁷³ *Id.* at pp. 5-6, 56.

¹⁷⁴ See generally Los Angeles Office of the Inspector General, Review of Stops Conducted by the Los Angeles Police Department in 2019 (Oct. 27, 2020) <https://a27e0481-a3d0-44b8-8142-1376cfbb6e32.filesusr.com/ugd/b2dd23_d3e88738022547acb55f3ad9dd7a1dcb.pdf> (as of Dec. 14, 2020).

6. Misconduct Complaints

In general, agencies with strong accountability systems investigate all complaints made by members of the public and those made from within the agency. The Board plans to explore how best practices can guarantee that *all* complaints will be fairly and thoroughly investigated. Thus, agencies must ensure that members of the public have access to submit complaints and that complaints will be faithfully recorded, tracked, and investigated. Best practices may also include how to conduct investigations into misconduct complaints with integrity and create mechanisms to increase the community's involvement in the process. Additionally, the Board and agencies may consider the potential role of independent civilian complaint review boards, or other stakeholders can explore their establishment by working with their boards of supervisors, city councils, or mayors through ballot initiatives.

Some specific issues that the Board intends to review and consider for future recommendations include having a supervisor at the scene of a use of force or a civilian complaint; reviewing arrest reports, officer activity reports, or other incident reports for the day in conjunction with any video footage for accuracy in reporting and adherence to law and policy; ways to investigate and document use of force incidents; how to provide counseling, support, and direction to officers; and commending and highlighting positive interactions to reinforce these behaviors.

The Board intends to review best practices that include precluding any involved supervisor from participating in the investigation; providing personnel serving as investigators with enhanced training on conducting employee misconduct investigations; and preventing officers with a history of sustained civilian complaints or who have been disciplined for excessive use of force, discrimination, or dishonesty from being eligible for assignment to Internal Affairs or any other interagency misconduct investigation team. The Board will also examine best practices regarding time limits on investigations of alleged misconduct, both for agency response to the subject of the complaint and internally with its officers.

7. Discipline Policies

Accountability systems should incorporate not only formal disciplinary or corrective measures, but also include informal training and feedback to improve job performance. Generally, discipline is determined by agency policy, but it is also often influenced by what is included in an agency's Memorandum of Understanding (MOU) based on negotiations between the agency and their employee's union.¹⁷⁵ MOUs may attempt to dictate requirements regarding agency accountability and officer discipline. The Board hopes to explore best practices around negotiated discipline standards for both administrative misconduct (e.g. calling in sick when the officer is not actually sick) and excessive force or bias-based policing, officer leave following misconduct, documentation of disciplinary actions and preservation of the documentation, and the use of disciplinary boards to ensure that discipline policies are implemented fairly, objectively, and progressively where appropriate.

¹⁷⁵ MOUs, also known as collective bargaining agreements, are written binding agreements that are the result of negotiations between an employer and a labor union.

Agency discipline policies and procedures should set out what types of discipline an officer can expect for each kind of violation and establish the range of discipline for each type of violation. The Board will examine best practices for discipline policies and the concept of progressive discipline when there are multiple incidents of misconduct.

8. Community-Based Accountability

For law enforcement agencies to fully practice accountability, the community must be included in those efforts to keep individual officers and the agency as a whole accountable. The Board will review avenues for community involvement, including community participation in oversight, advisory, or disciplinary boards. There are important considerations to ensure effective community participation on these bodies, such as making the selection process for civilian members transparent and unbiased; for example, bias in the selection process can happen when there are irrelevant requirements that have no bearing on a candidate's qualifications to be on such a body, such as whether someone has a criminal history or their immigration status. Additionally, the Board will examine best practice recommendations on reliable, comprehensive, and representative annual community surveys that can serve to inform agencies about the community's perception of the quality of their provision of service.

9. Recruitment, Hiring, and Promotions

How an agency recruits, hires, and promotes its personnel is integral to a robust accountability system. Not everyone is fit to be a law enforcement officer or able to embody the high standards of integrity required for modern day policing. Recruitment alone is insufficient; agencies must also ensure they are taking concrete steps to retain and promote officers who excel at performing their duties and engage in bias-free policing, while holding others accountable and not rewarding those who fail to live up to the mission of fair and equitable policing.

Strategies for thoughtful and diverse recruitment is the foundation for accountability within law enforcement. The Board will research best practices, including establishing a strategic hiring and recruitment plan;¹⁷⁶ identifying specific recruiting targets (such as increasing female officer retention);¹⁷⁷ seeking community input;¹⁷⁸ creating a diverse central recruitment team or unit to ensure consistency and cohesion;¹⁷⁹ training for recruiters and background investigators in procedural justice and implicit bias focused on specific issues or strategies relevant to the hiring process;¹⁸⁰ developing and reviewing recruitment materials to reflect the agency's values and mission;¹⁸¹ and compliance with the strategic recruitment and hiring plan through data

¹⁷⁶ Cal. Dep't of Justice, Review of Sacramento Police Dep't: Report and Recommendations Phase II (2020) pp. 83-84 <https://oag.ca.gov/system/files/attachments/press-docs/SPD%20Report%20Phase%20II_0.pdf> (as of Dec. 14, 2020).

¹⁷⁷ *Ibid.*

¹⁷⁸ *Id.* at p. 86.

¹⁷⁹ *Id.* at p. 81; Hillard Heintze, San Francisco Police Department Collaborative Reform Initiative: Phase I – Initial Progress Report (May 16, 2019), p. 70 <<https://oag.ca.gov/system/files/attachments/press-docs/hillard-heintze-initial-progress-report-sfpd-phase-i.pdf>> (as of Dec. 14, 2020).

¹⁸⁰ Cal. Dep't of Justice, Review of Sacramento Police Dep't: Report and Recommendations Phase II (2020) p. 91 <https://oag.ca.gov/system/files/attachments/press-docs/SPD%20Report%20Phase%20II_0.pdf> (as of Dec. 14, 2020).

¹⁸¹ *Id.* at p. 77.

tracking, audits, and periodic assessments.¹⁸² For example, one potential best practice could be for recruiters and background investigators to review a candidate’s social media account to look for behavior that would make the candidate unfit to be an officer, including ties to hate groups or any comments or postings demonstrating racism or white supremacy, sexism, homophobia, or other problematic views or beliefs. With respect to recruitment materials, best practices may include developing the qualities the agency is looking for and highlight the “guardian” over “warrior” mentality¹⁸³, distributing materials widely, and strategically targeting recruitment for gender and racial or ethnic diversity.¹⁸⁴

Promotion within agencies should be a transparent process. The Board will also examine promotion metrics, including performance evaluations for promotions or lateral hiring; consideration of officer discipline history or history of civilian complaints; and recognizing officers who embody the mission of equity and bias-free policing.

10. Performance Evaluations

Performance evaluations have traditionally focused on metrics such as arrests or other police actions that do not underscore the importance of good, thoughtful, and constitutional police work. That kind of structure creates a system that may inadvertently encourage behavior that is contrary to effectively and fairly serving the community as a whole. Instead, the Board plans to examine best practices to evaluate officers’ behaviors in engaging in bias-free constitutional policing, such as an officer’s demonstrated: a) integrity and ethical decision-making;¹⁸⁵ b) commitment to community engagement and building relationships and trust with communities; and c) commitment to bias-free policing. Performance reviews may also play a role in evaluating an officer’s communication skills,¹⁸⁶ general safety habits, completion of training requirements, and their effective use of de-escalation and crisis management techniques. The Board will also examine best practices around civilian commendations or complaints, post-discipline compliance with policy and corrective action plans, and specific officer behaviors, such as the quality and accuracy of officer reports, search warrants, and supportive affidavits or declarations.

Wave 2 Agency Bias-Free Policing Policies Review

In its 2019 report, the Board found that while most agencies did have a specific policy or portion of a policy addressing racial and identity profiling, there was little consistency across agencies in the substance of those policies. In its 2020 report, the Board built upon this finding and provided model language that law enforcement agencies could include in their bias-free policing policies. The Board also reviewed the bias-free policing policies for the eight Wave 1

¹⁸² *Id.* at pp. 83-84, 92.

¹⁸³ *Id.* at p. 77.

¹⁸⁴ *Id.* at pp. 81-82.

¹⁸⁵ U.S. Dep’t of Justice, Office of Community Oriented Policing, *Implementing a Comprehensive Performance Management Approach in Community Policing Organizations: An Executive Guidebook* (2015) pp. 3, 14, 33.

¹⁸⁶ *Id.* at pp. 3, 14, 37.

agencies, based on the best practices outlined in the 2019 report. This year, the Board is extending its review to include the seven Wave 2 agency policies.¹⁸⁷

Oakland Police Department (Oakland Police): The Oakland Police have an eight page, stand-alone policy titled “Prohibitions Regarding Racial Profiling and Other Bias-Based Policing,” which became effective November 15, 2004. From the outset, the policy delineates its purpose: to reaffirm the Oakland Police’s commitment to providing service and enforcing laws in a fair and equitable manner and to establish a relationship with the community based on trust and respect. To accomplish this purpose, the policy includes a definition of racial profiling and a statement on the limited circumstances in which characteristics of individuals may be considered in policing decisions. The policy also helps officers better understand racial profiling by providing examples of different police interactions, such a consent searches, where racial profiling may arise. Moreover, it also clearly establishes that consent searches should not be based on actual or perceived race, ethnicity, national origin, gender, age, religion, sexual orientation, or disability. To assist with the community relationship building piece, the policy includes a section for officers on how to communicate with the community when conducting stops. In addition to this stand-alone bias-free policy, a separate rule on “Professional Conduct and Responsibilities” also touches on how officers should conduct themselves towards others.¹⁸⁸ Another rule titled “Field Interviews & Stop Data Report” dictates how officers should record RIPA stop data. The rule states that Oakland Police use stop data “as a critical component of risk management,” with the goal “to reduce the risk of negative disparate impact on the community by enhancing precision policing, understanding racial disparities.”

Oakland Police prohibits its members from engaging in, ignoring, or condoning racial profiling or other bias-based policing. Furthermore, the policy requires members to report incidents and makes clear that members will be subject to discipline if they fail to comply. For supervisory review, the policy details six supervisor responsibilities in addition to ensuring their subordinates know and understand the policy. A supervisor is required to monitor their subordinates, review all Stop-Data Collection Forms they submit, sign those forms once reviewed, and conduct periodic audits. The policy explicitly provides that supervisors and commanders will be subject to discipline if they themselves violate the policy or if they know or should know that their subordinates are out of compliance.

Sacramento Police Department (Sacramento Police): The Sacramento Police has a stand-alone “Bias-Based Policing” policy dated June 5, 2017. The policy defines bias-based policing and racial profiling and explicitly prohibits the detention, interdiction, or disparate treatment of any person based on their actual or perceived characteristics by officers. Sacramento Police make clear that complaints of such behavior will be thoroughly investigated and require officers to report knowledge or information they may have about conduct that would violate this policy. Moreover, Sacramento Police provide for an Administrative Review of citizen complaints and concerns relating to its bias-free policy to ensure officers are conducting stops and citizen

¹⁸⁷ The policies of the Wave 2 law enforcement agencies can be found in Appendix Table F.1.

¹⁸⁸ Oakland Police Department, Manual of Rules, Section 314.04 Conduct Toward Others – Harassment and Discrimination (September 30, 2010) <<https://cao-94612.s3.amazonaws.com/documents/oak032180.pdf>> (as of Dec. 14, 2020).

contact in accordance with the policy. Although this review is designated as annual, the Professional Standards Unit provides complaint data “on demand” to the Captain to review and act on, but there is no indication how often this may occur. Similarly, the Sacramento Police updated its “Internal Investigation Manual – RM 220.01” to more accurately track complaints alleging “profiling” as a standalone allegation. While the bias-free policing policy does not provide guidance on the collection or use of RIPA demographic data associated with stops, detentions or seizures conducted, the agency’s General Order 210.09 does. To ensure compliance with RIPA and the agency’s Bias-Based Policing policy, the general order requires supervisors to monitor and examine all police activities of those in their command. Sacramento Police has also recently implemented an administrative “Use of Force Review Board,” which meets monthly to review uses of force that do not involve firearm discharge or death. This review will include whether the officer adhered to the bias-based policing policy in addition to use of force laws and agency policies.

Fresno Police Department (Fresno Police): The Fresno Police has a stand-alone¹⁸⁹ policy that became effective June 1, 2020. The policy defines racial or bias-based policing and includes a component on the limited circumstances in which characteristics of individuals may be considered. There is a component on encounters with the community, which requires officers engaging in non-consensual encounters to be prepared to articulate a sufficient reasonable suspicion to justify the contact. It also includes a component on officer training and encourages members to familiarize themselves with racial and cultural differences, if they have not yet received training. The policy discusses the collection of stop data through Cal DOJ’s Stop Data Collection System pursuant to AB 953. The policy makes clear that it is the responsibility of all members of Fresno Police to prevent, report, and respond appropriately to discriminatory or biased practices. The policy addresses supervisory review by describing an annual review conducted by the Audit & Inspections Unit. According to the policy, that unit reviews the Internal Affairs database for complaints alleging bias and reviews meeting minutes detailing complaints received at the Chief’s Advisory Board committee meetings. The results of the annual review are then published in their Annual Bias-Based Policing Report, which details recommendations regarding training issues, policies and procedures, and changes in federal or state mandates. The annual reports previously included analysis of traffic stop data, but Fresno Police no longer plans to include this in their reports because it will submit stop data to the California DOJ. Fresno Police’s website includes links to California DOJ’s OpenJustice website, where their stop data will be publicly available, and the AB 953 webpage, where RIPA Board reports include stop data analysis. The bias-based policing policy is referenced in two other policies regarding interactions with transgender individuals and personnel complaints.

Orange County Sheriff’s Department (Orange County Sheriff): The Orange County Sheriff has a stand-alone¹⁹⁰ policy on “Bias Free Policing” and a separate policy on “Racial and Identity Profiling Act (RIPA).” The Bias Free Policing policy defines racial profiling or bias based policing

¹⁸⁹ Fresno Police’s policy is provided by a private corporation through a paid subscription service offered to law enforcement agencies around the country.

¹⁹⁰ Orange County Sheriff’s policy is provided by a private corporation through a paid subscription service offered to law enforcement agencies around the country.

and includes a component on the limited circumstances in which characteristics of individuals may be considered. There is no specific component on how officers should conduct themselves in encounters with the community. The policy includes a component on officer training and encourages members to familiarize themselves with racial and cultural differences, if they have not yet received training. The policy makes clear that it is the responsibility of all members of Orange County Sheriff to prevent, report, and respond appropriately to clear discriminatory or biased practices. The RIPA policy delineates the data fields that must be reported. Neither policy includes a component on data analysis or addresses supervisory review. The Bias-Free Policing policy has a section titled “supervisor responsibility,” which establishes that the S.A.F.E. Division Captain should review the Orange County Sheriff’s efforts to prevent racial/biased based profiling and submit any concerns to the Sheriff; this section does not discuss direct supervisory review. Separately, the Internal Affairs Unit Manager and the Captain (or an authorized designee) are required to ensure all data regarding civilian complaints and stops are collected and reported. Orange County Sheriff reported that the Technology Division was primarily overseeing the collection of RIPA data, but Orange County Sheriff formed a working group to determine how to analyze and review the data being sent to the Department after they realized they needed to ensure the proper information was being recorded.

Long Beach Police Department (Long Beach Police): The Long Beach Police issued a special order on bias-free policing on September 2, 2020. The special order is in effect until it is included in the agency’s Department Manual. Additional relevant content is provided in the Department’s Policy Manual sections “3.2 General Responsibilities – Employees” and “3.4 Conduct Toward the Public.” These policies are available on the Long Beach Police’s website; the new special order is not yet available online. The new special order includes definitions of racial profiling, biased policing, and specified characteristics. It also includes a component on the limited circumstances in which characteristics of individuals may be considered. Section 3.4 includes a section on encounters with the community in which officers are required to provide their names and department IDs or those of other officers upon request. Additionally, the special order requires officers to inform community members of the reason for the contact preferably at the beginning or by the end of an encounter to avoid misunderstandings. Under the new order, supervisors are required to ensure compliance and initiate investigations when violations are alleged. Moreover, it is the supervisors’ responsibility to ensure employees are not retaliated against for reporting suspected instances of biased policing. The policies and special order do not discuss annual training on bias/racial profiling, stop data analysis, or accountability. The agency issued a special order on stop data collection in December 2018. That special order requires all stop data to be reviewed to ensure there is no identifiable information included and that the Administration Bureau completes a quarterly audit. Long Beach Police has stated that they are developing a stop data dashboard to provide commanding officers with the ability to analyze the type of stops, reasons for stops, searches conducted, and actions taken in the field by their officers.

Sacramento County Sheriff’s Office (Sacramento County Sheriff): The Sacramento County Sheriff does not have a stand-alone bias-free policing policy. Applicable content is included in the General Order: Detentions, Arrests, Search Seizure, and Immigration Enforcement and General Order: AB 953 RIPA Compliance. Both of these policies are available online under the

transparency section of the website. The Detentions, Arrests, Search Seizure, and Immigration Enforcement General Order includes the definition of racial or identity profiling provided in Cal. Penal Code section 13519.4(e) and a component on the limited circumstances in which characteristics of individuals may be used. Sacramento County Sheriff puts the responsibility on every member of its agency to prevent, report, and respond appropriately to dispel discriminatory or biased practices. This General Order discusses encounters with the community, specifically discussing encounters with non-English speaking persons, persons with wheelchairs and other devices, and persons who are deaf or hard of hearing. The AB 953 General Order details the stop data required to be collected and discusses supervisory review. Supervisors are required to review and approve or reject each officer's AB 953 stop data reports. This review is limited to ensuring there is no unique identifying information sent to Cal DOJ. Neither general order includes information about racial and identity profiling training or data analysis. While its policies do not discuss data analysis, Sacramento County Sheriff reported to DOJ that it conducts data analysis on AB 953 stop data and uses the analysis for training and improvement in serving its community. Moreover, it informed DOJ that it has replicated the Board's annual report for its agency and created monthly dashboards of the data for department managers to review. Sacramento County Sheriff also stated that it provides Principled Policing and Bias Based Policing training to its officers on an ongoing basis; this training is not referenced in their policies but parts of it have been incorporated into the agency's academy curriculum.

San Jose Police Department (San Jose Police): The San Jose Police has a stand-alone policy that was last revised on February 15, 2011. In addition to this policy, there are two other policies that are relevant to bias-free policing, namely the "C 1305 Equality of Enforcement" and "C 1308 Courtesy" sections. All three of these policies are available online. The stand-alone bias-based policing policy includes a definition of bias-based policing and explains that biased actions can occur not only upon initiation of the stop, but also throughout the stop. The stand-alone policy does not contain an explanation of the limited circumstances in which characteristics of individuals may be considered. Policies C 1305 and C 1308 detail how an officer should conduct themselves during encounters with the community, e.g. officers should be courteous and professional, control their tempers, and exercise patience even in the face of extreme provocation. None of the three policies address bias/racial profiling training. However, the department reported that it requires Fair and Impartial Policing training, which includes implicit bias, Biased Based Policing, and Procedural Justice Training. Additionally, it has increased police academy cultural diversity and discrimination training beyond the state minimum. Moreover, command officers receive eight hours of Preventing and Responding to Anti-Muslim Bigotry training. The San Jose Police also has a separate policy on Documenting Detentions Pursuant to the Racial and Identity Profiling Act of 2015 (AB 953). None of the policies discuss data analysis, accountability, or supervisory review. San Jose Police informed CA DOJ that it does have a procedure for data analysis that is not detailed in its Bias-Based Policy. It also hired researchers from the University of Texas at El Paso and San Antonio to statistically analyze the stop data. Additionally, San Jose Police has separate policies and procedures for accountability and supervisory review. All personnel are expected and bound to follow the prohibition against discriminatory policing and a commitment to equality in

enforcement in anything they do. San Jose Police supervisors can hold their officers accountable through civilian complaints alleging bias based policing – whether or not they are founded. If a civilian complaint’s allegations of bias based policing are determined to be unfounded, a Supervisory Referral Complaint is created as a follow up. When a Supervisory Referral Complaint is made, a supervisor or captain must discuss the interaction and officer’s behavior and what, if any, impact it could have on the department’s operations.

Wave 2 Agency	Stand-Alone Bias-Free Policing Policy?	Clearly Written?	Easily Accessible? ¹⁹¹	Uses Concrete Definitions of Bias-Free Policing and/or Racial & Identity Profiling	Component on Limited Circumstances in which Characteristics of Individual May Be Considered?
Oakland Police	✓	✓	✓	✓	✓
Sacramento Police	✓	✓	✓	✓	✓
Fresno Police	✓	✓	✓	✓	✓
Orange County Sheriff	✓	✓	✓	✓	✓
Long Beach Police	✓	✓	✓	✓	✓
Sacramento County Sheriff	✗	✓	✓	✓	✓
San Jose Police	✓	✓	✓	✓	✗

Wave 2 Agency	Component on Encounters with Community?	Component on Racial and Identity Profiling Training?	Component on Data Analysis?	Component on Requiring Accountability?	Supervisory Review?
Oakland Police	✓	✓	✓	✓	✓
Sacramento Police	✓	✓	✓	✓	✓
Fresno Police	✗	✓	✓	✓	✓
Orange County Sheriff	✗	✓	✗	✓	✗
Long Beach Police	✓	✗	✗	✗	✓
Sacramento County Sheriff	✓	✗	✗	✓	✓
San Jose Police	✗	✗	✗	✗	✗

¹⁹¹ Beginning January 1, 2020, each law enforcement agency must conspicuously post on their website all current standards, policies, practices, operation procedures, and education and training materials that would otherwise be available to the public through a Public Records Act request. (Cal. Pen. Code, § 13650.)

Wave 1 Agency Bias-Free Policing Policies Review Follow-Up

The Board also followed up on its review of the Wave 1 agency's bias-free policing policies.¹⁹²

California Highway Patrol (CHP): Since last year's review, CHP reported that it is currently developing a stand-alone bias-free policing policy based on existing departmental policies and procedures, as well as some of the model policy language outlined in the Board's 2020 report.

San Diego Police Department (San Diego PD): San Diego PD updated its Non-Bias Based policing policy in February 2020 to include many of the key components recommended by the RIPA Board. The policy touches on training and the expectations the agency has for its officers. For example, while the previous policy stated officers should make every effort to prevent or report instances of discrimination, the new policy specifies how to do so. Additionally, the policy is clear that those who engage in, ignore, or condone discrimination will be subject to discipline. The policy also now includes supervisory review to ensure compliance with RIPA. San Diego PD reported to DOJ that they have implemented various oversight measures to ensure officers are correctly submitting RIPA data. For example, officers are required to include information on every RIPA stop data submitted in their daily journals. Officer actions that generate reports and RIPA stop data collection, including arrests and detentions, require officers to include language that RIPA entries were submitted before their reports are approved by their supervisors. San Diego PD informed DOJ that it released a training bulletin regarding the auditing of RIPA data by supervisors and command staff in January 2019 that is complemented by the February 2020 policy. The training bulletin details that on a monthly basis, sergeants must audit RIPA entries for two members of their squad on a rotating basis. If discrepancies are found, the sergeant must discuss this with the officer and a next level supervisor must be briefed to determine if this is an ongoing issue that requires corrective action. Moreover, the training bulletin requires notes and documentation in quarterly management reports regarding any reporting discrepancies identified in the monthly reviews and how those were addressed.

San Bernardino County Sheriff's Department (San Bernardino Sheriff): Since the Board's review last year, San Bernardino Sheriff has amended its bias-free policing policies to reflect some key best practices. These updates include a new policy with definitions related to bias, such as racial and identity profiling, bias-based policing, implicit bias, bias by proxy, reasonable suspicion, detention, and probable cause. The Bias-Free Policing policy now includes a component on the limited circumstances in which characteristics of an individual may be considered. Additionally, San Bernardino Sheriff's RIPA Data Collection and Analysis policy provides that it will regularly analyze data to assist it with identifying practices that may have a disparate impact on a group relative to the general population. Relatedly, the San Bernardino Sheriff reported it adopted a new policy on December 8, 2020 regarding supervisory and command staff review. This policy requires supervisors to ensure that all personnel, including dispatchers and professional staff, understand and comply with all policies related to RIPA. To ensure this compliance, supervisors are required to conduct and record daily random audits. Daily audits include a review of how many stop data forms an officer submitted during their

¹⁹² The policies of the Wave 2 law enforcement agencies can be found in Appendix F.2.

shift. Additionally, each station must conduct random audits that compare the type of calls with the number of forms completed. At the end of a watch commander's shift, they will run a random unit history and tally up the number of forms to ensure an accurate number were submitted. When a supervisor discovers a discrepancy, they must provide remedial training. The policy also requires commanders to monitor a RIPA dashboard that allows for review of demographics of individuals stopped. Lastly, the policy requires that RIPA stop data be reviewed at department staff meetings and that the agency share its data at public meetings.

Los Angeles County Sheriff's Department (LA County Sheriff): LA County Sheriff provided additional pertinent policies this year. LA County Sheriff's "Constitutional Policing and Stops" policy, which it reports has been in place since May 2017, explicitly states the Department's commitment to equal protection of the law; it does not include a concrete definition of bias-free policing or racial and identity profiling. Separately, the "Stops, Seizures, and Searches" policy, also in place since May 2017, includes a component on the limited circumstances in which characteristics of individuals may be considered. Various policies discuss encounters with the community, including its "Consensual Encounters," "Logging Field Activities, and "Interacting with Transgender and Gender Non-Conforming Persons." With respect to training, requirements for racial and identity profile training are detailed in the June 2019 "Training Requirements for Sworn Personnel." While LA County Sheriff reported that it has the ability to analyze data collected on detentions and community contacts, and has conducted those audits in the past, it does not have a policy directing regular audits on the data. LA County Sheriff also has separate specific policies on supervisory review of public complaints alleging racial bias. These policies include the "Policy of Equality-Procedures-External Complaint Monitoring," which requires LA County Sheriff's Affirmative Action Unit to process these complaints and forward them to the Equity Unit for investigation where appropriate, as well as the "Procedures for Department Service Reviews," which covers individual and agency wide reviews submitted by members of the public. The LASD also employs a random service review audit process, during which field supervisors contact community members involved in requests for service.

San Diego County Sheriff's Department (San Diego County Sheriff): The San Diego County Sheriff updated its Non-Biased Based Policing policy in July 2020. The policy now includes a component on encounters with the community, training, and data analysis. San Diego County Sheriff provides officers with implicit bias training and cultural sensitivity throughout the year in the form of digital learning platforms, in-person training, and training bulletins. San Diego County Sheriff reported to DOJ that RIPA stop data is reviewed at the station and executive level to ensure accountability. The revised policy does not include a component on accountability or supervisory review.

San Francisco Police Department (San Francisco PD): The San Francisco PD's Bias-Free Policing Policy now includes a section on training, which mandates training for both sworn and civilian members on principled policing, cultural diversity, racial profiling, creating inclusive environments, managing implicit bias, and bias by proxy. Although San Francisco Police has a separate policy on data analysis – San Francisco Administration Code 96A.3 – it is not referenced in the bias-free policing policy.

Los Angeles Police Department (Los Angeles Police): On November 8, 2019, the Los Angeles Police updated its policy prohibiting biased based policing to include additional protected characteristics and makes clear that it includes both actual or perceived membership in one of these identity groups. These characteristics include immigration status, employment status, English fluency, and houselessness. The policy does not reference training; the agency reports that it does not intend to include specific training aspects in the policy due to their ever-changing nature, but it is committed to training its officers on these topics. For example, all new recruits are required to attend an 8-hour training course with the Museum of Tolerance. Additionally, concepts from trainings on implicit bias and procedural justice, provided to the officers in 2017, have since been integrated into multiple training courses, including leadership briefs and roll call trainings. Los Angeles Police also report that it conducted a 4-hour training in March 2019 with Gang Enforcement Details personnel on procedural justice, the impact on communities, and responses to implicit bias. The agency also provided the Board with a copy of its updated use of force policy, which includes a section on fair and unbiased policing.

While the policy prohibiting biased based policing does not reference data analysis, the agency shared that it has various data analyses projects underway. These projects include its own RIPA report on its data, an analysis from the California Policy Lab, another study by Northwestern University’s Mathematical Methods in the Social Sciences program, and a report by the Office of the Inspector General (LA OIG). Moreover, the agency reports that it is in the process of refining a dashboard that would allow command staff the ability to analyze data specific to their area of responsibility and compare it to stops across the city at large.

Riverside County Sheriff’s Department (Riverside County Sheriff): The Riverside County Sheriff updated its Bias-Based Policing policy in July 2020 to include a component on supervisory review. The policy now requires supervisors to periodically audit officers’ RIPA data entries to ensure all required stops are being reported. The agency reported to DOJ that is in the process of rolling out a new computer-aided dispatch and record management system, which will allow for data analysis; this system is scheduled to go live mid-2021.

Vision for Future Reports

In the coming years, the Board hopes to conduct more comprehensive research – examining both current agency policies and protocols and evidence-based research – into each area of accountability systems to identify best practices.

CALLS FOR SERVICE AND BIAS BY PROXY

One aspect of policing that is critical to police-community relations are individuals' requests or calls for assistance from the police (e.g., 911 calls), often referred to as "calls for service." Law enforcement's response to such calls is critical because these interactions may involve life and death situations for the caller, the officer, and the subject of the call. How law enforcement responds can shape community expectations and perceptions of law enforcement more broadly. The Board believes it is imperative to improve law enforcement response models to protect all members of the community, regardless of race or identity, especially when responding to individuals in crisis.

In its prior reports, the RIPA Board recommended improving trainings and creating policies related to bias by proxy. Bias by proxy occurs "when an individual calls the police and makes false or ill-informed claims about persons they dislike or are biased against."¹⁹³ High-profile bias by proxy cases continue to occur and have now become an inflection point in the movement for change after the infamous case of Amy Cooper, who made a false police report against Christian Cooper, a Black man who was birdwatching in Central Park.¹⁹⁴ We know that these issues are not new, but they are representative of a deeper and more persistent problem that requires education, reform, and training for the public, law enforcement, and dispatchers. Resolving these issues involves taking a closer look at dispatchers' role in police responses and outcomes.

This year the Board expanded its exploration of issues related to calls for service by reviewing best practices for responding to calls specifically about individuals in crisis. Both law enforcement and community members generally agree that police officers should not be the first responders to people experiencing a variety of purely social—in other words, non-criminal— issues, such as a mental health crisis, drug overdose, or simply being unhoused. Police are often asked to play the role of both law enforcement and social worker, without the benefit of a degree or in depth training in social work.

One way to combat this is to employ a community first response, which is a response to a call for service that prioritizes community-based solutions to a crisis instead of a law enforcement response, or *before* police arrive on a scene (e.g., having a licensed therapist be the first responder to a mental health crisis). Community-based problems require community-based solutions. The community should be the first responders to situations such as health-related emergencies or socioeconomic issues such as being unhoused. A community first response allows law enforcement agencies to focus more of their valuable resources on preventing or investigating crime, while allowing skilled specialists to assist those who are having a crisis.

All stakeholders must invest in our communities so the most appropriate person can respond to a crisis and, in the process, agencies and communities can develop emergency response models

¹⁹³ Fridell, *Producing Bias-Free Policing: A Science-Based Approach* (2017) Springer International Publishing, p. 90.

¹⁹⁴ Nir, *How 2 Lives Collided in Central Park, Rattling the Nation*, The New York Times (Jun. 14, 2020)

<<https://www.nytimes.com/2020/06/14/nyregion/central-park-amy-cooper-christian-racism.html>> (as of Dec. 14, 2020).

that are better equipped to protect everyone equally. This year, the Board discusses developing models for future best practice recommendations.

Responding to Bias-Based Calls for Service

Trainings, Policies, and Procedures for Dispatchers and LEAs

Emergency dispatchers are required to take the POST basic training for dispatchers in order to serve in this position. According to POST, after completing the basic training course – a minimum of 120 hours – dispatchers are required to take an additional 24 hours of training every 2 years. Crisis Intervention Training (CIT) is not required for dispatchers, though 3,756 dispatchers (out of 8,057) in California had taken the class as of October of 2020. The only section in the POST basic training for dispatchers that addresses bias is a section titled “Community Policing/Cultural Diversity/Hate Crimes/Gang Awareness,” where the topic of bias is discussed generally. The basic training addresses the history of community policing and the role the dispatcher plays, including helping identify trends as well as potential neighborhood issues, communicating problem areas, and awareness of what is important to the communities served.¹⁹⁵ The POST basic training dispatch course does address responding to hate crimes, but the focus is on how dispatchers take incident reports of hate crimes.

*“The Department is in the process of developing ... bias by proxy training for its civilian personnel based on the recommendations by the Board.”
- San Diego PD*

Based on the Board’s review of the applicable POST trainings, the Board recommends that POST expand trainings to address bias by proxy so that dispatchers and first responders can prevent abuse of the 911 dispatch system. The Board recommends updated trainings that include how to: (1) diffuse or deescalate the situation; (2) assess when a bias-

based call is being made; (3) mitigate the bias when transferring a call to first responders; and (4) notify law enforcement when a dispatcher suspects the 911 caller is making a bias-based call or filing a false police report.

Bias by proxy occurs with a range of behaviors. Although there are all too many reports of Amy Coopers in this world, dispatchers should also be mindful of the potential for implicit bias in the reports of seemingly well-intentioned callers. Dispatchers, as well as law enforcement, need further mandatory training on how to address both implicit and explicit bias when addressing 911 callers, as well as how to identify bias within themselves.

A Restorative Justice Approach to Biased Based Calls for Service

Knowingly filing a false police report is a crime.¹⁹⁶ By contrast, incidents of bias-based calls may not rise to the level of criminal behavior, and sometimes are protected speech. Nevertheless, an individual who experiences a bias-based call may feel unsafe or unwelcome in their community. Therefore, the RIPA Board and the Communities Against Hate, a coalition of 15

¹⁹⁵ See Commission on Peace Officer Standards and Training, Public Safety Dispatchers’ Basic Course: Training Specifications (July 2011) <https://post.ca.gov/Portals/0/Publications/Dispatcher_Basic_Course.pdf?ver=2019-07-12-131112-730> (as of Dec. 14, 2020).

¹⁹⁶ Cal. Penal Code, § 148.5.

national organizations,¹⁹⁷ both recommend that law enforcement agencies conduct thorough reviews of bias-based incidents, and that agencies strengthen data collection around those incidents and their responses to them.¹⁹⁸ The National Coalition of Anti-Violence Programs (NCAVP) echoes the recommendation to increase efforts to encourage reporting and underscores the need to increase community-based reporting infrastructure.¹⁹⁹ The National LGBT/HIV Criminal Justice Working Group additionally identified investment in bystander intervention programs and other community safety models as key strategies that will allow communities to intervene and respond to violence more effectively.²⁰⁰ It is imperative that departments collect data and track when bias-based calls are made. This allows departments to examine if there is a larger systemic issue within, for example, a particular neighborhood or if there are repeat bias-based callers who must be flagged.

The Board believes a restorative justice approach is essential to address bias-based calls and cases when someone files a suspected false police report. Restorative justice “is a theory of justice that emphasizes repairing the harm caused by criminal behavior. It is best accomplished through cooperative processes that allow all willing stakeholders to meet, although other approaches are available when that is impossible. This can lead to transformation of people, relationships and communities.”²⁰¹ The Board acknowledges that when biased calls are made to law enforcement, it deeply impacts the relationship within the community and with the police. As such, a restorative justice approach that focuses on the harm caused by the criminal behavior and repairing the harm through community collaboration is needed to address the underlying causes of bias-based behaviors.

While behaviors that feed on and perpetuate bias must be condemned and punished, the Board also recognizes that many advocacy organizations and individuals do not support penalty-enhancement bills.²⁰² The Board is concerned that while these laws are framed as mechanisms to protect bias-targeted communities, they have contributed to perpetuating

¹⁹⁷ The coalition partners include: The Leadership Conference Education Fund, Lawyers’ Committee for Civil Rights Under Law, New York City Anti-Violence Project, Asian Americans Advancing Justice, Hollaback!, Muslim Advocates, National Action Network, National Center for Transgender Equality, National Council of Jewish Women, National Disability Rights Network, National Network for Arab American Communities, Religious Action Center, South Asian Americans Leading Together, The Sikh Coalition, and UnidosUS (formerly National Council of La Raza). The Southern Poverty Law Center serves as strategic advisor.

¹⁹⁸ Communities Against Hate, *Hate Magnified: Communities in Crisis* (2019) pp. 7-8. <<https://hatemagnified.org/CAH-hatemagnified2019.pdf>> (as of Dec. 14, 2020).

¹⁹⁹ National Coalition of Anti-Violence Programs, *National Report on LGBTQ & HIV-Affected Violence in 2017* (2018) p. 24 <<http://avp.org/wp-content/uploads/2019/01/NCAVP-HV-IPV-2017-report.pdf>> (as of Dec. 14, 2020). The NCAVP hate violence incident-reporting model includes false police reporting incidents. *Id.* at p. 47.

²⁰⁰ Saenz, Ingelhart, and Ritchie, *The Impact of the Trump Administration’s Federal Criminal Justice Initiatives on LGBTQ People & Communities and Opportunities for Local Resistance* (2018) p. 25. <https://www.lambdalegal.org/sites/default/files/publications/downloads/the_impact_of_the_trump_administrations_federal_criminal_justice_initiatives_on_lgbtq_people_communities_and_opportunities_for_local_resistance.pdf> (as of Dec. 14, 2020).

²⁰¹ Center for Justice & Reconciliation, *Lesson 1: What Is Restorative Justice?* Prison Fellowship International <<http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-1-what-is-restorative-justice/>> (as of Dec. 14, 2020).

²⁰² Penalty-enhancement bills are laws that increase criminal penalties; lengthen sentences, for bias-related crimes. Penalties are enhanced “either through assigning a higher sentencing range for bias-motivated crimes or ‘upgrading’ a bias-driven offense to a more serious category of crime.” Franklin, K. *Good Intentions: The Enforcement of Hate Crime Penalty Enhancement Statutes* (2002) *The American Behavioral Scientist*, 46(1), 154-55.

social disparities. Instead, communities and prosecuting agencies should emphasize the importance of restorative and transformative justice²⁰³ responses to bias-motivated incidents.

A restorative justice approach that addresses bias-based calls can be a tool to educate the bias-based caller and to reconcile their actions by acknowledging the harm done to the affected community or individual.²⁰⁴ The approaches can be as simple as an apology or required community service at an organization working with people of color, or as in depth as a court-ordered cultural sensitivity training.²⁰⁵ One tactic departments could employ is for dispatchers to code a suspected bias-based call as a “restorative justice” matter. When officers are dispatched, they could enter the situation with the mindset that the alleged suspect may be the victim of a bias-based call. Shift supervisors should also be dispatched in these situations and help “close out the call” to let the bias-based caller know that no suspicious or criminal activity was found and to educate the caller on what is or is not an appropriate basis for calling 911.

“The LASD also employs a random service review audit process during which field supervisors contact community members involved in requests for service. Field supervisors ask them a variety of questions to determine if they were or were not satisfied with the service they received or if they have any service or personnel complaints regarding any [or] all deputy personnel who were present at the call”

- Los Angeles County SD

In the case of Amy Cooper, the District Attorney’s office is exploring a restorative justice approach where Amy Cooper not only takes responsibility for her actions in filing a false police report, but is also educated on how her bias-based behavior was harmful.²⁰⁶ The District Attorney hopes that by using a restorative justice approach, “this process will both enlighten,

²⁰³ “Transformative justice [is] a liberatory [liberating] approach to violence . . . [which] seeks safety and accountability without relying on alienation, punishment, or State or systemic violence, including incarceration or policing.” This is a similar approach to restorative justice, but instead of relying on the government or criminal justice system, it instead promotes healing and accountability through a cooperative community engagement. “Transformative Justice seeks to provide people who experience violence with immediate safety and long-term healing and reparations while holding people who commit violence accountable within and by their communities. This accountability includes stopping immediate abuse, making a commitment to not engage in future abuse, and offering reparations for past abuse. Such accountability requires on-going support and transformative healing for people who sexually abuse.” Transformative Justice, Transform Harm (Oct. 01, 2020) <<https://transformharm.org/transformative-justice/>>. See also Toward Transformative Justice: A Liberatory Approach to Child Sexual Abuse and other forms of Intimate and Community Violence, Generation 5 (2007) <http://www.usprisonculture.com/blog/wp-content/uploads/2012/03/G5_Toward_Transformative_Justice.pdf> (as of Dec. 14, 2020).

²⁰⁴ Communities Against Hate, Hate Magnified: Communities in Crisis (2019) pp. 34-35 <<https://hatemagnified.org/CAH-hatemagnified2019.pdf>> (as of Dec. 14, 2020); National Coalition of Anti-Violence Programs, National Report on LGBTQ & HIV-Affected Violence in 2017 (2018) p. 8. <<http://avp.org/wp-content/uploads/2019/01/NCAVP-HV-IPV-2017-report.pdf>> (as of Dec. 14, 2020).

²⁰⁵ Communities Against Hate, Hate Magnified: Communities in Crisis (2019) pp. 34-35 <<https://hatemagnified.org/CAH-hatemagnified2019.pdf>> (as of Dec. 14, 2020); National Coalition of Anti-Violence Programs, National Report on LGBTQ & HIV-Affected Violence in 2017 (2018) p. 7. <<http://avp.org/wp-content/uploads/2019/01/NCAVP-HV-IPV-2017-report.pdf>> (as of Dec. 14, 2020).

²⁰⁶ The victim of the racist call has stated he does not wish to participate in the prosecution. (*Woman who called cops on Black birdwatcher made 2nd 911 call, prosecutors reveal*, WABC (Oct. 15, 2020). <<https://abc7ny.com/society/amy-cooper-expected-to-agree-to-community-service/7021351/>> [as of Dec. 14, 2020]).

heal, and prevent similar harm to our community in the future.”²⁰⁷ A restorative justice process provides a unique opportunity for the community to come together and have a conversation about the impact of explicit or implicit bias and incidents that reinforce hate.

Best Practices for Responding to Bias-Based Calls

The Board continues to review evidence-based best practices and policies in responding to bias-based calls. The San Francisco Police Department is one of the few law enforcement agencies within the state of California that directly addresses bias by proxy in its policies. Within the policy, the agency defines it as:

[W]hen individuals call the police and make false or ill-informed claims of misconduct about persons they dislike or are biased against based on explicit racial and identity profiling or implicit bias. When the police act on a request for service rooted in implicit, explicit or unlawful bias, they risk perpetuating the caller’s bias. Members should use their critical decision-making skills drawing upon their training to assess whether there is criminal conduct.²⁰⁸

The policy goes on to reiterate that officers should be cognizant of “racial and identity profiling, implicit bias, and bias by proxy” while carrying out their duties.²⁰⁹

The Board recommends that the legislature: (1) require law enforcement agencies to adopt a policy addressing bias by proxy and (2) mandate a specific course on bias by proxy for both dispatchers and officers as part of their basic training and continuing education. Specifically, for bias by proxy, the policy should include:

*“SFPD was in the process of renewing its Bias General Order that addressed all recommendations on bias policy from the RIPA board, and included a nation leading bias by proxy policy”
- San Francisco PD*

- How officers can identify a bias-based call for service;
- How sworn personnel and dispatchers should interact with the community member who has made a bias-based call for service;
- How an officer should interact with a community member who is the subject of a bias-based call;
- How the shift supervisor should interact with the caller;
- Required training for officers and dispatchers that covers responding to bias-based calls for service; and

²⁰⁷ *Woman who called cops on Black birdwatcher made 2nd 911 call, prosecutors reveal*, WABC (Oct. 15, 2020) <<https://abc7ny.com/society/amy-cooper-expected-to-agree-to-community-service/7021351/>> (as of Dec. 14, 2020).

²⁰⁸ See San Francisco Police Department (2020) General Order 5.17: Bias Free Policing Policy <https://sfgov.org/policecommission/sites/default/files/Documents/PoliceCommission/draft_DGO_5.17_Policy_Prohibiting_Biased_Policing_-_redlined_01242020%20FINAL.pdf> (as of Dec. 14, 2020).

²⁰⁹ *Ibid.*

- Guidelines for how to implement a restorative justice approach to address bias-based incidents in their communities.

Additionally, departments should consider using a three-step protocol to approaching bias-based calls, which is something that the Board raised in last year’s report. Former RIPA Board Member Jennifer Eberhardt and researchers at Stanford University, in conjunction with tech company Nextdoor – an online platform where neighbors can gather and share information – developed a strategy of “*if you see something suspicious, say something specific*” to curb racial profiling on the platform. Dr. Eberhardt’s team recommend “adding friction,” which simply means slowing people down and causing them to pause and consider specifically what is “suspicious” about what they are observing. This approach has been highly effective in mitigating bias. In fact, the strategy was so effective that Nextdoor was able to curb racial profiling by 75 percent. The three-step checklist included:

- First, they asked users to pause and think, “What was this person doing that made him suspicious?” The category “Black man” is not grounds for suspicion.
- Second, they asked users to describe the person's physical features, not simply their race and gender.
- Third, they realized that many people did not seem to know what racial profiling was, nor that they were engaging in it. So Nextdoor provided them with a definition and told them that it was strictly prohibited.²¹⁰

Trainings for both law enforcement and dispatchers should consider implementing this approach or working on developing something similar. The simple act of adding friction is an invaluable tool that research shows reduces profiling.²¹¹ When the same Stanford researchers also worked with the Oakland Police Department, they found that asking officers to pause and ask a question before every stop: “is this stop intelligence led?”, or in other words, “do I have prior information to tie this particular person to a specific crime?” By adding that question to the form officers completed during a stop, they slowed down and thought about why they were considering stopping someone. This intelligence-led question resulted in a massive drop in the number of stops of those perceived as Black and Hispanic or Latinx. In fact, adding these sources of friction reduced stops of those perceived as Black by 43 percent and those perceived as Hispanic or Latinx by 35 percent.²¹² By implementing this approach, agencies may be able to

²¹⁰ Eberhardt, How racial bias works -- and how to disrupt it (June 2020) Ted Talk <https://www.ted.com/talks/jennifer_l_eberhardt_how_racial_bias_works_and_how_to_disrupt_it/transcript?language=en> (as of Dec. 14, 2020).

²¹¹ *Ibid.* See also Strategies for Change: Research Initiatives and Recommendations to Improve Police Community Relations in Oakland, Calif. (2016) Stanford SPARQ <<https://stanford.app.box.com/v/Strategies-for-Change>> (as of Dec. 14, 2020).

²¹² Eberhardt, How racial bias works -- and how to disrupt it (June 2020) Ted Talk. <https://www.ted.com/talks/jennifer_l_eberhardt_how_racial_bias_works_and_how_to_disrupt_it/transcript?language=en> (as of Dec. 14, 2020); See also Oakland Police Department, Office of Chief of Police, 2016-18 Racial Impact Report (2019) p. 3 <<https://cao-94612.s3.amazonaws.com/documents/OPD-Racial-Impact-Report-2016-2018-Final-16Apr19.pdf>> (as of Dec. 14, 2020).

prevent officers from being dispatched to calls for service that do not involve a crime, but rather are the result of either implicit or explicit bias.

Responding to a Mental Health Crisis

“Over the years, reductions in state and local budgets have slashed funding for mental health services, homelessness, and substance abuse and recovery services; offender reentry programs; educational and vocational training opportunities; and programs that promote economic improvement. By default, police agencies have been required to fill the void created by funding cuts in social and medical welfare systems, which often places police officers in an untenable position.

For example, the “defunding” of mental health services by state and local governments in recent years means that the police are often the only ones left to call to situations where a social worker or mental health professional would have been more appropriate and safer for all involved. Although police agencies are working to train officers in crisis intervention or mental health first aid, this does not take the place of proper medical treatment.”

- International Association of Chiefs of Police

213

“A comprehensive and integrated crisis network is the first line of defense in preventing tragedies of public and patient safety, civil rights, extraordinary and unacceptable loss of lives...”²¹⁴ Civil rights leaders have long advocated for funding social services and community-based programs that better address individual needs rather than asking the criminal justice system to address issues such as being unhoused or mental health conditions. Law enforcement has also explained that over time they have been asked to be the “catch all” for issues our society has failed to solve, and there needs to be a better solution.²¹⁵

The vast majority of calls for service are actually best suited for a community responder model, where social service agencies are the first responders to nonviolent calls or a mental health crisis. In fact, only 4 percent of calls for service involve a report of a violent crime.²¹⁶ Further, in a study of over 264 cities, researchers found that “every 10 additional organizations focusing on crime and community life in a city with 100,000 residents leads to a 9 percent reduction in

²¹³ International Association of Chiefs of Police (Jun. 08, 2020) IACP Statement on “Defunding the Police” <<https://www.theiacp.org/news/blog-post/iacp-statement-on-defunding-the-police>> (as of Dec. 14, 2020).

²¹⁴ Substance Abuse and Mental Health Services Administration (2020) National Guidelines for Behavioral Crisis Care: Best Practices Tool Kit, p. 8 <<https://www.samhsa.gov/sites/default/files/national-guidelines-for-behavioral-health-crisis-care-02242020.pdf>> (as of Dec. 14, 2020).

²¹⁵ Sipes, *Social Workers Need to Step Up and Replace Cops*, Crime in America (July 13, 2020) <<https://www.crimeinamerica.net/social-workers-need-to-step-up-and-replace-cops/>> (as of Dec. 14, 2020).

²¹⁶ Asher and Horwitz, *How Do the Police Actually Spend Their Time?* New York Times (Jun. 19, 2020) <<https://www.nytimes.com/2020/06/19/upshot/unrest-police-time-violent-crime.html>> (as of Dec. 14, 2020).

the murder rate, a 6 percent reduction in the violent crime rate, and a 4 percent reduction in the property crime rate.”²¹⁷

The Board recognizes that even with specialized crisis intervention training for officers and other county programs in which social workers and law enforcement work together, nearly 1 in 4 fatal police shootings in the United States in the past 5 years involved someone experiencing a mental health crisis.²¹⁸ Nationwide, about one third to half of use of force incidents by police involved someone with a disability or mental health conditions.²¹⁹

Investing in the community and social services is a common sense approach to modern policing that reduces the overall violent crime rates, encourages an efficient use of community resources, and saves countless lives by connecting people to the care they need. In developing new crisis models, it is important to be mindful of the lessons of our past as we also move into the future of reimagined approaches to healthcare.

[How the Mental Health System Has Historically Interacted with the Criminal Justice System](#)

Mental health advocates in our country have struggled and continue to strive to achieve equal rights and fair treatment of those with disabilities. State-run mental institutions developed in the 1800’s after Dorothea Dix reported on the appalling treatment of those afflicted with mental illness in the jails.²²⁰

Unfortunately, the state-run institutions turned into a terrifying, abusive, horrific environment for those who were committed to them. The conditions of these institutions gave rise to the deinstitutionalization movement. Disability rights advocates fought to move severely mentally ill people from the inhumane conditions of state-run institutions to community-based care and advocated that treatment of mental illness should be in the least restrictive setting.²²¹ However, funding for community mental health centers was not prioritized by the federal or state governments over several decades, and states have continued to cut spending for mental health related services. From 2009 to 2012, states cut over \$4.35 billion dollars allocated for community-based care –the largest reduction in budget since the deinstitutionalization movement. In 2012, California had a mental health budget of \$2.8 billion, a \$760 million dollar

²¹⁷ In reaching these conclusions researchers reviewed crime rates and trends in 264 cities spanning a period of 20 years. Sharkey, Torrats-Espinosa & Takyar, *Community and the Crime Decline: The Causal Effect of Local Nonprofits on Violent Crime*. (2017) *American Sociological Review*, 82(6), 1214-1240

<https://journals.sagepub.com/doi/10.1177/0003122417736289> (as of Dec. 14, 2020).

²¹⁸ *Fatal Force: Police Shootings Database*, Washington Post (Nov. 18, 2020)

<https://www.washingtonpost.com/graphics/investigations/police-shootings-database/> (as of Dec. 14, 2020).

²¹⁹ Perry and Carter-Long, *The Ruderman White Paper on Media Coverage of Law Enforcement Use of Force and Disability* (March 2016) Ruderman Family Foundation https://rudermanfoundation.org/wp-content/uploads/2017/08/MediaStudy-PoliceDisability_final-final.pdf.> (as of Dec. 14, 2020).

²²⁰ Dorothea Dix, *Memorial to the Legislature of Massachusetts, Old South Leaflets* (1843) vol. 7, pp. 489-519

https://college.cengage.com/history/ayers_primary_sources/dorothea_dix_speaks_insane_persons.htm.> (as of Dec. 14, 2020).

²²¹ *Deinstitutionalization: A Psychiatric “Titanic,”* PBS: Frontline (1997)

<https://www.pbs.org/wgbh/pages/frontline/shows/asylums/special/excerpt.html#ret7> (as of Dec. 14, 2020).

reduction from 2009 funding levels.²²² In the vacuum that was created by these severe funding cuts, prisons and jails took over the role of caretaking for people suffering from a variety of ailments; we as a society began to criminalize and punish what we gave up trying to heal and soothe. Today, one third of unhoused persons suffer from a serious untreated mental health condition.²²³ Approximately 2 million people with mental illness are booked into jail each year; nearly 15 percent of men and 30 percent of women in the jails have a serious mental health condition that requires treatment.²²⁴ In fact, the Los Angeles County Jail is effectively one the largest “mental institutions” in the country.²²⁵

Police have been inappropriately tasked with the responsibility of helping alleviate a health crisis. Police officers and departments are not trained mental health clinicians and – even with the best of training – should not be the first responders in many of these situations. Nor can

“With non-existent or inadequate crisis care, costs escalate due to an overdependence on restrictive, longer-term hospital stays, hospital readmissions, overuse of law enforcement and human tragedies that result from lack of access to care. Extremely valuable psychiatric inpatient assets are over-burdened with referrals that might be best-supported with less intrusive, less expensive services and supports.”

- Substance Abuse and Mental Health Services Administration (SAMHSA)

emergency rooms be the only alternative to providing treatment to people with a medical condition, as this often creates a revolving door where some patients can never achieve long-term stabilization.²²⁶

Removing mental health care from carceral institutions, such as jails and state-run institutions, and bringing it back into the community, should be the path forward. The Board calls upon our leaders to fulfill the promise that was made over 60 years ago to fund community based solutions so everyone can live with dignity, autonomy, and respect.

Developing Crisis Response Models

This year, the RIPA Board invited several experts to speak about mental health and law enforcement interactions. One of those experts was Emily Lyles, a Licensed Clinical Social Worker in California with the Kern County Behavioral Health and Recovery Services who also oversees the Mobile Evaluation Team (MET) and co-chairs the Crisis Intervention Team (CIT). Emily Lyles discussed the development and implementation of one of the first co-response

²²² Lippman, *State Mental Health Cuts Hit Low-Income Patients Hard*. Huffington Post (Sep. 19, 2012) <https://www.huffpost.com/entry/state-mental-health-cuts_n_1897769> (as of Dec. 14, 2020).

²²³ Mondics, *How Many People with Serious Mental Illness Are Homeless?* The Treatment Advocacy Center <<https://www.treatmentadvocacycenter.org/fixing-the-system/features-and-news/2596-how-many-people-with-serious-mental-illness-are-homeless>> (as of Dec. 14, 2020).

²²⁴ *Jailing People with Mental Illness*, National Alliance on Mental Illness <<https://www.nami.org/Advocacy/Policy-Priorities/Divert-from-Justice-Involvement/Jailing-People-with-Mental-Illness>> (as of Dec. 14, 2020).

²²⁵ Los Angeles County Sheriff's Department, *Welcome to Twin Towers* <<http://shq.lasdnews.net/pages/PageDetail.aspx?id=1404>> (as of Dec. 14, 2020).

²²⁶ Substance Abuse and Mental Health Services Administration (2020) National Guidelines for Behavioral Crisis Care: Best Practices Tool Kit, p. 8 <<https://www.samhsa.gov/sites/default/files/national-guidelines-for-behavioral-health-crisis-care-02242020.pdf>> (as of Dec. 14, 2020).

teams in the nation, where law enforcement and social workers team up to respond to mental health calls. She discussed how Kern County uses this approach to “reroute” people from the criminal justice system to treatment.

Vinny Eng also presented to the Board. Mr. Eng is a community organizer and mental health advocate who lost his sibling, Jazmyne Ha Eng. Jazmyne was killed by sheriff’s deputies while experiencing a mental health crisis in a mental health facility. This tragedy became the impetus for his advocacy, which focuses on preventing similar outcomes for others experiencing a crisis. Vinny Eng advocated that the Board look at models where law enforcement is not the first point of contact for mental health crisis response and that the community must be involved throughout the process in order to achieve meaningful reforms. Vinny Eng further recommended that the Board not subdivide issues of race and disability because both are deeply intertwined, noting Mental Health America reports that Black adults are 20 percent more likely to report serious psychological distress than Whites.²²⁷

“We cannot arrest and incarcerate our way out of poverty, homelessness and mental illness. We cannot continue to expect officers to be guardians of safety, social workers, case managers, and counselors.”
- Vinny Eng

The Board has started to examine several types of crisis intervention strategies from around the country in its exploration of developing best practices and model policies. There is no one-size-fits-all solution – each person and each crisis is different. Likewise, each community has different needs and gaps in social services that must be addressed. The examples below are presented in a timeline to demonstrate the evolution of crisis response in our country. This list is by no means exhaustive and should be seen as a starting point for

leadership, communities, and law enforcement to discuss how they can improve calls for services through a community first response. We hope by carefully examining our past, we can better reimagine the future of public safety.

Memphis Model: Crisis Intervention Teams

The Crisis Intervention Teams (CIT) model began in Memphis, TN in 1988 when a mother called the police to help her son, who was having a mental health crisis; her son was killed by police.²²⁸ The City of Memphis took this tragic moment to bring together the community to develop a new approach to public safety. Since then, the program has been replicated nationally and internationally, with over 2,700 CIT programs.²²⁹

The basis behind the CIT program is to train a select group of police officers to respond to certain crisis calls. The core element of CIT involves officers interested in the program taking a

²²⁷ Mental Health America (2020) Racism and Mental Health <<https://www.mhanational.org/racism-and-mental-health>> See also, U.S. Department of Health and Human Services Office of Minority Health (Sep. 25, 2019) Mental and Behavioral Health - African Americans <<https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=4>> (as of Dec. 14, 2020).

²²⁸ Rogers, McNeil & Binder, *Effectiveness of Police Crisis Intervention Training Programs*. (2019) Journal of the American Academy of Psychiatry and the Law, p. 2 <<http://jaapl.org/content/jaapl/early/2019/09/24/JAAPL.003863-19.full.pdf>> (as of Dec. 14, 2020).

²²⁹ *Id.* at p. 3.

40-hour or 1-week course on crisis response. In Memphis, the instructors include mental health workers, advocates, and officers familiar with CIT.²³⁰ The program also requires dispatchers to undergo an 8-hour training to recognize mental health calls that should be rerouted to the CIT. Finally, the program has a “centralized drop-off mental health facility,” where there is automatic acceptance of patients transported by CIT officers.²³¹

The research on the outcomes of the CIT programs indicate mixed results. “[T] here is concern about the lack of evidence of efficacy for specific goals and concern over the opportunity cost of pursuing this model to the exclusion of others.”²³² One study found that CIT training appeared to have little to no effect on injuries in police encounters with individuals with mental illness, and there is no measurable difference between use of force with CIT trained officers and those without it.²³³ However, CIT has shown to be effective in improving officer satisfaction and self-perceived reduction in the use of force; moderate cost reductions have also occurred in cities that have implemented CIT programs by diverting people from the jails to hospitals.²³⁴ CIT recommends that 20 to 25 percent of officers be trained in the program to ensure coverage of all shifts.²³⁵

In their best practices guide, CIT acknowledges that even after 30 years of service, they “still see too many people jailed, left to the streets, and with no place to go for care except the emergency department.” CIT helps give officers some tools to mitigate the tragedies of an unaddressed health crisis. CIT sees itself as a temporary solution until our society develops mental health solutions for a mental health crisis. The end goal should be “a robust crisis response and community mental health system that prevents people from entering the revolving door of the criminal justice system.”²³⁶

Mobil Evaluation Teams (MET): Kern County

The MET is a Crisis Intervention Unit that is dispatched by law enforcement agencies to the scene of behavioral health crises to provide on-scene crisis intervention and evaluations conducted under Welfare and Institutions Code section 5150. MET teams were first formed in the 1990’s in Los Angeles and quickly expanded to Kern County, which developed one of the

²³⁰ *Id.* at pp. 2-3.

²³¹ Larger metropolitan areas have deployed multiple facilities within geographically dispersed areas. Rural settings present specific challenges in using the CIT model for crisis response.

²³² Rogers, McNiel & Binder, *Effectiveness of Police Crisis Intervention Training Programs* (2019) *Journal of the American Academy of Psychiatry and the Law*, pp. 5-6 <<http://jaapl.org/content/jaapl/early/2019/09/24/JAAPL.003863-19.full.pdf>> (as of Dec. 14, 2020).

²³³ Kerr, Morabito & Watson, *Police Encounters, Mental Illness, and Injury: An Exploratory Investigation* (2010) *Journal of Police Crisis Negotiations*, 10(1-2), 116-132 <<https://journals.sagepub.com/doi/10.1177/0011128710372456>> (as of Dec. 14, 2020).

²³⁴ Rogers, McNiel & Binder, *Effectiveness of Police Crisis Intervention Training Programs* (2019) *Journal of the American Academy of Psychiatry and the Law*, pp. 5-6 <<http://jaapl.org/content/jaapl/early/2019/09/24/JAAPL.003863-19.full.pdf>> (as of Dec. 14, 2020).

²³⁵ *Yale Police Department participates in Crisis Intervention Team (CIT) Training*, Yale News (Sep. 09, 2020) <<https://your.yale.edu/news/2020/09/yale-police-department-participates-crisis-intervention-team-cit-training>> (as of Dec. 14, 2020).

²³⁶ CIT International (Aug. 2019) *A Best Practice Guide for Transforming Community Response to Mental Health Crisis* <<https://citinternational.org/bestpracticeguide>> (as of Dec. 14, 2020).

first co-response models in the nation.²³⁷ Through the MET collaboration with behavioral health specialists, what starts as a law enforcement response can instead lead to an intervention provided by a mental health professional, resulting in verbal de-escalation and a resolved call for service. These teams are also responsible for providing CIT training to officers.

The MET teams in Kern County responds to 2,600-3,000 calls for service a year. The Kern model adopts several approaches to providing care:

- Mental health providers participate in the 911 dispatch system, and they can either be dispatched by law enforcement or can respond directly on the 911 to mental health calls.
- MET provides CIT training to officers in Kern County, including Bakersfield Police Department and Kern County Sheriff's Office.
- Co-response teams have a social worker riding along with an officer.
- Smart911 is a program used by MET that allows callers to pre-enter health information, such as a mental health diagnosis or prescribed medications.²³⁸

Kern County has encountered several obstacles to providing community-based care for residents in crisis. As is the case with many behavioral health services, MET teams have struggled with funding throughout the years. First, the county currently funds its program through the general behavioral health fund for the county and by billing those who are using the services (i.e., charging the person who is in crisis.) Additionally, it has been a challenge to connect patients to community-based care, and teams are left with few options for long-term care for patients. "Currently, the ratio of patients to mental health care providers in Kern County is 580:1. Although this is not the highest ratio in California, it is well above California as a whole (380:1)."²³⁹ Nevertheless, despite these challenges, in 2020 Kern County is providing 24/7 access through virtual crisis response.

Eugene, Oregon: CAHOOTS (Crisis Assistance Helping Out On the Streets)

The CAHOOTS program in Oregon has been a model for many cities who are "reimagining public safety." It is a 24/7 mobile crisis intervention program that has been utilized by the city of Eugene since 1989. The intervention team is dispatched through both the 911 call center and a non-emergency line. CAHOOTS is a mobile health clinic that will arrive at the dispatched location in a van and will either offer services to the person in crisis at their location or

²³⁷ Department of Mental Health (2019) Mental Evaluation Team Progress Report Fiscal Year 2018-19 <<https://lasd.org/pdfjs/web/FY2018-19%20Annual%20Report%20on%20MET.PDF>> (as of Dec. 14, 2020).

²³⁸ "When you call 9-1-1, your Smart911 Safety Profile displays on the 9-1-1 screen and the 9-1-1 call takers can view your addresses, medical information, home information, description of pets and vehicles, and emergency contacts. You can provide as much or as little information as you like. Smart911 is a national service meaning your Smart911 Safety Profile travels with you and is visible to any participating 9-1-1 center nationwide." Smart911 <<https://www.smart911.com/>> (as of Dec. 14, 2020).

²³⁹ Kern County Public Health Services Department, (2018-2019) Community Health Assessment and Improvement Plan <<https://kernpublichealth.com/wp-content/uploads/2019/12/KCPHSD-Community-Health-Assessment-and-Improvement-Plan-2018.2019.pdf>> (as of Dec. 14, 2020).

transport the person to an appropriate community provider. They handle about 20 percent of all 911 calls in the city.

The teams consist of (1) either a nurse or EMT and (2) a crisis worker who has several years of experience in the mental health field. The CAHOOTS program is considered a co-response model, meaning that if a crime is reported, the police may be dispatched instead of or in addition to the crisis intervention team.²⁴⁰ The team is equipped to handle matters such as conflict resolution, welfare checks, substance abuse issues, and aid to those who are experiencing thoughts of self-harm. In addition to their professional backgrounds, team members have over 500 hours of required training. The team relies on trauma-informed de-escalation and harm reduction techniques to help those in crisis.²⁴¹

CAHOOTS staff are not police officers and, thus, are not armed. Instead, CAHOOTS staff rely on their training to reach non-violent resolutions. The consulting director for the program has explained that one of the biggest obstacles they have faced is overcoming social stigmas surrounding mental health and substance use and the belief that these calls are inherently dangerous. “It is our experience that folks in crisis just aren’t dangerous.”²⁴²

The program has helped the city save about \$8 million dollars annually on public safety and \$14 million in emergency rooms costs.²⁴³ Alameda County is working in collaboration with Bonita House to create a similar mobile response team that will be funded in part by the Mental Health Services Act. Los Angeles County has also voted to contract with non-profit partners to create an unarmed crisis response team similar to the CAHOOTS program to respond to non-violent calls.²⁴⁴ This type of reform may be a starting place for some communities, but certainly is not the only model or the right model for every community.

San Francisco: Street Crisis Response Teams

Since the death of George Floyd, there has been a renewed interest in developing new models for crisis response. The city of San Francisco, in collaboration with a community-based steering committee, is working to develop alternative responses to non-violent calls. Notably, the steering team is guided by the Human Rights Commission of SF and consists of community members from Hospitality House, GLIDE, San Francisco AIDS Foundation, Urban Alchemy, Street Violence Intervention Program, At the Crossroads, Metta Fund, and HealthRight360.²⁴⁵,

²⁴⁰ Crisis Assistance Helping Out On the Streets (CAHOOTS) White Bird Clinic Media Guide 2020 <<https://whitebirdclinic.org/wp-content/uploads/2020/06/CAHOOTS-Media-Guide-20200626.pdf>> (as of Dec. 14, 2020).

²⁴¹ *Ibid.*

²⁴² Westervelt, *Mental Health and Police Violence: How Crisis Intervention Teams Are Failing*. NPR (Sep. 18, 2020) <<https://www.npr.org/2020/09/18/913229469/mental-health-and-police-violence-how-crisis-intervention-teams-are-failing>> (as of Dec. 14, 2020).

²⁴³ Crisis Assistance Helping Out On the Streets (CAHOOTS) White Bird Clinic, Media Guide 2020 <<https://whitebirdclinic.org/wp-content/uploads/2020/06/CAHOOTS-Media-Guide-20200626.pdf>> (as of Dec. 14, 2020).

²⁴⁴ Meeks, *Los Angeles will create unarmed crisis response teams for nonviolent 911 calls*, CNN (Oct. 14, 2020) <<https://www.cnn.com/2020/10/14/us/los-angeles-unarmed-crisis-response-teams-911-calls/index.html>> (as of Dec. 14, 2020).

²⁴⁵ City of San Francisco, Mayor's Office (Sep. 8, 2020) Mayor London Breed Announces Launch of Alternatives to Policing Steering Committee <<https://sfmayor.org/article/mayor-london-breed-announces-launch-alternatives-policing-steering-committee>> (as of Dec. 14, 2020).

Sheryl Evans Davis, Executive Director of the San Francisco Human Rights Commission said, “this is the beginning of a process to address the system failures and inequities disproportionately experienced by people of color and people in crisis. I look forward to hearing from those directly impacted, learning from the Steering Committee and hearing the alternatives created, informed, supported and led by community.”²⁴⁶

The city is currently working in collaboration with the community to develop the best crisis response model for the city. Instead of armed officers responding to psychiatric calls or non-violent calls, the city will focus on developing mobile crisis response teams, consisting of paramedics, mental health professionals, and peer support specialists (e.g., someone who has personally experienced a mental health crisis). This program is similar to the CAHOOTS crisis response teams.²⁴⁷

The Board wanted to highlight this program as an example of how cities developing crisis response systems can effectively do so in collaboration with the community and those directly impacted by the services.

New York: Not911

Not911 is a mobile app that aides the user in resolving a variety of community-based issues without the police. The app was created by a nonprofit software company, Emergent Works, that trains and employs formally incarcerated people.²⁴⁸ The designers recognized that many people are fearful of calling the police for a variety of reasons, such as immigration status.²⁴⁹

The app allows users to choose from a variety of agencies and nonprofits to address issues such as mental health calls, assistance for those who are unhoused, domestic violence, drug overdose, or legal support. Presently the app is only available to New York City-based organizations that offer counseling, mediation, and intervention services.²⁵⁰ The app is currently available for download at <https://not911.nyc/>.

The Board’s Vision for Crisis Intervention Models

As these crisis response models continue to develop, the Board hopes to continue to explore different types of responses. For example, there is a nonprofit mobile crisis response team that launched in California in 2020 that is completely independent from the police department and traditional 911 dispatch centers.²⁵¹ The Board is interested in learning more about this and

²⁴⁶ *Ibid.*

²⁴⁷ Westervelt, *Removing Cops from Behavioral Crisis Calls: 'We Need To Change The Model,'* NPR (Oct. 19, 2020) <<https://www.npr.org/2020/10/19/924146486/removing-cops-from-behavioral-crisis-calls-we-need-to-change-the-model>> (as of Dec. 14, 2020).

²⁴⁸ Emergent Works (2020) <<https://www.emergentworks.org/>> (as of Dec. 14, 2020).

²⁴⁹ Scotland and Quin, *Meet the Formerly Incarcerated Software Engineers Who Built a No-Police Alternative to 911,* Codeburst.io (Sept. 18, 2020) <<https://codeburst.io/meet-the-formerly-incarcerated-software-engineers-who-built-a-no-police-alternative-to-911-5a5af163f8b2?gi=9e0d442d73c8>> (as of Dec. 14, 2020).

²⁵⁰ Emergent Works (2020) <<https://www.emergentworks.org/>> (as of Dec. 14, 2020).

²⁵¹ Nonko, *A Volunteer-Run Program Could Be Model for Mental Health Response Without Police Intervention,* Next City (Oct. 1, 2020) <<https://nextcity.org/daily/entry/volunteer-run-program-model-mental-health-response-police-intervention>> (as of Dec. 14, 2020).

other models and consulting with experts in the mental health crisis intervention field to assess what models may serve as exemplars for law enforcement agencies in California.

The Board also hopes to review data on the efficacy of the different types of community-based responses and how they can be further improved. We encourage communities to come together and create a forum for families, providers, and law enforcement to discuss the best approaches to resolving this health care crisis. We must uplift our communities, listen to their needs, and be inclusive of disability when we discuss reforms so that we can move away from using jails and the criminal justice system as a substitute for treating societal issues. There are several resources that may be available to communities seeking to fund crisis intervention models, including funds available from the Mental Health Services Act, prison realignment funds through AB 109, and potentially the CAHOOTS Act, if passed by the U.S. legislature. Although some of this funding has been available for some time, counties have either not spent the funds or have expended the funds on increasing law enforcement budgets. These sources could be an invaluable resource for advocates and communities to finance innovative community-based responses to crisis care.

[Mental Health Services Act](#)

The Mental Health Services Act can be a tremendous resource for counties in funding innovative approaches to mental health reforms and creating new crisis response models. The MHSA was passed by the California State legislature in 2004, but counties largely did not utilize these funds. In 2018, the legislature conducted an audit of MHSA funds and found that due to poor oversight of expenditures, many counties had amassed millions in unspent MHSA funds.²⁵² The Board recommends that community members or law enforcement officers who have questions about how your county or city is spending MHSA funds should contact the California Department of Health Care Services, Phone, (916)-713-8756, FAX, (916) 440-7621, mhsa@dhcs.ca.gov.

[AB 109: Public Safety Realignment](#)

Another source of funding for community-based care is AB 109, prison realignment legislation. In 2011, the California Legislature passed AB 109, which sought to move persons serving a sentence for a low-level offense from jail into community-based programs, often referred to as “realignment.” The bill included funding provisions for implementing and providing rehabilitative and supportive services.²⁵³ In the bill, the legislature specifically encouraged counties to use the funds to “invest in community based alternatives” to incarceration; however, there is little oversight and the spending of these funds is largely up to the broad discretion of local leaders. Since its enactment, local governments on average have

²⁵² California State Auditor (Feb. 2018) Mental Health Services Act, The State Could Better Ensure the Effective Use of Mental Health Services Act Funding <<https://auditor.ca.gov/pdfs/reports/2017-117.pdf>> (as of Dec. 14, 2020).

²⁵³ California Mental Health Planning Council. (2012) Implementing AB 109: How Four California Counties Met the Challenge of the 2011 Public Safety Realignment in Their Communities <https://www.dhcs.ca.gov/services/MH/Documents/AB%20109%20Imp%20Feb%202013_FINAL.pdf> (as of Dec. 14, 2020).

only used 11 percent of those funds for community-based services, while the remaining funds went back into the jails and probation departments.²⁵⁴

Some counties spend more of their budgets on community-based care, while others have taken AB 109 funding and increased local law enforcement budgets. For example, Contra Costa, Orange County, and Sacramento County spend 75 to 100 percent of their AB 109 budget on law enforcement. By contrast, San Diego, San Francisco, and Santa Cruz spend 0 to 25 percent of their AB 109 funds on law enforcement. This distinction is critical, since community-based programs, such as drug treatments, mental health counseling, employment assistance, and anger management, are highly effective at reducing recidivism rates, reducing costs associated with incarceration, and improving public safety.²⁵⁵ For instance, Santa Cruz, which spent a majority of its AB 109 funds on community-based services, saw a 20 percent reduction in its jail population.²⁵⁶

The Crisis Assistance Helping Out On the Streets (CAHOOTS) Act

The CAHOOTS Act is pending legislation that was introduced in the United States Congress in August 2020; identical bills were introduced in both the House and Senate. If it passes, this legislation would enhance state Medicaid funding for community-based mobile crisis response programs for those who may be experiencing a mental health or substance use disorder crisis. The federal government would pay 95 percent of the programs costs *and* offer up to \$25 million in grants to establish or expand existing programs.²⁵⁷ Thus, California law enforcement agencies would not be responsible for the majority of the costs to implement or expand such programs.

In order to qualify for funding under the Act, the mobile crisis response teams must meet certain minimum requirements. They must be multidisciplinary teams composed of behavioral health care professionals, including nurses, social workers, and peer support specialists, who are trained in trauma care, de-escalation strategies, and harm reduction. The services must be available 24-7 and voluntary for the individuals experiencing the mental health or substance use disorder crisis. The crisis teams must maintain relationships with relevant community partners, including medical and behavioral health providers, community health centers, crisis respite centers, managed care organizations, or other social services organizations.²⁵⁸

Vision for Future Reports

The Board will continue to analyze best practices and policies regarding bias by proxy. We will explore both evidenced-based best practices and individual agency's policies. We hope to start developing model policies for trainings for dispatchers in how to handle bias-based calls.

²⁵⁴ *Ibid.*

²⁵⁵ Flynn, *Putting Teeth into A.B. 109: Why California Historic Public Safety Realignment Act Should Require Reentry Programming*. (Aug. 2013) Golden Gate University L.Rev. Vol. 43, Issue 3, Art. 7, pp. 9-20 <<https://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=2104&context=ggulrev>> (as of Dec. 14, 2020).

²⁵⁶ *Ibid.*

²⁵⁷ Crisis Assistance Helping Out On the Streets Act (2019-2020) 116 H.R. 7961; see also Crisis Assistance Helping Out On the Streets Act (2019-2020) 116 S. 4441.

²⁵⁸ Crisis Assistance Helping Out On the Streets Act (2019-2020) 116 H.R. 7961; see also Crisis Assistance Helping Out On the Streets Act (2019-2020) 116 S. 4441.

Additionally, we would like to review best practices for how agencies can implement a restorative justice approach to bias-based calls.

In the coming years, the Board also hopes to consult with community members and experts in the field of crisis response. The Board recognizes that community based solutions to crisis response will come from communities themselves. We hope to invite leaders from some of these organizations to inform the Board of developing best practices surrounding crisis response. The Board will continue to review different national and international crisis response models, as well as data on the efficacy of different models, and make recommendations aimed at improving crisis intervention in California.

CIVILIAN COMPLAINTS: POLICIES AND DATA ANALYSES

California law enforcement agencies have been submitting complaint information to the Department since 1981. The passage of RIPA required law enforcement agencies to submit the number of complaints alleging racial or identity profiling along with the number of complaints with dispositions of “sustained,” “exonerated,” “not sustained,” and “unfounded.”²⁵⁹ This data is then disaggregated and analyzed for inclusion in the Board’s annual report. Included below is an overview and analysis of the civilian complaint data submitted to the DOJ, a review of the Wave 2 agencies civilian complaint forms, and a foundational discussion of Early Intervention Systems (EIS).

As the Board has noted in its earlier Reports, state law gives each law enforcement agency discretion to implement their complaint processes and outreach differently.²⁶⁰ This variability can affect the number of complaints an agency may receive and the outcome of those complaint investigations. Thus, making comparisons across law enforcement agencies should be done with care, as the differences may be the result of a variety of factors. The Board has identified the following factors as important to consider in analyzing complaint data: 1) lack of uniformity regarding what constitutes a “civilian complaint” and how to quantify complaints; 2) lack of uniformity regarding how to process civilian complaints; 3) accessibility and knowledge of an agency’s complaint process; 4) accessibility for people with disabilities; and 5) the potential deterrent impact of language that comes from Penal Code section 148.6 on complaint forms. For example, one agency may make it easier for civilians to file complaints than another agency and thus increase the number of complaints reported. Other observed agency variabilities include differences in language access, staffing, and policies or practices with respect to which unit or other governmental body conducts the complaint investigation. The RIPA Board continues to encourage California law enforcement agencies to standardize the collection of complaint information by using more consistent protocols and incorporating best practice recommendations provided in the Board’s 2019 report.²⁶¹

Overview of Civilian Complaint Data

The civilian complaint data for 2019 was submitted to the Department by 691 agencies employing peace officers in California. The agencies reported 15,890 complaints across three categories: non-criminal, misdemeanor, and felony. The majority of complaints (15,025, or 94.6%) alleged non-criminal conduct; complaints alleging behavior constituting a misdemeanor offense accounted for 3 percent (472) of complaints, and allegations of behavior constituting a felony represented 2.5 percent (393) of complaints.

²⁵⁹ “Sustained” means the investigation disclosed sufficient evidence to prove the truth of the allegation in the complaint by a preponderance of the evidence. “Exonerated” means the investigation clearly established that the employee’s actions that formed the basis of the complaint were not a violation of law or agency policy. “Not sustained” means the investigation failed to disclose sufficient evidence to clearly prove or disprove the complaint’s allegation. “Unfounded” means the investigation clearly established that the allegation is not true. Cal. Pen. Code, § 13012, subd. (a)(5)(B).

²⁶⁰ See Cal. Pen. Code, § 832.5.

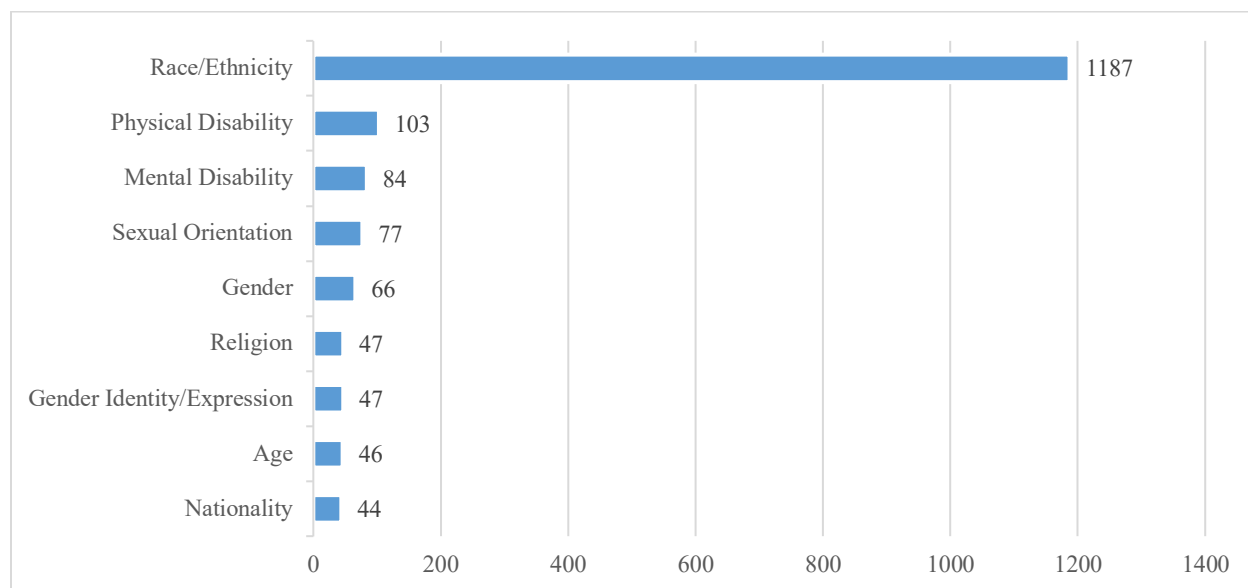
²⁶¹ See Racial and Identity Profiling Advisory Board Report (2019) pp. 41-44

<<https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2019.pdf>> (as of Dec. 14, 2020).

Law enforcement agencies are required to report the number of complaints that contain an allegation of racial or identity profiling.²⁶² Specifically, agencies submit data to the Department detailing profiling complaints that fall into nine categories: race/ethnicity, physical disability, mental disability, sexual orientation, gender, religion, gender identity/expression, age, and nationality.²⁶³ Agencies reported 1,427 complainants alleging an element, or elements, of racial or identity profiling, constituting 9 percent of the total complaints reported in 2019.

The total number of racial and identity profiling allegations (1,701) reported to the Department exceeds the total number of racial and identity profiling complaints (1,427) due to reported allegations of profiling based on multiple identity group characteristics. For example, a civilian may file a complaint alleging they experienced profiling based on both their gender and sexual orientation. This example would count as a single complaint with two types of alleged identity profiling. Accordingly, Figure 37, below, displays the number of reported allegations that fell into each of the nine identity group types.

Figure 37. Total Allegations of Racial and Identity Profiling Reported in 2019



Analysis of Civilian Complaint Data Submitted by Agencies Subject to Stop Data Reporting

Of the 691 agencies employing peace officers in California that reported civilian complaint data in 2019, 452 agencies are subject to RIPA’s stop data reporting requirements (hereafter RIPA agencies). These 452 RIPA agencies include municipal and district police departments, county sheriff’s departments, the California Highway Patrol, and the law enforcement agencies of the University of California, California State Universities, California Community Colleges, as well as K-12 school district police departments.²⁶⁴ The sections that follow examine only the data

²⁶² Cal Pen Code, § 13012, subd. (a)(5)(A).

²⁶³ *Ibid.*

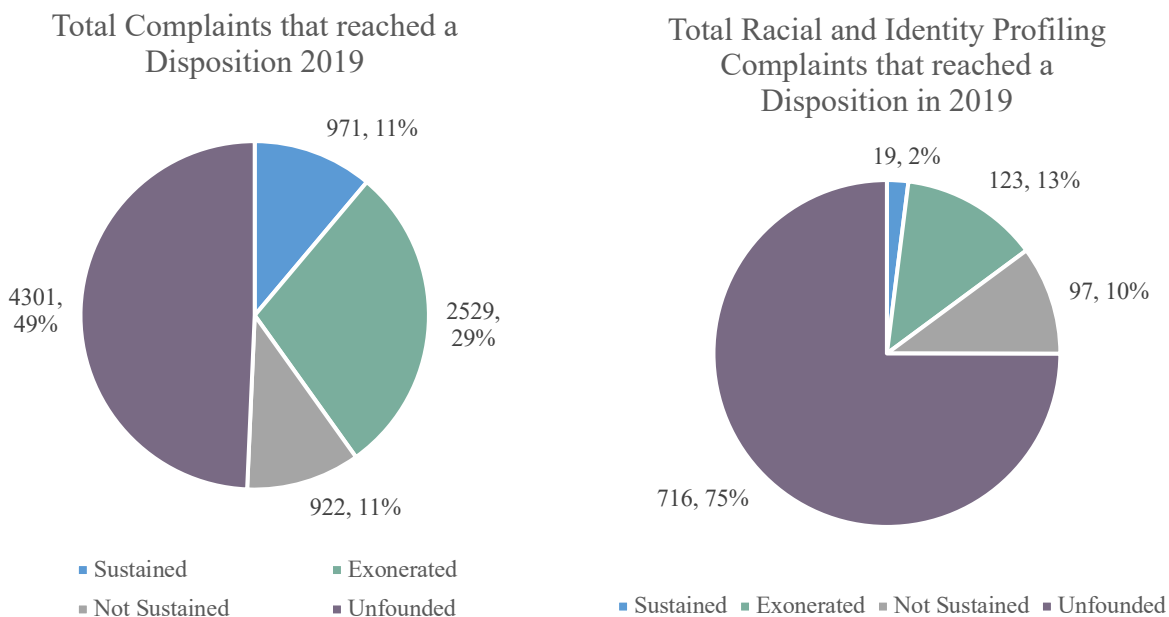
²⁶⁴ For more information on the law enforcement agencies that are required to report under RIPA, see Cal. Code Regs., tit. 11, § 999.225 <<https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/stop-data-reg-final-text-110717.pdf>> (as of Dec. 14, 2020).

submitted by the stop data reporting agencies that either are or will soon begin collecting RIPA stop data.

Civilian Complaints for Stop Data Reporting Agencies

RIPA agencies reported 10,987 civilian complaints in 2019. Most complaints alleged noncriminal conduct (10,224, or 93.1%), followed by complaints for conduct that constitutes a misdemeanor offense (439, or 4%); complaints alleging conduct that constitutes a felony were the least common (324, or 2.9%). Of the 10,987 complaints reported, 8,723 reached a disposition in the 2019 calendar year. Of those 8,723 complaints that reached a disposition, 971 (11.1%) were sustained, 2,529 (29%) were exonerated, 922 (10.6%) were not sustained, and 4,301(49.3%) were unfounded.²⁶⁵ Eighty-four RIPA agencies (18.6%) reported that they did not receive any civilian complaints in the 2019 calendar year. The remaining 368 (81.4%) RIPA agencies reported they received one or more civilian complaints; 146 (39.7%) of these agencies reported one or more civilian complaints alleging racial or identity profiling. These 146 agencies reported 1,153 complaints alleging racial or identity profiling, 955 of which reached disposition in 2019. Of these 955 racial and identity profiling complaints, 19 (2%) were sustained, 123 (12.9%) were exonerated, 97 (10.2%) were not sustained, and 716 (75%) were determined to be unfounded. Figure 38 displays the distribution of disposition types within the 2019 data for (1) all complaints that reached disposition and (2) complaints of racial and identity profiling that reached disposition.²⁶⁶

Figure 38. Disposition Distribution of 2019 Complaints

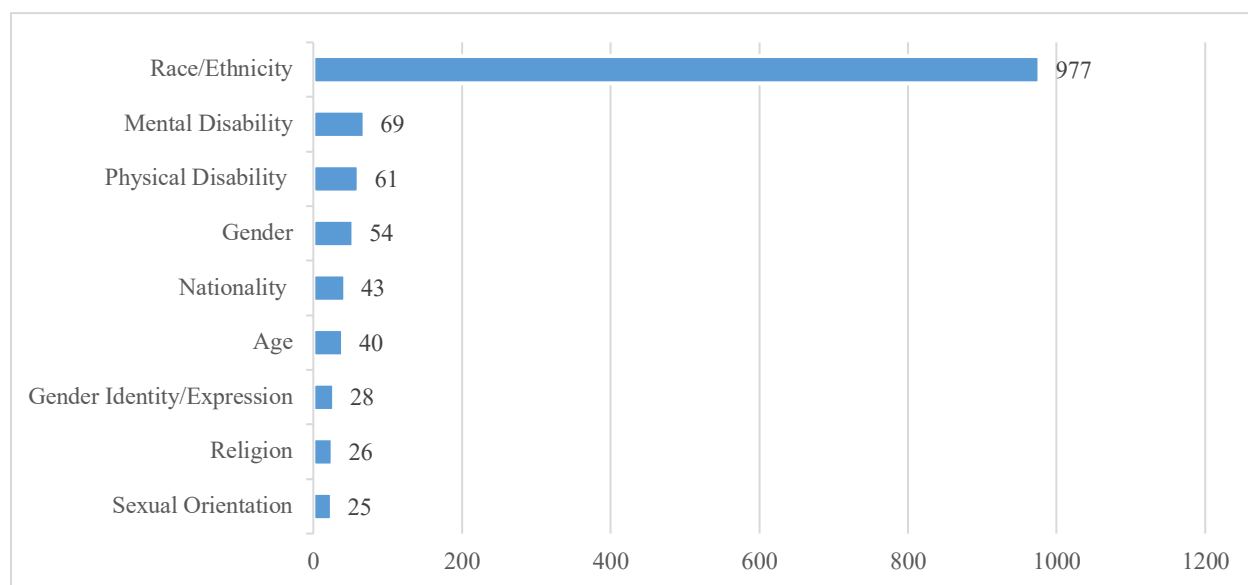


²⁶⁵ It is important to note that not every complaint reached a disposition during the same year it was initially reported; therefore, it is possible that some complaints that appeared in the 2019 disposition categories were first reported in 2018 or earlier.

²⁶⁶ For an agency-level breakdown of how many profiling complaints reached each disposition type in 2019, see Appendix Table D.1.

Figure 38 displays the 1,323 allegations of racial or identity profiling reported by stop-data-reporting agencies in 2019 broken down by identity type: race/ethnicity, mental disability, physical disability, gender, nationality, age, gender identity/expression, religion, and sexual orientation.²⁶⁷

Figure 39. Total Racial and Identity Profiling Allegations Reported by Reporting Agencies in 2019



Agency-Level Data Snapshot: 2019 Civilian Complaints for Wave 1 and 2 Agencies

Table 7 displays civilian complaint totals broken down for Wave 1 and 2 agencies.²⁶⁸ The table provides the following information: the total number of complaints reported; the number of complaints reported alleging racial or identity profiling; and the number of sworn personnel each agency employed in 2019.²⁶⁹

²⁶⁷ The total number of racial and identity profiling allegations (1,323) reported by stop-data-reporting agencies exceeds the total number of racial and identity profiling complaints (1,153) due to reported allegations of profiling based on multiple identity group characteristics.

²⁶⁸ Wave 1 agencies are the eight largest agencies in the state; they were required to start submitting stop data to the Department by April 1, 2019. Wave 2 agencies are the seven next largest agencies that were required to start submitting stop data to the Department by April 1, 2020. (Gov. Code, § 12525.5(a)(2)).

²⁶⁹ Sworn personnel totals presented are calculated from the information contained within the Law Enforcement Personnel file available at <https://openjustice.doj.ca.gov/data>. The DOJ collects the Law Enforcement Personnel data through a one-day survey taken on October 31st of each reporting year.

Table 7:

Reporting Wave	Agency	Total Complaints Reported	Total Profiling Complaints Reported	Total Sworn Personnel
1	California Highway Patrol	353	21	7,230
1	Los Angeles County Sheriff's Department	1,010	68	9,565
1	Los Angeles Police Department	2,205	426	10,002
1	Riverside County Sheriff's Department	33	0	1,788
1	San Bernardino County Sheriff's Department	113	39	1,927
1	San Diego County Sheriff's Department	214	74	2,601
1	San Diego Police Department	102	25	1,764
1	San Francisco Police Department	842	0	2,279
2	Fresno Police Department	231	13	806
2	Long Beach Police Department	182	9	817
2	Oakland Police Department	1,215	36	740
2	Orange County Sheriff's Department	129	11	1,888
2	Sacramento County Sheriff's Office	205	5	1,348
2	Sacramento Police Department	146	6	678
2	San Jose Police Department	205	36	1,150

Cross-Year Comparisons

Figures 40 through 43 display the number of total complaints reported (Figures 40 and 42), as well as the total number of racial and identity profiling complaints reported (Figures 41 and 43)

for Wave 1 and 2 agencies across the four years that agencies have been required by RIPA to submit expanded civilian complaint data to the Department.²⁷⁰

Wave 1 Agency Complaints Reported (2016-2019)

Wave 1 agencies reported 4,872 civilian complaints in 2019. This total constituted a 19.1 percent increase relative to the total number of civilian complaints reported in the year prior (4,091), a 32.4 percent increase from 2017 (3,679), and a 24.8 percent increase from 2016 (3,904).

The majority of Wave 1 agencies (7 out of 8) experienced an increase in the number of civilian complaints reported between 2018 and 2019. The agency that experienced the largest percentage increase from 2018 to 2019 was the San Diego County Sheriff's Department (San Diego Sheriff), with a 2,278 percent increase in complaints (from 9 to 214).²⁷¹ The Riverside County Sheriff's Department (Riverside Sheriff) was the only Wave 1 agency to experience a decrease (28.3%) in their number of complaints reported, with 33 complaints in 2019, down from 46 in 2018.

²⁷⁰ See Cal. Pen. Code, § 13012, subd. (a)(5)(A)(iii).

²⁷¹ This increase can partially be attributed to the San Diego Sheriff's change in reporting practices instituted after comparing its numbers to those of its peers in the 2020 RIPA Board report. Previously, San Diego Sheriff only reported internal affairs investigations into deputy misconduct or policy or law violations as civilian complaints. Now, it reports all complaints received by Internal Affairs. Relative to most other Wave 1 agencies, San Diego Sheriff reported low numbers of complaints across the four years covered in Figure 40. Agencies with lower numbers of complaints reported are more susceptible to large percentage changes from year to year. San Diego Sheriff did not have the largest cross-year increase in complaints reported amongst Wave 1, in raw terms.

Figure 40. Wave 1 Total Complaints Reported

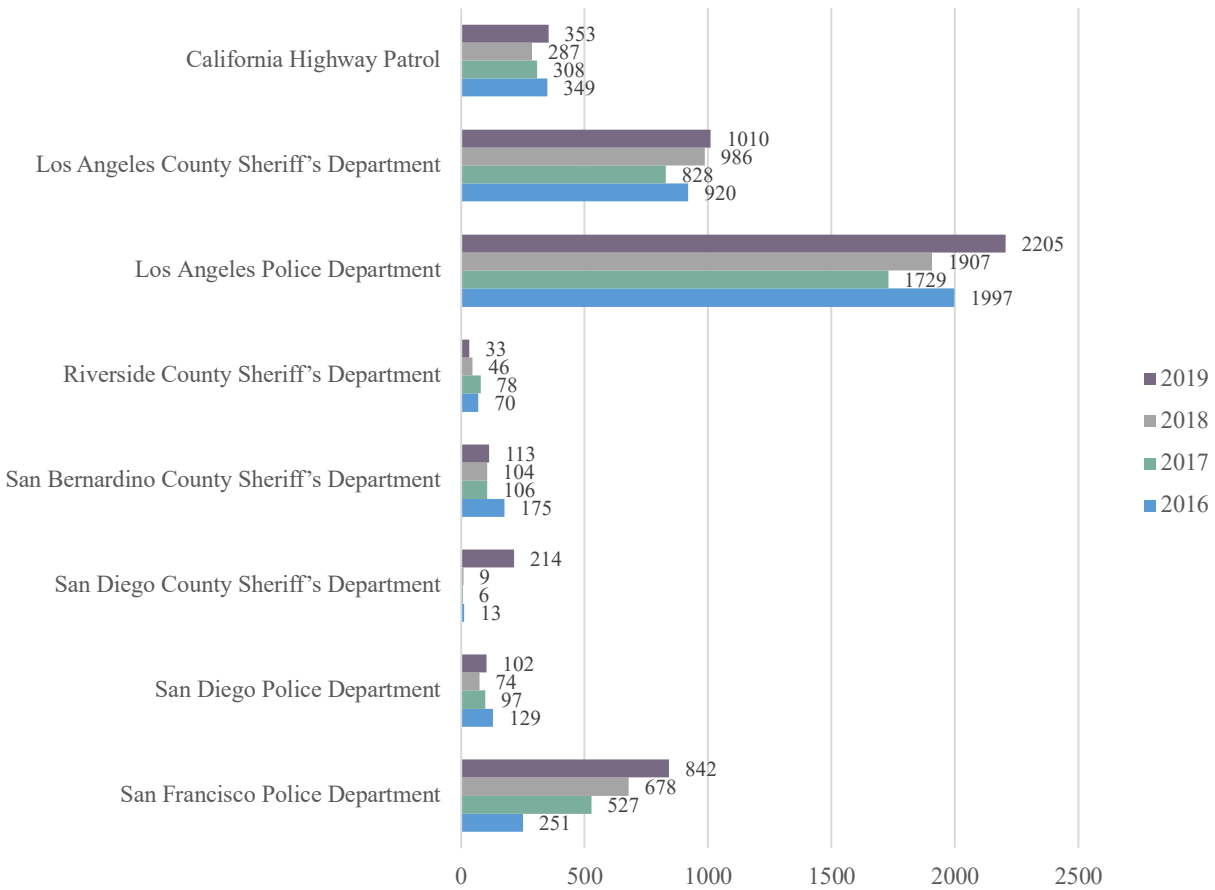


Figure 41 displays the total number of racial and identity profiling complaints reported by Wave 1 from 2016 through 2019. The total number of racial and identity profiling complaints was 653 in 2019, which is a 44.5 percent increase from 2018, a 76 percent increase from 2017, and a 406 percent increase from 2016.²⁷²

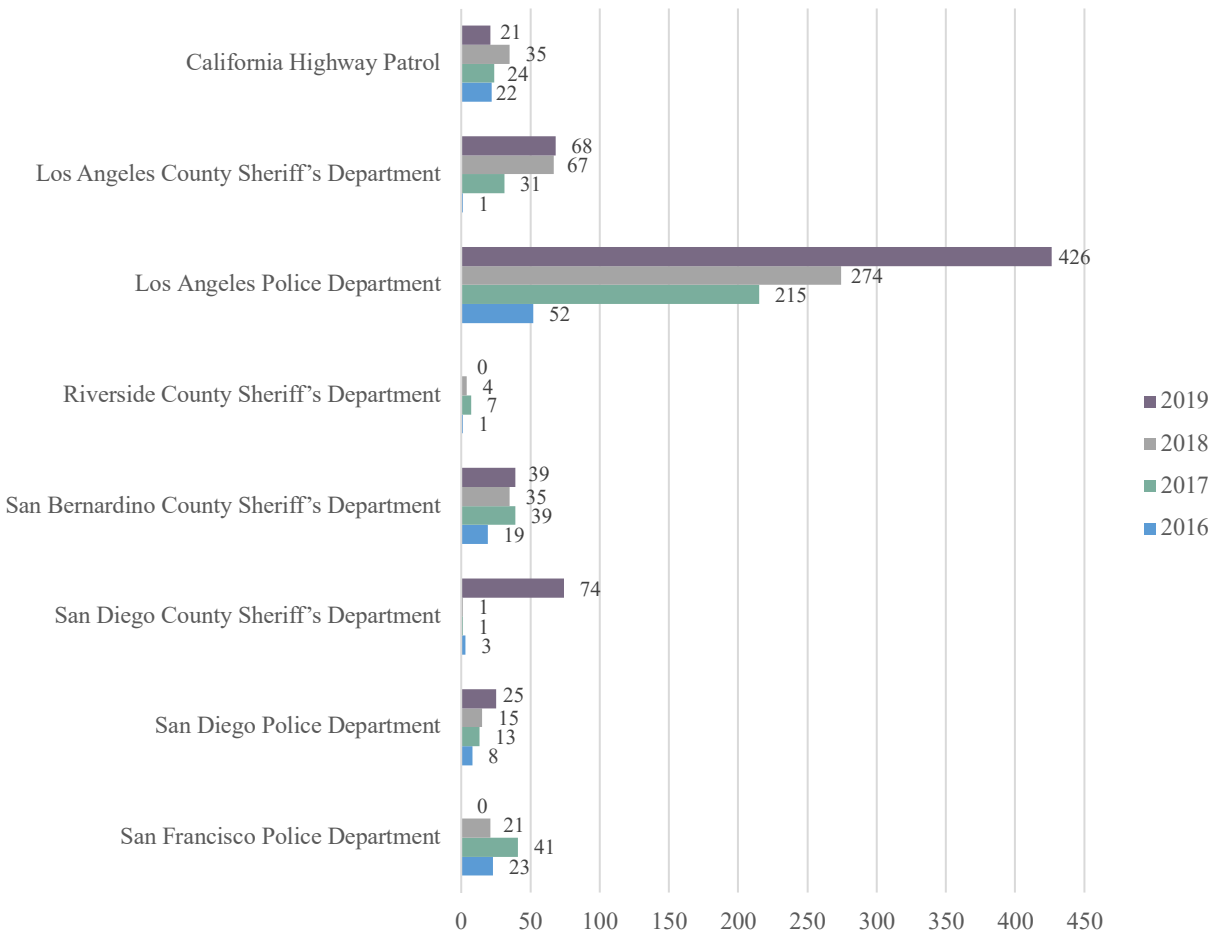
Of the eight agencies in Figure 41, five experienced an increase in the number of reported racial and identity profiling civilian complaints between 2018 and 2019, while the other three experienced a decrease. San Diego Sheriff had the largest relative increase, 7,300 percent, of Wave 1 agencies.²⁷³ Conversely, the San Francisco Police Department (San Francisco PD) had

²⁷² The first year that agencies were required to track their number of racial and identity profiling complaints and report it to the Department was 2016. As a result, the low number of racial and identity profiling complaints reported in 2016, compared to subsequent years, may partially be the result of the learning curve of agencies having to collect the data in a different manner than they had historically.

²⁷³ As is the case with the total number of civilian complaints reported by San Diego Sheriff, the stark increase in profiling complaints reported can partially be attributed to the San Diego Sheriff's change in reporting practices that the agency instituted between the 2018 and 2019 civilian complaint reporting periods. See note 271 for further details.

the largest relative decrease in the number of racial and identity profiling complaints reported from 2018 to 2019 (21 to 0, 100%).²⁷⁴

Figure 41. Wave 1 Total Racial and Identity Profiling Complaints Reported



Wave 2 Agency Complaints Reported (2016-2019)

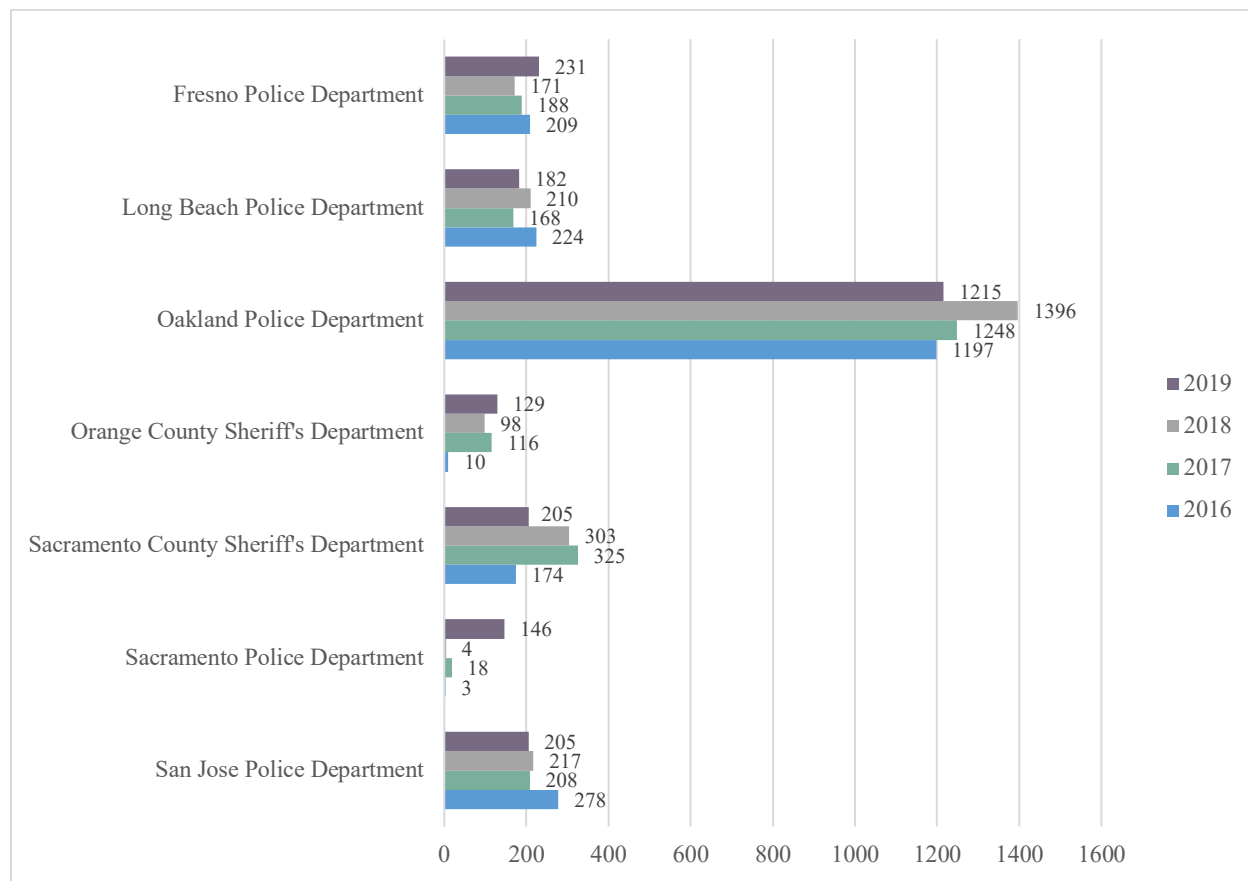
In 2019, the total number of civilian complaints for all Wave 2 agencies was 2,313, which was a 3.6 percent decrease from the previous year. The number of civilian complaints reported in 2019 was 1.9 percent higher than in 2017 and 10.4 percent higher than in 2016.

Less than half of Wave 2 agencies (3 out of 7) experienced an increase in the total number of civilian complaints reported between 2018 and 2019. The agency that experienced the largest relative increase from 2018 in 2019 was the Sacramento Police Department (Sacramento PD), with a 3,550 percent increase. This increase may be attributed to the Sacramento PD's change in policy in August 2019, which ended Sacramento PD's practice of categorizing certain complaints as "inquiries" to be resolved informally at the precinct/watch level. This policy change followed the Department's review of Sacramento PD's practices and its

²⁷⁴ Riverside Sheriff also had a 100 percent relative decrease from 2018 to 2019; however, San Francisco PD had a larger decrease in the raw number of complaints (21 compared to 4) than Riverside Sheriff, which is why San Francisco PD is highlighted as experiencing the largest decrease.

recommendation that all personnel complaints be tracked uniformly and classified by type of alleged misconduct.²⁷⁵ This change is also in line with the RIPA Board’s recommendation in its 2020 Report that law enforcement agencies should provide clear policies and direction as to how the term “complaint” should be defined to avoid significant disparities in how to identify, quantify, and process complaints.²⁷⁶ On the other end of the distribution, the agency that experienced the highest percentage decrease in complaints reported was the Sacramento County Sheriff’s Office, which saw a 32.3 percent decrease in number of complaints from 2018 to 2019.

Figure 42. Wave 2 Total Complaints Reported



Wave 2 agencies reported a total of 116 racial and identity profiling complaints in 2019. This was a 7.9 percent decrease from the number of racial and identity profiling complaints reported in 2018; a 7.2 percent decrease from 2017; and a 1.8 percent increase from 2016.

Of the seven agencies in Figure 39, four experienced an increase in the number of racial and identity profiling complaints reported between 2018 and 2019, while the other three experienced a decrease or remained the same. The Sacramento PD had the largest relative increase: it reported zero racial and identity profiling complaints in 2018 and six in 2019. On

²⁷⁵ See Racial and Identity Profiling Advisory Board, Annual Report 2020 (Jan. 1, 2020) pp. 68-69 <<https://oag.ca.gov/sites/all/files/agweb/pdfs/riipa/riipa-board-report-2020.pdf>> (as of Dec. 14, 2020).

²⁷⁶ *Ibid.*

the other end of the spectrum, the Oakland Police Department had the largest decrease in total racial profiling allegation complaints reported from 2018 to 2019 resulting in a 37.9 percent decrease. Lastly, the San Jose Police Department reported the same number of racial and identity profiling complaints, 36, in both 2018 and 2019.

AB 953 Survey: Civilian Complaint Procedures

As noted in the Policies and Accountability section, the Department conducted a survey of Wave 1, 2, and 3 agencies to learn about the impact of the Board’s recommendations and data analysis within law enforcement agencies. As of December 10, 2020, 25 of the 26 agencies surveyed had responded. With respect to civilian complaints, some of the findings include:

- Seven of the 25 agencies surveyed indicated that they took actions in response to the Board’s recommendations regarding civilian complaint procedures.

Agencies that Reported Taking Actions in Response to the RIPA Board’s Recommendations Regarding Civilian Complaint Procedures	
Kern County Sheriff Orange County Sheriff Sacramento Police San Bernardino County Sheriff	San Diego Police San Francisco Police Santa Clara County Sheriff

A few agencies provided examples of the actions they took.

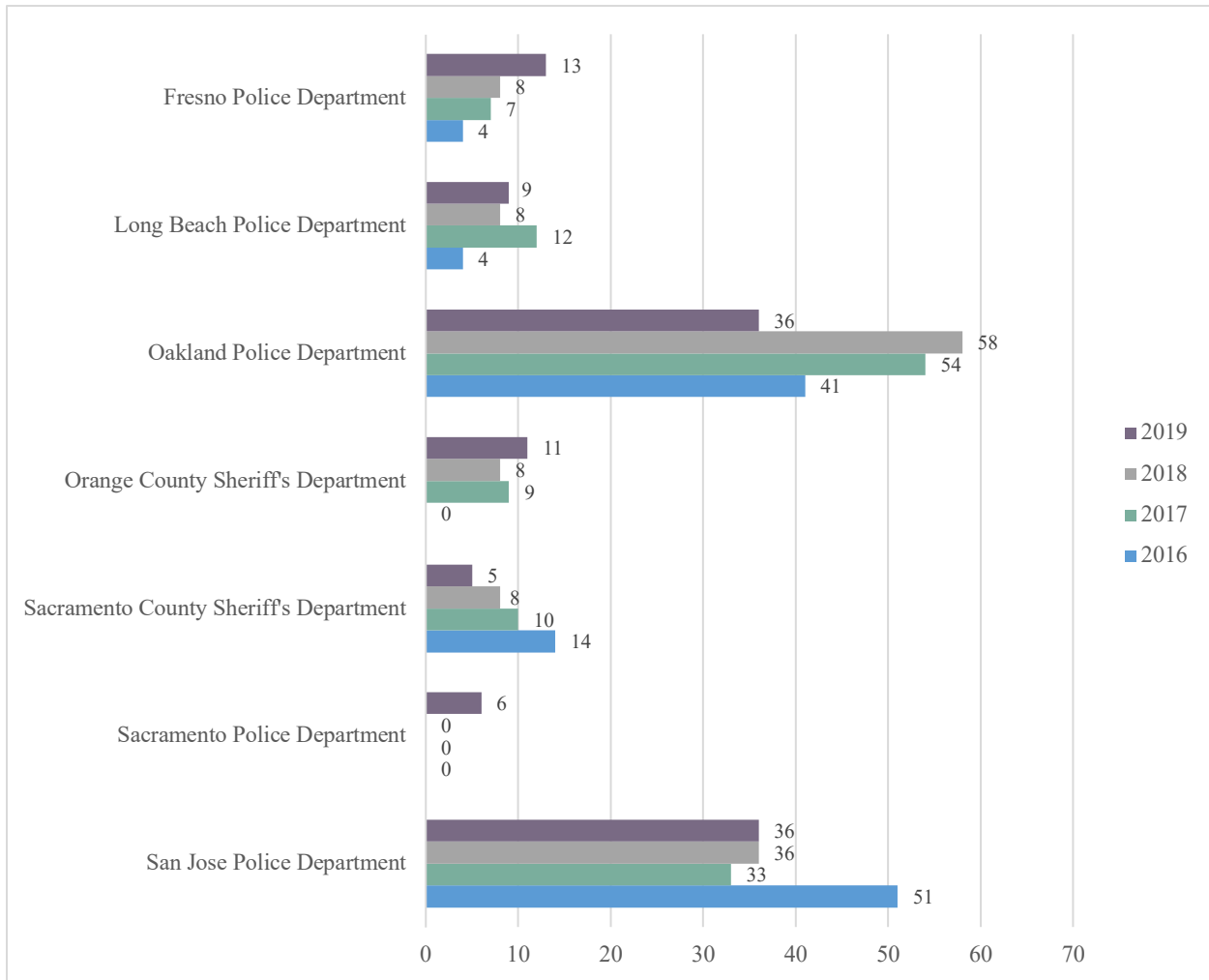
*“[SFPD] looked at complaints of bias by percentage and quantity comparatively. Findings were captured in the department’s public quarterly reporting, and presented to the SFPD’s Commission and public”
- San Francisco Police*

*“Any complaints are immediately referred to our Internal Affairs Unit for investigation”
– Kern County Sheriff*

- Six agencies indicated that they were reviewing and determining how to implement the best practices related to civilian complaint procedures.

Report Currently Reviewing and Determining How to Implement the RIPA Board’s Recommendations Regarding Civilian Complaint Procedures	
Kern County Sheriff Los Angeles County Sheriff Sacramento Police	San Diego Police San Francisco Police Santa Clara County Sheriff

Figure 43. Wave 2 Total Racial and Identity Profiling Complaints Reported



“LASD is in the process of revising the classifications of completed community complaint investigations to better reflect current law” – Los Angeles County Sheriff

“Deficiencies in the complaint form and procedures have been forwarded to our oversight partner agency, who has control of the complaint form content” – San Francisco Police

- Bakersfield, Riverside, and Stockton Police Departments indicated that the Board’s recommendations were already incorporated in their civilian complaint procedures.

“Our department has a Civilian Panel that conducts a parallel investigation on all civilian complaints...”

*“We have [had] an Early Warning System for over 15 years to help identify potential issues before they become systemic or catastrophic”
- Riverside Police*

Wave 2 Civilian Complaint Form Review

In its 2019 report, the Board made recommendations for best practices for civilian complaint procedures and policies.²⁷⁷ In its 2020 report, the Board built upon this review and made recommendations regarding civilian complaint forms after reviewing literature regarding best practices for civilian complaint procedures and forms.²⁷⁸ Through this lens, the Board conducted an initial review of the Wave 1 agencies’ civilian complaint forms in its 2020 report; the Board is now extending that review to the Wave 2 agencies.²⁷⁹

Long Beach Police Department: The Long Beach Police Department (Long Beach Police) accepts complaints: (1) in person, (2) by telephone, (3) by mail, or (4) by e-mail. On the agency’s public website, a member of the public can find the civilian complaint process and form.²⁸⁰ The civilian complaint form and process are available in English, Spanish, Khmer, and Tagalog. Long Beach Police follows the City of Long Beach’s Language Access Policy passed in 2018. The policy provides that while Spanish-speaking residents numerically qualify for services under state law, Long Beach also has a “substantial number of limited English speaking Cambodian and Filipino residents” for whom services and materials should be provided in their spoken languages.²⁸¹ The current complaint forms were translated by a contract professional services translator in 2013. The agency permits third-party complaints and anonymous complaints. Long Beach Police also provides a contact list that includes their Citizen’s Police Complaint Commission (CPC), as well as other local, state, and federal offices from which a complainant can seek assistance if they feel their complaint was not properly investigated.

²⁷⁷ See Racial and Identity Profiling Advisory Board Report (2019) pp. 41-44
<<https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2019.pdf>> (as of Dec. 14, 2020).

²⁷⁸ See Racial and Identity Profiling Advisory Board Report (2020) p. 58-80
<<https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2020.pdf>> (as of Dec. 14, 2020).

²⁷⁹ See Appendix G for the Wave 2 civilian complaint forms.

²⁸⁰ The complaint form and procedures can be located here: Long Beach Police Department, Citizen Complaint Procedure
<<http://www.longbeach.gov/police/contact-us/citizen-complaint-procedure/>> (as of Dec. 14, 2020).

²⁸¹ City of Long Beach, Language Access Policy (2018) <<http://www.longbeach.gov/globalassets/health/media-library/documents/healthy-living/office-of-equity/language-access-resolution-and-policy-update-2018---english>> (as of Dec. 14, 2020).

Oakland Police Department: Civilian complaints regarding the Oakland Police Department (Oakland Police) personnel can be submitted to either the agency’s Internal Affairs Division²⁸² or to the Citizens’ Police Review Agency (CPRA).²⁸³ Complaints filed directly with Oakland Police’s Internal Affairs Division will be investigated by the Internal Affairs Division, whereas those submitted to the CPRA will be investigated by the CPRA. The agency reports that Internal Affairs and CPRA investigate concurrent complaints. It is unclear from their websites whether there is a difference in the type of complaints each entity investigates. The Internal Affairs Division accepts complaints: (1) by phone, (2) by mail, (3) by e-mail, (4) by fax or (5) in person out in the field, at their main office, or any of the other designated locations. The CPRA receives complaints: (1) online, (2) by mail, or (3) by fax. The online civilian complaint form is only available in English. A PDF version of the complaint form is available in English, Spanish, Chinese, or Vietnamese. A description of the civilian complaint process is only available with the CPRA’s English online submission form. Unlike the PDF form, the online version allows complainants to “decline to state” certain demographic and contact information such as date of birth or phone number. Both the PDF and online complaint forms provide an open narrative space for the complainant to share what they would like to happen as a result of the investigation. Through an online portal, a complainant can track the status of the investigation of their complaint. Oakland Police reports it also accepts anonymous or third party complaints.

San Jose Police Department: The San Jose Police Department’s (San Jose Police) Internal Affairs Unit accepts civilian complaints: (1) by phone, (2) by letter, (3) by e-mail, (4) by fax, or (5) online. Complaints can be submitted to the agency itself, the Internal Affairs Unit, or the Office of the Independent Police Auditor. Regardless of who the complaint is submitted to, it will be investigated by the Internal Affairs Unit. The online complaint form is available in English, Spanish, and Vietnamese;²⁸⁴ San Jose Police’s standard documents are translated into these three languages due to the prevalence of these languages in their community. If another language is required, its Duty Manual requires vital documents to be translated by an on-duty certified interpreter or a contracted translation service. The complaint form and other documents are generally translated by sworn personnel who are certified as interpreters or San Jose Police’s contracted translation services. The form uses language from Cal. Penal Code section 148.6 language and describes the complaint process. The online form asks for any witnesses and their contact information. The form also specifically asks the complainant to designate whether the complaint involves race or identity profiling concerns. Anyone can file a complaint and it can be submitted anonymously. San Jose Police offers a voluntary Mediation Program for alleged misconduct deemed minor or where there is a misunderstanding about enforcement action, neglect of duty, or police procedure.

²⁸² The online complaint form and procedures can be located here: City of Oakland, Report Police Misconduct <<https://www.oaklandca.gov/services/report-police-misconduct>> (as of Dec. 14, 2020).

²⁸³ The online complaint form and procedures can be located here: <https://apps.oaklandca.gov/CPRA/?_ga=2.235015489.1909800277.1607078516-1525498134.1584741107> (as of Dec. 14, 2020).

²⁸⁴ The online complaint form and procedures can be located here: San Jose Police Department, Internal Affairs <<https://www.sjpd.org/about-us/organization/office-of-the-chief-of-police/internal-affairs>> (as of Dec. 14, 2020).

Sacramento County Sheriff's Office: The Sacramento County Sheriff's Office (Sacramento County Sheriff) accepts complaints: (1) online, (2) in person, (3) by phone, or (4) in writing. All complaints are investigated by the Internal Affairs Bureau. The online complaint form is available in English and can be translated into other languages by using the Google translate button located at top right hand corner of the website.²⁸⁵ The online form includes nearly verbatim language from Cal. Penal Code section 148.6 but provides a check box to mark if the complainant wishes to remain anonymous. The agency reports that a complainant may e-mail video or photos associated with the incident to Internal Affairs at the e-mail listed. There is no information attached to this online form about the civilian complaint process except for how to contact the Internal Affairs unit. Complaints that are submitted in other languages are translated by an employee who is fluent in the language or by a county-contracted translation service. In addition to the online complaint form, the agency has a PDF, or printed, version of the civilian complaint form that complainants can access in-person and includes Cal. Penal Code section 148.6 language. Unlike the online version, the PDF form makes clear that a third party can submit complaints, which is a Board recommendation, and provides a space for information of an attorney or representative to be included.

Sacramento Police Department: The Sacramento Police Department (Sacramento Police) takes civilian complaints: (1) by phone, (2) in writing, (3) in person, (4) online or (5) by e-mail. The agency's website includes information on the personnel complaint process in English. At the very bottom of the webpage, there is a Google translate button that allows complainants to translate the complaint procedures into other languages. While the complaint procedures reference Cal. Penal Code section 148.6, the Sacramento Police removed quoted language from the code on their webpage that could be seen as dissuading someone from reporting misconduct. Sacramento Police implemented an online complaint form in November 2020.²⁸⁶ The form is in English but can also be translated using the Google translate feature at the bottom of the webpage. A separate City of Sacramento body, the Office of Public Safety Accountability (OPSA), has an online complaint form.²⁸⁷ OPSA's online complaint form is not directly linked on the Sacramento Police's website. A complainant can learn of OPSA and its online complaint form by downloading the Sacramento Police's "Complaint Procedure Brochure." OPSA receives complaints: (1) online, (2) by phone, or (3) in person at their office. The online complaint form is available in English but can also be translated by using the Google translate button at the very bottom of the webpage. On August 1, 2019, Sacramento Police updated its civilian complaint procedures based upon recommendations made by Cal DOJ. As of July 2020, Sacramento Police's Internal Affairs Division is working with the new incoming OPSA director to enter into an MOU regarding OPSA's role and responsibilities with respect to

²⁸⁵ The online complaint form can be located here: Sacramento County Sheriff's Office, Professional Standards <https://www.sacsheriff.com/pages/professional_standards_division.php> (as of Dec. 14, 2020).

²⁸⁶ A link to the online complaint form and procedures can be located here: City of Sacramento Police Department, Complaint Form <<https://www.cityofsacramento.org/Police/Contact/Personnel-Complaint/Personnel-Complaint-Form>> (as of Dec. 14, 2020).

²⁸⁷ A link to the online complaint form and procedures can be located here: City of Sacramento Office of Public Safety Accountability (OPSA), Public Safety Complaint Form <<https://www.cityofsacramento.org/OPSA/complaint-process/online-complaint>> (as of Dec. 14, 2020).

complaints, including steps to either link the OPSA complaint form on Sacramento Police’s website or duplicate the form on Sacramento Police’s website.

Fresno Police Department: The Fresno Police Department (Fresno Police) accepts civilian complaints: (1) online, (2) in person, (3) by mail, and (4) by phone. These methods are outlined in the agency’s “Complaint Procedures” brochure. The brochure states that complaint procedures help civilians, the community, and the police. Fresno Police determines the language translations needed for their complaint form and brochure by conducting a four-factor analysis outlined in their Limited English Proficiency Services policy. Documents are then translated by certified employees or an outside agency if no employees are certified in that language. The printed civilian complaint form and brochure are available in English, Hmong, and Spanish. For those languages that do not meet the four-factor threshold, the agency attempts to provide meaningful access for LEP individuals attempting to make a complaint through other translation resources like a language line or a certified bilingual employee. The online civilian complaint form is available in English only.²⁸⁸ Before someone can access the online form, they must click a box acknowledging that they read and understand an advisory that is nearly verbatim language from Cal. Penal Code section 148.6. This language is also included in the printed version of the form and requires a signature. The form provides a phone number to call if the complainant’s contact information changes. Additionally, the form asks if photos were taken of any injuries suffered and the name of the person who took the photos. The form also asks if the complaint was filed with any other City of Fresno department or outside agency. If the complaint has been filed with another department, the form requests the date of such report and the person contacted. Lastly, the form has a specific section for racial and identity profiling complaints. The print version of the form is nearly identical to the online version, with the exception of including a mailing address. The printed forms were last revised December 2018. If a complaint is submitted in person at the station, the complainant receives a “complaint receipt” which provides the case and event number and the date on which the complaint was received. Fresno Police accepts anonymous and third-party complaints to the extent that sufficient information is provided. Details of the civilian complaint process are outlined in the brochure, which is not available with the online complaint form.

The City of Fresno also has an Office of Independent Review (Fresno OIR), which participates in the Fresno Police Department’s civilian complaint process. Members of the public can submit their complaints to the Fresno OIR or the Fresno Police Department; if the complaint is submitted to the Fresno OIR, it is routed to the department. Regardless of where the complaint is submitted, the Fresno OIR has complete access to the department’s Internal Affairs and reviews all civilian complaints.²⁸⁹ Based on the complaints received and reviewed, the Fresno OIR produces quarterly reports that indicate whether it concurs with the disposition of each civilian complaint investigation. The reports also include a specific section on biased based

²⁸⁸ The online version of the complaint form can be located here: City of Fresno Police Department, Internal Affairs Online Complaint Form <<https://www.fresno.gov/police/services-special-units/internal-affairs/internal-affairs-online-complaint-form/>> (as of Dec. 14, 2020).

²⁸⁹ More specifically, this also includes responding to police officer shootings of civilians and reviewing those investigations.

complaints and recommendations to the department. Moreover, the Fresno OIR regularly meets with members of the community and fields questions about the complaint process.

Orange County Sheriff’s Department: The Orange County Sheriff’s Department (Orange County Sheriff) accepts complaints: (1) in person, (2) by mail, or (3) by phone to the Internal Investigations Unit during regular business hours and to the Watch Commander if after regular business hours. On the agency’s public website, there is a webpage with links to the civilian complaint form available in 27 languages.²⁹⁰ The agency reports that these languages were determined by Orange County’s population. The complaint form was translated by bilingual employees and Google translate. Orange County Sheriff reports that third-party or anonymous complaints are accepted. The end of the civilian complaint form includes nearly verbatim language from Cal. Penal Code section 148.6. Information on the complaint process is attached to the complaint form itself and explained on the agency’s public website.

Wave 2 Agency	Form Accessible Online?	Can Submit Online?	Multiple Methods of Submission?	Available in Multiple Languages? ²⁹¹
Long Beach Police	✓	✓	✓	✓
Oakland Police	✓	✓	✓	✓ OS ²⁹² ✗ PV ²⁹³
San Jose Police	✓	✓	✓	✓
Sacramento County Sheriff	✗	✓	✓	✓
Sacramento Police	✓	✓	✓	✓
Fresno Police	✓	✓	✓	✓
Orange County Sheriff	✓	✗	✓	✓

²⁹⁰ The 27 languages include Albanian, Armenian, Cambodian, Chinese, Dutch, English, Farsi, French, Hebrew, Hindi, Hungarian, Llongo, Indo, Italian, Japanese, Korean, Lao, Polish, Punjabi, Russian, Spanish, Swedish, Tagalog, Tamil, Thai, Urdu, and Vietnamese. A link to the online complaint form and procedures can be located here: Orange County Sheriff’s Department, How to File a Complaint <<https://www.ocsheriff.gov/commands-divisions/professional-services-command/professional-standards/how-file-complaint>> (as of Dec. 14, 2020).

²⁹¹ Federal and state law require federally and state assisted law enforcement agencies to provide meaningful access to Limited English Proficient (LEP) individuals. Under federal law, to determine the extent of its obligation to provide services to the LEP population, the Federal Coordination and Compliance Section recommends that law enforcement agencies engage in a four-factor analysis. (See U.S. Dep’t of Justice, Federal Coordination and Compliance Section, Planning Tool: Considerations for Creation of a Language Assistance Policy and Implementation Plan for Addressing Limited English Proficiency in a Law Enforcement Agency <https://www.justice.gov/crt/fcs/Law_Enforcement_Planning_Tool> (as of Dec. 14, 2020). California state law also requires local agencies that receive state funding to provide language access services to LEP populations. (Gov. Code, § 11135, subd. (a); Gov. Code, § 7290). Law enforcement agencies may ask local community-based organizations to help translate complaint forms or create a database of qualified interpreters for speakers of any language, including sign language.

²⁹² “OS” refers to the online submission form.

²⁹³ “PV” refers to the printed or PDF version of the complaint form.

Wave 2 Agency	Third Party Complaints Allowed?	Includes Narrative Field for Description of Complaint?	Does Not Include Language from PC §148.6? ²⁹⁴	Complaint Process Information Attached to Form?
Long Beach Police	✓	✓	✓	✗
Oakland Police	✓	✓	✓	✓ OS ✗ PV
San Jose Police	✓	✓	✗	✓
Sacramento County Sheriff	✓	✓	✗ OS ✗ PV	✗
Sacramento Police	✓	✓	✓	✓
Fresno Police	✓	✓	✗	✗ OS ✓ PV
Orange County Sheriff	✓	✓	✗	✓

Early Intervention Systems

Law enforcement accountability is necessary to ensure legitimacy and improve relationships between law enforcement officers and the communities they serve. The killing of George Floyd in Minneapolis in May 2020 is a prime example of how a lack of accountability can have potentially harmful and even deadly effects; in the case of George Floyd, two of the four officers involved had previously been the subject of several complaints (one had six and another had sixteen filed against him).²⁹⁵ Although we will never know for sure, George Floyd’s death may have been preventable with the implementation of strong accountability measures

²⁹⁴ The Ninth Circuit and California Supreme Court have come to opposite conclusions regarding whether Penal Code section 148.6 is constitutional. (Compare *People v. Stanistreet* (2002) 29 Cal. 4th 497, 510 [Section 148.6 is a permissible regulation of prohibited speech, namely, false allegations against peace officers, which, on its face, does not violate the First Amendment to the United States Constitution] with *Chaker v. Crogan* (2005) 428 F.3d 1215, 1222, cert. denied, 547 U.S. 1128 (2006) [Penal Code section 148.6’s criminal sanction violated the First Amendment of the United States Constitution because it regulated content-based speech on the basis of that speech’s content].) As such, many California law enforcement agencies have removed the warning from their civilian complaint forms and accept anonymous complaints. The California Attorney General’s Office has also determined that a law enforcement agency can investigate allegations of police misconduct, even if the complainant did not sign the admonition as required by Penal Code section 148.6. (79 Ops. Cal.Atty.Gen. 1631 (1996).) The RIPA Board strongly supports the acceptance of anonymous complaints. The RIPA Board also renews its request to the California Legislature to address this conflict, since the requirements set out by the Penal Code can have a chilling effect on the submission of civilian complaints. For purposes of this review, a checkmark denotes that an agency does *not* include Penal Code section 148.6 language on their form.

²⁹⁵ Barker, et al., *Officers Charged in George Floyd’s Death Not Likely to Present United Front*, The New York Times (June 4, 2020) <<https://www.nytimes.com/2020/06/04/us/george-floyd-police-records-chauvin.html>> (as of Dec. 14, 2020).

that would have flagged these officers as needing training, reassignment, discipline, or termination.

Accountability in law enforcement can take many different forms. The Board’s Civilian Complaints subcommittee has been particularly interested in the use of Early Intervention Systems (EIS). This section provides a background on these systems and how they can be used to keep community members and officers safe while improving officer skills development. The Board is in the process of conducting research on how California law enforcement agencies use EIS and whether there is evidence that EIS are effective.

Early Intervention System Use in Law Enforcement Agencies

EIS have been around in some form or another since the 1970’s, but were often limited to very few categories of performance, such as use of force and civilian complaints.²⁹⁶ EIS are a necessary and valuable administrative tool that can enhance integrity and accountability of both individual officers and whole agencies.²⁹⁷ These systems are not meant to take over the job of supervisors or predict officer behavior. Instead, they are meant to be part of a larger performance management system. Ideally, EIS should provide an opportunity for agencies to: identify potentially at-risk behavior *before* the need for disciplinary action, promote civilian and officer safety, and provide officers with resources and tools to re-direct performance and behaviors.²⁹⁸ Moreover, while EIS may flag certain officer behavior that needs correction, any intervention should not replace discipline when it is needed.²⁹⁹

A strong EIS includes key components: identification of at-risk behaviors, evaluation of “flagged” officer behavior, intervention to address that behavior, and monitoring to ensure long-term change. Indicators – usually different types of police action – are used to track officer behavior.³⁰⁰ While there are many indicators used to identify at-risk officer behavior, they may vary by agency. Current literature does not define a minimum number of indicators for EIS to include. However, “the more potential indicators that can be identified and captured in the system, the more likely it is that an agency will be able to detect” which officers’ behaviors need to be redirected to improve their performance.”³⁰¹ Agencies will then set a specific threshold for each indicator, which is usually a set number of times an officer engages in a specific behavior. When that threshold is met, an officer’s behavior is then “flagged” for review. Some agencies may flag officer behavior only when it meets the threshold for one indicator, whereas others may institute a multilayered approach with successive “flags” to determine what kind of supervisor response and intervention is warranted.³⁰² When creating

²⁹⁶ Amendola and Davis, Best Practices in Early Intervention Implementation and Use in Law Enforcement Agencies (Nov. 2018) p. 2.

²⁹⁷ U.S. Dep’t of Justice, Office of Community Oriented Policing, Supervisions and Intervention within Early Intervention Systems: A Guide for Law Enforcement Executives (Dec. 2005) p 6.

²⁹⁸ Amendola and Davis, Best Practices in Early Intervention Implementation and Use in Law Enforcement Agencies (Nov. 2018) p. 1.

²⁹⁹ U.S. Dep’t of Justice, Office of Community Oriented Policing, Supervisions and Intervention within Early Intervention Systems: A Guide for Law Enforcement Executives (Dec. 2005) p. 5.

³⁰⁰ Amendola and Davis, Best Practices in Early Intervention Implementation and Use in Law Enforcement Agencies (Nov. 2018) p. 1.

³⁰¹ *Id.* at p. 3.

³⁰² *Id.* at p. 5.

thresholds for specific indicators that will be flagged, it is also important for the system to identify when an officer has nearly met the threshold across various indicators to ensure interventions are undertaken and at-risk behavior by officers is not missed simply because they do not meet the threshold in a single category.³⁰³ Moreover, agencies should also have a system that lets them run assessments of officers and not simply rely on flagging. These assessments would be useful for individual performance evaluations.³⁰⁴

EIS Requires Supervision of Both Line Officers and First-Line Supervisors

Effective first-line supervisors are required to make EIS function well.³⁰⁵ An EIS should not only apprise supervisory staff of subordinate officer and group behavior, but also supervisor behavior.³⁰⁶ Command staff should have a separate system authorization and login to monitor supervisors' oversight of their subordinates as well. A system that allows for this kind of management will assist an agency in holding itself accountable.³⁰⁷

First-line supervisors require support through training and mentoring by command staff on how to correct behavior. Training and policies should encourage supervisors to regularly review system data, such as before roll call, be proactive in addressing potential problems, documenting those meetings, and reporting back to the supervisor's own chain of command.³⁰⁸

When an officer's behavior is identified as needing intervention, supervisors must be required to include a note with information about when they reviewed the information, what resources they recommended, and what actions were taken. Including this information will assist with monitoring and management of that monitoring.³⁰⁹

Common Indicators Used in EIS

The type and number of indicators varies across agencies. Current literature does not set out a best practice for the number of indicators, though there is some consensus around which types of police behavior to oversee. The U.S. DOJ includes these types of indicators in its consent decrees with agencies across the nation.³¹⁰ Some agencies will include other indicators that they deem helpful. Research shows the most common EIS indicators include:

³⁰³ *Id.* at p. 6.

³⁰⁴ *Id.* at p. 6.

³⁰⁵ U.S. Dep't of Justice, Office of Community Oriented Policing, Supervisions and Intervention within Early Intervention Systems: A Guide for Law Enforcement Executives (Dec. 2005) pp. 5-6.

³⁰⁶ Amendola and Davis, Best Practices in Early Intervention Implementation and Use in Law Enforcement Agencies (Nov. 2018) p. 5.

³⁰⁷ Amendola and Davis, Best Practices in Early Intervention Implementation and Use in Law Enforcement Agencies (Nov. 2018) p. 7.

³⁰⁸ U.S. Dep't of Justice, Office of Community Oriented Policing, Supervisions and Intervention within Early Intervention Systems: A Guide for Law Enforcement Executives (Dec. 2005) p. 11.

³⁰⁹ Amendola and Davis, Best Practices in Early Intervention Implementation and Use in Law Enforcement Agencies (Nov. 2018) p. 7.

³¹⁰ See *U.S. v. City of Seattle* (W.D. Wash. 2012) 12-cv-1282; *U.S. v. the County of Los Angeles and the County of Los Angeles Sheriff's Dep't* (C.D. Cal 2015) 15-cv-3174; *U.S. v. City of New Orleans* (E.D. La. 2013) 17-cv-1924; *U.S. v. Police Department of the City of Baltimore, et al.* (Md. 2017) 17-cv-0099.

- All misconduct and community complaints against the officer, including disposition of each allegation
- Racial and identity profiling allegations
- All reportable uses of force, broken down by level and type
- Number of shootings or weapons discharges
- All injuries and deaths to persons in the officer's custody or an officer's presence at the scene of any deaths
- Vehicle pursuits and traffic collisions involving agency equipment
- All instances in which force is used and a person is charged with Failure to Obey, Resisting Arrest, Assault on an Officer, Disorderly Conduct, Trespassing, or similar charges
- All instances in which an officer issues three or more citations during a single encounter
- Violations of the agency's body-worn and in-car camera policies
- All instances in which an agency learns:
 - That a declination to prosecute any crime or municipal code violation was based upon concerns of the Prosecutor about an officer's credibility;
 - That a court has made a negative credibility determination regarding an officer; or
 - That a motion to suppress evidence was granted on the grounds of a constitutional violation by an officer
- All criminal proceedings initiated against an officer, as well as all civil or administrative claims filed with or against the agency or its agents that result from the actions of sworn personnel
- All disciplinary action taken against officers
- All non-disciplinary corrective action required of officers
- All awards and commendations received by officers, including those received from civilians
- Officer sick leave usage
- Training record for each officer
- Loss or theft of agency property in custody of the employee, including money, firearms, force instruments, ID cards
- Interviews or interrogations in violation of agency policy and law

- Arrests, especially excessive discretionary arrests
- Off-duty employment
- Traffic Stops
- Warrantless searches and seizures

Possible Interventions to Provide “Flagged” Officers

Interventions should vary to meet the wide range of officers’ needs.³¹¹ The more targeted or specialized an intervention, the better it will be at helping the officer achieve needed improvements.

The most common intervention includes counseling by the officer’s immediate supervisor. These counseling sessions can be both informal and formal. They may arise from something a supervisor witnesses in the field and wants to correct immediately or when an EIS flags potentially risky behavior. Another common form of intervention is training, which is directed by a supervisor depending on the flagged behavior. In some instances, officers may self-identify training needs. Another type of intervention may be to send a crisis intervention team that is trained to immediately respond to an incident whereby officers can get immediate peer counseling in the event of an officer involved shooting or use of force involving serious bodily injury.

Some agencies have employed a creative type of intervention through reassignment and relief from duty. Each assignment in an agency comes with different risk factors, which some individuals are more suited for than others. If an officer has been given the opportunity to remedy behavior and alternatives for re-assignment do not succeed or are not available, it may be in the best interest of all (the officer, the agency, and the public) to transfer the officer to an assignment where the particular problematic situations are less likely to happen.³¹² Similarly, some agencies have employed a “temporary relief from duty” option where sergeants have the authority to relieve an officer from duty without loss of pay if that officer is clearly under a great deal of stress or unfit for duty that day. Where this has been used, there has been no formal action taken or documented. However, these types of interventions should be tracked to ensure there is no abuse of this practice.³¹³

Some interventions are less about the officers’ skills development and instead are more personal. These interventions can include wellness programs or professional counseling on personal or family issues. This kind of intervention may require buy-in from officers because of stigmas that can be attached to obtaining counseling.³¹⁴ The U.S. Department of Justice found that officers were more open to support from their peers through formal peer officer support

³¹¹ U.S. Dep’t of Justice, Office of Community Oriented Policing, Supervisions and Intervention within Early Intervention Systems: A Guide for Law Enforcement Executives (Dec. 2005) p. 6.

³¹² *Id.* at p. 26.

³¹³ *Id.* at p. 26.

³¹⁴ *Id.* at p. 23.

programs. These programs are often comprised of a few officers in a precinct or unit who receive training to be designated as peer support.³¹⁵

Once an intervention is provided to an officer, it is imperative that the supervisor follow through to see if the officer changes their behavior.³¹⁶ The practice of follow through has been found to vary among agencies; some do it for the long term, while others do not follow up at all. Some agencies make interventions voluntary and could be one reason that there may be no follow-through.³¹⁷ Follow-through could include observing an officer out in the field several times a month or periodic check-ins and inquiring if officer needs more support. It is critical that clear follow-through actions are designated for a supervisor to reinforce the need to improve or modify behavior.

U.S. DOJ EIS Recommendations

In various pattern and practice investigations and consent decrees, U.S. DOJ has required agencies to adopt an EIS or improve a system an agency may already have in place. In this process, DOJ has recommended similar best practices, including:

- EIS policy should include a mechanism for review of an officer whose activity has already triggered an indicator threshold so that the threshold is lower if EIS is triggered again.³¹⁸
- Collect trends for supervisors, precinct, squad, and unit.
- Collect trends for precinct-level activity on use of force, complaints and dispositions, number of officers triggering EIS review, and supervisor EIS reviews with officers.
- EIS policy should include directives setting forth the specific information that the EIS will capture, as well as data storage, data retrieval, reporting, data analysis, pattern identification, supervisory use, supervisory/departmental intervention, documentation, audits, access to the system, and confidentiality of personally identifiable information.
- All data must be entered in a timely, accurate and complete manner.
- Comparisons should be done by peer group between officers of similar assignment and duties.
- Command staff collect and, at least quarterly, analyze EIS information related to supervisor, squad, and officer trends.
- First line supervisors and lieutenants review EIS data for all officers under their direct command at least monthly, and whenever an officer first comes under their supervision.
- At least quarterly, supervisors will review broader, pattern-based reports.

³¹⁵ *Id.* at pp. 24-25.

³¹⁶ *Id.* at pp. 27-28.

³¹⁷ *Id.* at pp. 27-28.

³¹⁸ See *U.S. v. City of Seattle* (W.D. Wash. 2012) 12-cv-1282; *U.S. v. the County of Los Angeles and the County of Los Angeles Sheriff's Dep't* (C.D. Cal 2015) 15-cv-3174; *U.S. v. City of New Orleans* (E.D. La. 2013) 17-cv-1924; *U.S. v. Police Department of the City of Baltimore, et al.* (Md. 2017) 17-cv-0099.

- EIS protocol should include data storage, data retrieval, reporting, data analysis, pattern identification, supervisory use, supervisory/departmental intervention, documentation, audits, access to the system, and confidentiality of information protected by law.
- Offer a variety of intervention options like counseling, training, or other supervised, monitored, and documented actions plans and strategies to correct behavior.
- Aggregate statistical information should be kept indefinitely and used to evaluate longitudinal trends.

Promising Practices

It is no surprise that any accountability measure, including EIS, must be supported by management and achieve buy-in from the line staff, command staff, and unions. Agency EIS have the most success when the chief or sheriff has advocated for and supported the system within the agency.³¹⁹ To ensure officers do not feel that this system is a “gotcha” system but rather something they should be invested in, it is imperative that an agency adequately educate its members. Officer training should include what the EIS captures and how that data will be interpreted, as well as the purpose of the data.³²⁰ Supervisors should be trained to understand their role in the accountability process and how this may alter their current responsibilities.³²¹

Agencies must also clearly outline how EIS works, how and why it will be used, and what interventions will look like in their policies and protocols.³²² Agencies can provide EIS training at the academy, during roll call, through literature, or during in-service trainings or informal meetings.³²³ It is important for agencies to stress how the use of EIS and improvement of agencies’ accountability systems as a whole will improve officer and community safety by improving officers’ skills.

Examples of EIS in Practice: Phoenix and Seattle Police Department

The Board describes these two agency’s systems only to give readers a clearer understanding of how EIS works, but does not endorse these systems, as more research regarding the effectiveness of these systems is needed.

Phoenix PD³²⁴

Phoenix’s system includes five phases: 1) identification, 2) notification, 3) supervisor review, 4) intervention, and 5) follow-up. The “identification” phase covers both officer and supervisor “potential risk behavior.” When the system issues an employee or supervisor alert, each alert is reviewed on a case-by-case basis by a coordinator who considers certain factors. Next, in the “notification” phase, the system informs the employee’s chain of command. The alert includes information helpful to command staff to understand what happened. When the alert is sent by

³¹⁹ U.S. Dep’t of Justice, Office of Community Oriented Policing, Supervisions and Intervention within Early Intervention Systems: A Guide for Law Enforcement Executives (Dec. 2005) p. 5.

³²⁰ *Id.* at p. 37.

³²¹ *Ibid.*

³²² *Id.* at p. 42.

³²³ *Id.* at p. 43.

³²⁴ See generally Phoenix Police Dept. Personnel Support Services, Operations Order 3.8 (Aug. 2017) pp. 5-7.

the coordinator, it is copied to command up to bureau/precinct commander/administrator. During the “supervisor review” phase, a first-line supervisor reviews all pertinent information provided, meets with employee, and determines if intervention would be beneficial. This phase must be completed with 14 calendar days and the first- and second-line supervisors work together. The employee is encouraged to be an active participant and provide feedback in a private meeting aimed at addressing the root cause of the potential risk behavior. If intervention is required, during the “intervention phase,” the supervisor meets with the officer again to go over recommended intervention(s) and create timelines for specific performance. Interventions can take three different forms:

- Supervisory-based intervention: handled solely in chain of command by providing guidance or specific strategies that employee can implement immediately.
- Training-based intervention: requires employee to take training as soon as possible to improve performance.
- Wellness-based intervention: includes support services like Employee Assistance Program (professional counseling services provided through the governmental employer), peer support program, critical incident stress management, police chaplaincy program.

The final “follow-up” phase must be complete within 45 days after a supervisor receives an alert. Documentation must be submitted and should include the time and date of the meeting with the officer and a statement that the alert was reviewed. This documentation is forwarded to a second-line supervisor for approval and then the second-line supervisor sends the completed and approved documentation to the coordinator. Phoenix PD’s EIS includes different indicators or behaviors and sets different thresholds for employees and supervisors that will flag their behavior for review.

Seattle PD³²⁵

The Seattle Police Department’s EIS policy begins by explaining what EIS is and why the agency uses it. Seattle PD’s EIS has specific time frames when each phase of the system is to be followed. The Early Intervention Assessment begins with an Early Intervention Coordinator notifying a Sergeant/First-Line Supervisor that an assessment needs to be completed within three days of identifying the employee. Within 14 days of receiving the notice, the Sergeant/First-Line Supervisor must complete the assessment form and submit it to the chain of command. Within three days of receiving that assessment, a Lieutenant/Manager must complete an EIS approval form and submit it to the Captain/Director. Within seven days of receiving the assessment, the Captain/Director must review it, complete an EIS approval form, and submit it to the EIS Coordinator. Next, at least one week before the next committee meeting, the EIS coordinator must submit the assessment to a “Performance Review

³²⁵ See generally Seattle Police Department Manual, 3.070 Early Intervention System (Apr. 1 2020) <<https://www.seattle.gov/police-manual/title-3---employee-welfare/3070---early-intervention-system>> (as of Dec. 14, 2020).

Committee.” Within seven days of the meeting, the “Performance Review Committee” must review the assessment and either reject it by sending it back to the chain of command or accepting it and sending it the Bureau Chief. Within 5 days of receiving the assessment, the Bureau Chief will review and approve the assessment.

The agency has all officers separated and assigned into five peer groups, which determines the threshold level upon which an alert will be triggered. If an employee meets the threshold of a risk factor, then an Early Intervention Assessment is conducted and may result in a mentoring plan, for which a supervisor is directly liable for tracking progress of the officer. Additionally, the EIS policy provides that an assessment will be conducted at the aggregate level if an officer has a total of 10 indicators during a six-month period. The agency’s policy clearly delineates examples of the types of interventions an officer may participate in and the roles and tasks of the coordinator, first-line supervisor, lieutenant and managers, captains and directors, and the bureau chief.

Vision for Future Reports

In the coming years, the Board will do a deeper dive into the use of civilian complaints within EIS and the effectiveness of EIS in holding individual officers, supervisors, units, and agencies accountable. Additionally, the Board remains committed to creating a uniform “complaint” definition to help create consistency throughout the State of California regarding what kinds of reports should constitute a complaint.

LAW ENFORCEMENT TRAINING RELATED TO RACIAL AND IDENTITY PROFILING

Law enforcement agencies receive training related to the mandates of RIPA from the California Department of Justice, internally within their agencies, and from POST.

California Department of Justice POST Certified Course

In 2020, the Department received certification from POST to conduct in-person classroom trainings, Reporting Stop Data for RIPA (AB 953). Due to COVID-19, plans to offer a classroom-based course were paused; however, the team also developed a web-based option for the course, with sessions beginning in Fall 2020.

The course provides a detailed review of the RIPA legislation and the role of the RIPA Board, in addition to key definitions and an in-depth review of the data fields that are reported with a stop. During the sessions, emphasis is placed on how the reporting requirements apply to the various scenarios officers may encounter while on duty. Attendees will learn the data collection process, from the time it is collected locally, to when and how it is reported to the DOJ's statewide repository, to its analysis and publication in the Board's Annual Report. The course instructors include staff in both the Department's Civil Rights Enforcement Section and California Justice Information Services Division to discuss legal questions related to RIPA, as well as administrative/technical aspects of implementation. The training incorporates multiple learning approaches, including a PowerPoint presentation, videos, interactive review of scenarios, a system demonstration, and knowledge checks. The goal of the course is to ensure uniform reporting across agencies.

Sessions are four hours in length, and the Department will offer these approximately twice a month. The target audience includes sworn and non-sworn law enforcement personnel responsible for working on their agency's overall RIPA implementation. Participants are asked to share their role in their agency's implementation of stop data collection and their existing knowledge of RIPA in the hopes of best tailoring the course to fit the real world needs of the attendees and their respective agencies.

The Department presented an overview and selected contents at the POST Subcommittee meeting on August 5, 2020. The Department incorporated the Board's feedback before the first training session in October 2020.

AB 953 Survey: Training and Recruitment

The Department's survey to the Wave 1, 2 and 3 agencies also addressed how the agencies were incorporating the Board's recommendations and best practices into their training. Fifteen of the 25 agencies surveyed indicated that they incorporated the Board's recommendations into their training.

Agencies Indicated That They Have Incorporated the Board’s Recommendations into Their Training

Alameda County SO	Los Angeles PD	San Diego County SD
Bakersfield PD	Orange County SD	San Diego PD
CHP	Riverside County SD	San Francisco PD
Fresno PD	Sacramento PD	San Jose PD
Los Angeles County SD	San Bernardino County SD	Stockton PD

Ten agencies described how they incorporated the Board’s recommendations into their training.

Alameda County SO: reported sharing and discussing the 2019 RIPA Board Report during SDCS training as it related to data being collected and shared.

Fresno PD: indicated that the recommendations were included in Roll Call Training Bulletins.

Los Angeles County SD: indicated that they require POST-approved anti-bias training annually.

Orange County SD: reported implementing a training video, bulletin, and briefing training.

Sacramento PD: indicated that all academy recruits and sworn personnel receive training on racial and other equity, which is provided in the academy and through Continuing Professional Training (CPT), policy updates, roll call training bulletins, and roll call training.

San Bernardino County SD: reported that data analysis and talking points were provided to commanders to discuss at briefings.

San Diego County SD: reported that training was provided to sworn and non-sworn employees at daily briefing, online, and in-person with community groups.

San Francisco PD: reported that implicit bias or procedural justice training was incorporated into 12 courses, including required bi-annual CPT training, stand-alone courses on bias, and management courses for civilians.

San Jose PD: indicated that they teach the requirements of AB 953 data collection and remind everyone of existing policies consistent with the RIPA Board’s recommendations.

“Training has been provided in person and on-line to sworn and non-sworn employees. This training has been conducted at daily briefing, on-line and in person with community groups” – San Diego County SD

“All academy recruits and sworn personnel receive training on racial and other equity Training is provided in the academy, Continuing Professional Training (CPT), policy updates, roll call training bulletins and roll call training” - Sacramento PD

“SFPD currently includes implicit bias or procedural justice training through 12 courses, from required bi-annual AO/CPT training to stand alone courses on bias, to management courses for civilians. These courses draw on a wide variety of sources, including the RIPA reports, as they are drafted and/or updated”
- San Francisco PD

Several agencies indicated that they were in the process of developing or updating training materials in line with best practices.

Bakersfield PD: reported that its Quality Assurance Unit was reviewing the 2020 RIPA Board Annual Report to assess future trainings.

CHP: indicated that they were updating the departmental training curriculum in compliance with RIPA and associated statutory requirements.

San Diego PD: indicated that while sworn officers have participated in implicit bias and bias by proxy training for years, they are currently developing similar training for civilian personnel.

“The Department is in the process of developing implicit bias and bias by proxy training for its civilian personnel based on Board Recommendations”
- San Diego PD

“The department's Quality Assurance Unit is currently reviewing all relevant information (including the 2020 RIPA Board Annual Report) while assessing future training....”
- Bakersfield PD

Additionally, several agencies reported that they had already incorporated the Board’s recommendations in their training.

Los Angeles PD: indicated that they would continue to include the Board’s recommendations as they create new training.

Riverside County SD: reported that deputies receive ongoing training.

San Francisco County Sheriff: indicated that diversity and racial bias training was pre-existing.

Santa Clara County SO: indicated that they have not specifically adopted the Board’s recommendations, but continue to develop training based on best practices and new legislation.

Stockton PD: reported that they conduct ongoing procedural justice training, racial profiling, and implicit bias training.

Agencies Reported Training as One of Their Approaches to Ensure Compliance with their Bias-Free Policing Policies and as One Method to Address Non-Compliance	
Use Training & Supervision to Ensure Staff Meet the Bias-Free Policing Policy Expectations	Additional Training is One Method Used to Respond to Violations
Fresno County SO San Diego PD San Francisco County SO Santa Clara County SO Ventura County SD	Alameda County SD Bakersfield PD CHP Kern County SD San Bernardino County SD

“All staff is held accountable and take yearly training updates in this area ... The City and County of San Francisco has city departments established which monitor and encourage racial diversity and training for all city/[County] employees.”
–San Francisco County SO

“SDPD holds personnel accountable by establishing clear expectations in policy and procedures, providing training and supervision to help meet those expectations...”
–San Diego PD

Hiring

The San Diego County Sheriff’s Department indicated one of the main actions they have taken to adopt the Board’s recommendations has been to change their hiring procedures to reflect the county demographics. The Board plans to further evaluate issues relating to recruitment, hiring, retention, and promotion during 2021.

Diversity in Law Enforcement

The RIPA Board was created with the purpose of eliminating racial and identity profiling and improving and understanding diversity in law enforcement through training, education, and outreach. The Board has undertaken a review of literature about the impact of diversity in law enforcement and the communities served and hopes to examine law enforcement recruitment, hiring, and promotions in future years.

Research studies on diversity in law enforcement show correlations between police officer behavior and the race of the officer and driver during police stops. Numerous studies have found that public officials of color are more likely to implement policies that reduce disparate

treatment toward people of color.³²⁶ In the case of racial profiling, White officers have been shown to be more likely to stop and search Black motorists, whereas officers of color treat drivers of color more fairly than White officers.³²⁷

The literature also suggests a correlation between the racial, ethnic, or gender composition of a police force and decreased police violence. However, this change in law enforcement officer behavior occurs only when there are enough officers of color that feel safe representing the interests of members of the same race. This concept, known as critical mass, suggests that individuals help other minorities within an organization or community they serve when empowered by large enough numbers from similar backgrounds within that organization.³²⁸ Nevertheless, there can be challenges to this concept of critical mass, including officers of color conforming to organizational culture for career success, peer pressure, or the internalization of the dominant organizational view.³²⁹ Additional challenges to critical mass include significant trust issues between communities of color and law enforcement, including historical legacies of slavery, segregation, and discrimination.³³⁰

These challenges, along with allegations of racial profiling and the perceptions it creates in communities of color, make it more difficult for law enforcement officers to meaningfully collaborate with community members to achieve public safety.³³¹ Given how important these diversity issues are for law enforcement behavior and community relations, the Board looks forward to further exploring these critical matters next year.

³²⁶ Wright and Headley, *Police Use of Force Interactions: Is Race Relevant or Gender Germane?* (May 2020) *American Rev. of Public Admin.* pp. 1-14 [citing Capers, *The effect of the external environment on bureaucratic representation: Assessing the passive to active representation link* (2018) vol. 48, No. 4, *The American Rev. of Public Admin.*].

³²⁷ Nicholson-Crotty, Nicholson-Crotty & Fernandez, *Will More Black Cops Matter? Officer Race and Police-Involved Homicides of Black Citizens* (2017) volume 77, No. 2, *Public Admin. Rev.* pp. 206-16 [citing Gilliard-Matthews, Kowalski & Lundman, *Office Race and Citizen-Reported Traffic Ticket Decisions by Police in 1999 and 2002* (2008) volume 11, No. 2, *Police Quarterly*, pp. 202-19]; see also Antonovics & Knight, *A New Look at Racial Profiling: Evidence from the Boston Police Department* (2009) volume 91, No. 1, *Review of Economics and Statistics*, pp. 163-177; and Hong, *Representative bureaucracy, organizational integrity, and citizen coproduction: Does an increase in police ethnic representativeness reduce crime?* (Oct. 2015) volume 35, No. 1, *J. of Policy Analysis and Management*, pp. 11-33.

³²⁸ Nicholson-Crotty, Nicholson-Crotty & Fernandez, *Will More Black Cops Matter? Officer Race and Police-Involved Homicides of Black Citizens* (2017) volume 77, No. 2, *Public Admin. Rev.* p. 209.

³²⁹ Wilkins and Williams, *Black or Blue: Racial Profiling and Representative Bureaucracy* (2008) volume 68, No. 4, *Public Administration Rev.* pp. 654-64 [citing Romzek, *Employee Investment and Commitment: The Ties That Bind* (1990) volume 50, No. 3, *Public Administration Rev.* pp. 374-382].

³³⁰ Wilkins & Williams, *Black or Blue: Racial Profiling and Representative Bureaucracy* (2008) *Public Administration Rev.*, volume 68, No. 4, p. 655 [citing Russell-Brown, *The Color of Crime: Racial Hoaxes, White Fear, Black Protectionism, Police Harassment, and other Macroaggressions* (1998) New York University Press].

³³¹ Wilkins & Williams, *Black or Blue: Racial Profiling and Representative Bureaucracy* (2008) volume 68, No. 4, *Public Administration Rev.* p. 655.

California Commission on Peace Officers Standards and Training (POST)

POST is a state entity in the California Executive Branch that reports directly to the Governor. POST is responsible for setting the minimum selection and training standards for over 96,000 law enforcement officers and dispatchers in California; more than 600 agencies participate in the voluntary POST program. POST has approximately 135 staff and over 30 Law Enforcement Consultants. It has a current budget of approximately \$82 million. The Commission holds three public meetings per year to establish standards and regulations and to give direction to POST staff. The Commission established an advisory committee of 14 appointed individuals that provides a two-way communication link between the Commission and organizations that share an interest in the Commission's work.

Legislative Mandate

In 2015, RIPA amended Penal Code section 13519.4, which created specific training requirements for POST, as well as guidelines to prevent racial and identity profiling. The law requires academy level courses for new recruits and expanded training for seasoned in-service officers. The Legislature stressed that these courses should teach understanding and respect for racial, identity, and cultural differences and development of effective non-combative methods of carrying out law enforcement duties in a racially and culturally diverse environment.

Penal Code section 13519.4 requires that the curriculum "be evidence-based and include and examine evidence-based patterns, practices, and protocols that prevent racial or identity profiling." In developing the training, POST must consult with the RIPA Board, which, in turn, includes its review of the law enforcement training in its annual report.

Summary of Racial and Identity Profiling Training Courses

The information below details how POST has worked with the RIPA Board POST Subcommittee on training and recruitment over the past three years. POST's goal has been to develop academy level courses for all new recruits and expanded training courses for seasoned in-service officers. The five courses established to meet the mandates of RIPA are aimed at teaching respect for racial, identity and cultural differences, and they consist of two academy courses: 1) Principled Policing in the Community and 2) Cultural Diversity/Discrimination, and three courses for in-service officers: 1) Bias and Racial Profiling, 2) Implicit Bias and Profiling Update Self-Paced Refresher and 3) Implicit Bias and Profiling Update Self-Paced Refresher for Supervisors. The Board has reviewed two of the five mandated courses. In addition, this Report provides information relating to other courses on procedural justice and implicit bias that are being developed or updated by POST.

2018 RIPA Report

In the 2018 RIPA Report, the Board reviewed two POST training courses for in-service officers: “Biased Based Policing: Remaining Fair and Impartial” and “Principled Policing.”

After the Board’s feedback concerning the Biased Based Policing course, POST replaced the course with a two-hour training video course entitled, “Bias and Racial Profiling.”

The Board reviewed the 2015 “Principled Policing” course – developed in partnership with the Department of Justice, Stanford University, the Oakland and Stockton Police Departments, the California Partnership for Safe Communities, and the Empower Initiative – and found that it met many requirements established by Penal Code section 13519.4. However, the Board recommended that the course be updated to include: 1) the obligations of peace officers in preventing, reporting and responding to discriminatory or biased practices by fellow police officers; 2) a discussion of California’s prohibition against racial and identity profiling; and 3) community participation. POST has integrated elements of the Board recommendations into the new mandated academy course entitled, “Principled Policing in the Community.”

2019 RIPA Report

In the 2019 RIPA Report, the Board conducted evidence-based research and identified best practices for trainings devoted to preventing racial and identity profiling in policing. These best practices include:

- evidence-based and scientific peer-reviewed research on bias, principles of civil rights, and constitutional policing and reflecting the agency’s commitment to procedural justice, bias-free policing, and community policing;
- communication and community relationships;
- the tenets of procedural justice (voice, neutrality, respectful treatment, and trustworthiness); and
- implicit bias, explicit bias, and cultural competency.

2020 Training Updates

Since the 2020 RIPA Report, POST has continued efforts to strengthen training courses aimed at meeting the mandates of RIPA and Penal Code section 13519.4. The following are the five standard courses offered by POST:

Academy Courses	In-Service Training
<ul style="list-style-type: none">• Principled Policing in the Community – 26 hour in-person course• Cultural Diversity/Discrimination – 16 hour in-person course	<ul style="list-style-type: none">• Bias and Racial Profiling – 2 hour video• Profiling and Implicit Bias Refresher for Supervisors – 2 hour online course (Spring 2021)• Profiling and Implicit Bias Refresher – 2 hour online course (Fall 2020)

POST also created or updated other courses related to racial and identity profiling and principled policing.

- Procedural Justice/Implicit bias training, an 8-hour course for in-service officers that is voluntary but meets the legislative mandates. It covers several topic areas such as Principled Policing, law enforcement cynicism, community relations, and implicit bias. As of January 2020, 6000 officers had completed the training.
- POST modified supervisory, management, and executive level courses to include the four tenets of procedural justice.
- POST produces between three and five short videos (3-5 minutes long) entitled, “Did You Know.” These videos are about procedural justice and implicit bias and are used during rollcall, training, or community meetings.
- POST has had a long-term relationship with the Museum of Tolerance (MOT) in Los Angeles. Each year, POST enters a \$1.5 million contract for instruction on a series of courses. All students who attend the POST Supervisory Leadership Institute attend the training at the MOT.
- POST has developed a Distance Learning Grant Program (DLGP) pursuant to the California State Budget Act of 2020. The DLGP is designed to award funds on a competitive basis to help with the development and facilitation of the delivery of quality training aimed at increasing equitable access to high-quality learning experiences while using distance learning technologies. The program is funded at \$5,000,000 and must address issues in one of the following five program areas: Use of Force and De-escalation, Implicit Bias and Racial Profiling, Community Policing, Cultural Diversity, and Organizational Wellness.

Recent Updates to the POST Training Program for 2021

1. The “Bias and Racial Profiling” course is a two-hour training video, which was reviewed by the RIPA Board and released by POST in May 2020. As of July 2020, a total of 4,635 individuals had completed the training.
2. The “Principled Policing” course was updated in October 2020 to update curriculum. It is a voluntary 8-hour course for in-service officers.
3. The “Principled Policing in The Community” course was approved to be included in the POST Basic Academy Learning Domain 3. This is a 26-hour mandatory course for new recruits and became effective April 2020.
4. The “Principled Policing Train-The-Trainer” (T4T) is a 24-hour course – one for instructors in the basic academy and one for in-service instructors. After two initial T4T presentations in September 2020, the Principled Policing course for in-service students will be deployed across the state.

5. POST is developing a two-hour instructor video, tentatively titled “Principled Policing Instructor Video.” The video will be used as a resource in the aforementioned T4T instructor training and will enable all instructors to use the same video resource, whether basic or in-service. The video will 1) provide video scenario resources for Principled Policing instructors to use in their classes and 2) enhance the instructor’s facilitation skills and effectiveness by providing both facilitation tips and recommendations based on what occurs within the video program’s examples. It will also provide commentary on how instructors can bring forth additional Principled Policing-specific content beyond just the examples in the video scenarios.
6. The self-paced online “refresher” training course is almost complete and is expected to be released by February 2021. The course will be tentatively titled “Profiling and Implicit Bias Refresher.”
7. The supervisor module for the self-paced “refresher” course is currently under development. POST anticipates releasing the supervisor module in the spring of 2021. The module will be tentatively titled “Profiling and Implicit Bias Refresher for Supervisors.”

Officers are required to take a mandatory two-hour refresher course every five years after leaving the academy, and the Board reviewed two of the courses designed to meet this requirement.

Board Member Review of Profiling and Implicit Bias Self-Paced Online Refresher Course

One of the five mandatory courses created by POST on racial and identity profiling and cultural diversity is entitled, “Profiling and Implicit Bias Refresher.” It is a self-paced course and is located on the POST Learning Portal, which means officers can take this course at any time.

The POST curriculum development process includes analysis, design, and review phases before the course is released to the field. POST invited the Board to participate early in the course development process for the “Profiling and Implicit Bias Refresher” and again after the content was created.

During the initial analysis phase, POST had one-on-one interviews with Board members (past and present), which included Ben McBride, Warren Stanley, Sandra Brown, Marianna Marroquin, and David Robinson. POST then worked with Subject Matter Experts (SME) from the Museum of Tolerance and their trained instructors to establish learning objectives in line with the mandates in Penal Code section 13519.4. Additionally, POST used both SME’s and law enforcement officers to test different prototypes. In April 2020, POST invited Board members to review an online demonstration of a draft of the course and hosted content review and feedback sessions. Four current Board members, Steve Raphael, Melanie Ochoa, LaWanda Hawkins and Sandra Brown, provided comments on the course.

The Board members³³² expressed that while an in-classroom course is the preferred form of delivery, the modules of this online course were structured and designed very well. The Board members liked that the course included the topics of constitutional rights, implicit bias, connecting with the community, procedural justice, accountability, and de-escalation. The Board was also pleased to see that if an officer answers a question incorrectly, they could not proceed and would need to answer the question correctly before going forward to the next scenario.

Nevertheless, Board members concluded that because the content, scenarios, and desired outcomes are critical to the course success, the subject areas listed above need to be strengthened, clarified, discussed in greater detail, or changed. The Board offered a variety of recommendations for improvement. Board members expressed concerns that the course included scripted bias scenarios as a teaching tool even though actual footage of officer-involved situations is available and would be more effective. The Board members expressed that greater care should be taken when selecting teaching examples needed to achieve the desired outcome. They felt that the course would benefit from providing more guidance and discussion about the legal implications and consequences of bias. The Board also recommended that the course include some classroom discussion regarding the reasons why POST included certain bias based scenarios. Lastly, the Board pointed out that the course did not sufficiently emphasize officer accountability, reporting obligations, and how officers should respond after observing biased behavior by their peers, nor did the course take advantage of teaching opportunities provided in scenarios applying reasonable suspicion and the use of social media.

Board Member Review of Bias and Racial Profiling Video Course

Another of the five mandatory courses created by POST is entitled, “Bias and Racial Profiling.” Officers can view this training video either in a facilitated group or individual setting. Before her passing in December 2018, the Honorable Alice Lytle, a RIPA Board member, was very involved in the early development of this curriculum, served as an SME, and provided guidance to POST. Other SME’s working on the training course video included representatives from the Fresno County District Attorney’s Office, the Council on Islamic Relations, the Museum of Tolerance, the Stockton Police Department, the Glendale Community College Police Department, and an advocate of the LGBTQ community. Course development meetings were held with collaborators in October and December of 2018 and again in February 2019. Additionally, POST interviewed the SME’s individually.

In April 2020, following the post-production of the video, Board members were invited to view the final version of the video prior to its release in May 2020. Board member participants

³³² These are a compilation of comments made by individual Board members – they are not verbatim and do not necessarily reflect those of more than one reviewer.

included Sandra Brown, Angela Sierra, Nancy Frausto, Melanie Ochoa, and David Swing. Board members³³³ reviewed the video and provided POST the following comments.

Some Board members were pleased with the course and thought it was designed to enhance critical thinking and tackle difficult subjects in a way that did not seem artificial. Some felt it was professional and well put together and some liked the historical segments. Board members felt that it could be helpful for community members to see the included conversations between officers.

Some Board members expressed concerns about specific scenarios that needed deeper discussions involving parole and probation, explicit versus implicit bias, the use of highly offensive terms to describe groups of individuals, and the need to use real data to illustrate the disparate treatment of people of color. Some Board members believed that the training should include the role of contemporary police, illustrate how misconduct can create present-day views of law enforcement, and provide officers with the tools to combat personal or agency issues. The Board members also believed that the training was lacking because it did not include RIPA stop data, it did not use actual incidents and events involving officers, nor did it use examples of ways to communicate with different groups of people when stopped (e.g. people with hearing or learning disabilities). Finally, the course did not discuss the “wrongness” of a stop and the bias that led to the stop; and it did not cover situations where officers may not be fully aware of how their actions change as the stop evolves.

Unfortunately, POST advised that it could not adopt any of the above recommendations by the Board members due to the limited time available between the time that POST previewed the video to the Board members and the video’s release, since the video was already in post-production. Because POST was unable to change the video, but did want the input of the Board and the Department, POST invited Department personnel who staff the RIPA Board to review and edit the participant’s guide based on Board member suggestions. The guide would be used to edit the facilitator’s guide that is used during the presentation of the course. POST incorporated most of these comments into the guide, so many of them will be addressed during the classroom discussion portion of the training. POST has expressed a strong desire and commitment to ensure this does not happen again, and has pledged to work closely with the Board throughout the entire process in the future. The Board looks forward to developing a stronger working relationship with POST moving forward.

Vision for Future Reports

Law enforcement training must be relevant to today’s circumstances and the oath officers take to protect and serve everyone. Training is critical to law enforcement culture, community relations, and outcomes that prevent innocent people from being harassed, criminalized, or

³³³ These are a compilation of comments made by individual Board members – they are not verbatim and do not necessarily reflect those of more than one reviewer.

unnecessarily injured or killed. Training is also critical to ensure that all community members are treated equitably when they come into contact with a law enforcement officer.

The Board will continue its work to review all five training courses designated by POST with assistance from outside consultants. The Board will specifically review the two Academy courses, Learning Domain 3, Principled Policing in the Community and Learning Domain 42, Cultural Awareness/Discrimination. The Board also looks forward to working with POST on the development of the Profiling and Implicit Bias Refresher Course for Supervisors. In the coming years, the Board also hopes to examine the impact of implicit bias training in law enforcement.

Finally, the Board would like POST to consider the following training ideas. Namely, POST should:

- Use the data and analysis from the RIPA reports to examine the disparities between racial and identity groups and identify topic areas of concern for future course development.
- Use actual footage of law enforcement encounters in lieu of scripted scenarios.
- Provide training tools and techniques that emphasize community member perspectives during officer encounters.
- Provide courses on officer peer behavior accountability. Officers should be trained how and when to report incidents to their supervisor and be assured they will not be harassed, ridiculed, or retaliated against.
- Provide training courses aimed at deeper discussions regarding; 1) possible officer bias that leads to a stop, how the situation evolves during the stop, and how negative outcomes can be prevented; 2) community perceptions of consent and the behavior or event that turns consent into detention; 3) parole and probation stops and searches; and 4) verbal and non-verbal communication during a stop to prevent escalation.
- Connect recruit academy training with field training and determine how implicit bias and racial and identity profiling and cultural awareness training are being applied.
- Ensure that Field Training Officers have received sufficient training in implicit bias, profiling, and cultural awareness to perform their job fairly and equitably.
- Make the Principled Policing Course, which includes a community presenter component, mandatory for all officers.
- Provide in-service officer racial and identity and cultural awareness training more frequently than two hours every five years.

Vision for Future Reports

- The Board will continue to analyze POST's trainings on bias free policing and racial and identity profiling to ensure that its trainings incorporate the most up-to-date evidence based best practices. In addition to training, the Board hopes to explore best practices in hiring and diversity in law enforcement in the coming years.

RELEVANT LEGISLATION ENACTED IN 2020

This Report highlights relevant legislation enacted in 2020, an unprecedented year for legislative reforms regarding policing, criminal justice, and mental health. This legislation may impact the Board’s work towards eliminating racial and identity profiling, as well as require updated trainings for officers. All bills are effective on January 1, 2021, unless otherwise specified.

Police Practices

AB 1196 – Choke Holds

Assembly Bill 1196 establishes that law enforcement agencies are not authorized to use a carotid restraint or a choke hold. A carotid restraint is “a vascular neck restraint or any similar restraint, hold, or other defensive tactic in which pressure is applied to the sides of a person’s neck that involves a substantial risk of restricting blood flow and may render the person unconscious in order to subdue or control the person.” A choke hold is “any defensive tactic or force option in which direct pressure is applied to a person’s trachea or windpipe.”³³⁴ The author, Assemblymember Gipson, noted: “In the Eric Garner case, NY Commissioner James O’Neill said that the officer’s failure to relax his grip while subduing him triggered a fatal asthma attack. With the high profile death of George Floyd in Minneapolis, where a peace officer used his knee to subdue and detain him, it is clear that similar methods of restraining suspects are incredibly risky and should no longer be allowed.”³³⁵ This legislation ensures that these methods of restraint are no longer authorized throughout the state of California.

AB 846 – Public Employment: Public Officers or Employees Declared by Law to be Peace Officers

AB 846 establishes that the emotional and mental health evaluations included as minimum standards for peace officers in the state must include bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation. The law states that when police departments are advertising positions for peace officers, they must emphasize community-based policing, familiarization between law enforcement and community residents, and collaborative problem-solving, while de-emphasizing the paramilitary aspects of the job. AB 846 also establishes that by January 1, 2022, POST must study, review, and update their regulations and associated training materials related to officer candidates’ screening for emotional and mental conditions to incorporate identification of the explicit and implicit bias described above.

³³⁴ AB 1196 as amended does not have a prohibition on “techniques or transport methods that involve a substantial risk of positional asphyxia.” This is something law enforcement may wish to address when updating their policies.

³³⁵ Assem. Floor Analyses, analysis of AB 1196 (2019-2020 Reg. Session), as amended Aug. 31, 2020, p. 1.

AB 1506 – Police Use of Force

AB 1506 establishes that by July 1, 2023, the California Department of Justice will create a division that, upon the request of a law enforcement agency, will review the use-of-force policy of the agency and make recommendations for changes. Additionally, the law requires that beginning in 2021 a “state prosecutor,” e.g., the Attorney General unless otherwise specified or named, will investigate incidents of an officer-involved shooting resulting in the death of an unarmed civilian.

SB 480 – Law Enforcement Uniforms

SB 480 establishes that law enforcement agencies may not authorize or allow employees to wear a uniform that is camouflage or a uniform that is substantially similar to the United States Armed Forces or state active militia.

AB 1185 – Sheriff Oversight

AB 1185 establishes that a county, through action of the board of supervisors or a vote of county residents, may create a sheriff’s oversight board or an inspector general’s office. The law further allows for those entities to have the authority to issue subpoenas when deemed necessary to investigate a matter within their jurisdiction.

AB 1775 – False Reports and Harassment

AB 1775 amends existing law protecting Californians from violence or intimidation by threat of violence to provide that intimidation by threat of violence includes, but is not limited to, “making or threatening to make a claim or report to a police officer or law enforcement agency that falsely alleges that another person has engaged in unlawful activity or in an activity that requires law enforcement intervention,” knowing that the claim or report is false, or with reckless disregard for the truth or falsity of the claim or report. The bill also increases the criminal penalties for knowingly using the 911 emergency system for the purpose of harassing another. In addition, the bill clarifies that under certain circumstances a false report could be a hate crime and provides for civil remedies for a violation. The bill also establishes that communications between a person and a law enforcement agency in which the person knowingly or recklessly makes a false report that another person has committed or is committing a criminal act will not be privileged in a judicial, legislative, or other official proceeding.

Criminal Justice Reform

SB 132 – Transgender Respect, Agency, and Dignity Act

SB 132 requires the state Department of Corrections and Rehabilitation (CDCR) to treat an incarcerated person who is transgender, nonbinary, or intersex, in a manner consistent with that person’s gender identity. Further, SB 132 requires CDCR to house a person based on the person’s preference. CDCR must also search the person according to the search policy for that person’s gender identity or the gender designation of the facility where they are housed, whichever is the preference of the person. The bill additionally mandates that CDCR personnel

record the person's self-reported gender identity, gender pronouns, and honorifics during the intake process. SB 132 requires not only CDCR staff but also contractors and volunteers to properly address people by the appropriate name and pronoun.

Youth

AB 901 – Youth “Juvenile”

AB 901 limits various authorities of the juvenile court and other local entities in addressing the issue of truant youth. As one example, under AB 901, a juvenile court judge may no longer adjudge a minor a ward of the court on the basis they habitually refuse to obey the reasonable and proper orders or directions of school authorities. Under AB 901, a peace officer must also first refer a minor who is habitually truant or habitually refuses to obey the reasonable and proper orders or directions of their parent or guardian to a community-based resource, the probation department, a health agency, a local educational agency, or other governmental entities that may provide services before issuing a notice to appear in juvenile court to determine whether the minor should become a ward of the court. AB 901 also prohibits a juvenile court from rendering a judgment that a parent or guardian of a youth deemed insubordinate or disorderly bring them to school daily. Probation officers under AB 901 are now required to refer a youth who has four or more trancies in a school year to services provided by a community-based resource, the probation department, a health agency, a local educational agency, or other governmental entities that may provide services.

SB 203 – Juveniles: Custodial Interrogation

SB 203 establishes that youth under 18 must consult with an attorney prior to any custodial interrogation and before waiving their Miranda rights. Previously, the law only provided these protections for youth who are 15 and younger and it was set to expire on January 1, 2025. SB 203 extends these protections indefinitely.

Mental Health

AB 3242 – Mental Health and Involuntary Commitment

Existing law authorizes the involuntary, up-to-72-hour commitment and treatment of people with certain mental health disorders for their own protection. AB 3242 permits an examination or assessment to determine whether an involuntary commitment is necessary to be conducted using telehealth. AB 3242 has an impact on community assisted transport teams that respond to mental health emergencies and allow teams to seek doctor approval without having to have a police officer or clinician respond to the scene directly.

AB 1976 – Mental Health Services: Assisted Outpatient Treatment (known as “Laura’s Law”)

AB 1976 requires counties to develop an assisted outpatient treatment (AOT) program unless they affirmatively opt out. The bill also repeals the January 1, 2022 expiration of, and extends indefinitely, Laura's Law, a state law that permits the court to order AOT under two conditions: (1) if the person meets existing involuntary commitment requirements or the person has refused treatment and their mental health condition is substantially deteriorating; and (2) AOT

would be the least restrictive level of care necessary to ensure the person's recovery and stability in the community. Previously, AOT was only available in counties where it was adopted by the board of supervisors.

AB 2112 – Suicide Prevention

AB 2112 establishes a statewide office for suicide prevention that, among other duties, provides information and technical assistance on suicide prevention and assesses regional and statewide suicide prevention policies and practices. The new department is also responsible for developing evidenced-based best practices.

CONCLUSION

The Board has come a long way in the last four years, but there is more work ahead to fulfill the goal of the Racial and Identity Profiling Act of 2015 to eliminate racial and identity profiling in California. The Survey responses from law enforcement agencies demonstrate the significant impact the work of the Board is having on agency policy, training, and procedures. Agencies are discussing the Report with their staff, incorporating best practices for their bias-free policing policies and complaint forms, analyzing their data to identify disparities, and engaging with their communities. The Board will continue to evaluate stop data and highlight disparities to inform data-driven policy and practice recommendations. Each year, the Board delves deeper into topics of import to the community and law enforcement to make recommendations that will continue to effect positive change and ultimately improve relationships and trust between law enforcement and the community.

Traffic Function and Responsibility

500.1 PURPOSE AND SCOPE

The ultimate goal of traffic law enforcement is to reduce traffic collisions. This may be achieved through the application of such techniques as geographic/temporal assignment of personnel and equipment and the establishment of preventive patrols to deal with specific categories of unlawful driving behavior. Traffic enforcement techniques are based on accident data, enforcement activity records, traffic volume, and traffic conditions. This department provides enforcement efforts toward violations, not only in proportion to the frequency of their occurrence in accident situations, but also in terms of traffic-related needs.

500.2 TRAFFIC OFFICER DEPLOYMENT

Several factors are considered in the development of deployment schedules for officers of the South Pasadena Police Department. Information provided by the California Statewide Integrated Traffic Reporting System (SWITRS) is a valuable resource for traffic accident occurrences and therefore officer deployment. Some of the factors for analysis include:

- Location
- Time
- Day
- Violation factors

All officers assigned to patrol or traffic enforcement functions will emphasize enforcement of accident causing violations during high accident hours and at locations of occurrence. All officers will take directed enforcement action on request, and random enforcement action when appropriate against violators as a matter of routine. All officers shall maintain high visibility while working general enforcement, especially at high accident locations.

Other factors to be considered for deployment are requests from the public, construction zones or special events.

500.3 ENFORCEMENT

Enforcement actions are commensurate with applicable laws and take into account the degree and severity of the violation committed. This department does not establish ticket quotas and the number of arrests or citations issued by any officer shall not be used as the sole criterion for evaluating officer overall performance (Vehicle Code § 41603). The visibility and quality of an officer's work effort will be commensurate with the philosophy of this policy. Several methods are effective in the reduction of collisions:

South Pasadena Police Department

South Pasadena PD CA Policy Manual

Traffic Function and Responsibility

500.3.1 WARNINGS

Warnings or other non-punitive enforcement actions should be considered in each situation and substituted for arrests or citations when circumstances warrant, especially in the case of inadvertent violations.

500.3.2 CITATIONS

Citations may be issued when an officer believes it is appropriate. It is essential that officers fully explain the rights and requirements imposed on motorists upon issuance of a citation for a traffic violation. Officers should provide the following information at a minimum:

- (a) Explanation of the violation or charge
- (b) Court appearance procedure including the optional or mandatory appearance by the motorist
- (c) Notice of whether the motorist can enter a plea and pay the fine by mail or at the court

500.3.3 PHYSICAL ARREST

Physical arrest can be made on a number of criminal traffic offenses outlined in the Vehicle Code or Penal Code. These physical arrest cases usually deal with, but are not limited to:

- (a) Vehicular manslaughter
- (b) Felony and misdemeanor driving under the influence of alcohol/drugs
- (c) Felony or misdemeanor hit-and-run
- (d) Refusal to sign notice to appear
- (e) Any other misdemeanor at the discretion of the officer, such as reckless driving with extenuating circumstances

500.4 SUSPENDED OR REVOKED DRIVERS LICENSES

If an officer contacts a traffic violator for driving on a suspended or revoked license, the officer may issue a traffic citation pursuant to Vehicle Code § 14601.

If a computer check of a traffic violator's license status reveals a suspended or revoked driver license and the traffic violator still has his or her license in possession, the license shall be seized by the officer. The officer shall verbally advise the traffic violator of the suspension or revocation and issue the citation. The officer will be responsible for filling out the Verbal Notice form (DMV form DL-310) and causing that form and license to be forwarded to the Department of Motor Vehicles.

500.5 HIGH-VISIBILITY VESTS

The Department has provided American National Standards Institute (ANSI) Class II high-visibility vests to increase the visibility of department members who may be exposed to hazards presented by passing traffic, maneuvering or operating vehicles, machinery and equipment (23 CFR 655.601; 8 CCR 1598).

South Pasadena Police Department

South Pasadena PD CA Policy Manual

Traffic Function and Responsibility

Although intended primarily for use while performing traffic related assignments, high-visibility vests should be worn at any time increased visibility would improve the safety or efficiency of the member.

500.5.1 REQUIRED USE

Except when working in a potentially adversarial or confrontational role, such as during vehicle stops, high-visibility vests should be worn at any time it is anticipated that an employee will be exposed to the hazards of approaching traffic or construction and recovery equipment. Examples of when high-visibility vests should be worn include traffic control duties, accident investigations, lane closures and while at disaster scenes, or anytime high visibility is desirable. When emergency conditions preclude the immediate donning of the vest, officers should retrieve and wear the vest as soon as conditions reasonably permit. Use of the vests shall also be mandatory when directed by a supervisor.

Vests maintained in the investigation units may be used any time a plainclothes officer might benefit from being readily identified as a member of law enforcement.

500.5.2 CARE AND STORAGE OF HIGH-VISIBILITY VESTS

High-visibility vests shall be maintained in the trunk of each patrol and investigation unit, in the side box of each police motorcycle and in the saddlebag or gear bag of each police bicycle. Each vest should be stored inside the re-sealable plastic bag provided to protect and maintain the vest in a serviceable condition. Before going into service each employee shall ensure a serviceable high-visibility vest is properly stored.

A supply of high-visibility vests will be maintained in the equipment room for replacement of damaged or unserviceable vests. The Support Services Lieutenant should be promptly notified whenever the supply of vests in the equipment room needs replenishing.



Public Safety Commission Agenda Report

ITEM NO. _____

DATE: August 9, 2021

FROM: Brian Solinsky, Chief of Police

SUBJECT: **Discussion on Potential New Ordinance for the South Pasadena Municipal Code (SPMC) Regarding Safe Storage of Firearms in Residences**

Recommendation

It is recommended that the Public Safety Commission:

1. Hold a discussion on a potential new ordinance for the South Pasadena Municipal Code regarding Safe Storage of Firearms in Residences; and
2. Provide a recommendation to the City Council regarding a new ordinance for the South Pasadena Municipal Code regarding Safe Storage of Firearms in Residences.

Discussion/Analysis

There are several California state laws regulating the storage of and access to firearms. These laws are comprehensive but aimed primarily at reasonably preventing access to firearms by children and others not legally permitted to possess a firearm. Therefore, with one exception discussed below, the laws do not mandate the storage of a firearm in a person's residence.

California Penal Code Section 25100 is the statute that defines the crime of criminal storage of a firearm. The law states, "...a person commits the crime of 'criminal storage of a firearm' if all of the following conditions are satisfied: The person keeps any firearm within any premises that are under the person's custody or control. The person knows or reasonably should know that a child is likely to gain access to the firearm without the permission of the child's parent or legal guardian. [And] the child obtains access to the firearm and thereby causes death or great bodily injury to the child or any other person." A violation of the statute can result in a felony charge punishable by up to three years in state prison.

Current law also requires that trigger locks be sold with firearms unless the buyer provides proof they own a gun safe. A point of confusion with the state law is that it does not define "safe storage." Additional concern amongst some advocacy groups is that the California law does not apply to all homes, but instead to homes where children live or where "a child is likely to gain access to the firearm."

A Safe Storage of Firearms Ordinance would require all firearms in a residence to be securely stored in a locked container or disabled with a trigger lock. The ordinance would define a "locked container" as a secured container that is fully enclosed and locked by a padlock,

Discussion on Potential New Ordinance for the SPMC Regarding Safe Storage of Firearms in Residences

August 9, 2021

Page 2 of 4

keylock, or similar locking device. A trigger lock is any device, when applied to the firearm, renders the firearm inoperable.

California Penal Code Section 23635 indicates that firearms sold or manufactured in California must come with a safety device. With some exceptions, any firearm sold or transferred by a licensed firearms dealer in California, including a private transfer through a dealer and any firearm manufactured in the state, must include or be accompanied by a firearm safety device that is listed on the Department of Justice's roster of approved firearm safety devices.

Department of Justice approved safe gun storage devices can be purchased for as little as \$40, and trigger locks are often distributed for free at police stations. In May 2021, the South Pasadena Police Department also offered these free locking devices to any firearm owner that requests one.

The locking requirements discussed apply only to firearms that are not being carried on the person or in the person's immediate control. Therefore, firearm owners may carry loaded and unlocked firearms in the home at any time, and the safe storage requirements allow owners to store firearms loaded if they choose. A City ordinance may be enforced criminally as provided in SPMC Chapter 1 – General Provisions, Section 1.7 – General penalty; continuing violations:

Whenever in this code or in any other ordinance of the city, any act is prohibited or is made or declared to be unlawful or an offense, or the doing of any acts is required or the failure to do any act is declared to be unlawful or a misdemeanor, where no specific penalty is provided for, the violation of any such provision of this code or any other ordinance of the city shall be punished by a fine not exceeding one thousand dollars or imprisonment for a term not exceeding six months, or by both such fine and imprisonment.

Every day any violation of this code or any other ordinance of the city shall continue shall constitute a separate offense. (Ord. No. 1983, § 1.)

The proposed implementation of a Safe Gun Storage Ordinance was initially brought to the City Council for consideration by Moms Demand Action for Gun Sense in America. Moms Demand Action is a non-partisan grassroots organization aiming to reduce gun violence and improve gun safety.

At least 37 cities across California have enacted similar ordinances imposing storage requirements when the firearm is in a person's residence regardless of the presence of a child or other person not legally able to possess a gun. Los Angeles, Cudahy, and Culver City are the closest in proximity. Staff contacted 16 of the cities that adopted the ordinance. Of those cities contacted, representatives indicated the ordinance is not enforced and only used as an educational component. Instead, those agencies use the California Penal Code for prosecution. Several of the cities contacted indicated they had not had any incidents where the loose firearms in the household were a factor or issue.

Discussion on Potential New Ordinance for the SPMC Regarding Safe Storage of Firearms in Residences

August 9, 2021

Page 3 of 4

A representative from the Alhambra District Attorney's Office indicated that the filing of criminal charges based on the municipal code would be reviewed on a case by case basis.

Background

According to the Gun Violence Archive data, gun violence killed nearly 20,000 Americans in 2020, more than any other year in at least two decades. Suicides account for 6 out of 10 firearm-related deaths. An additional 24,000 people died by suicide and accidental deaths by firearms. Last year, the United States saw the highest one-year increase in homicides within the country's largest cities, including the City of Los Angeles. Los Angeles suffered a 30 percent spike in shooting deaths. For non-fatal shootings, the numbers are significantly higher. According to the Brady Institute, approximately 114,000 people are shot each year in the U.S. Of those, almost 8,000 are 17 years old or younger.

Firearm purchases in 2020 soared with a record-setting number. According to the Federal Bureau of Investigation, people purchased about 23 million guns in 2020, which signifies a 64 percent increase over 2019 sales. The compounded effects of the COVID-19 pandemic hampered anti-crime efforts, and the consequent shutdowns and stay-at-home orders led to a significant rise in unemployment and homicide rates. According to a Washington Post (Denham & Tran, 2021) analysis of gun sales in 2021, gun purchases skyrocketed almost 80% in January. The effort to reduce the spread of COVID-19 led to food shortages, millions of lost jobs, and empty streets. Additionally, amid waves of civil unrest across the country, a significant increase in firearms sales occurred in the weeks after massive protests throughout the nation. According to the National Shooting Sports Foundation, the flood of gun sales recorded in 2020 included more than 8 million first-time buyers.

According to data obtained in 2021 by the Gun Violence Archive, nearly 300 children were shot and killed in 2020, a 50 percent increase from the previous year. More than 5,100 kids and teens 17 and younger were killed or injured last year – an increase that is particularly alarming because it occurred in a year when most children were not attending class in person. Experts believe this points to the severity of teen suicide and domestic violence.

Policy Implications

A violation of such an ordinance would most likely be enforced after the fact: such as a firearm recovered after being used in a crime or by observation of police officers during a call to a residence on a report of an unrelated crime. An exception to prosecution under the ordinance should be offered when firearm thefts are reported correctly to not discourage the reporting of firearm thefts to law enforcement.

California Penal Code Section 25250 requires that all losses or thefts of firearms be reported to the local law enforcement agency within five days after discovery of the theft or loss.

Discussion on Potential New Ordinance for the SPMC Regarding Safe Storage of Firearms in Residences

August 9, 2021

Page 4 of 4

Alternatives Considered

1. Accept the draft ordinance and recommend City Council review.
2. Modification of the draft ordinance
3. Public Safety Commission can choose to not move forward with a recommendation to City Council

Fiscal Impact

The fiscal impacts of community education, outreach, or prosecution under this ordinance would be absorbed through the police department's existing outreach plan consisting of social media, neighborhood watch, and community groups.

Environmental Considerations

The action considered is exempt from the California Environmental Quality Act (CEQA), as it is not considered a "project" pursuant to Section 15378(b)(5) of CEQA Guidelines. The action involves an organizational or administrative activity of government that will not result in a direct or indirect physical change in the environment.

Public Notification of Agenda Item

The public was made aware that this item was to be considered this evening by virtue of its inclusion on the legally publicly noticed agenda, posting of the same agenda and reports on the City's website and/or notice in the *South Pasadena Review* and/or the *Pasadena Star-News*.

Attachments:

- A. Draft ordinance regarding "Safe Storage of Firearms in Residences."



Public Safety Commission Agenda Report

ITEM NO. <u> 4 </u>

DATE: August 9, 2021

FROM: Ed Donnelly, Public Safety Commission Sub-Committee
Lisa Watson, Public Safety Commission Sub-Committee

SUBJECT: **Discussion on the Potential of Unarmed Traffic Enforcement Officers**

Recommendation

It is recommended that the Public Safety Commission:

1. Hold a discussion on the potential of unarmed traffic enforcement officers; and
2. Provide a recommendation to the City Council regarding the possibility of unarmed traffic enforcement officers.

Background

In 2015 the California Legislature passed AB953, The Racial and Identity Profiling Act (RIPA). This law compels police agencies throughout the State to provide statistics regarding racial and ethnic data for each interaction their officers have with the public. To provide oversight for this program, the RIPA advisory board was created. RIPA went into effect in 2018 with the State's largest law enforcement agencies and is being rolled out through 2023 to include every law enforcement agency statewide. The South Pasadena Police Department will begin collecting statistical data for an April 2023 submission to the Department of Justice (DOJ).

In their 2021 Annual Report, the RIPA board reported that people of color are stopped for daytime traffic infractions at more than double the rate of Caucasians. In addition, black motorists and passengers were more than twice as likely to be detained, handcuffed, or removed from vehicles as white individuals. Similar statistics have been seen across the nation. Along with general calls for police reform in the wake of the murder of George Floyd by a Minneapolis Police officer in May of 2020, this data has prompted academic and political calls for Unarmed Traffic Enforcement (UTE) programs to be developed.

Earlier this year, City Council directed the Public Safety Commission (PSC) to study the potential of UTE to reduce the number of violent encounters during traffic stops. The PSC's Sub-Committee on UTE, consisting of Commissioners Watson and Donnelly, were tasked with investigating the viability of instituting this type of program in South Pasadena. The Sub-Committee's mandate was broad and included conversations with local activist groups, South Pasadena Police (SPPD) Chief Solinsky, police department staff, and additional resources from outside the City.

Discussion on the Potential of Unarmed Traffic Enforcement Officer

August 9, 2021

Page 2 of 7

The Sub-Committee's work commenced with collecting and reviewing statistics regarding traffic enforcement, use of force, and bias both locally in California and nationwide. In the later stages of the Sub-Committee's work, this expanded to include inquiries into the use of unarmed traffic officers in other municipalities in the United States, the United Kingdom, and New Zealand. The data and resources reviewed, including the aforementioned 2021 RIPA report, have been included as a comprehensive attachment to this document.

On a typical day, approximately 135,000 cars travel on South Pasadena streets. In addition, State Route 110 passes directly through the center of the City. This volume of traffic constitutes a substantial public safety concern and is fraught with the possibility of property damage, injury, and death. In response to persistent requests by residents for more rigorous traffic enforcement, the SPPD instituted a Traffic Bureau in 2019 consisting of two officers patrolling on a motorcycle and one in a patrol car. In 2020, SPPD responded with an officer to 26,858 calls, with an additional 32,159 received for other services. These totals include 3,788 traffic stops; 2,170 citations; 1,018 warnings and 509 arrests. SPPD officers reported the use of force in only three of these stops. The current SPPD dispatch and reporting system does not track race or ethnicity data for traffic enforcement in an actionable way. The updated Computer Assisted Dispatch (CAD) system deployed by SPPD this year in preparation for RIPA reporting requirements will track this data. It will be readily available for analysis in April 2023.

The Sub-Committee researched existing and proposed UTE programs throughout the country. This research included academic and journalistic sources, direct conversation with persons involved in implementing UTE policies, review of ordinances, meeting minutes, email correspondence, and Zoom meetings. In the course of this investigation, no formal UTE program was identified or found to be currently operating in the United States.

Discussion/Analysis

Three newly proposed programs were identified and investigated. The three municipalities that have proposed or passed ordinances to establish UTE programs are Berkeley, CA; Cambridge, MA; and Philadelphia, PA. A two-pronged approach was taken to explore how these cities were implementing the launch of UTE. The Sub-Committee made direct contact with City Council members or City Manager/Mayor's staff in the three cities and requested that SPPD staff make direct agency to agency contact with the corresponding police departments.

Berkeley, CA

In July of 2020, the Berkeley City Council, with the endorsement and support of Mayor Jesse Arreguin, passed an omnibus package to reimagine public safety. The concept included the creation of a new City Department of Transportation. Under the purview of the newly created BerkDOT is the creation of an unarmed traffic enforcement department. The Sub-Committee contacted Trano Trachtenberg, Legislative Aide, to Mayor Arreguin. Mr. Trachtenberg provided meeting minutes from the Berkeley Transportation Commission's February 2021 meeting that included an extensive report on the practicalities of creating the new department of transportation. It is noted in the report from Liam Garland, Berkeley's Public Works Director, that *"enforcement of traffic violations set forth by non-sworn personnel could violate state law. Until state law changes, such a shift in function outside of BPD may be preempted. The City*

Discussion on the Potential of Unarmed Traffic Enforcement Officer

August 9, 2021

Page 3 of 7

Council adopted a resolution on December 15, 2020, requesting the California legislature enact legislation to give municipalities greater flexibility in traffic enforcement.”

When contacted by the SPPD staff, the Berkeley PD Traffic Bureau reported there had been no plan implemented, only a discussion by the political leadership to explore the idea. As of this time, the implementation of UTE in Berkeley has been completely halted until such time that the California Penal Code is amended to allow for the issuing of citations by non-sworn officers. The City passed an ordinance that prevents police officers from enforcing minor traffic infractions. This ordinance may trigger litigation from the State for police negligence, litigation from the ACLU for negligence in enforcing laws fairly for all residents, and class action litigation from residents impacted by negligence in enforcing existing laws.

Cambridge, MA

In July of 2020 and subsequently September of 2020, the Cambridge, MA City Council put forth a proposal to establish a UTE program. Policy Order POR 2020 #178 proposed that primary traffic enforcement be transferred from the Cambridge Police Department to unarmed personnel from the Traffic and Parking Department, Public Works, Health & Human Services, or another appropriate agency.

The Sub-Committee conversed with the Councilors who sponsored this effort, Councilor Quinton Zondervan and Councilor Jivan Sobrinho-Wheeler, by email, phone, and Zoom meetings. The Cambridge City Council and Public Safety Committee discovered that Massachusetts law precludes non-sworn officers from issuing traffic citations. A transcript of the October 14, 2020, Cambridge Public Safety Committee meeting is included as an attachment to this document. When contacted by SPPD staff, the Cambridge PD noted that the proposal had been rejected entirely due to current state rules and regulations. As of this time, the implementation of a UTE program in Cambridge has been completely halted until Massachusetts state law is amended to allow for the issuing of citations by non-sworn officers. The Councilors report that they have abandoned this program and refocused their efforts to establish a CAHOOTS model mental health response team.

Philadelphia, PA

In May 2019, voters in Philadelphia approved the creation of a corps of public safety enforcement officers. The responsibilities of this proposed uniformed but unarmed team are to assist police with code enforcement and regulating traffic, especially a widespread scourge of double-parked cars. Though this ordinance was passed, funding for this program has not been approved, and it has been delayed until possibly 2022. The Sub-Committee received no response from the Philadelphia Mayor or City Manager's staff. The SPPD reports that they contacted their colleagues at the Philadelphia PD, confirming that this program has not been implemented.

Additional UTE type programs

In addition to the three UTE proposals cited above, other similar programs were investigated by the Sub-Committee. To ensure a comprehensive understanding of alternative traffic enforcement concepts, three additional programs were examined.

Discussion on the Potential of Unarmed Traffic Enforcement Officer

August 9, 2021

Page 4 of 7

New Orleans

The City of New Orleans has contracted a private company, On Scene Services (OSS), to handle accident investigations. The New Orleans Police Department is currently understaffed, and the City was looking for ways to ease the burden on police resources. The employees of OSS are primarily retired police officers with experience in traffic enforcement. When an accident is reported, employees of OSS are sent to conduct an investigation at the scene of the collision. If there is evidence of criminal activity, the New Orleans Police are called to handle arrests and citations. In incidents where there is no apparent criminal activity, the OSS employees compile a report submitted to the NOPD for review and insurance companies that cover the motorists involved in the accident. Other than this contractor's accident response service, the City of New Orleans does not have an active UTE program.

The United Kingdom Highways Agency

The United Kingdom (UK) Highways Agency has uniformed traffic officers that patrol local highways in marked squad cars. Through email correspondence and Zoom meetings, the UK Highway Agency shared the details of this program. Though they are uniformed and patrol roads similarly to police, the traffic officers are responsible solely for traffic flow. These responsibilities include clearing accidents, removing debris, reporting damage, initiating necessary repairs, and traffic control during significant public events. In the event of any criminal behavior, they do not respond but call the appropriate police agency. While there is a tradition of police foot patrols in London that do not carry firearms, this does not extend to traffic enforcement as the situation is fraught with the possibility of violence during a traffic stop. The UK does not currently have any active UTE program.

New Zealand

The New Zealand National Police Force had a decades-long UTE program that began as early as when automobiles were introduced to the country. This program was implemented for roughly sixty years until it was ended in 1993. In the country's history, thirty-one percent of officers killed in the line of duty died during traffic stops. The deaths of officers include both unarmed and armed officers. Due to the dangerous nature of making traffic stops, the responsibilities of the unarmed patrols were assimilated into the regular duties of the National Police. New Zealand does not currently have an active UTE program.

Technology for Traffic Enforcement

Aside from the use of unarmed personnel, the Sub-Committee explored the use of technological solutions to enforce traffic regulations. Current approaches to this largely revolve around the use of automated camera systems. Automated camera systems effectively identify infractions when motorists exceed the speed limit or have illegally crossed through an intersection during a red light. Cameras are not effective at enforcing any other types of traffic infractions. The Sub-Committee looked into the possibility of deploying these camera systems in South Pasadena.

Red Light Cameras

Red Light Cameras are legal in California; however, the citations issued by mail are unenforceable because they are not issued by a sworn officer and have no impact on the driver's

Discussion on the Potential of Unarmed Traffic Enforcement Officer

August 9, 2021

Page 5 of 7

DMV record. Because it is widely known by motorists that red light cameras citations do not need to be paid, most cities in California have discontinued their use.

The City of Los Angeles has not used automated red-light cameras since 2011. The ACLU has also voiced its opposition to automated red light cameras as a possible infringement of resident's privacy rights. While the ACLU has not brought any litigation explicitly addressing the use of red-light cameras, they remain opposed to using any surveillance systems in public areas.

Speed Cameras

The use of automated radar-activated cameras to enforce speed infractions is not currently legal in California. In February 2021, a bill was introduced to the California Assembly by Reps. Chiu and Freidman to approve the use of these types of camera systems. AB550 would authorize a pilot program to use speed cameras in Los Angeles, Oakland, San Jose, San Francisco, and one additional Southern California city that has not yet been named.

If this bill passes, the ACLU will most likely bring immediate litigation for privacy concerns against any municipality that deploys a speed camera system as they previously have done in Davenport, IA.

A second bill introduced in the California Senate by Senator Susan Rubio, SB735, has been met with opposition by both police unions and the ACLU. Per amendments, SB735 is strictly limited to providing for the use of speed cameras only in currently identified school zones. The full text of both AB550 and SB735 are included as an attachment in this report.

Additional approaches to achieve the goal of equitable traffic enforcement.

The Sub-Committee also explored additional alternatives to reduce the disproportionate enforcement of traffic along racial and ethnic lines. There are two pragmatic approaches to achieve this in the absence of an unarmed patrol or technology systems: police policy review and officer training.

SPPD Policy

In 2020 the PSC undertook a substantial review of SPPD policy regarding the use of force. This review found that SPPD policy largely met or exceeded the policy requirements of the 8Can'tWait Campaign with the exception of the outdated Use of Force Continuum concept. This is reflected in the minimal use of force deployed during traffic stops by SPPD officers, as noted above. Additional policy review may be required once more comprehensive data about the racial and ethnic makeup of motorists stopped in South Pasadena is available in preparation for RIPA reporting requirements.

SPPD Training

Since November of 2020, SPPD personnel have participated in ongoing training courses aimed at reducing bias and increasing the use of de-escalation during interactions with the public. This includes:

1. Bias and Racial Profiling

Discussion on the Potential of Unarmed Traffic Enforcement Officer

August 9, 2021

Page 6 of 7

2. Crisis-Intervention and De-Escalation Training
3. Implicit Bias Training (Conducted by staff from the Museum of Tolerance)
4. Threat Assessment and De-Escalation Strategy
5. De-Escalation
6. Diversity, Equity, and Inclusion Awareness

Chief Solinsky reports that this training is required department-wide and is ongoing on a regular basis. As the new CAD system is launched and data can be collected, it can be used to analyze the effectiveness of these training programs regarding traffic enforcement.

Findings

1. California Penal Code Section 830.1 reserves the power to issue moving citations to sworn peace officers. Until such time that this is changed through legislation, the use of Unarmed Traffic Enforcement cannot be legally conducted and is therefore moot. The PSC should monitor for any legislative changes in the future, at which time this approach can be revisited.
2. In the event that any of the municipalities studied by the Sub-Committee do enact a UTE program without changes to state law, the results should be monitored and analyzed by the PSC and the City. The review should consider the implementation of this type of approach, including any strategies that allow for deploying a UTE team without changes to the California Penal Code.
3. The PSC and City should monitor the outcomes of AB550 and SB735. If either of these bills becomes law, the PSC and City should monitor the results to determine if speed cameras systems effectively reduce harm from speeding motorists and whether the burden of litigation is prohibitive.
4. The SPPD must continue officer training to ensure constant reductions of the interference of bias as they conduct traffic enforcement stops.
5. The PSC, the City, and the SPPD should conduct a timely review of racial and ethnic data of motorists that are stopped for traffic violations as it is collected with the new CAD system. The review should be ongoing and, if necessary, should cause review and changes to policy and training dependent on the results.

Fiscal Impact

There is no fiscal impact associated with the discussion of this report. There may be additional costs related should the PSC be directed to continue further research or conduct community outreach. Should a UTE program be implemented when legally permissible, there will likely be significant fiscal impacts in creating a new department or potential litigation.

Environmental Considerations

The action considered is exempt from the California Environmental Quality Act (CEQA), as it is not considered a “project” pursuant to Section 15378(b)(5) of CEQA Guidelines. The action

Discussion on the Potential of Unarmed Traffic Enforcement Officer

August 9, 2021

Page 7 of 7

involves an organizational or administrative activity of government that will not result in a direct or indirect physical change in the environment.

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Attachments:

- A. 2021 Annual Racial and Identity Profiling Act Report
- B. Transcript of the October 14, 2020, Cambridge Massachusetts Public Safety Committee
- C. Text of AB550
- D. Text of SB735
- E. Berkeley 2-2021 Fair and Impartial Policing Report
- F. CA v, Goldsmith – Red Light Cameras Lawsuit
- G. Philadelphia Bill 18081801 Full Text
- H. Cambridge POR 2020 #178 Full Text
- I. South Pasadena 2014 traffic Flow Study
- J. SPPD Traffic Function and Responsibility Policy
- K. PSC UTE Sub-Committee Chart of Contacts

ATTACHMENT A
2021 Annual Racial and Identity Profiling Act Report

ATTACHMENT B
Transcript of the October 14, 2020, Cambridge
Massachusetts Public Safety Committee

ATTACHMENT C
Text of Assembly Bill 550

ATTACHMENT D
Text of Assembly Bill 735

ATTACHMENT E
Berkeley 2-2021 Fair and Impartial Policing Report

ATTACHMENT F
CA v, Goldsmith – Red Light Cameras Lawsuit

ATTACHMENT G
Philadelphia Bill 18081801 Full Text

ATTACHMENT H
Cambridge POR 2020 #178 Full Text

ATTACHMENT I
South Pasadena 2014 traffic Flow Study

ATTACHMENT J
SPPD Traffic Function and Responsibility Policy

ATTACHMENT K
PSC UTE Sub-Committee Chart of Contacts

Additional Documents

General Public Comment:

My name is Kevin Bibayan and I am an owner of Arco Gas Station at South Pasadena. I am writing to you because I received a memorandum that South Pasadena is considering prohibiting the sale of all tobacco products.

I understand the intent of what you are trying to do and applaud you for trying to promote a healthier and safer city. Unfortunately, a total ban of tobacco is not the answer.

Tobacco sales are critical to my business. Nationwide, tobacco products make up more than one third of all convenience store sales. Whether you agree with using the product or not, the reality is that there's a massive demand for these products.

If the City of South Pasadena were to prohibit tobacco sale, customer will simply drive to surrounding areas where the products remain readily available. As you can see, a local law that's bound to city limits does nothing to curb usage of the product. What's worse is that we'd surrender sales and revenue to neighboring communities. That'll hurt my business and ultimately city revenue from things like business tax, property tax, and payroll tax.

The timing of a proposal like this couldn't be worse. According to the National Association of Convenience Stores convenience store sales were down 15.4% in 2020 due to the COVID-19 pandemic. Removing one of my largest revenue drivers on top of wholistic massive sales losses creates a catastrophe that I may not be able to overcome.

Once more, I understand that you are trying to do what is best for all members of your community. However, we are still far from done with the immediate and long-term impacts of the COVID-19 pandemic. This pandemic was not just a health pandemic. It was also a business pandemic. I am hoping you could consider the voices of business owners who contribute not just to the city's revenue but to the needs of our constituents as well.

Sincerely,

Kevin Bibayan
Veer Partners/Arco #42540
736 Mission St
South Pasadena CA 91030
veerpartners@gmail.com