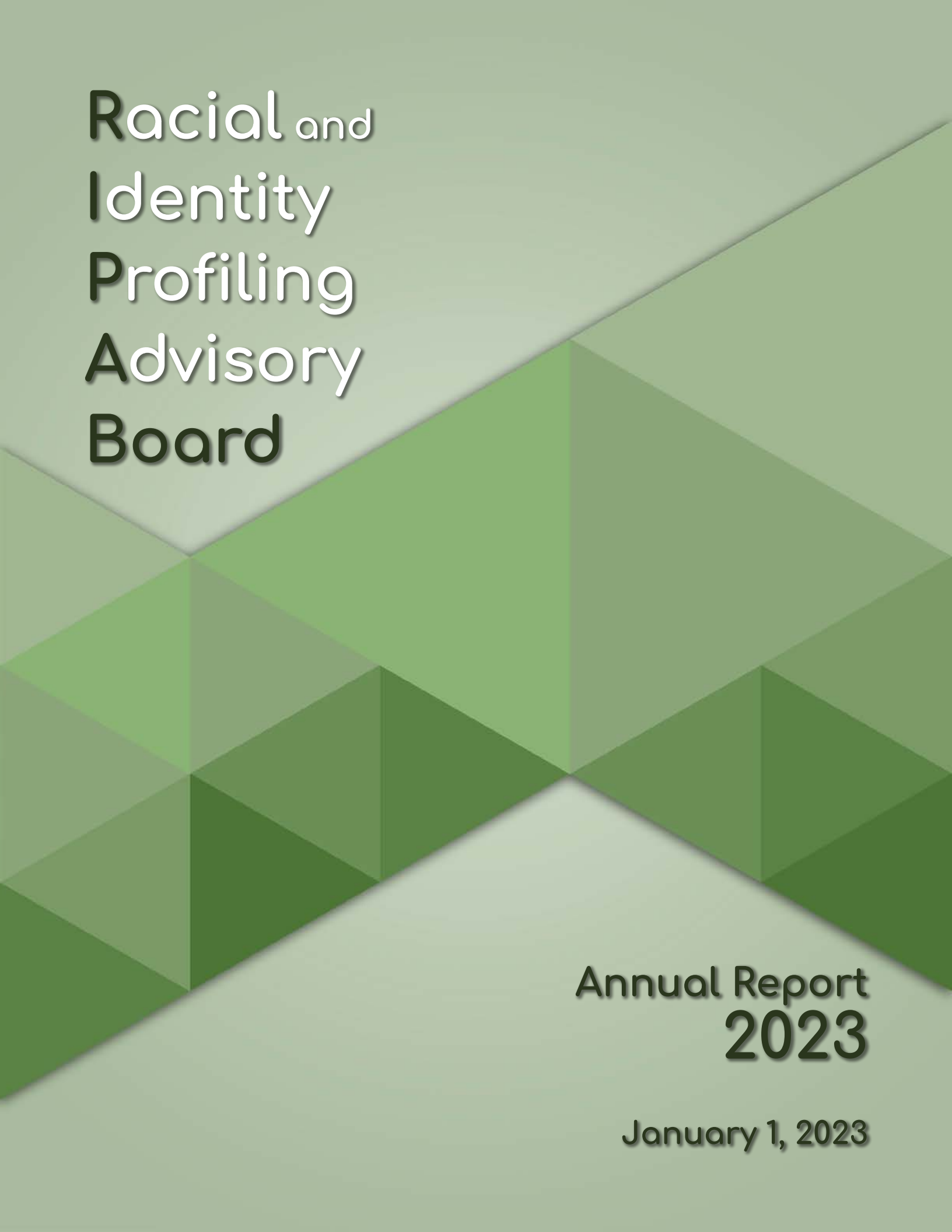


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Racial and Identity Profiling Advisory Board

Annual Report
2023

January 1, 2023

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Commissioner Amanda Ray has served on the RIPA Board since 2020 representing the California Highway Patrol. As a member of the POST Training and Recruitment subcommittee and the State and Local Policies and Accountability subcommittee, she greatly contributed to the Board Report during this time. Commissioner Ray held every uniformed rank within the CHP until she became the first woman to lead the organization in 2020. As CHP Commissioner, she oversaw a law enforcement agency with more than 11,000 employees, second only to the New York Police Department. The RIPA Board thanks Commissioner Ray for her service to the people of California and congratulates her on her retirement after 33 years of service to the California Highway Patrol.

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EXECUTIVE SUMMARY

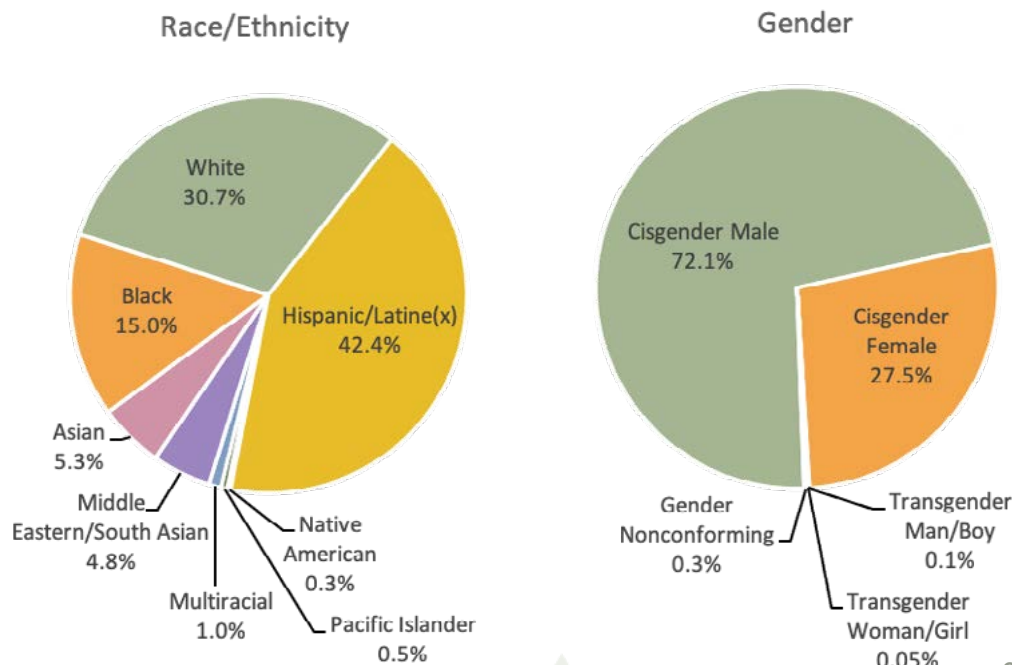
The California Racial and Identity Profiling Advisory Board's ("Board") 2023 Annual Report ("Report") marks the Board's sixth report since the Board's formation in 2016. This Report builds upon the Board's prior work by closely examining a wide range of issues related to racial and identity profiling in policing and how to eliminate this unlawful practice. Over the past four years, the data collected under the Racial and Identity Profiling Act ("RIPA") has provided empirical evidence showing disparities in policing throughout California. This year's data demonstrates the same trends in disparities for all aspects of law enforcement stops, from the reason for stop to actions taken during stop to results of stop.

Specifically, the 2023 Report analyzes the RIPA stop data from January 1, 2021 to December 31, 2021, collected and reported by 58 law enforcement agencies, including the 23 largest law enforcement agencies in California. The Report also explores the negative mental health impacts of adverse law enforcement interactions on individuals and communities and contains a new focus on youth interactions with law enforcement both inside and outside of school. Additionally, the report continues to examine the data and research on pretextual stops and consent searches. In this Executive Summary, the Board highlights specific findings, analyses, and research discussed in more detail in the body of the Report.

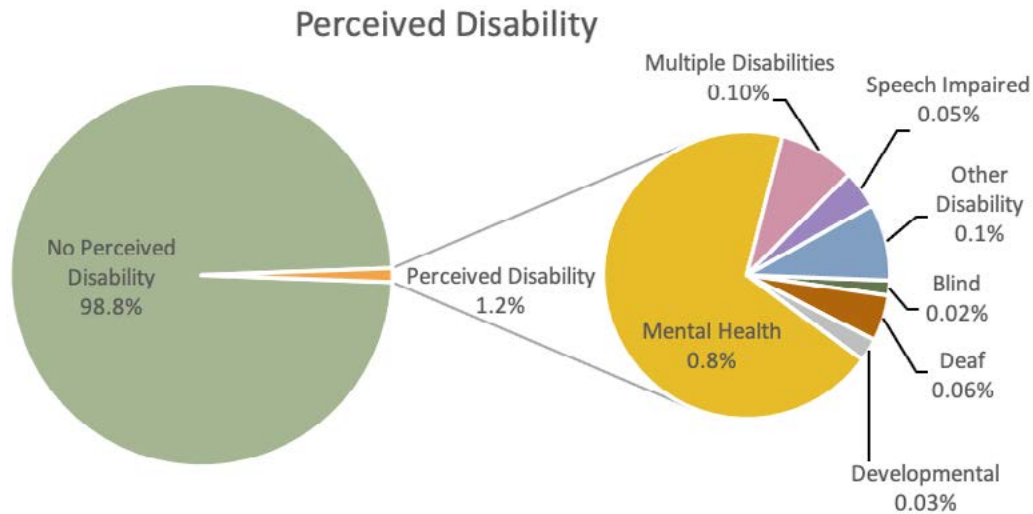
As a supplement to the Report, the Board is also including a list of Recommendations and Best Practices discussed in the Report. The Board encourages all stakeholders, including law enforcement agencies, policymakers, the California Commission on Peace Officer Standards and Training (POST), researchers, advocates and community members, to use these recommendations and best practices as a springboard for discussion and implementation of reforms. These reforms will not only improve public safety in California, but also strengthen law enforcement and community relations. Community input is critical to any reform process. The Board encourages agencies and municipalities to work with community members in effecting change in their communities.

FINDINGS REGARDING RIPA STOP DATA

- Agencies reported over 3.1 million stops during the data collection period, with the California Highway Patrol conducting the most stops of any single agency (54.9%).
- Individuals perceived to be Hispanic/Latine(x) (42.4%), White (30.7%), or Black (15.0%) comprised the majority of stopped individuals.



- The majority of stopped individuals were perceived as either (cisgender) male (72.1%) or (cisgender) female (27.5%), together accounting for 99.7 percent of individuals stopped.
- Officers perceived 1.2 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 (75.1%).



- The most commonly reported reason for a stop across all racial/ethnic groups was a traffic violation (86.8%), followed by reasonable suspicion that the individual was engaged in criminal activity (10.5%). Relative to other racial/ethnic groups, Black individuals had the highest proportion of their stops reported as reasonable suspicion (16.2%) and the lowest proportion of their stops reported as traffic violations (80.5%).
- To provide context for the racial distribution of stops by the reporting agencies, the Board compared the stop data to residential population data from the American Community Survey that was weighted to correspond with the jurisdictions of the reporting agencies. Black and Hispanic/Latine(x) individuals represented a higher proportion of stopped individuals than their relative proportion of the weighted California residential population.

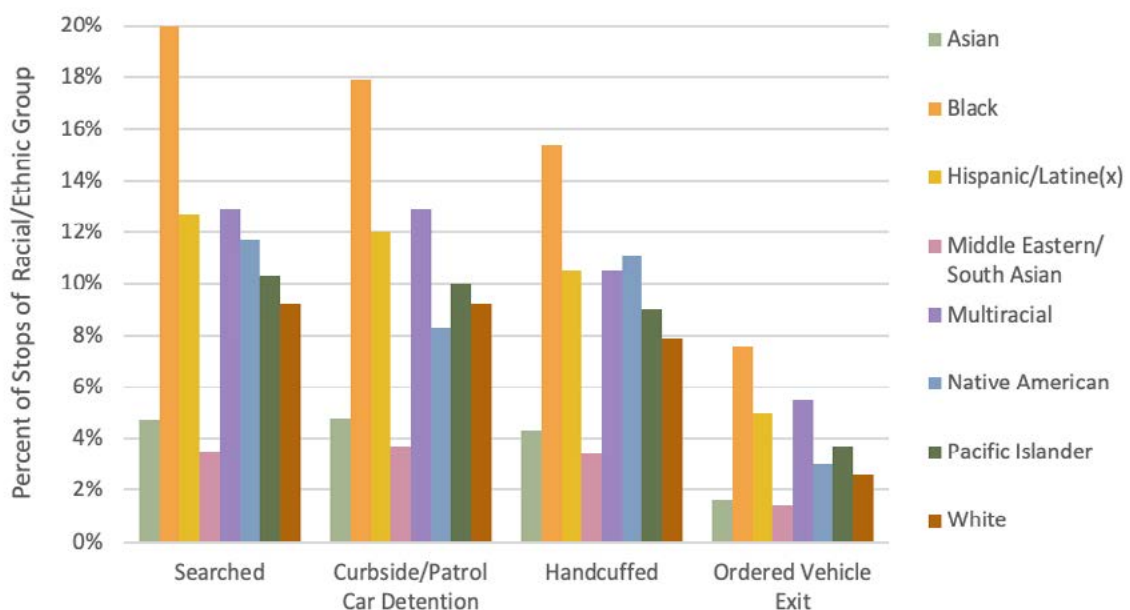


The Board analyzed when officers reported using force during a stop. Findings indicate that:

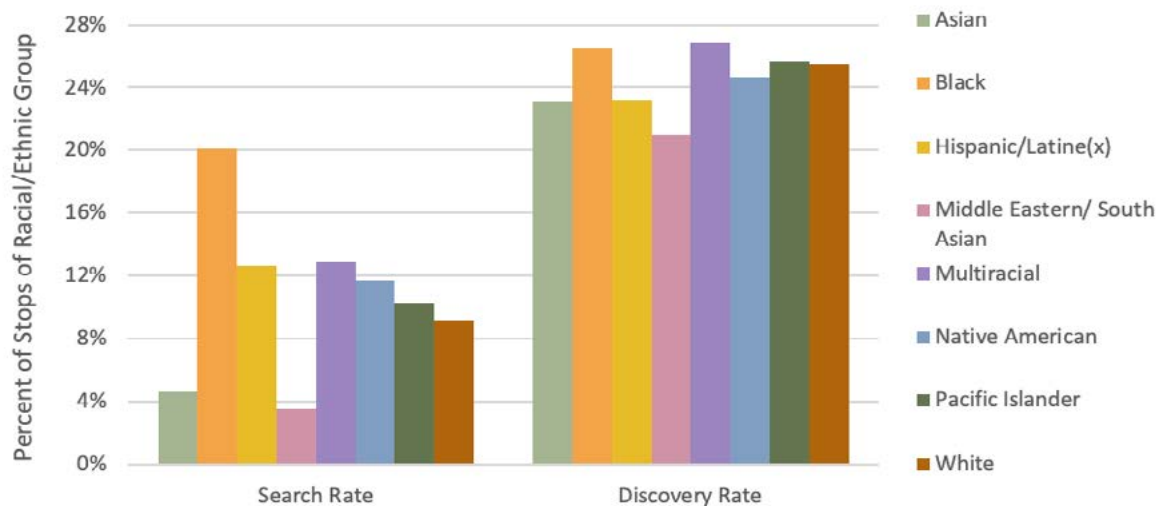
- Black and Hispanic/Latine(x) individuals were more likely to have force used against them compared to White individuals, while Asian and Other individuals were less likely to have force used against them. Specifically, the odds of having force used during a stop were 1.24 times and 1.09 times as high for Black and Hispanic/Latine(x) individuals, respectively.

The Board also analyzed the actions taken during stops. Findings indicate that:

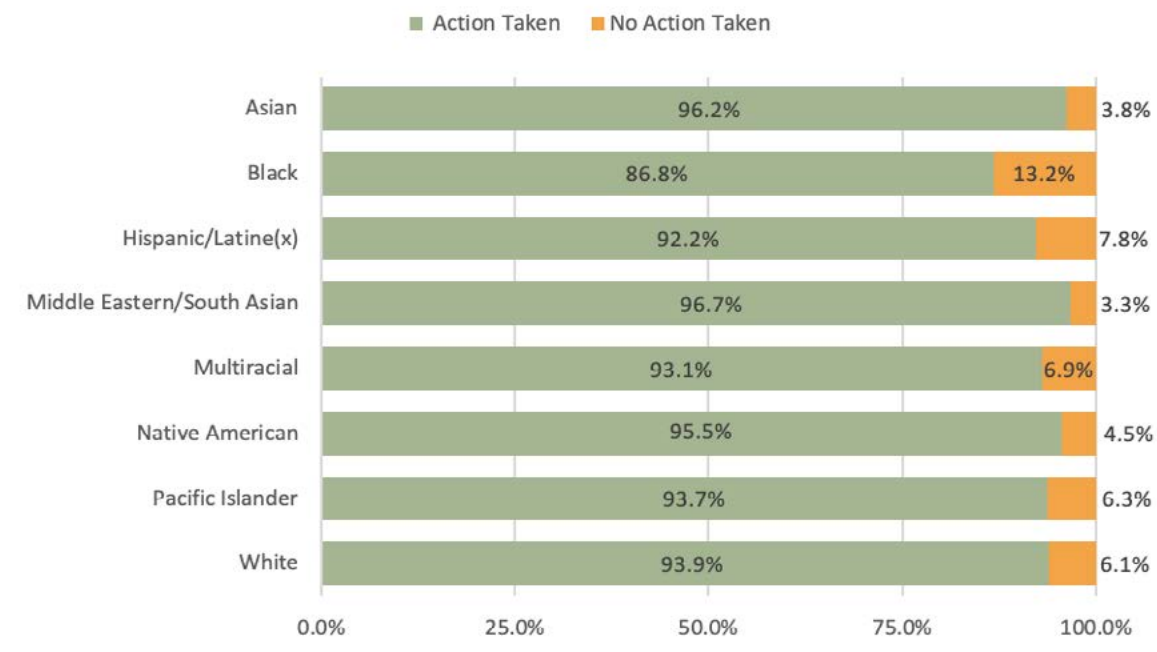
- Stopped individuals whom officers perceived to have a disability were searched (45.9%), detained on the curb or in a patrol car (46.0%), and handcuffed (49.4%) at a much higher rate than individuals perceived not to have a disability (11.4% searched, 10.8% detained, and 9.3% handcuffed). Individuals whom officers perceived to have a disability had a lower rate of being removed from a vehicle by order (3.3%) compared to individuals who were not perceived as having a disability (4.3%).
- Within all racial and ethnic groups, the highest observed percentage of stops in which officers handcuffed, searched, or detained individuals curbside or in a patrol car was for adolescents (10-14 years old and 15-17 years old). Within intersections of perceived age and racial and ethnic identity, Black adolescents (10-14 and 15-17 years old) were detained curbside or in a patrol car (36.2-44.5% of the time), searched (39.9-42.4% of the time), or handcuffed (33.5-36.5% of the time) during a higher percentage of stops than any other combinations of race and ethnicity and age groups. The RIPA data reveals that 15-17 year old Black youth are searched at nearly six times the rate of White youth, and 15-17 year old Hispanic/Latine(x) youth are searched nearly four times the rate of White youth.
- Overall, of all the racial and ethnic groups, stopped individuals whom officers perceived to be Black had the highest rate of being searched (20.1%), detained on the curb or in a patrol car (17.9%), handcuffed (15.4%), and removed from a vehicle by order (7.6%). Similar to findings from the 2022 Report, officers searched and removed from vehicle by order more Black individuals than White individuals, despite stopping over twice the number of White individuals as Black individuals.



- Additionally, search discovery rate analysis showed that stopped individuals of all racial or ethnic groups of color, with the exception of Asian and Middle Eastern/South Asian individuals, had higher search rates compared to individuals perceived as White. Stopped individuals perceived to be Black were searched at more than two times the rate of White individuals.



- Officers also report the result of each stop (for example, warning or citation given, arrest, or no action taken). Officers reported taking no action as the result of stop most frequently during stops of individuals they perceived to be Black compared to individuals of other racial/ethnic groups, indicating those stopped Black individuals were not engaged in criminal activity.



MENTAL HEALTH IMPACTS OF BEING POLICED

The Board examined recent research showing that police interactions can negatively impact the mental and physical health of individuals who are Black, Indigenous, Hispanic/Latine(x) and other people of color. Research shows that the types of contact and frequency of involuntary contacts with law enforcement may have a harmful impact on the individual stopped, triggering stress responses, depressive symptoms, anxiety, and other related negative mental health impacts. This research suggests that racial and identity profiling goes beyond the criminal legal system and policing; it is also a critical public health issue.

Urban policing practices over recent decades has experienced a movement toward a proactive or aggressive policing approach, wherein officers employ active engagement tactics with individuals in “high crime areas” to discover “imminent” criminal activity. The predominant police contact in large cities is with young Black and Hispanic/Latine(x) males, who experience stark differences from their White peers in how they are treated during law enforcement encounters.

The threat or act of calling the police on Black and Hispanic/Latine(x) individuals can expose them to risk of a range of serious, negative psychological effects. Research shows that bias-based calls to law enforcement – also known as bias by proxy – can be weaponized against innocent people of color as a form of racial intimidation that can cause terror in the victim, given the history of police brutality and use of force against Black, Hispanic/Latine(x), Indigenous, and other people of color.

The Board reviewed studies and surveys of Black individuals living in urban areas, and the researchers suggest that individuals who are stopped experience high rates of distress, a sense of injustice, feelings of hopelessness, and even feelings of dehumanization. Rather than bolster public safety, increased police presence may have the opposite effect and erode the community’s feeling of security. For Black individuals, merely seeing the police can increase anxiety levels, and interacting with officers correlates with higher distress, anxiety, trauma, and depression. Higher levels of police intrusion also corresponded with worse mental health. Heightened police surveillance can have especially acute mental health impacts on youth.

Based on the research, the Board believes that public health officials and policymakers should treat racial and identity profiling and adverse policing as significant public health issues. It is imperative to recognize that police interactions can negatively affect the mental and physical health of individuals who are Black, Hispanic/Latine(x), Indigenous, and people of color. Doing so could help significantly reduce the high stress, community fragmentation, and poor health outcomes among community members who experience targeting of their neighborhoods and aggressive policing practices. Given this, adequate resources should be invested to understand and address the health implications of racial and identity profiling.

PRETEXT STOPS

This year the Board continues examining pretextual stops and searches. A pretext stop occurs when an officer stops someone for a lawful traffic violation or minor infraction with the intention to use the stop to investigate a hunch regarding a different crime that by itself would not amount to reasonable suspicion or probable cause. While pretext stops are legal, this practice is widely criticized and often described as a fishing expedition, which is supported by the data that shows these types of stops do not yield high rates of contraband or evidence.

The Board reviews historical policing practices and policies that may have encouraged the use of pretextual stops and then breaks down the different types of stops that would be considered pretextual. Because pretextual stops allow officers to exercise significant discretion, explicit and implicit bias may influence officers’ decisions to make a stop and their actions during the stop. Research shows that traffic stops are the number one reason people encounter law enforcement and are the greatest

source of Black-White disparities among routine law enforcement activity.

- Research shows Black Californians are more likely to have force used against them during a traffic stop and are about three times more likely to be injured, shot, or killed by the police relative to their share of the state's population. Nationally, the majority of killings by law enforcement arose out of an incident involving a traffic violation or a law enforcement response to a non-violent offense.
- The RIPA data reveal Black individuals were 4 times as likely, Hispanic/Latine(x) individuals were 2.4 times as likely, and Multiracial individuals were 2.2 times as likely as White individuals to be asked for consent to search during a traffic stop. Yet RIPA consent search data from 2019 to 2021 show a continued trend of officers being least likely to find contraband in the possession of these groups as compared to those perceived to be White.
- Similar to consent searches, searches based on a person's supervision status (e.g., parole, probation, etc.) do not require the officer to suspect any criminal wrongdoing. RIPA data show Black individuals stopped for traffic offenses are 5.2 times as likely to experience a search based solely upon supervision status compared to White individuals stopped for traffic offenses. Contraband was discovered during only 15 percent of all traffic stops involving supervision only searches and even less frequently when these types of stops (involving a supervision only search) were of individuals perceived to be Black (12.3%) or Hispanic/Latine(x) (14.2%).

In addition to a broader analysis of traffic stops, the Board also examined a narrower subset of stops that can be pretextual in nature – including stops for bicycle-related violations, stops of pedestrians for roadway violations (such as not crossing at a designated intersection or failure to obey a traffic sign), or loitering stops – to determine if certain violations are disparately used against certain groups of individuals.

- Out of all stops, the Board found that people perceived to be Multiracial, Hispanic/Latine(x), or Black comprise a larger percentage of those stopped for bicycle violations than those who are perceived as White.
- During stops for bicycle violations generally, the rates of search, curbside or patrol car detention, and handcuffing were much higher compared to stops for all other reasons, and officers performed searches during 37.5 percent of stops for bicycle-related violations compared to 11.8 percent of all other stops. Compared to overall action rates during bicycle violation stops described above, an officer was more likely to search, detain, or handcuff individuals who were perceived to be Multiracial or Hispanic/Latine(x) and more likely to detain or handcuff individuals perceived to be Black.
- Pedestrian roadway violations were identified as the reason for a stop a higher proportion of the time when individuals stopped were perceived to be Black (0.81%), White (0.80%), and Multiracial (0.66%). Compared to the average rates among pedestrian roadway stops, officers more frequently searched, detained, and handcuffed individuals when they perceived them to be Multiracial, Black, or Hispanic/Latine(x). Individuals whom officers stopped and perceived to be Black were 2.6 times as likely to have no action taken at the end of a stop for a pedestrian roadway violation than those who were perceived as White.
- When disaggregated by race, loitering violations made up a larger percentage of stops when the individual was perceived to be Black (1.68%), White (1.27%), or Multiracial (1.05%). For gender identity, loitering violations made up a larger percentage of all stops when officers perceived individuals to be Transgender Men/Boys (4.55%) or Transgender Women/Girls (4.36%) – four times higher than the overall proportion of stops that were for loitering (1.03%). In addition, loitering stops made up a 6 times larger percentage of total stops for people with perceived mental health disabilities and a 4 times larger percentage of total stops for people with another disability

compared to those perceived to have no disabilities.

Focusing on intelligence-led and evidence-based stops have the potential to reduce disparities and profiling while focusing on public safety. Research indicates reducing pretextual stops will not have a negative impact on public safety.

- Pretextual stops do not often result in the recovery of contraband or weapons.
- Pretextual stops are costly. Data show that officers spend a significant amount of time –nearly 80,000 hours in 2019 – on traffic stops that lead to no enforcement action or discovery of contraband. For local law enforcement departments, 28,000 of those hours were spent on enforcing non-moving violations, which are more likely to be pretextual.
- Studies by the National Highway and Traffic Safety Administration (NHTSA) suggest traffic safety measures such as automated speed enforcement and red-light cameras can improve public safety while reducing officer discretion.

In an effort to reduce disparities shown by the data and make policing practices fairer, safer, and more equitable, some law enforcement agencies, municipalities, and states are working to end pretextual stops and searches. In addition to ending pretext stops, several municipalities are considering broader strategies to reduce the footprint of policing in traffic enforcement, including: (1) limiting the use of fines and fees for traffic violations to reduce the collateral effect of some pretextual stops; and (2) creating a traffic program that involves unarmed civilians rather than law enforcement. The Board highlighted the policies of several cities in California and around the country that have been developing civilian traffic departments.

The Board encourages stakeholders to create data-driven policies to improve public safety and develop innovative ways to address racial and identity profiling through eliminating pretextual stops. Specifically regarding high discretion pretext stops and searches, which are vulnerable to bias, the Board calls on the Legislature, law enforcement agencies, and local district attorneys to examine emerging approaches, including:

- (1) Identifying and taking action to limit enforcement of traffic laws and minor offenses that pose a low risk to public safety and show significant disparities in the rate of enforcement.
- (2) Limiting armed law enforcement responses with respect to traffic enforcement by allowing for stops only if there is a concern for public safety and explore amending the vehicle code to more broadly move traffic enforcement out of law enforcement's purview (e.g., to a civilian traffic unit).
- (3) Prohibiting certain searches, such as consent searches or supervision searches, during traffic stops and instead requiring probable cause for any search.
- (4) Eliminating all pretextual stops and subsequent searches and ensuring that a stop or search is based on reasonable suspicion or probable cause, respectively.

The Report also discusses models implemented in various jurisdictions aimed at eliminating disparities related to pretextual stops. These models contain key provisions other law enforcement agencies and municipalities may wish to explore when developing their own policies. Based on these models, the Board makes the following recommendations:

- (1) The Board recommends agencies' policies should prescribe the specific types of prohibited stops and, thus, limit the discretion officers have to determine what can be characterized as a public safety stop.

(2) The Board recommends that the Legislature evaluate moving to a probable cause standard for stops that the RIPA data shows have a statistically significant disparate outcome with little benefit to public safety.

(3) Policies should prohibit specific types of enforcement actions traditionally allowed in the absence of probable cause or reasonable suspicion. Specifically, the Board believes that law enforcement policies should prohibit both consent searches and supervision searches unless there are articulable facts establishing probable cause that a crime has been committed.

(4) The Board recommends that the Legislature prohibit asking an individual their probation, parole, or supervision status, unless there are articulable facts establishing probable cause that a crime has been committed.

Similarly, the Board explored various policies implemented by district attorneys aimed at reducing disparities related to pretext stops. Many of these policies contain several core components the Board recommends that district attorneys consider when developing strategies to address pretextual stops, namely:

(1) Declining to file charges that stem from a pretextual stop or search.

(2) Creating policies that direct deputy district attorneys to decline to file possessory charges based on a search that occurred during a traffic encounter or misdemeanor offense, such as a consent or probation search.

(3) Developing directives that clearly prescribe the types of stops that are restricted or prohibited, such as obstructed window or expired registration.

Lastly, the Board examined new laws in other states that rely on a variety of approaches to end pretextual stops. The Board recommends several considerations for the California Legislature to review when evaluating potential state policy reforms:

(1) Consider various measures, including prohibiting consent searches or creating primary and secondary traffic enforcement systems, and how the measures might reduce disparities and inequitable enforcement of laws.

(2) Consider addressing pretextual stops beyond just traffic violations, such as pedestrian-related stops (for example, policies that address stop-and-frisk, such as in the State of New York).

(3) Consider creating a package of reforms to address and end pretextual stops that includes decriminalization as a core component.

It is also important for agencies, district attorneys, and lawmakers to work with the communities they serve to develop their own policies to address pretextual stops in addition to looking at new types of traffic enforcement programs.

YOUTH CONTACT WITH LAW ENFORCEMENT

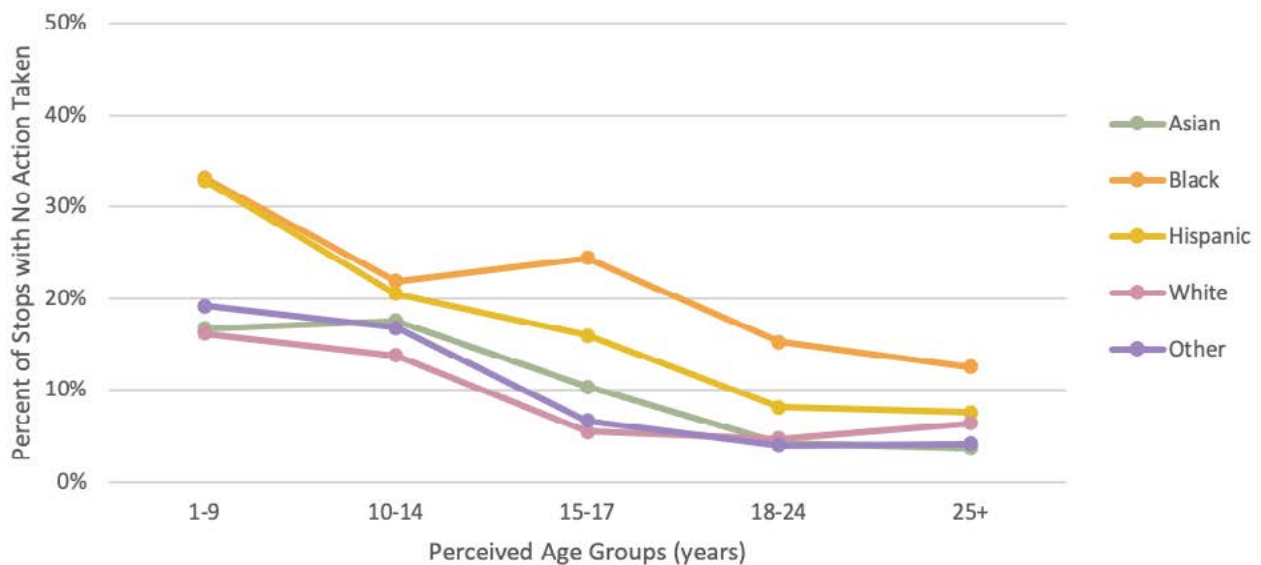
Children and adolescents can face the same treatment as adults during police encounters – they may be detained, searched, handcuffed, pepper sprayed, tased, and even shot. When these encounters go wrong, the consequences can be devastating and have far-reaching effects that go beyond what the data show. The Board highlights several high-profile incidents where the officer's lack of consideration for the age of the youth involved resulted in the child being harmed.

In addition, the Board examines the data to better understand the experience of youth when

interacting with law enforcement. Research shows that Black and Hispanic/Latine(x) youth are more likely than White youth to experience direct contact with law enforcement. The data reveal that 15-17 year old Black youth are searched at nearly six times the rate of White youth and Hispanic/Latine(x) youth are searched at nearly four times the rate of White youth. Black adolescents are also detained curbside or in a patrol car, searched, or handcuffed during a higher percentage of stops than any other combinations of race and ethnicity with age groups. Black youth are also more likely than their White peers to be stopped and detained for identical behavior, including minor offenses like vandalism and disorderly conduct, and are more likely to have force used against them. Studies also show that misbehavior by youth of color is more likely to be treated as a disciplinary or policing issue, unlike misbehavior by their White peers, which is more frequently perceived as a “behavioral health concern” to be addressed by school officials instead of police.

The Board also carefully evaluated disparities in stops that result in officers taking no reportable action to determine whether the stop was sufficiently supported by reasonable suspicion or probable cause and whether it should have occurred in the first place. The largest disparity between racial groups in the percent of stops that result in no reportable action taken occurs in the 15- to 17-year-old age group. Within this age group of stopped individuals, officers took no action with Black adolescents 24.4 percent of the time, Hispanic/Latine(x) adolescents 15.8 percent of the time, Asian adolescents 10.3 percent of the time, adolescents in other racial/ethnic groups 6.6 percent of the time, and White adolescents 5.5 percent of the time.

Rate of No Reportable Action Taken as Result of Stop by Age and Racial and Ethnic Group



Additionally, the Board examined consent only searches, which are searches in which the only basis provided by the officer is “consent given.” The highest percentage of stops with consent only searches was reported among individuals who were perceived to be both Black and between the ages of 15 and 17 years old. This data may reflect the fact that youth may not know their rights or feel comfortable declining an officer’s request to search their person or property.

The Board also reviewed field interview card data. Officers can fill out field interview cards to record and track contacts made during stops, investigations, and arrests; the field interview cards may be used to then enter data into law enforcement databases, such as the CalGang Database, which tracks potential gang membership. Within the different age groups, officers completed field interview cards during a higher percentage of stops of individuals perceived to be 10-14 years old from all perceived racial and ethnic groups (Black 19.1%, Hispanic/Latine(x) 16.4%, Asian 11.3%, White 10.1%, and Other 8.6%). The Board expresses concerns about including youth in police databases after a field interview

card is completed – both because of their greater vulnerability and willingness to comply with authority figures and answer officers’ questions, but also because children may not be able to weigh the long-term consequences of speaking to the police about information that could later be put into a database. The Board encourages policymakers and law enforcement agencies to consider additional protections and safeguards for youth, given the potential long-term negative consequences.

The Board also explored the increase in school-based law enforcement, which has increased contact with law enforcement for recent generations of youth. In the U.S. Department of Education’s 2015-16 Civil Rights Data Collection, California school districts reported 2,080 onsite law enforcement officers and 4,228 security guards in schools. Data show that 6.3% of students (390,072 students) in California attended schools where law enforcement was present, but the school did not have a counselor.

The Board reviewed data from state and national sources regarding student safety before exploring the relationship between student safety and school-based law enforcement. While often the motivation for establishing school-based law enforcement is increasing public safety, incidents of school violence and safety issues decreased over the decade between 2009 and 2019, except for school shootings. Researchers have found that school resource officers (SROs) do not prevent gun-related incidents and the presence of SROs increases the use of suspension, expulsion, police referral, and arrest of students. These increases were consistently greatest for Black students, male students, and students with disabilities.

Moreover, students who experience higher rates of disciplinary exclusion, such as suspensions, expulsions, and transfers to alternative schools, may also be at higher risk for contact with the criminal legal system. Over the past decade, rates of suspensions and expulsions declined within California schools. However, studies show that students of color, students with disabilities, and LGBTQ+ students are more likely to experience disciplinary exclusion compared to their peers, although evidence does not suggest higher rates of problematic behavior.

Given this research, the Board asks that policymakers consider if additional protections for youth should also extend to other areas of law enforcement practice, such as consent searches and field interview cards. Youth may also need additional protections and safeguards prior to waiving any rights, particularly if any statements they make could be used against them in criminal proceedings. Additionally, youth may respond differently in an encounter with officers than adults. Policymakers may also consider how use of force policies and practices can be reformed to take into account the physical and developmental differences of youth.

The Board emphasizes the importance of creating policies or laws that account for the vulnerability of youth and plans to review additional policy recommendations and best practices for student disciplinary issues and policy recommendations regarding school-based police.

RACIAL AND IDENTITY PROFILING POLICIES AND ACCOUNTABILITY

Several high-profile police killings, especially the killing of George Floyd, have catalyzed a national movement calling for deep systemic changes that would reduce the persistent violence against Black Americans by police officers. At the heart of the movement is an outcry for police accountability. Most law enforcement agencies have internal processes that should hold officers accountable. However, many of these processes are hindered by various institutional failures and hurdles. When these internal mechanisms failed to curtail misconduct, jurisdictions created external agencies to serve as additional checks on agencies. The Report surveys a variety of police accountability mechanisms. There are many factors that contribute to the effectiveness of internal accountability mechanisms. Such mechanisms often rely on civilian complaints or internal complaints, where sworn officers hold other sworn officers accountable, as discussed in more detail in the Report. The effectiveness of internal mechanisms may depend on officers dutifully carrying out processes that are established by the agency, having checks on both the processes and officers to ensure they are adhering to established policies, and the

commitment to accountability from the agency's leadership.

The Report discusses the effects of agency culture, the role supervisors may play in shaping that culture, and data and policy analysis used to promote accountability. A law enforcement agency's culture regarding accountability influences the efficacy of internal affairs and other departmental accountability systems. Supervisors play an integral role in building and shaping a department's culture and encouraging accountability. Internal affairs departments are a first line mechanism for accountability; a law enforcement agency has the most direct access to the officer in question and the evidence surrounding allegations of misconduct. Agencies should also conduct data analysis to provide concrete evidence of the impact of a practice on the community and review and revise their policies as needed.

Some jurisdictions have created accountability mechanisms external to law enforcement agencies, depending on the community's resources and desire for change. All accountability systems are better when they are integrated and take a holistic view so that there are different checks on the officers and agency that people feel they can count on. The Board reviews the following external accountability mechanisms:

- Attorney general oversight;
- Civil litigation mechanisms;
- Criminal oversight;
- Civilian review boards, including the various types and guiding principles for effective civilian review boards;
- Inspector generals, highlighting characteristics of successful inspector generals and providing examples of the Offices of Inspector Generals that oversee the Los Angeles Police Department and Los Angeles Sheriff's Department;
- Police commissions, discussing commissions in San Francisco, Oakland, Los Angeles, and Burbank; and
- San Francisco Department of Police Accountability, a unique government department that oversees and is independent from the police department.

While these mechanisms may overlap, a concerted and integrated effort among them is more likely to achieve accountability. Because communities have varying resources and needs, there is not a one-size-fits-all model. Different agencies and municipalities may try different approaches to fit their community's needs. As the Board emphasizes throughout this Report, the community should be involved in making the decisions about what approach will be the best fit. In the future, the Board would like to review the efficacy of accountability mechanisms and discuss efficacy measures. The Board would also like to discuss the limitations faced by accountability mechanisms, particularly those that may be experiencing retaliation from law enforcement agencies.

CALLS FOR SERVICE AND BIAS BY PROXY

The Report discusses the role dispatchers play in racial and identity profiling. Dispatchers play an integral role in the response to and outcome of a call for service for a number of reasons. They serve as the conduit between the 911 caller and the response team. A dispatcher interacts directly with the 911 caller – hearing the voice and tone of the caller and any background noises – and can ask questions as necessary. The dispatcher then makes the choice to (1) send law enforcement; (2) send a crisis intervention team in jurisdictions that have them; (3) send out a medical or fire team; or (4) not send out a team at all. Thus, the ability to discern whether a call is about a non-violent crisis, such

as a mental health or substance abuse episode, or improperly fueled by bias, is an important skill. Additionally, the response team relies on the information gathered by a dispatcher. That information may influence how a team responds to a particular incident and may set the stage for or prevent a volatile interaction.

The Report examines why dispatchers might be reluctant to not send law enforcement teams and examines several resources that can be utilized to help a dispatcher make better-informed decisions on responses to calls for services, such as:

- Technology and Information: California's 911 call system is also being updated to Next Generation 911 (NG911) to keep pace with current technology. This system will give dispatchers access to more information as they answer calls, such as text messages and videos;
- 988 Suicide and Crisis Lifeline: 911 dispatchers will work contemporaneously with a newly created mental health crisis hotline, 988, to reduce law enforcement response to crisis calls. The 988 system will help stem law enforcement response to calls in which a mental health response or substance abuse response is the more appropriate response; and
- Resource Line and Database – 211: Services are also available through another three-digit phone number, 211. It is a free phone number and online database that connects people to local health and human services, such as food, housing, child care, utility assistance, crisis intervention, disaster response information, and more.

POST is updating its dispatcher training course to include training on mental health, crisis intervention, and de-escalation techniques, and the effects of implicit and explicit biases. As POST updates and develops the Dispatcher Basic Training Course, the Board recommends that POST:

- (1) (a) Create a bias training for dispatchers that must be attended by all dispatchers at least once a year; (b) mandate participation in bias training to be repeated, sustained, and reinforced as further research supports; (c) and perform an annual review and update of the bias training for quality assurance and effectiveness;
- (2) Develop an assessment tool beyond an oral interview for determining potential bias of applicants during dispatcher hiring;
- (3) Develop outreach strategies for hiring dispatchers such that dispatchers are representative of the diversity of the community they serve; and
- (4) Offer guidance to local law enforcement agencies regarding social media investigations or inquiries in the hiring of dispatchers.

In last year's Report, the Board highlighted a number of local programs around the country that were developing alternatives to armed officers responding to crises. These programs, in cities such as San Francisco, Sacramento, Oakland, Denver, and Los Angeles, consist of trained, unarmed professional crisis response teams that can respond to calls for service and help individuals in need of mental health or other support. In this Report, the Board provides updates from these programs, including expansions or changes in procedure in the past year. In short, these crisis intervention programs are continuing to provide care to their community and expanding to add new teams or additional service times. This expansion means fewer crisis calls are answered by law enforcement, which reduces contact between individuals in crisis and the police and the criminal legal system. A community response means more referrals to treatment and fewer calls that end with individuals in handcuffs. Critically, crisis intervention teams rarely called for police reinforcement, which indicates that alternatives to law enforcement are successful at providing crisis response without risking public safety.

The Report also discusses a number of federal- and state-level funding resources for communities looking to set up crisis intervention programs. Additionally, the Report describes the funding of the

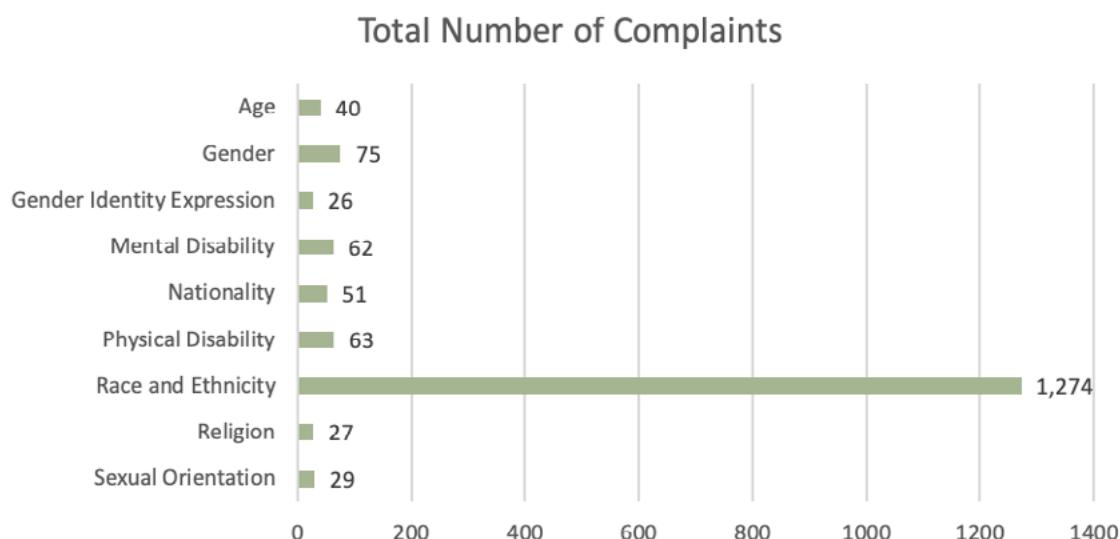
programs described above. The various programs referenced in this Report draw funding from sources such as city funds, grants, or the service of volunteers.

CIVILIAN COMPLAINTS

The Report includes an analysis of civilian complaints received in 2021 by 688 law enforcement agencies in California, including the 522 RIPA reporting agencies. RIPA agencies reported 10,088 complaints in total, and 10,490 complaints reached a disposition in the 2021 calendar year. Of the complaints that reached a disposition, 992 (9.5%) were sustained, 1,076 (10.3%) were not sustained, 3,496 (33.3%) were exonerated, and 4,926 (47%) were unfounded.

RIPA agencies reported 1,426 complaints alleging an element or elements of racial or identity profiling, constituting 14.1 percent of the total complaints reported by RIPA agencies in 2021. Within those 1,426 complaints, there were 1,647 allegations of identity profiling. This is because some civilians alleged more than one type of identity profiling, such as profiling based on both their nationality and religion. Complaints alleging race and ethnicity profiling constituted approximately 77 percent of the 1,647 allegations of identity profiling. The figure below provides a breakdown of the allegations within those complaints.

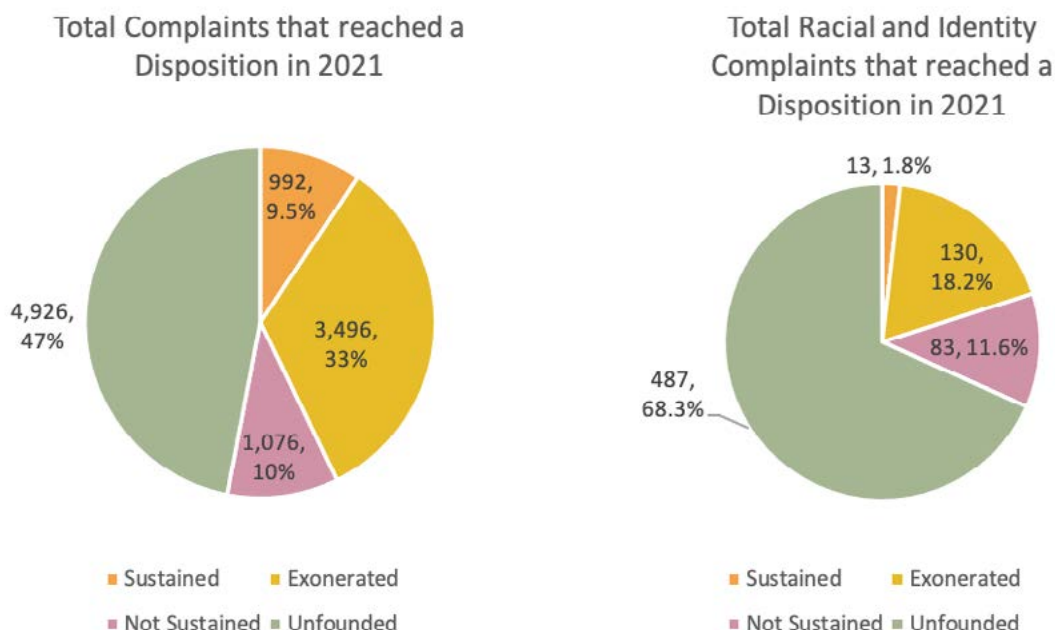
Total Allegations of Racial and Identity Profiling Reported in 2021



Of the 1,426 complaints alleging identity profiling, 713 reached a disposition in 2021: 13 (1.8%) were sustained, 83 (11.6%) were not sustained, 130 (18.2%) were exonerated, and 487 (63.8%) were unfounded.

The figure below displays the distribution of disposition types within the 2021 data for (1) all complaints that reached disposition and (2) complaints of racial and identity profiling that reached disposition.

Disposition Distribution of 2021 Complaints



The Report contains more details and a breakdown of complaint numbers for Wave 1, 2, and 3 agencies. Notably, Wave 1 agencies experienced an increase in the total number of complaints alleging racial and identity profiling, while Wave 2 and 3 agencies experienced a decrease. However, there was no clear correlation between the total number of complaints and the number of profiling complaints received within each wave. Wave 1 agencies experienced a 3.5 percent decrease in the total number of complaints, but an 18.2 percent increase in the number of complaints alleging racial and identity profiling. Wave 2 agencies experienced a 30.1 percent decrease in total complaints and a 1.4 percent decrease in profiling complaints. Wave 3 agencies experienced a 6.5 percent decrease in total complaints and a 22.7 percent decrease in profiling complaints.

In addition to data analysis, the Report contains a comprehensive discussion of best practices for each step of civilian complaint process. These practices aim to ensure that the complaint process is accessible and meaningful to members of the community as well as law enforcement. Standardizing the complaint process, ensuring that all complaints are investigated, and encouraging regular and transparent communication with complainants allows members of the community to feel heard and that their input is valued. Additionally, these practices allow agencies to develop a better understanding of the facts underlying each complaint, which, in turn, may assist in the identification of personnel issues affecting the agency. Accordingly, the Board encourages law enforcement agencies to review the best practices discussed in this Report and incorporate them into their complaint practices.

Lastly, the Board renews its recommendations to the Legislature to (1) define “civilian complaint” in Penal Code section 832.5 and (2) modify or eliminate the requirement stated in Penal Code section 148.6 that law enforcement agencies obtain a signed acknowledgement regarding criminal sanctions before accepting civilian complaints.

POST TRAINING AND RECRUITMENT

As required by law, the Commission on Peace Officer Standards and Training (POST) is the independent state agency responsible for all training and regulations for peace officers throughout California and is charged with developing minimum standards, disseminating guidelines, and certifying training. As part of its mandate under RIPA, the Board has reviewed and made recommendations on curriculum, videos, online course materials, and classroom training. The Board's review of POST's trainings and expenditures provides public insight into: (1) the quality of the course and training offerings and suggested revisions and improvements, (2) how effective the trainings are at reducing racial and identity profiling, and (3) how POST funding for law enforcement training is utilized.

This Report highlights the Board's reviews and commentary on two courses that focus on racial and identity profiling: Learning Domain 42 (LD 42), the Basic Academy course on Cultural Diversity/Discrimination, and the Museum of Tolerance's (MOT) curriculum for trainers entitled "Racial and Identity Profiling Train-the-Trainer." The Board's comments varied among the courses, including but not limited to the following: the courses should contain meaningful discussion regarding unlawful racial or identity profiling behavior and accountability for engaging in such behavior; the courses should include discussion of disparities shown in RIPA data and evidence-based content around profiling; the courses should discuss the history of policing; MOT and POST should work continuously to update course materials much more frequently in collaboration with community members; the Board expressed concerns that MOT and POST only dedicated a year to update MOT's curriculum after the course was not substantially updated for 20 years; the Board members would have liked the opportunity to observe the facilitation of the course; the Board would like to receive data measuring the effectiveness of POST's trainings; the courses should refer to racial *and* identity profiling throughout the training, rather than focusing only on racial profiling; the facilitation team should include non-law enforcement representatives; and the courses should aim for trainees to leave with the understanding that addressing bias can actually lead to better outcomes. The Report contains a more detailed discussion of Board commentary for both courses.

The Report lists a number of recommendations for consideration by the public, the Legislature, POST, and law enforcement agency executives. These include, but are not limited to:

- Providing the Board with information on how the Board's recommendations were incorporated into the courses;
- Expanding the size of the POST Commission to add additional public members to ensure more diverse representation from the public non-sworn community; conducting an audit or fiscal analysis of POST's funding for training to determine the most effective use of training funds;
- Requiring Field Training Officers to take extensive racial and identity profiling training prior to providing field training to newly certified Academy graduates;
- Mandating that POST create measures of effectiveness of its certified courses;
- Incorporating RIPA data into POST course framework and using real-life situations in the training;
- Increasing public participation by having the RIPA Board's course feedback and best practice recommendations discussed at public POST Commission meetings, developing a community engagement plan, and hiring a community engagement coordinator;
- Updating the Train-the-Trainer course more frequently, and proactively engaging with the community and a diverse group of stakeholders to review and provide recommendations regarding new course content; and
- Expanding the collaborative partnerships to different organizations that can receive funds for designing the curriculum and delivering the training.

The Report also reviews analyses, studies, and audits regarding POST training of peace officers and dispatchers from the Legislative Analyst's Office, The Little Hoover Commission, and the California State Auditor.

Additionally, the Board provided comments to POST regarding its regulations relevant to racial and identity profiling, including AB 846, which required POST to develop regulations around screening for bias in the hiring process, and SB 2, which required POST to define "serious" misconduct for purposes of evaluating peace officers for decertification.

The Board looks forward to continued dialogue with POST to explore how racial and identity training can become a more effective tool for officers in the effort to eliminate racial and identity profiling in California.

PUBLIC USE OF RIPA DATA

To understand the utility and effectiveness of RIPA data, the Board invited several organizations to present on how they have used RIPA data in their communities. The Report highlights how the Public Policy Institute of California, Neighborhood Legal Services of Los Angeles County, and the Center for Policing Equity have all analyzed RIPA data to identify racial disparities in policing practices across California.

RIPA REGULATIONS

The Report summarizes the amendments to the regulations implementing RIPA, which were approved by the Office of Administrative Law on August 5, 2022. The Attorney General's Office amended the regulations to improve accuracy and consistency of the reported stop data. The goal of the amendments is to assist the Board, law enforcement agencies, independent researchers, and the public in tracking, analyzing, and learning how racial or identity profiling may occur in order to develop solutions and policy changes.

The Report highlights some key changes to the regulations, which include requiring officers to report whether they perceive stopped individuals as unhoused, clarifying existing obligations so reporting will be more streamlined for officers, and outlining a process for researchers and the public to access stop data. California Code of Regulations, title 11, section 999.28, related to how agencies report stop data to the Department and how members of the public can access the stop data, is effective as of August 5, 2022, while California Code of Regulations, title 11, sections 999.224, 999.226, and 999.227, related to data collection, are effective on January 1, 2024.

RELEVANT LEGISLATION ENACTED IN 2022

The Report includes a section on recently enacted legislation related to RIPA that may require updated trainings and revisions to agencies' policies and procedures. The legislation highlighted in the Report deals with reform to background investigations for officers, implementation of a 988 number to handle mental health and crisis incidents, and decriminalization of pedestrian roadway violations, among others.

THE MENTAL HEALTH IMPACTS OF BEING POLICED ON COMMUNITIES IMPACTED BY RACIAL AND IDENTITY PROFILING

1. Introduction

The RIPA Board's mandate is to eliminate racial and identity profiling in policing.¹ The problem of racial and identity profiling in this country is not a new one. The use of law enforcement to suppress and control marginalized and disempowered groups is a thread that has run through American history, and it is often felt most significantly by heavily policed communities. From slave patrollers monitoring the movement of enslaved Black people to protect the property rights of wealthy White individuals² to the forcible removal of Indigenous communities from their native lands, to the arrest of suffragettes working for women's right to vote,³ to Japanese internment,⁴ to the criminalization of the LGBTQ+ community,⁵ and to the targeting of immigrants by local and federal authorities,⁶ peace officers have enforced unjust laws and policies. While policing today may not explicitly target certain communities, analysis of the RIPA stop data reveals multiple racial disparities related to officer actions, suggesting that Black, Indigenous, and other people of color are still targets.

Scholars have found that urban policing practices over recent decades experienced a movement toward a proactive or aggressive policing approach, wherein officers employ active engagement tactics with individuals in high crime areas to discover "imminent" criminal activity.⁷ This model of policing has been employed in large cities such as Philadelphia, Chicago, Los Angeles, and New York City (where 4 million stops were recorded by the New York City Police Department (NYPD) between 2004 and 2012).⁸ In general, the predominant police contact in each of these cities is with young Black and Hispanic/Latine(x) males,⁹ who experience stark differences from their White peers in how they are treated by law enforcement during those encounters.¹⁰

- 1 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."
- 2 Hansen, *Slave Patrols: An Early Form of American Policing* (July 10, 2019) Nat. Law Enforcement Memorial and Museum <<https://nleomf.org/slave-patrols-an-early-form-of-american-policing/>> [as of Nov. 29, 2022].
- 3 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 Nov. 29, 2022].
- 4 See, e.g., *Korematsu v. United States* (1944) 323 U.S. 214.
- 5 See, e.g., *Bowers v. Hardwick* (1986) 478 U.S. 186; *Stonewall Riots* (June 26, 2020) History <<https://www.history.com/topics/gay-rights/the-stonewall-riots>> [as of Nov. 29, 2022].
- 6 *SB 1070 Four Years Later: Lessons Learned* (Apr. 23, 2014) Nat. Immigration Law Center <<https://www.nilc.org/issues/immigration-enforcement/sb-1070-lessons-learned/>> [as of Nov. 29, 2022]; *President Trump's Raids on Immigrant Communities* (Feb. 27, 2017) Nat. Immigration Law Center <<https://www.nilc.org/issues/immigration-enforcement/trump-raids-on-immigrant-communities/>> [as Nov. 29, 2022].
- 7 Geller et al., *Aggressive Policing and the Mental Health of Young Urban Men* (2014) 104 Am. J. Pub. Health 2321, 1 <https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=2851&context=faculty_scholarship> [as of Nov. 29, 2022]; see also Kubrin et al., *Proactive Policing and Robbery Rates Across U.S. Cities* (2010) 48 Criminology 57, 4, 9 <https://scholarworks.iupui.edu/bitstream/handle/1805/6029/Kubrin_2010_proactive.pdf?sequence=1> [as of Nov. 29, 2022] (defining "proactive policing" as the "strict enforcement of all laws, addressing minor infractions as well as serious crimes" and "maximiz[ing] the number of interventions in, and observations of, the community").
- 8 Geller et al., *Aggressive Policing*, *supra* note 7.
- 9 Geller et al., *Aggressive Policing*, *supra* note 7, at p. 2.
- 10 *Id.* (citing prior research finding that *Terry* stops, which disproportionately affect Black and Latine(x) populations, often involve physical violence, racial degradation, and homophobia); Brunson, "Police Don't Like Black People": African-American Young Men's Accumulated Police Experiences (2007) 6 Criminology and Pub. Pol. 71; Brunson and Weitzer, *Police Relations with Black and White Youths in Different Urban Neighborhoods* (2009) 44 Urban Affairs Rev. 858.

In California, during 2021 stopped individuals perceived to be Black had a higher proportion of stops involving at least one reportable action (31%) compared to White individuals (15.9%).¹¹ Individuals perceived to be Black were searched at a rate of 20.1 percent, which is higher than any other racial or ethnic group.¹² Individuals perceived to be Black were also detained on the curb or in a patrol car at the highest rate (17.9%),¹³ handcuffed (15.4%),¹⁴ and removed from a vehicle (7.6%) more frequently than other racial or ethnic groups.¹⁵ The Board also compared this data to residential population data to find that Black individuals are stopped 144.2 percent more frequently than expected given their proportion of the residential population.¹⁶ Thus, police stops and actions taken during those stops disproportionately impact the Black community; as the data shows, individuals from other marginalized communities are also negatively impacted.

Recent research, discussed in detail below, has looked beyond the quantitative data to examine the impact of the actions underlying the data findings on Black, Hispanic/Latine(x), Indigenous and other people of color. The direct experience and observation of these adverse interactions with law enforcement can have far-reaching effects beyond the interaction itself. Below the Board examines the health implications of racial profiling.

2. Racial Profiling and Public Health

Recent research has shown that police interactions can negatively impact the mental and physical health of individuals who are Black, Hispanic/Latine(x), Indigenous, and people of color, suggesting that racial and identity profiling should not just be treated as a criminal justice issue, but a public health one as well. Research shows that the types of contact and frequency of involuntary contacts with law enforcement may have a harmful impact on the stopped individual, triggering stress responses and depressive symptoms, anxiety, and other related negative mental health impacts.¹⁷ This is especially true for those individuals reporting intrusive and/or unjust police stops.¹⁸

Further, studies show that police contact targeting Black individuals adversely impacts their health in six ways, including through: “(1) violent confrontation with police that causes injury or death; (2) police language that escalates a confrontation through micro-aggressions or macro-aggressions; (3) sub-lethal confrontations with police; (4) adverse health consequences of perceived or vicarious threats, i.e., the mere belief in potential harm by police injures health . . . (5) knowledge of or a personal relationship with someone who directly experienced racial profiling; or (6) public events without personal knowledge of the unarmed person threatened or killed by police as a result of racial profiling, but where such events cause both individuals and the community at large to perceive a threat.”¹⁹ Researchers suggest that individuals who are stopped experience high rates of distress, a sense of injustice, feelings of hopelessness, and even feelings of dehumanization.²⁰ Police mistreatment

11 See Report at p. 42.

12 See Report at p. 43.

13 *Ibid.*

14 *Ibid.*

15 *Ibid.*

16 See Report at p. 51.

17 See Geller et al., *Aggressive Policing*, *supra* note 7, at pp. 2-4, 8-14.

18 See Geller et al., *Aggressive Policing*, *supra* note 7, at p. 12.; Sewell and Jefferson, *Collateral Damage: The Health Effects of Invasive Police Encounters in New York City* (2016) 93(1) J. Urban Health 42, 43 <https://www.researchgate.net/publication/287269356_Collateral_Damage_The_Health_Effects_of_Invasive_Police_Encounters_in_New_York_City> [as of Nov. 29, 2022].

19 Laurencin and Walker, *Racial Profiling is a Public Health and Health Disparities Issue* (2020) 7(3) J. Racial Ethn. Health Disparities 393, 3-5 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7231642/>> [as of Nov. 29, 2022].

20 Geller et al., *Aggressive Policing*, *supra* note 7, at p. 4 (citing Shedd, *Arresting Development: Race, Place, and the End of Adolescence. Feminism Legal Theory Workshop*, (Feb. 2012) Columbia L. School; Brunson and Weitzer, *Police Relations with Black and White Youths in Different Urban Neighborhoods*, *supra* note 10).

can increase the risk of a range of negative psychological effects.²¹ A study conducted by doctors and researchers showed that media exposure to police killings of unarmed Black people can have a significant, negative impact on the mental health of Black individuals, without a similar effect on White individuals.²²

Rather than bolster public safety, increased police presence may have the opposite effect and “may traumatize local residents and erode feelings of security.”²³ Research has also shown that police hyper-targeting of neighborhoods increases the risk of police violence, which can contribute to community fragmentation and poor health outcomes among community members.²⁴ The causality between police interactions and use of force and the social impact on communities warrants further attention and research, as does the link between psychological health and law enforcement interactions.²⁵ In this Report, the Board focuses on the existing research demonstrating the health impacts.

3. Bias by Proxy Calls

Research shows that calling—or even threatening to call—the police can expose individuals to an increased risk of “serious, negative psychological effects.”²⁶ Contact as minimal as seeing law enforcement can generate increases in anxiety and stress.²⁷

The Board has been analyzing bias-based calls for service for several years. Bias-based calls for service – also known as bias by proxy – occur when a member of the community calls law enforcement and “makes false or ill-informed claims about persons they dislike or are biased against.”²⁸ The threat or act of calling the police on Black individuals can be understood as a form of racial intimidation that can cause terror in the victim, given the history of police brutality and use of force against Black individuals, as well as Hispanic/Latine(x), Indigenous, and other people of color.²⁹ In the face of an unjustified call for service by law enforcement, the victim may reasonably believe they are “confronted with the very real possibility of humiliation, physical harm, or even death.”³⁰ Further contributing to the mental health trauma of witnessing a call for service that leads to death is the sense of despair associated with the value placed on Black lives following the death of an individual during a response to a call for service.³¹ Victims of these calls are well aware of the racialized realities of policing in America, and that their deaths could be “rationalized and defended without consequence.”³²

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- 21 McNamara, *White Caller Crime: Racialized Police Communication and Existing While Black* (2019) 24 Mich. J. Race & L. 335, 366 <<https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1293&context=mjrl>> [as of Nov. 29, 2022].
- 22 See McNamara, *supra* note 21, at p. 367 (citing Bor et al., *Police Killings and Their Spillover Effects on the Mental Health of Black Americans: A Population-Based, Quasi-Experimental Study* (2018) 392 Lancet 302, 307 (documenting that media coverage of police brutality had no effect on the mental health of White respondents) <<https://dash.harvard.edu/bitstream/handle/1/37367687/nihms-1007736.pdf?sequence=1>> [as of Nov. 29, 2022]).
- 23 See Ang, *The Effects of Police Violence on Inner City Students* (2021) 136 Quart. J. Economics 115, 32 <https://scholar.harvard.edu/files/ang/files/policeviolence_ang.pdf> [as of Nov. 29, 2022] (finding that “some police encounters may traumatize local residents and erode feelings of security”).
- 24 Gomez, *Policing, Community Fragmentation, and Public Health: Observations from Baltimore* (2016) 93 J. Urban Health 154, 164 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4824692/pdf/11524_2015_Article_22.pdf> [as of Nov. 29, 2022].
- 25 See Ang, *supra* note 23, at p. 2.
- 26 McNamara, *supra* note 21, at p. 367.
- 27 *Id.* at 366 (citing Alang et al., *Police Brutality and Black Health: Setting the Agenda for Public Health Scholars* (2017) 107 Am. J. Pub. Health 662 <https://www.researchgate.net/publication/315510199_Police_Brutality_and_Black_Health_Setting_the_Agenda_for_Public_Health_Scholars> [as of Nov. 29, 2022]).
- 28 See Racial and Identity Profiling Advisory Board, Annual Report (2021) p. 101 <<https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2021.pdf>> [as of Nov. 29, 2022] (citing Fridell, *Producing Bias-Free Policing: A Science-Based Approach* (2017) Springer Internat. Publishing, p. 90 <<http://ndl.ethernet.edu.et/bitstream/123456789/15169/1/90.pdf.pdf>> [as of Nov. 29, 2022]).
- 29 See McNamara, *supra* note 21, at p. 370.
- 30 *Ibid.*
- 31 *Ibid.*
- 32 *Ibid.*

These racialized communications are particularly devastating when Black and Hispanic/Latine(x) children are involved, which can lead to long-term traumatic effects of how they view the police and, most importantly, how they view themselves. As an example:

On October 12, 2018, Teresa Klein, a White woman, accused nine-year-old Jeremiah Harvey [a Black youth] of “sexual assault” when she claimed the child “grabbed her butt” in a Brooklyn deli. On the now-viral video, Klein is seen calling the police, stating “I was just sexually assaulted by a child,” and demanding “the cops [get] here right now!” Harvey can be heard crying in the background of the video. Security footage later showed that Harvey’s school bag accidentally grazed Klein as he walked behind her. In a later interview, Harvey’s mother testified that her son has suffered from ongoing flashbacks and nightmares. Moreover, she worried the ordeal would “affect him for life,” since Harvey now suffers from anxiety when he sees the police.³³

In another example, Gil Perkins, a Black male who was a Master’s of Public Health student at Harvard at the time of this incident, relayed how the act of calling the police was weaponized against him as a threat:

Some evening, I parked my car in front of the house like I always do... So I’m leaning against the car, just having a conversation, and a woman comes to the door, and was like, “Hey you, you need to leave, you’re talking too loud.” And I’m like, “You know who I am. I live right here.” And she was just dismissive like, “I don’t know, I don’t care, you need to leave, you’re talking too loud.” I was like, “Lady, A, I’m not talking loud, and I’m leaning on my car. And I live right here, I’m about to walk into my house. Like, we’re neighbors, I’m not a stranger.” She’s like, “I’m calling the cops.” And I’m like, “Calling the cops for what? I’m not doing anything.” And the line that stuck with me the most. . . “I’m calling the cops right now. And you know what that means for you.” That’s the line that sticks in my mind. It was like she had an awareness of what that would mean. It was so real, because I had to acknowledge that as much as I was really, really was frustrated and angry with this person for just completely messing up my night and invading my space, the reality was what it was. In that situation, if the police arrive, it’s gonna be all bad for me. And we both knew that. And it was like she weaponized that against me. And so I just made a calculated decision like, look, I don’t need this static. Yes, all I planned on doing was going into my car, grabbing my things, going upstairs, but now I have to leave. So I got back in my car, and I just drove away. And I didn’t come back for like a couple hours. She knew, effectively, that I was powerless. Like when the cops came, they’re not gonna hear me out, and she knew that. So it was her weapon, and I didn’t have any other weapons. So I had to leave, I was gonna lose that battle.³⁴

And a Black Columbia professor who was profiled while walking his dog in New York City was asked by the police whether he was afraid of the older White woman who confronted him.³⁵ He responded by saying that he was not physically afraid of her, but that she did wield a weapon: “She has a phone.”³⁶

These bias by proxy calls are not limited to Black and Hispanic/Latine(x) people. For example, two Native American teenage brothers were touring Colorado State University when a parent reported them to the campus police, saying their behavior and band T-shirts were “dark” and suspicious.³⁷ The boys’ mother stated on Facebook, “My two teenagers were ‘patted down,’ and my 17-year-old

33 McNamara, *supra* note 21, at p. 368.

34 McNamara, *supra* note 21, at p. 369.

35 Stewart, *The White Dog Walker and #LivingWhileBlack in New York City* (May 2020) New York Times <<https://www.nytimes.com/2020/05/30/nyregion/central-park-video.html>> [as of Nov. 29, 2022].

36 Stewart, *The White Dog Walker and #LivingWhileBlack in New York City*, *supra* note 35.

37 Papenfuss, *College Apologies to Native American Brothers Detained After Joining Campus Tour* (May 2018) Huffington Post <https://www.huffpost.com/entry/native-american-brothers-detained-on-colorado-college-tour_n_5aed1450e4b041fd2d26d559> [as of Nov. 29, 2022].

ordered to ‘empty his pockets,’ then immediately ordered to ‘keep his hands out of his pockets,’ until he was forced to ask, ‘Which one do you want me to do?’ All of this treatment because some ‘nervous mother’ didn’t like how my boys looked and was unsettled by their quiet presence?”³⁸ As a result of this detention, the boys missed the tour they had saved up for, and were understandably frightened and humiliated by the experience.³⁹

Calls for service also raise questions about how police and dispatchers’ assessment of credibility is affected by race. Research has shown that law enforcement may credit the words of White individuals over Black individuals in calls for service scenarios.⁴⁰ This act of being dismissed or having one’s credibility questioned is sufficient to inflict trauma on the individual.⁴¹ On those occasions where racialized reporting ends in public arrest, the innocent Black victim is “further exposed to the indignity of having bystanders watch” as the arrest unfolds.⁴²

In a similar vein, these unjustified calls may not only cause damage to an individual’s dignity, but can damage the victim’s reputation as well, particularly when involving false accusations of criminal conduct.⁴³ Research has also revealed that being falsely accused of a crime can have negative psychological consequences.⁴⁴

Racialized police communications can take place when law enforcement responds to trivial complaints made against Black and Hispanic/Latine(x) people performing everyday activities.⁴⁵ The weaponizing of calls to law enforcement for minor or manufactured acts involving Black and Hispanic/Latine(x) people leads to trauma associated with feelings of inadequacy or insufficiency related to personhood and belonging.⁴⁶

4. Police-Initiated Stops

In addition to calls for service, a number of studies have analyzed how different types of police encounters can have mental and physical health impacts on individuals stopped by police. The National Consortium on Violence Research sponsored a study of Black adolescents designed to gain a better understanding of how individuals process their interactions with police.⁴⁷ Respondents reported generally that policing efforts in their communities “primarily consisted of frequent pedestrian and vehicle stops by patrol officers, detectives, and members of specialized units and task forces.”⁴⁸ Study participants viewed these stops as aggressive and characterized their interactions as constituting harassment.⁴⁹ Respondents were asked how often they believed the police enforced laws, responded quickly to calls, worked hard to solve crimes in the neighborhood, were easy to talk to, were polite to people in the neighborhood, did a good job preventing crime, and harassed or mistreated people in the neighborhood.⁵⁰ Eighty-three percent of respondents reported experiencing harassment by police.⁵¹

38 Papenfuss, *supra* note 37.

39 *Ibid.*

40 McNamara, *supra* note 21, at p. 371.

41 See *id.* at pp. 371-375.

42 See McNamara, *supra* note 21, at p. 377.

43 See *id.* (citing *Rosenblatt v. Baer* (1966) 383 U.S. 75, 92).

44 Whitley, *The Mental Health Impact of ‘Blame a Black Man Syndrome’* (Nov. 16, 2017) Psychology Today <<https://www.psychologytoday.com/us/blog/talking-about-men/201711/the-mental-health-impact-blame-black-man-syndrome>> [as of Nov. 29, 2022].

45 *Id.* at 378.

46 See *id.* at pp. 377-381.

47 Forty St. Louis, Missouri based Black adolescent males were interviewed to explore the array of their experiences with police. The investigation that took place between Spring 1999 and Spring 2000 is based on information from a survey and in-depth interviews with “at risk” and delinquent adolescents aged 13-19, with a mean age of 16. See Brunson, *African-American Young Men’s Accumulated Police Experiences*, *supra* note 10, at p. 76.

48 Brunson, *African-American Young Men’s Accumulated Police Experiences*, *supra* note 10, at p. 78.

49 *Ibid.*

50 *Id.* at p. 79.

51 *Id.* at p. 81.

The young men surveyed not only objected to routinely being stopped, but they also objected to the manner in which officers spoke to them and expressed “grave concern about being ordered to sit or lie on pavement while enduring physically intrusive searches.”⁵² Many of the young men in the study expressed frustration when they believed they were stopped without basis for suspicion.⁵³ Twenty-five percent of the study’s participants experienced encounters that they believed extended beyond harassment to include violence and other forms of police misconduct.⁵⁴ The police misconduct most frequently reported was allegations of physical abuse and officers taking money and leaving individuals stranded in other neighborhoods.⁵⁵

Despite the young men of the study viewing aggressive policing practices as a normal aspect of police/urban Black male youth interactions, they nonetheless viewed police violence “as a common feature of urban policing” and the policing strategies as repressive, a belief that helped shape their assessment of the police.⁵⁶ Of particular concern to study participants was the excessive use of force, with the most common forms including pushing, shoving, punching, kicking, and the use of mace.⁵⁷

A Baltimore case study found that in neighborhoods with high crime and arrest rates, residents noticed the chilling effect police presence had on community activities.⁵⁸ Researchers interviewed 21 Black men and women between the ages of 21 and 64, asking them about their interactions with local law enforcement and the effect of policing on mental health and community fragmentation.⁵⁹ Notably, the study was carried out over a period of eight weeks in April and May of 2015, overlapping with the high profile death of Freddie Gray – which occurred during a Baltimore police van transport – and the resulting mass protests.⁶⁰ The interviews revealed that heightened police presence made them feel like they were under constant surveillance, making them less likely to have a positive relationship with local officers and dissuading them from passing time in public spaces.⁶¹ One forty-five year old male resident described the impact of police presence on community gathering:

We’re just standing in front of the Chinese carry out...just waiting for our food... and the police come and tell us to move along. Move along? ...we’re waiting for our food... thought the side walk was public property...we can’t stand on the corner in our own community? They want to pat us down...ask us if we have guns...we call it ‘SWB’...you know what that means? Means ‘standing while black’...if [you’re] black you can’t stand on the corner...did you know that? Not the first time I been harassed or seen other people. Too many times to count. Affects me, all of us...it makes us angry...we have so much anger inside...pushed down...because they keep treating us all like criminals...see two of us together and we’re criminals...how can we be together in our community? What do we do with this anger? We can’t even talk on the corner.⁶²

Community fragmentation of this type is associated with poor public health outcomes, largely stemming from stress and worry.⁶³ The Baltimore study also revealed that residents perceived police activity as being racially-motivated, which impacted the community-police relationship.⁶⁴ One interviewee inferred that police were using race-motivated intimidation while on duty, “It’s a hate crime thing, a racial type thing. When they harass black men and women for no apparent reason, to

52 Brunson, *African-American Young Men’s Accumulated Police Experiences*, *supra* note 10, at p. 81.

53 *Id.* at p. 83.

54 *Ibid.*

55 *Ibid.*

56 See *id.* at pp. 87, 95.

57 *Id.* at p. 87.

58 See Gomez, *supra* note 24, at pp. 159-163.

59 See *id.* at pp. 154-155.

60 See *ibid.*

61 See *id.* at pp. 162-163.

62 *Id.* at p. 162.

63 See Gomez, *supra* note 24, at p. 163.

64 See *id.* at pp. 161-163.

see it is different . . . has a lot to do with the color of your skin.”⁶⁵ Several interviewees observed that the police seemed to be monitoring the residents themselves, not responding to particular criminal threats.⁶⁶ One interviewee noted, “I get stopped and harassed all the time . . . walking and they tell me to ‘stop and stand against the wall, put your hands on top of your head, don’t move, where’s your ID at, do you live at the address on the ID...tired of getting harassed in Baltimore.”⁶⁷ Another interviewee confirmed a similar sentiment, “Police don’t look at kids as kids, look at them as grown, adults . . . I see the police cussing them, slamming them on the ground, verbally abusing them . . . Not their job to question babies . . . but they’ll tell them what they see so that’s why they harass them.”⁶⁸

Scholars examining New York City’s “stop and frisk” policies echo the results of the Baltimore case study and conclude that aggressive policing and fears of surveillance should be treated as public health issues since they reduce community activity and create environments of high stress.⁶⁹ Their research highlighted the racial disparities in the stop and frisk stops, finding that Black and Hispanic/Latine(x) individuals comprised approximately eighty-seven percent of stops but only comprised around thirty-three percent of the city’s population and were less likely to have weapons than their White counterparts.⁷⁰ Many of these stops did not result in arrests or discovery of illicit weapons, implying, as the residents in Baltimore inferred, that police actions were less directed at curbing criminal activity than policing certain races and populations.⁷¹ The authors concluded that this perception of surveillance has negative mental health impacts on residents, even before any violence arises: “Living under the constant threat of violent death transforms those who are not slain into the as-yet slain, but unmistakably closer to death—the constantly harassed, stressed, and unduly constrained slain-in-waiting.”⁷²

Research has also shown that particularly violent or intrusive encounters with police have an even greater mental health impact on individuals. For Black individuals, merely seeing the police can increase anxiety levels, and interacting with officers correlates with higher distress, anxiety, trauma, and depression.⁷³ Further, Black individuals who experience violence or mistreatment at the hands of the police may experience increased risk of suicidal ideation, paranoia, anxiety disorders, and post-traumatic stress.⁷⁴

Surveys of Black individuals confirm that with increased police contact comes increased trauma and anxiety symptoms, indicating that while police presence alone has mental health impacts, additional actions taken by the police are likely to exacerbate poor health outcomes.⁷⁵ One survey conducted between September 2012 and March 2013 interviewed 1261 young men living in New York City between the ages of eighteen and twenty-six.⁷⁶ Broadly, they were asked about their encounters with the New York City Police Department—how often they occurred, what interactions ensued—and the mental health effects of such encounters.⁷⁷ Survey participants were asked to describe times they had been stopped and police actions during that stop, including whether the officers conducted a search, used “harsh or racially tinged language,” or used physical force.⁷⁸ These factors were combined into a scale representing “police intrusion” and compared to respondents’ self-reported mental health

65 *Id.* at p. 161.

66 See *id.* at pp. 161-162.

67 *Id.* at p. 161.

68 *Id.* at p. 162.

69 Kwate and Threadcraft, *Dying Fast and Dying Slow in Black Space: Stop and Frisk’s Public Health Threat and a Comprehensive Necropolitics* (2018) 14 DuBois Review: Social Science Research on Race 535, 537, 540-544.

70 Kwate and Threadcraft, *supra* note 69, at p. 536.

71 *Id.* at pp. 536-37.

72 *Id.* at p. 539.

73 McNamara, *supra* note 21, at p. 366.

74 *Ibid.*

75 See Geller et al., *Aggressive Policing*, *supra* note 7, at p. i (“Participants reporting more police contact also reported more trauma and anxiety symptoms, associations tied to not just how many stops they reported but also the intrusiveness of the encounters and their perceptions of police fairness”).

76 *Id.* at p. 4.

77 *Id.* at p. 5.

78 *Ibid.*

symptoms.⁷⁹ The results showed that additional police contact led to higher anxiety symptoms, and further, that higher levels of police intrusion also corresponded with worse mental health.⁸⁰ At particularly high levels of intrusion, respondents reported a particularly sharp increase in posttraumatic stress disorder symptoms.⁸¹ The study concludes by finding that “[l]ess invasive tactics are needed, both for suspects who may display mental health symptoms, and to reduce any psychological harms to individuals stopped.”⁸²

A broader study conducted across both Baltimore and New York City surveyed 1221 adults and received 1000 survey responses about exposure to police violence and mental health.⁸³ Researchers selected eligible respondents to match the demographic composition of adults in both cities in terms of race/ethnicity, age, and gender.⁸⁴ This study categorized a number of police encounters in terms of violence, looking at factors related to physical violence (including the use of a gun, baton, taser, or other weapon, hitting, kicking, or punching), psychological violence (including using slurs, threatening), sexual violence (including forced inappropriate conduct, harassment), and neglect (including failure to respond or responding inappropriately to a call for service).⁸⁵ These four categories of violence were based on a model developed by the World Health Organization.⁸⁶

Respondents reported how often they experienced these types of violence within the past twelve months and then were asked to report a variety of mental health symptoms, including feelings of psychological distress, psychotic experiences, suicidal ideation, etc.⁸⁷ Researchers quantified respondents’ mental health symptoms to be analyzed alongside the police encounters.⁸⁸ A statistical analysis of this data revealed that psychological distress was linked most clearly with “assaultive” police exposures (i.e., violence with or without a weapon and sexual violence), but that nearly all police exposure resulted in adverse mental health symptoms.⁸⁹ The “more assaultive” forms of violence also corresponded with higher rates of suicidal ideation, suicide attempts, and psychotic experiences.⁹⁰ In conclusion, the researchers who initiated this study found that police violence presents a significant public health issue because of the link between exposure to police and to police violence and the prevalence of psychological distress and other mental health symptoms.⁹¹

Heightened police surveillance can have especially acute mental health impacts on youth. Youth of color in major metropolitan areas in the United States such Chicago, New York, and Washington, D.C. have learned to live with the constant threat of police encounters. As one scholar put it:

Even when the anticipated violence doesn’t happen, youth often suffer from the same psychological effects that would normally accompany such an encounter. Survival strategies are also embarrassing and demeaning. Having to placate or acquiesce to the police—especially when innocent of any crime—steals youths’ dignity and undermines their self-esteem.⁹²

79 *Ibid.*

80 Geller et al., *Aggressive Policing*, *supra* note 7, at pp. 8-10.

81 *Id.* at pp. 10-12.

82 *Id.*

83 DeVlyder et al., *Association of Exposure to Police Violence With Prevalence of Mental Health Symptoms Among Urban Residents in the United States* (2018) JAMA Network Open, p. 1 <<https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2715611#:~:text=All%20mental%20health%20outcomes%20were%20significantly%20associated%20with,greater%20distress.%20aSignificant%20differences%20in%20adjusted%20analyses%20%28%CE%B1%E2%80%89%3D%E2%80%8905%29>> [as of Nov. 29, 2022].

84 *Ibid.*

85 *Id.* at pp. 3-4.

86 *Id.* at p. 3.

87 *Id.* at pp. 3-4.

88 Researchers used the Kessler Screening Scale for Psychological Distress and a psychosis module developed by the World Health Organization. *Id.* at p. 3.

89 DeVlyder et al., *supra* note 83, at p. 7.

90 *Id.* at pp. 7-8.

91 See *id.* at p 8.

92 Henning, *Policing As Trauma: The Harms of Hyper-Surveillance and Over-Policing Youth of Color* (2022) 37 *Crim. Just.* 42, 44.

Additionally, studies have also found that youth who are frequently exposed to police have “significantly greater odds of sleep deprivation and low sleep quality.”⁹³ Researchers analyzed self-reported data from 3,444 youth in the United States on their post-traumatic stress and sleep quality after police encounters.⁹⁴ They found that trauma-induced sleep deprivation occurred, not only in youth who were stopped, but also in youth who vicariously experienced abusive police behaviors.⁹⁵ The earlier-cited research related to the impact of heightened police presence on dampened community activity also applies to youth.⁹⁶ Young people who have experienced adverse police encounters may relive these traumatic experiences upon seeing the police, which may persuade them to change the way they interact in their communities.⁹⁷ As one scholar put it, “[t]o avoid triggering memories and reduce the emotional effects of prior police contact, some Black youth stay inside or limit their use and enjoyment of public and recreational spaces.”⁹⁸

Even more so with youth than with their adult counterparts, the impact of traumatic experiences on a developing adolescent brain have a lasting effect on an individual’s mental health.⁹⁹ For this reason, heightened police surveillance, violent police encounters, and racial and identity profiling pose a great risk to the health of youth in the wake of those encounters and in the years following. For further data and discussion of law enforcement interactions with youth, please see pages 107-140.

5. Policy Reforms to Reduce Stop Disparities

Changing long-standing police practices and improving law enforcement-community relations requires a multi-pronged approach. As we have discussed in past Board reports, these reforms range from developing bias-free policing policies to establishing a uniform definition of “complaint,” evaluating peace officer candidates for bias, and providing additional training on bias. From some of the mental health studies discussed here, researchers have made suggestions about policy reforms, resources, and training.

Overall, the research reveals that public health officials and policymakers should treat racial profiling and adverse policing as significant public health issues and recognize that police interactions can negatively impact the mental and physical health of individuals who are Black, Indigenous, and people of color. Adequate resources should be invested to understand and address the health implications of racial profiling, as well as other types of identity profiling.

This Report provides a unique opportunity for the Board and its stakeholders to use the stop data and resources to help reduce the adverse outcomes experienced by individuals because of bias related to their race, ethnicity, gender identity, age, or disability. Because of the broad impacts of racial profiling and adverse policing, this issue needs to be addressed beyond the field of the criminal legal system and policing; it is a critical public health issue for Black, Indigenous, and other communities of color. Opportunity exists for public health systems to use RIPA stop data and engage partners in eliminating racial and identity profiling and adverse policing in California.

93 Henning, *supra* note 92, at p. 45.

94 *Ibid.*

95 *Ibid.*

96 See generally Gomez, *supra* note 24.

97 Henning, *supra* note 92, at p. 45.

98 *Ibid.*

99 *Id.* at p. 46.

ANALYSIS OF 2021 STOP DATA

1. Introduction

In the fourth year of RIPA stop data reporting, 58 law enforcement agencies in California collected data on 3,184,543 pedestrian and vehicle stops conducted from January 1 to December 31, 2021.¹⁰⁰ The data were submitted by Wave 1, Wave 2, and Wave 3¹⁰¹ agencies, as well as a few agencies from Wave 4¹⁰² that collected and submitted stop data early.¹⁰³

There were an additional 246,881 stops reported in 2021 compared to 2020, which was expected with the increase in reporting agencies. However, of the 18 agencies that collected stop data in 2020 and 2021, 13 saw a reduction in stops across years, while 5 saw an increase in stops. The COVID-19 pandemic and its effects on people's lives – as well as on law enforcement agencies' practices – may have contributed to the differences in the number of stops between 2020 and 2021 for some agencies.

Table 1. Stops by Agency (2020 and 2021)

Agency	# of Stops 2020	# of Stops 2021	Difference	% point difference from 2020
Alameda CO SO	-	15,505	-	
Anaheim PD	-	26,568	-	
Arcata PD	-	1,428	-	
Bakersfield PD	12,170	11,948	(-) 222	1.8%
Belmont PD	-	1,553	-	
Berkeley PD	-	5,469	-	
CHP	1,696,390	1,749,613	(+) 53,223	3.1%
Capitola PD	-	631	-	
Carlsbad PD	-	5,326	-	
Contra Costa CO SO	-	3,171	-	
Cotati PD	-	1,736	-	
CSU Chico PD	-	334	-	
CSU Sonoma PD	-	272	-	

- 100 Gov. Code, § 12525.5, subd. (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.”
- 101 Gov. Code, § 12525.5, subd. (a)(1) states that each “agency that employs peace officers shall annually report to the Attorney General data on all stops conducted by that agency’s peace officers for the preceding calendar year.” Wave 1 includes agencies that employ 1,000 or more peace officers, Wave 2 agencies employ 667 or more but less than 1,000 peace officers, and Wave 3 agencies employ between 334 and 667 peace officers. Cal. Gov. Code, § 12525.5, subd. (a)(2).
- 102 Wave 4 includes agencies that employ between one and 334 peace officers. Cal. Gov. Code, § 12525.5, subd. (a)(2).
- 103 The following agencies were required to start their data collection on January 1, 2022 but chose to start their data collection on January 1, 2021: Arcata Police Department, Belmont Police Department, California State University Chico Police Department, California State University Sonoma Police Department, California State University Stanislaus Police Department, Capitola Police Department, Carlsbad Police Department, Contra Costa County Sheriff’s Department, Cotati Police Department, Emeryville Police Department, Eureka Police Department, Hillsborough Police Department, Livermore Police Department, Mill Valley Police Department, Petaluma Police Department, Piedmont Police Department, Pomona Police Department, Rohnert Park Department of Public Safety, Santa Barbara Police Department, Santa Rosa Police Department, Sonoma County Junior College District Police Department, Sonoma County Sheriff’s Department, Sonoma Police Department, University of California Irvine Police Department, University of California San Francisco Police Department, and Windsor Police Department.

Agency	# of Stops 2020	# of Stops 2021	Difference	% point difference from 2020
CSU Stanislaus PD	-	279	-	
Culver City PD	-	9,454	-	
Davis PD	2,644	4,607	(+) 1,963	74.2%
Emeryville PD	-	1,665	-	
Eureka PD	-	2,906	-	
Fresno CO SO	-	19,310	-	
Fresno PD	14,738	10,848	(-) 3,890	26.4%
Hillsborough PD	-	646	-	
Kern CO SO	-	12,277	-	
Los Angeles Unified School District PD	1,150	100	(-) 1,050	91.3%
Los Angeles World Air- port Police	-	4,672	-	
Livermore PD	-	4,552	-	
Long Beach PD	17,210	11,986	(-) 5,224	30.4%
Los Altos PD	-	987	-	
Los Angeles CO SD	104,275	179,972	(+) 75,697	72.6%
Los Angeles PD	521,426	429,307	(-) 92,119	17.7%
Mill Valley PD	-	838	-	
Oakland PD	21,076	13,782	(-) 7,294	34.6%
Orange CO SO	39,855	46,283	(+) 6,428	16.1%
Petaluma PD	-	3,899	-	
Piedmont PD	-	639	-	
Pomona PD	-	4,594	-	
Riverside CO SO	56,339	75,855	(+) 19,516	34.6%
Riverside PD	-	19,267	-	
Rohnert Park PD	-	2,368	-	
Sacramento CO SD	43,881	33,018	(-) 10,863	24.8%
Sacramento PD	51,446	46,680	(-) 4,766	9.3%
San Bernardino CO SO	109,024	98,649	(-) 10,375	9.5%
San Diego CO SO	38,824	21,981	(-) 16,843	43.4%
San Diego PD	150,611	130,112	(-) 20,499	13.6%
San Francisco CO SD	-	628	-	
San Francisco PD	38,615	27,453	(-) 11,162	28.9%
San Jose PD	17,988	17,167	(-) 821	4.6%
Santa Ana PD	-	22,000	-	
Santa Barbara PD	-	4,398	-	
Santa Clara CO SO	-	14,540	-	

Agency	# of Stops 2020	# of Stops 2021	Difference	% point difference from 2020
Santa Rosa PD	-	6,725	-	
Sonoma CO SO	-	2,582	-	
Sonoma County Junior College District PD	-	551	-	
Sonoma PD	-	249	-	
Stockton PD	-	23,954	-	
UC Irvine PD	-	785	-	
UC San Francisco PD	-	543	-	
Ventura CO SO	-	47,293	-	
Windsor PD	-	588	-	

The collected data include demographic information of stopped individuals as perceived by the officer and descriptive information designed to provide context for the reason for the stop, actions taken during the stop, and outcome of the stop. The purpose of collecting these data is to document law enforcement interactions with the public and determine whether certain identity groups experience disparate treatment during stops. Individuals may self-identify differently than how an officer perceives them. This distinction is important because racial and identity profiling occurs because of how people perceive others and act based on that perception rather than how individuals see themselves. Some of the demographic characteristics collected (e.g., race/ethnicity or age) may be easier to perceive based on visible factors. Other identity characteristics (e.g., sexual orientation or disability) may not be as apparent and therefore may be perceived less consistently. The Legislature tasked law enforcement agencies with collecting data based on how officers perceive individuals. This context is important to consider when examining results of analyses performed on the stop data.

In this year's report, the Board presents stop data analyses in two sections:

- 1) The first section provides a breakdown of perceived identity group characteristics of the individuals stopped followed by breakdowns of characteristics (e.g., actions taken by officers) of the stops for each identity group.
- 1) The second section creates benchmarks (i.e., reference points) to compare the stop data results and measure disparities. These benchmarks include comparisons to residential population data and tests for different outcomes at various points during stops. These outcome-based tests explore search outcomes and the rates of force used by law enforcement.

2. Stop Data Demographics

2.1. Identity Demographics of Individuals Stopped by Officers

RIPA requires officers to collect perceived identity-related information about the individuals they stop 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.

Note: On June 10, 2022, the Los Angeles County Office of Inspector General (OIG) issued a report outlining evidence of underreporting of RIPA data by the Los Angeles County Sheriff's Department

(LASD) for civilian contacts between July 1, 2018 and June 30, 2019.^{104, 105} Findings indicated that the LASD underreported observation-based¹⁰⁶ stops and arrests.¹⁰⁷ The report also found that while observation-based stops of nearly all racial and ethnic groups went underreported in the SACR system, stops of Hispanic/Latine(x) people had a higher probability of going unreported than stops of all other racial/ethnic groups.¹⁰⁸ While the data collection period examined by the Los Angeles County OIG differs from that examined within this report, the OIG's report also discussed how the LASD had not yet implemented changes to rectify deficiencies that contributed towards the underreporting of stops in 2018 and 2019.¹⁰⁹ As such, these issues may have persisted into the 2021 data collection period. If such trends continued with the 2021 data, then some disparities across identity groups may actually be larger than shown within the RIPA data discussed in this Report. Accordingly, the Board will continue to monitor the reports of external accountability organizations and advocate for the adoption of methods to increase the accuracy and completeness of stop data collected under RIPA.

Race/Ethnicity.¹¹⁰ Officers perceived the highest proportion of individuals they stopped to be Hispanic/Latine(x) (42.4%, 1,348,972), followed by White (30.7%, 977,832), Black (15.0%, 478,937), Asian (5.3%, 168,492), Middle Eastern/South Asian (4.8%, 152,441), Multiracial (1.0%, 31,721), Pacific Islander (0.5%, 16,736), and Native American (0.3%, 9,411).¹¹¹

Gender.¹¹² RIPA regulations contain five gender categories, including male, female, transgender man/boy, transgender woman/girl, and gender nonconforming.¹¹³ Overall, the majority of individuals were perceived as cisgender male (72.1%, 2,296,595) or cisgender female (27.5%, 875,772),¹¹⁴ with all other groups collectively constituting less than one percent of stops.¹¹⁵

Age. Individuals perceived to be between the ages of 25 and 34 accounted for the largest proportion of

104 County of Los Angeles Office of the Inspector Gen., The Sheriff's Department's Underreporting of Civilian Stop Data to the California Attorney General (June 10, 2022) <<https://assets-us-01.kc-usercontent.com/0234f496-d2b7-00b6-17a4-b43e949b70a2/ee467145-85c7-450c-a739-93e1f1d79f78/The%20Sheriff%E2%80%99s%20Department%E2%80%99s%20Underreporting%20of%20Civilian%20Stop%20Data%20to%20the%20California%20Attorney%20General.pdf>> [as of Nov. 29, 2022].

105 The evidence presented in the report was derived from comparisons of data from the LASD's Computer Aided Dispatch (CAD) system and Sheriff's Automated Contact Reporting (SACR) system used to collect RIPA data.

106 "Observation-based" stops in the OIG report refer to stops that the Board refers to as "officer-initiated," meaning that officers indicated that the stops were not made in response to a call for service. See County of Los Angeles Office of the Inspector Gen., Underreporting of Civilian Stop Data to the California Attorney General, *supra* note 104, at p. 3 note 3.

107 For a summary of findings and recommendations from the OIG report regarding LASD's data collection, please see the County of Los Angeles Office of the Inspector General sub-section of the Policies and Accountability section of this Report. See Report at p. 152-154.

108 County of Los Angeles Office of the Inspector Gen., Underreporting of Civilian Stop Data to the California Attorney General, *supra* note 104, at pp. 11-13.

109 County of Los Angeles Office of the Inspector Gen., Underreporting of Civilian Stop Data to the California Attorney General, *supra* note 104, at pp. 19-20.

110 Due to a technical error, one successfully submitted record is missing information for the perceived race/ethnicity of the stopped individual.

111 Officers may select multiple racial/ethnic categories per individual when recording stop data. To avoid counting the same stopped individual in multiple racial/ethnic groups, all stopped individuals whom officers perceived to be part of multiple racial/ethnic groups were categorized as Multiracial. The distribution of the race/ethnicity categories that officers selected when they selected more than one category was as follows: Asian (21.0%), Black (30.7%), Hispanic/Latine(x) (72.0%), Middle Eastern/South Asian (29.4%), Native American (14.8%), Pacific Islander (16.8%), and White (66.0%).

112 Due to a technical error, four successfully submitted records are missing information for the perceived gender of the stopped individual.

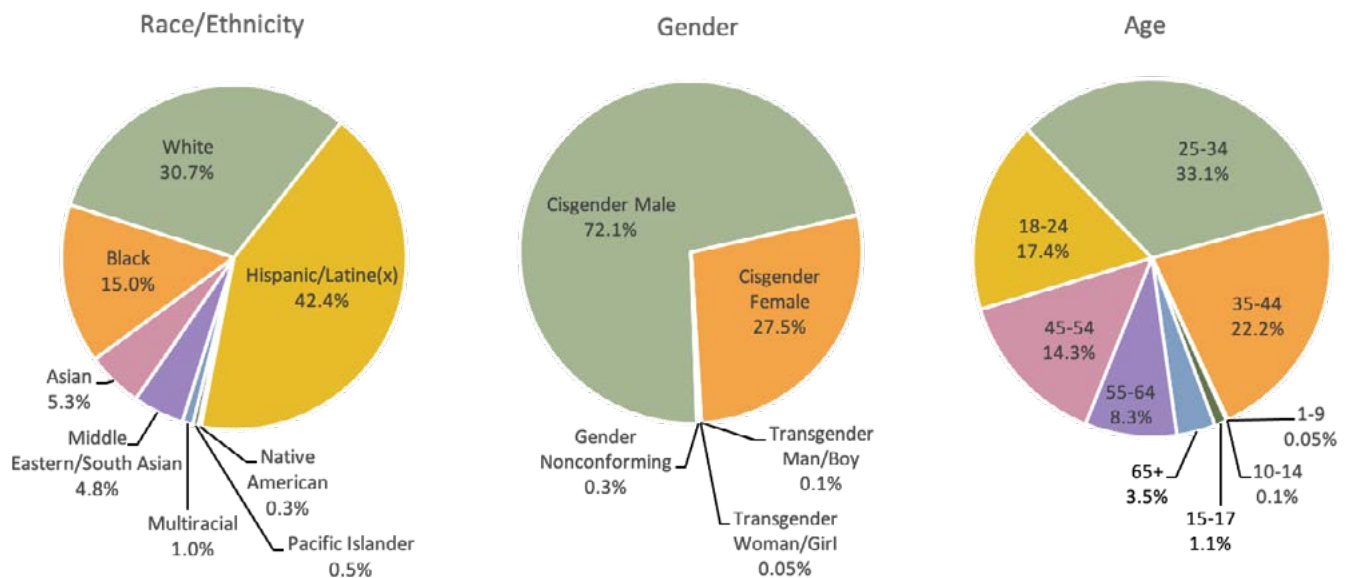
113 These categories match those found in the regulations informing RIPA stop data collection. Cal. Code Regs., tit. 11, § 999.226, subd. (a)(5)(A). For purposes of this report, "male" refers to cisgender males and "female" refers to cisgender females.

114 Cisgender is an adjective used to describe a person whose gender identity conforms with the sex they were assigned at birth.

115 The other groups were transgender man/boy (0.1%, 2,550), transgender woman/girl (0.05%, 1,583), and gender nonconforming (0.3%, 8,039).

individuals stopped within any age group (33.1%, 1,052,650). Individuals perceived to be below the age of 10 accounted for the smallest proportion (<0.1%, 1,542) of individuals stopped.¹¹⁶

Figure 1. Race/Ethnicity, Gender and Age Distributions of 2021 RIPA Stop Data



LGBT. Overall, stops of individuals perceived to be LGBT comprised less than one percent of the data (0.8%, 25,995).¹¹⁷ Of these 25,995 individuals, officers perceived 4,740 (18.2%) to be transgender. For many individuals, LGBT identity is not a consistently visible characteristic; therefore, officers' perception of this characteristic may often depend on context. For example, based on social cues or conversations, an officer may perceive the driver and a passenger in a vehicle to be same-sex partners.¹¹⁸ An individual's gender expression – how the person acts, dresses, and interacts to demonstrate their gender – may influence other people's perception. Additionally, individuals who are seen as existing outside of gender norms in ways that are easily perceived often experience more significant surveillance or scrutiny from law enforcement or others. This is sometimes called hypervisibility.¹¹⁹

Limited English Fluency. Officers perceived approximately 4.1 percent (128,949) of individuals stopped to have limited or no English fluency.

- 116 Individuals whom officers stopped and 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 the RIPA regulations (i.e., recording data for young passengers not suspected of committing a violation who also did not have reportable actions taken towards them). Cal. Code Regs., tit. 11, § 999.227, subd. (b).
- 117 Officers that report the perceived gender of an individual to be transgender must also indicate they perceived the person to be LGBT. Cal. Code Regs., tit. 11, § 999.226, subd. (a)(6).
- 118 RIPA seeks to collect perceived data, and the implementing regulations prohibit an officer from asking individuals about their sexual orientation (in addition to gender, age, and ethnicity) in order to collect RIPA data. Cal. Code Regs., tit. 11, § 999.226, subd. (a)(4)-(7). In this hypothetical example, the officer may have overheard a conversation that led to their perception, one of the vehicle occupants identified themselves or the other as a romantic partner (without being asked), or intimacy between individuals may have informed the officer's perception.
- 119 See, e.g., Fernandez and Williams, *We Deserve Better: A report by the members of BreakOUT!* (2014) p. 11 <https://issuu.com/youthbreakout/docs/we_deserve_better_report> [as of Nov. 29, 2022]; Shabalala, "Violence is everywhere for trans women" - Experiences of gendered violence in the lives of Black transgender women in post-apartheid South Africa: a critical transfeminist narrative enquiry (2020) University of Cape Town: Thesis Honors in Bachelor of Social Science, pp. 21-22 <http://www.psychology.uct.ac.za/sites/default/files/image_tool/images/117/Logos/thesis/VIOLEN~1.PD> [as of Nov. 29, 2022].

Disability. Officers perceived 1.2 percent (38,281) of individuals stopped to have one or more disabilities.¹²⁰ Of individuals perceived to have a disability, the most common disability reported by officers was mental health disability (75.1%, 26,811).¹²¹

2.2. Calls for Service

For each stop, officers must indicate whether they made the stop in response to a call for service.¹²² Officers reported that 6.1 percent of stops were made in response to calls for service.¹²³

Race/Ethnicity. Relative to other racial/ethnic groups, the share of stops made in response to calls for service was highest for Black individuals (9.5%) and lowest for Middle Eastern/South Asian individuals (2.6%).

Key Terms

- Call for service – a stop made in response to a 911 call, radio call, or dispatch
- Officer-initiated – a stop resulting from the officer’s observation, not in response to a call for service

Figure 2. Call for Service Status by Race/Ethnicity



¹²⁰ Specific disability categories that the officer could report were blind/limited vision (0.02%), deafness or difficulty hearing (0.06%), developmental disability (0.03%), disability related to hyperactivity or impulsive behavior (<0.1%), mental health disability (0.8%), other disability (0.1%), speech impaired (0.05%), and multiple disabilities (0.1%).

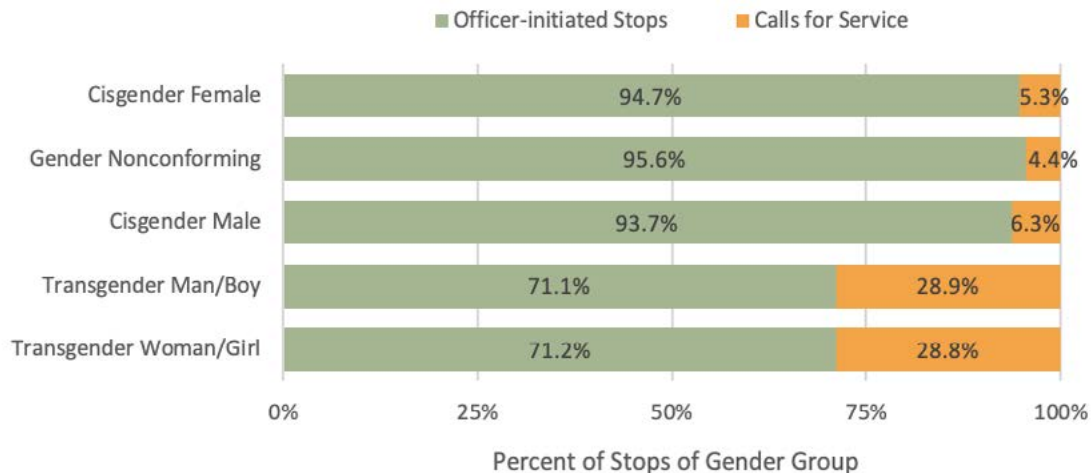
¹²¹ Individuals perceived to have multiple disabilities—including mental health disabilities—are not included in this statistic.

¹²² Calls for service are only reported if they resulted in a “stop,” as defined by the RIPA regulations. Cal. Code Regs., tit. 11, § 999.224, subd. (a)(14). Officers must note the primary reason for stop in addition to recording whether the stop was made in response to a call for service. Cal. Code Regs., tit. 11, § 999.226, subd. (a)(10)-(11). The RIPA regulations do not specify whether a stop made after a civilian flags down an officer on the street fits the definition of a call for service; accordingly, data entry for this field may vary across officers and agencies for stops where civilians flagged down officers. See generally Cal. Code Regs., tit. 11, § 999.226.

¹²³ Given that stops for traffic violations constitute a majority of the data but are less likely to be made in response to a call for service, these analyses were also conducted while excluding data from stops where the primary reason for the stop was a traffic violation. Please see Appendix A, Table A.5 for Stops by Identity Group and Calls for Service without Traffic Violations.

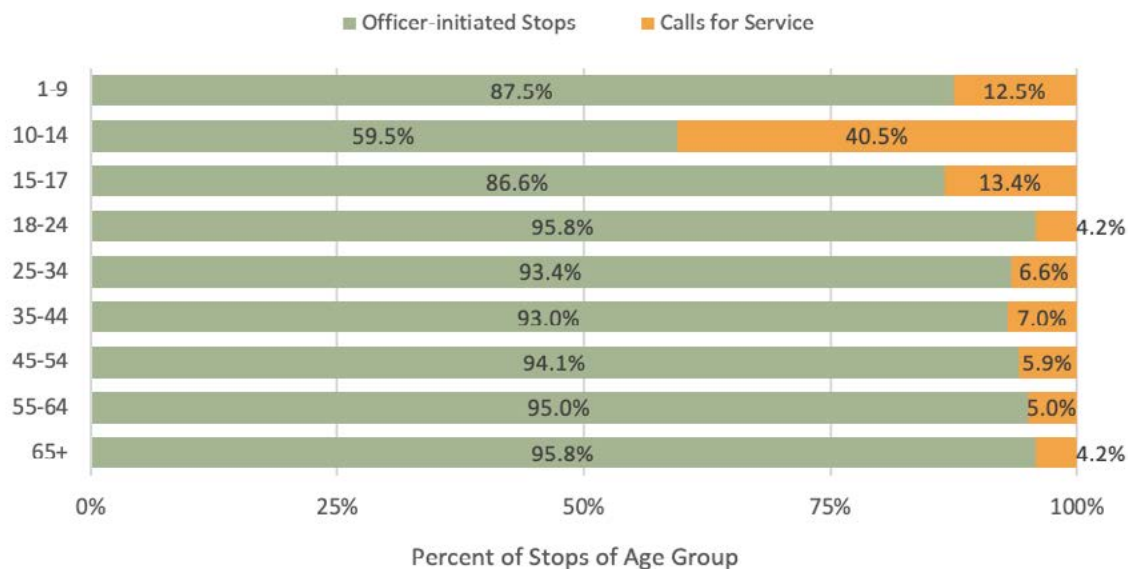
Gender. Relative to other genders, stopped individuals perceived as transgender men/boys had the highest proportion of stops initiated in response to a call for service (28.9%) followed closely by transgender women/girls (28.8%), while stopped individuals perceived as gender nonconforming had the lowest proportion (4.4%).

Figure 3. Call for Service Status by Gender



Age. Relative to other age groups, individuals stopped whom officers perceived to be between the ages of 10 and 14 had the highest proportion of stops initiated in response to a call for service (40.5%), whereas individuals between the ages of 18 and 24 (4.2%) and individuals aged 65 or older had the lowest proportion (4.2%).

Figure 4. Call for Service Status by Age Group



LGBT. Stopped individuals whom officers perceived to be LGBT had a higher proportion (13.9%) of their stops reported as being in response to a call for service than individuals whom the officers did not perceive to be LGBT (6.0%).

Limited English Fluency. Stopped individuals whom officers perceived to have limited or no English fluency had a higher proportion of their stops reported as being in response to a call for service (9.1%)

compared to English fluent individuals (5.9%).

Disability. Stopped individuals whom officers perceived as having a disability had a remarkably higher proportion of their stops reported as being in response to a call for service (59.2%) compared to individuals whom officers did not perceive to have a disability (5.4%).

2.3. Primary Reason for Stop

Officers are required to report the primary reason for initiating a stop for both pedestrian and vehicle stops. Officers report only the primary reason that informed their decision to initiate a stop, even if multiple reasons may apply.

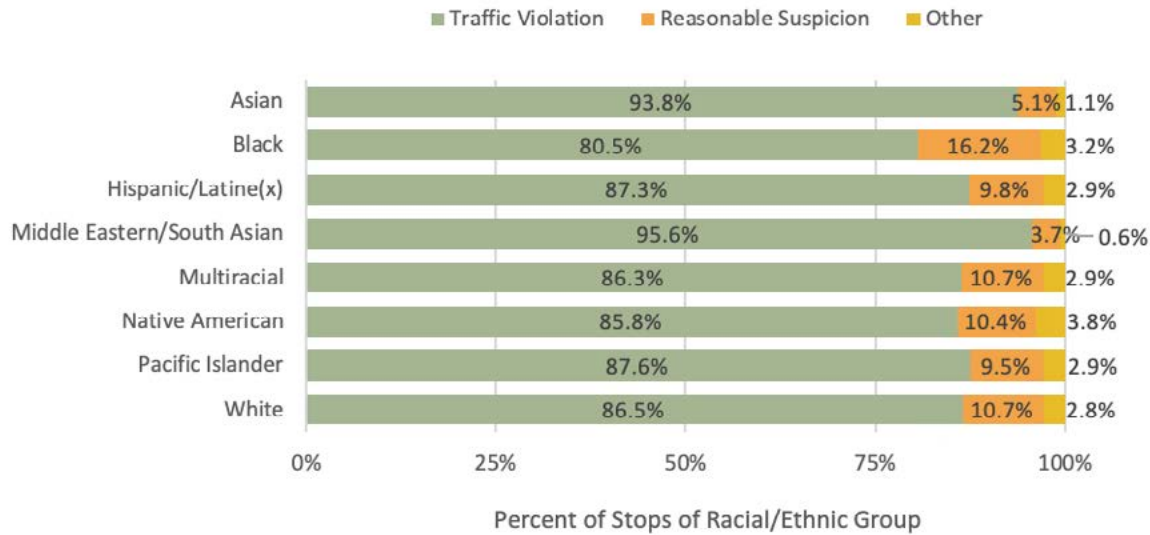
Officers may select from eight different primary reasons for a stop. The most common reason for a stop was a traffic violation (86.8%), followed by reasonable suspicion that the person was engaged in criminal activity (10.5%).¹²⁴ All other reasons collectively made up less than 3 percent of the data and are grouped together under the category of “Other” in the following sections.

Race/Ethnicity. Relative to other groups, Middle Eastern/South Asian individuals had the highest proportion of their stops reported as traffic violations (95.6%) and the lowest proportion of their stops reported as reasonable suspicion (3.7%) and “Other” (0.6%). Relative to other groups, Black individuals had the highest proportion of their stops reported as reasonable suspicion (16.2%) and the lowest proportion of their stops reported as traffic violations (80.5%). Native American individuals had the highest proportion of their stops reported as “Other” (3.8%) relative to other groups.¹²⁵

124 “Reasonable suspicion” is a legal standard in criminal law that requires an officer to point to specific, articulable facts that the person is engaged in, or is likely to be engaged in, criminal activity. *Terry v. Ohio* (1968) 392 U.S. 1, 21. 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 somebody. *Terry*, 392 U.S. at pp. 20-21. In order to fill a gap in the existing regulations, officers currently select “Reasonable Suspicion” as the reason for stop when an officer suspects criminal activity. Although officers may have reasonable suspicion when initiating stops for traffic violations, the applicable regulations state that officers should not select the “Reasonable Suspicion” value when the reason for stop is a traffic violation. Cal. Code Regs., tit. 11, § 999.226, subd. (a)(10)(A)(2). Instead, officers should select the “Traffic Violation” value as the primary reason for stop. *Ibid.* Nevertheless, “Reasonable Suspicion” is also selected as the reason for stop where officers initiate contact for community caretaking purposes. “Community caretaking” relates to an officer’s non-crime related duties that are not performed for the purpose of investigating a crime. A welfare or wellness check or the officer’s community caretaking function cannot serve as a basis for initiating a detention or search. Because no distinct value exists within the existing RIPA regulations that allows officers to capture when a stop is made during the course of a community caretaking contact, officers must select “Reasonable Suspicion” as the Reason for Stop, then select “Community Caretaking” as the offense code that serves as the basis for the stop. This designation in the regulations was not intended to suggest that people with mental health disabilities are engaging in criminal activity.

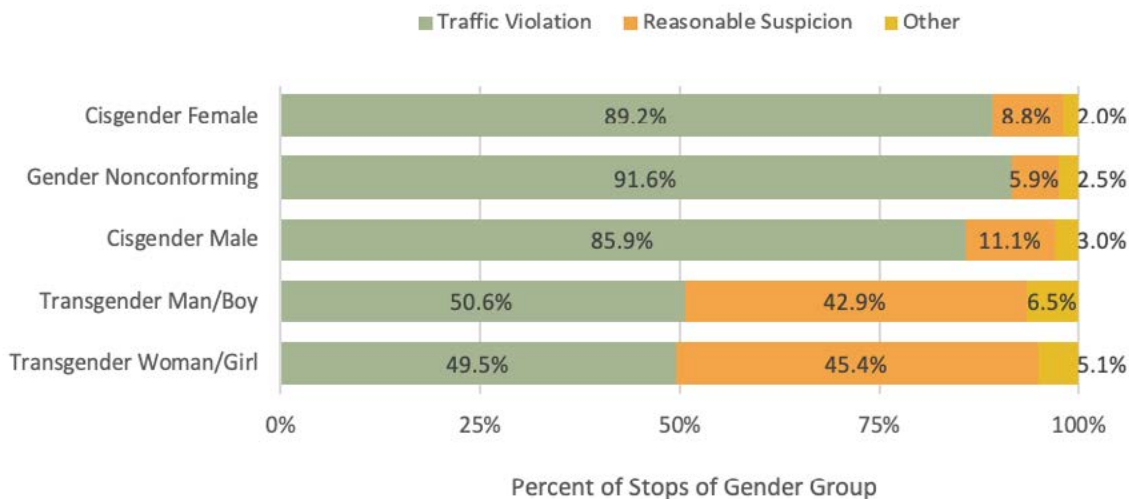
125 Other reasons for a stop that the officer could report included consensual encounter resulting in a search (0.9%), mandatory supervision (0.7%), warrants/wanted person (0.8%), truancy (0.3%), investigation to determine whether student violated school policy (<0.1%), and possible violations of the Education Code (<0.1%). These “Primary Reason for Stop” categories are combined in this section under the category of “Other.”

Figure 5. Primary Reason for Stop by Race/Ethnicity



Gender. Of all gender groups, gender nonconforming individuals had the highest proportion of their stops reported as traffic violations (91.6%) and the lowest proportion of their stops reported as reasonable suspicion (5.9%). Cisgender female individuals had the lowest proportion of their stops reported in the categories grouped together as “Other” (2.0%). Relative to other genders, transgender women/girls had the lowest proportion of their stops reported as traffic violations (49.5%) and the highest proportion of their stops reported as reasonable suspicion (45.4%), while transgender men/boys had the highest proportion of their stops reported in the categories grouped together as “Other” (6.5%).

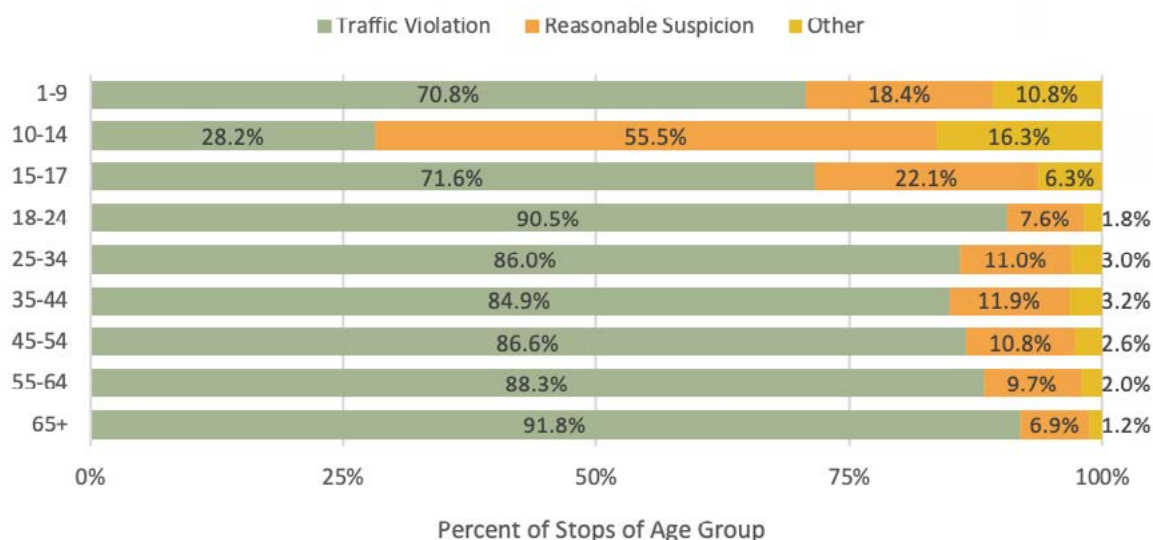
Figure 6. Primary Reason for Stop by Gender



Age. Individuals perceived to be 65 years or older had the highest proportion of their stops reported as traffic violations (91.8%) and the lowest proportion of their stops reported as reasonable suspicion (6.9%) and in the categories grouped together as “Other” (1.2%). Relative to other age groups, individuals perceived to be between the ages of 10 and 14 had the lowest proportion of their stops reported as traffic violations (28.2%) and the highest proportion of their stops reported as reasonable suspicion (55.5%) and in the categories grouped together as “Other” (16.3%).¹²⁶

126 The data show a higher number of reported traffic violations than many readers may expect for people too young to

Figure 7. Primary Reason for Stop by Age Group



LGBT. Individuals perceived to be LGBT had a lower proportion of their stops reported as traffic violations (72.4%) and a higher proportion of their stops reported as reasonable suspicion and in the categories grouped together as “Other” (22.7%, 4.8%) than individuals who officers did not perceive to be LGBT (86.9% traffic violations, 10.4% reasonable suspicion, and 2.7% other reasons).

Limited English Fluency. Individuals perceived to have limited English fluency had a lower proportion of their stops reported as traffic violations (83.9%) and in the categories grouped together as “Other” (2.4%) compared to individuals whom officers perceived to be fluent in English (86.9% traffic violations and 2.7% other reasons). 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 (13.7% and 10.4%, respectively).

Disability. Stopped individuals perceived as having a disability had a lower proportion of their stops reported as traffic violations (16.7%) and a higher proportion of their stops reported as reasonable suspicion (70.2%) and in the categories grouped together as “Other” (13.1%) than individuals not perceived to have a disability (87.6% traffic violations, 9.8% reasonable suspicion, and 2.6% other reasons).¹²⁷

2.4. Actions Taken by Officers During Stops

Officers can select up to 23 different actions taken during the stop (excluding 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 actions taken towards them in a single stop; officers must report all actions taken towards an individual during a stop.

hold a provisional permit or driver’s license. This could partially be explained by 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 law, which are considered valid reportable traffic violations.

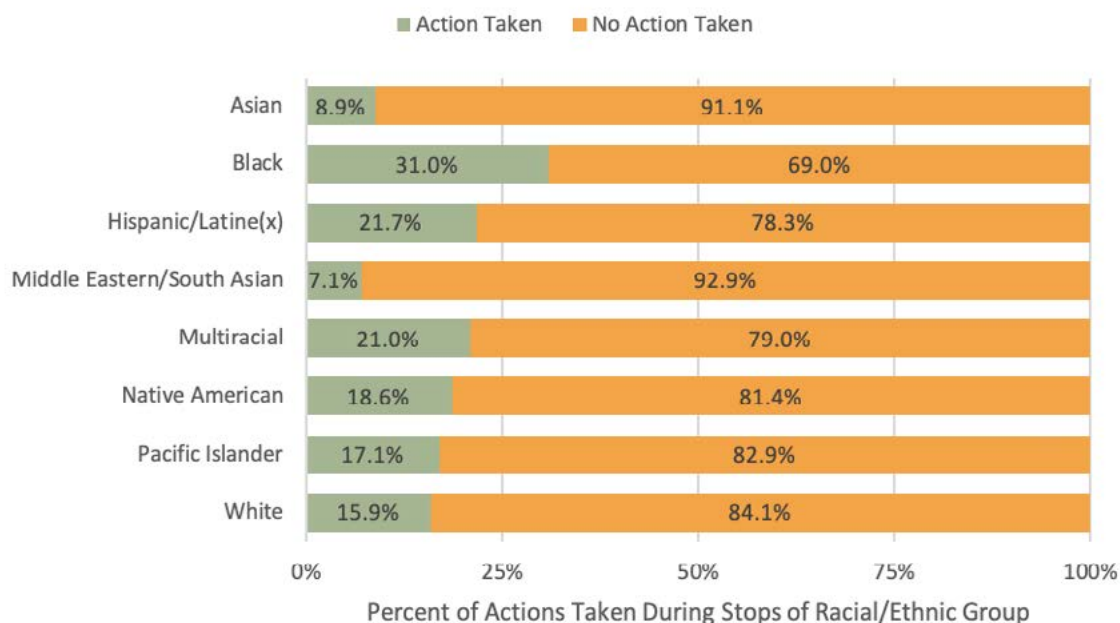
¹²⁷ One possible explanation for why individuals perceived to have a disability have a higher proportion of reasonable suspicion stops is related to how community caretaking contacts are recorded. As mentioned previously (supra note 124), community caretaking relates to an officer’s non-crime related duties that are not performed for the purpose of investigating a crime. Presently, stops for community caretaking are captured in the “Reasonable Suspicion” data element. Ibid.

Officers reported not taking any reportable action during 80.1% of stops and taking actions during 19.9% of stops. Overall, officers averaged less than one (0.6) reportable action per individual they stopped. For stops during which officers took one or more actions, the average number of actions taken by officers was 2.8. The average number of actions taken during stops for each identity group can be found in the Appendix.¹²⁸

Across all stops, the most common actions taken by officers were a search of property or person (11.9%), curbside or patrol car detention (11.3%), handcuffing (9.8%),¹²⁹ and verbally ordered removal from a vehicle (4.3%).¹³⁰ Officers indicated taking each of the other reportable actions towards less than 3 percent of individuals they stopped.¹³¹

Race/Ethnicity. Stopped individuals perceived to be Black had the highest proportion, relative to other racial/ethnic groups, of their stops involving the officer taking one or more actions towards them (31.0%). Stopped individuals perceived to be Middle Eastern/South Asian had the lowest proportion of their stops involving officers taking actions towards them (7.1%).

Figure 8. Actions Taken During Stop by Race/Ethnicity



¹²⁸ Please see Appendix A, Table A.6 for Stops by Identity Group and Average Actions Taken During Stops.

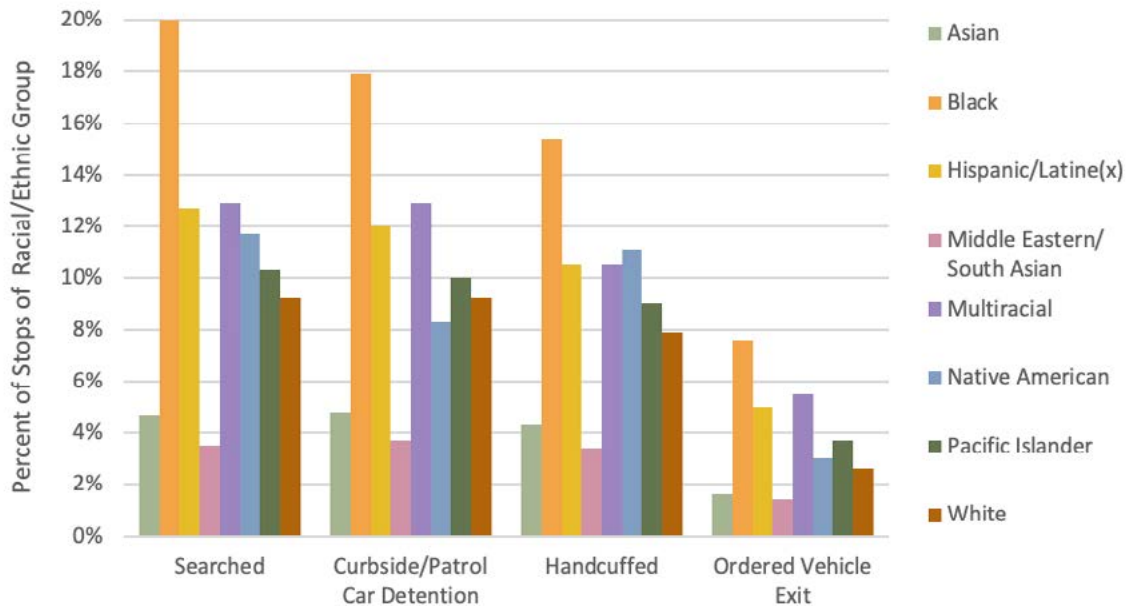
¹²⁹ A report of “handcuffing” an individual in this section does not mean that the officers arrested the individual. The Result of Stop section of this chapter, beginning on p. 46, discusses arrests. Additionally, Appendix A, Table A.13 displays the percentage of handcuffed individuals who experienced 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 60.8 percent, took some other form of action for 28.1 percent, and took no action towards 11.1 percent of individuals.

¹³⁰ Searches of person or property are captured in separate data fields and were combined for this analysis. Curbside and patrol car detentions are also recorded in distinct data fields and were combined.

¹³¹ Other actions include: person removed from vehicle by physical contact (0.5%), field sobriety test (2.2%), canine removed from vehicle or used to search (0.1%), firearm pointed at person (0.5%), 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 (0.5%), person photographed (0.6%), asked for consent to search person (2.8%), received consent to search person (95.5%), asked for consent to search property (2.1%), received consent to search property (93.8%), property seized (1.1%), vehicle impounded (1.6%), and written statement (<0.1%). See Cal. Code Regs., tit. 11, § 999.226, subd. (a)(12).

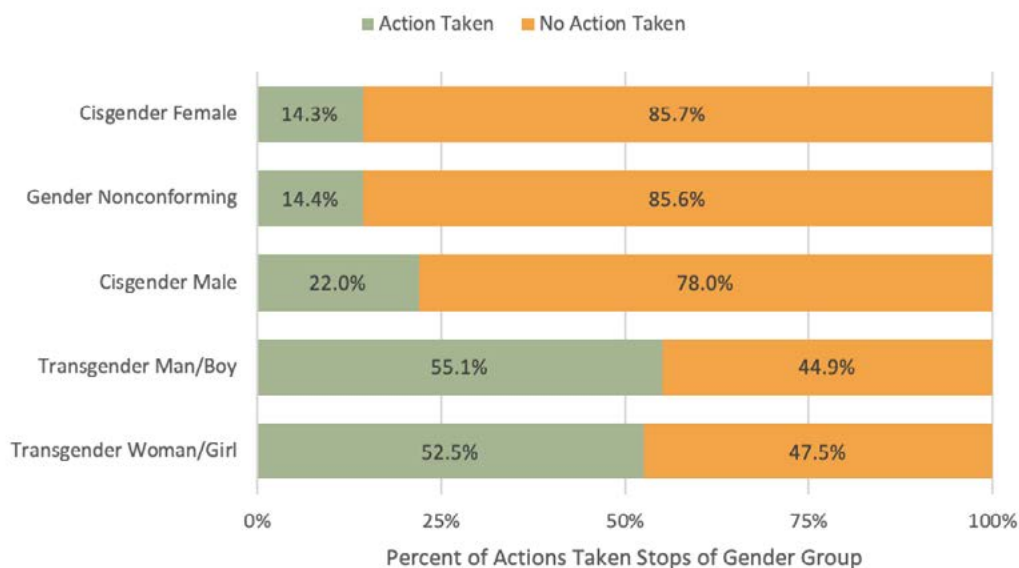
Of all the racial/ethnic groups, stopped individuals whom officers perceived to be Black had the highest rate of being searched (20.1%), detained on the curb or in a patrol car (17.9%), handcuffed (15.4%), and removed from a vehicle by order (7.6%). Similar to findings from the 2022 Report, officers searched and removed from vehicle by order more Black individuals than White individuals, despite stopping over twice the number of White individuals as Black individuals.¹³² Stopped individuals whom officers perceived to be Middle Eastern/South Asian had the lowest rate for each of these actions (ranging from 1.4% to 3.7%).

Figure 9. Actions Taken During Stop by Race/Ethnicity



Gender. Stopped individuals perceived to be transgender men/boys had the highest proportion of their stops involving the officer taking actions towards them (55.1%). Individuals perceived to be transgender women/girls also had actions taken towards them during more than half of their stops (52.5%). Individuals perceived to be cisgender female (14.3%) had the lowest proportion of stops with actions taken towards them.

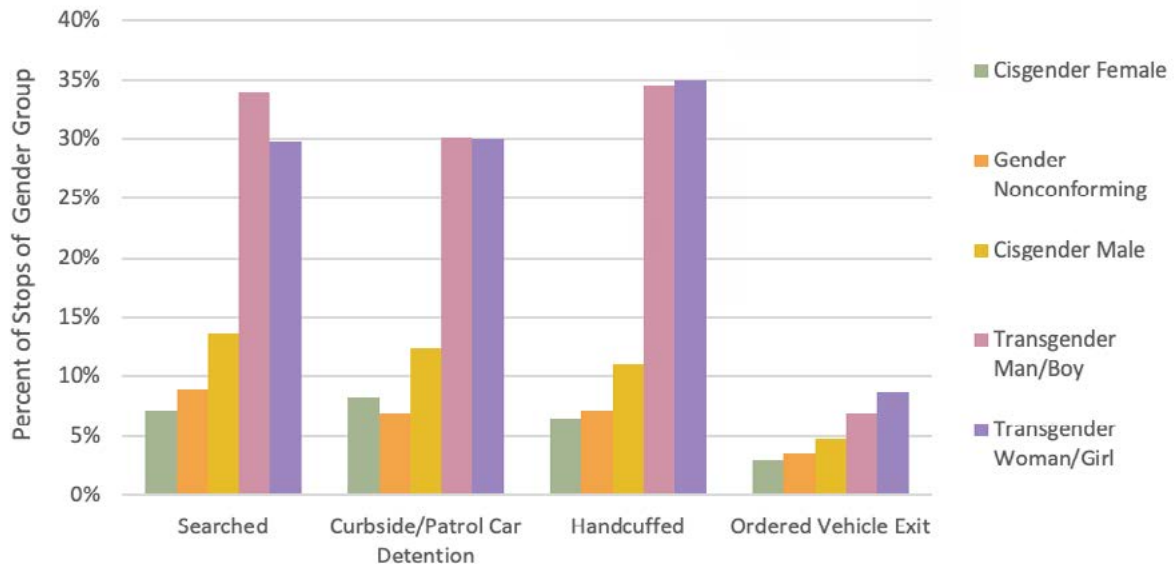
Figure 10. Actions Taken During Stop by Gender



¹³² See Appendix A, Table A.8 for a breakdown of actions taken toward stopped individuals by identity group.

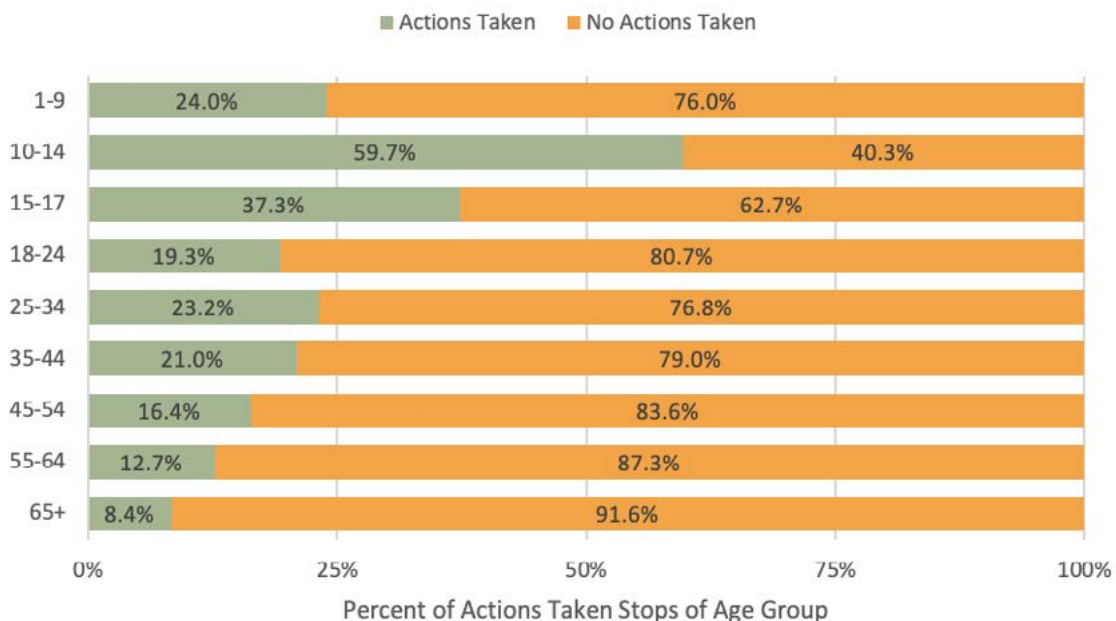
Stopped individuals whom officers perceived as transgender men/boys had the highest rate of being searched (34.0%) and detained curbside or in a patrol car (30.1%), while individuals perceived as transgender women/girls had the highest rates of being handcuffed (34.9%) and being removed by vehicle order (8.8%). Individuals perceived as cisgender female had the lowest rate of being searched (7.1%), handcuffed (6.5%), and removed from vehicle by order (2.9%), while individuals perceived as gender nonconforming had the lowest rate of being detained curbside or in a patrol car (6.9%).

Figure 11. Actions Taken During Stop by Gender



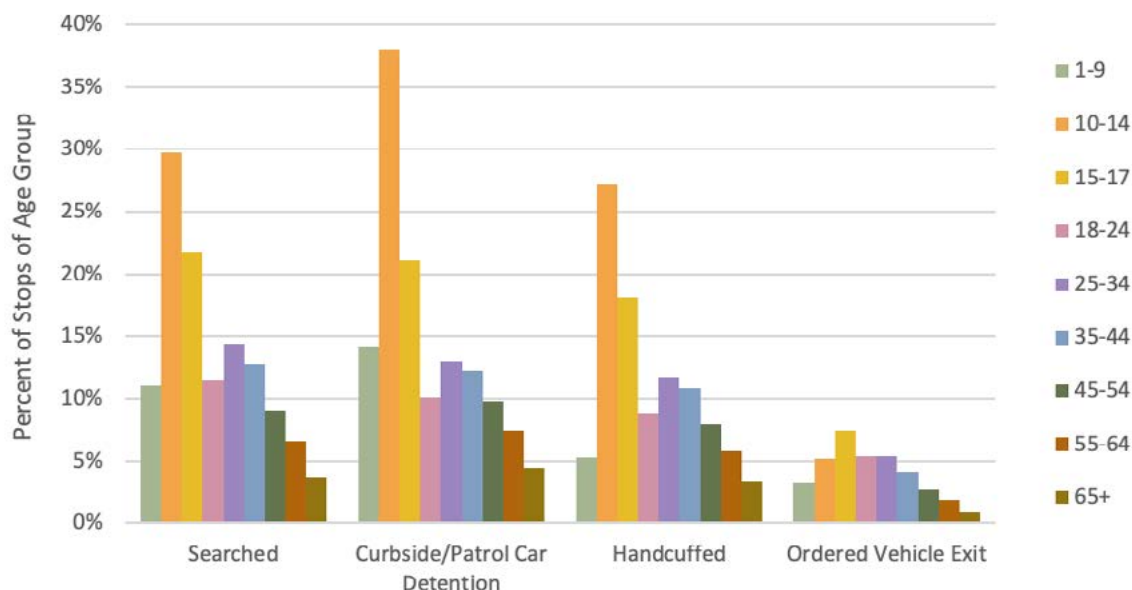
Age. Stopped individuals perceived to be between the ages of 10 and 14 had the highest proportion of their stops involve officers taking actions towards them (59.7%), while individuals perceived to be 65 or older had the lowest proportion (8.4%).

Figure 12. Actions Taken During Stop by Age Group



Relative to other age groups, individuals whom officers stopped and perceived to be between the ages of 10 and 14 had the highest rate of being searched (29.7%), detained on the curb or in a patrol car (37.9%), and handcuffed (27.1%), while individuals perceived to be between 15 and 17 had the highest rates of being removed from a vehicle by order (7.4%). Individuals aged 65 or older consistently had the lowest rate for each of these actions (ranging from 1.0 to 4.5%).

Figure 13. Actions Taken During Stop by Age Group



LGBT. Stopped individuals whom officers perceived to be LGBT had a higher proportion of their stops involving the officers taking actions towards them (32.0%) than individuals officers did not perceive to be LGBT (19.8%).¹³³

Stopped individuals whom officers perceived to be LGBT were searched (19.3%), detained on the curb or in a patrol car (18.8%), handcuffed (18.2%), and removed from a vehicle by order (5.5%) at a higher rate than individuals officers did not perceive to be LGBT (11.8% searched, 11.2% detained on the curb or in a patrol car, 9.7% handcuffed, and 4.3% removed from a vehicle by order).

Limited English Fluency. Individuals perceived to have limited English fluency had a higher proportion of their stops involve officers taking actions towards them (26.0%) compared to individuals whom officers perceived to be fluent in English (19.6%).

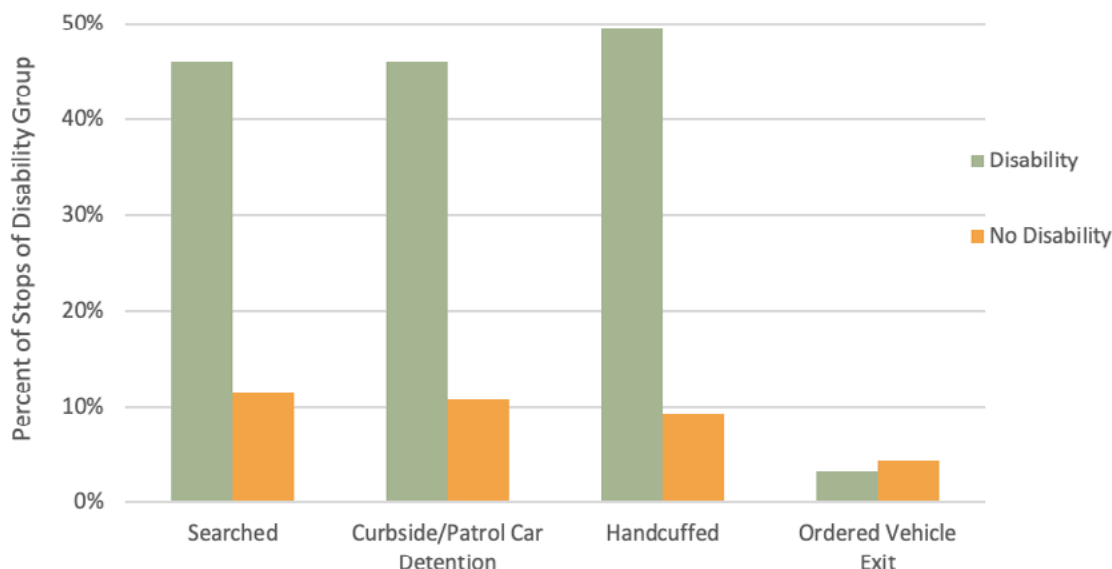
Stopped individuals whom officers perceived to have no or limited English fluency were searched (13.9%), detained on the curb or in a patrol car (12.9%), handcuffed (13.0%), and removed from a vehicle by order (5.8%) at a higher rate than those perceived to speak English fluently (11.8% searched, 11.2% detained on the curb or in a patrol car, 9.6% handcuffed, and 4.2% removed from a vehicle by order).

Disability. Stopped individuals perceived as having a disability had a higher proportion of their stops involve officers taking actions towards them (73.6%) than individuals not perceived to have a disability (19.2%).

¹³³ In many instances, officers may not perceive a stopped person's LGBT identity. As discussed on p. 36, an individual's gender expression may influence how other people perceive their gender, and contextual information such as conversations and intimacy between individuals may influence other people's perception of their relationships and sexual orientation. If officers decide to take additional actions towards an individual they stop, the additional interaction may also provide more information for officers to form perceptions about the individual, including LGBT identity.

Stopped individuals whom officers perceived to have a disability were searched (45.9%), detained on the curb or in a patrol car (46.0%), and handcuffed (49.4%) at a much higher rate than individuals perceived not to have a disability (11.4% searched, 10.8% detained on the curb or in a patrol car, and 9.3% handcuffed). Individuals whom officers perceived to have a disability had a lower rate of being removed from a vehicle by order (3.3%) compared to individuals who were not perceived as having a disability (4.3%).

Figure 14. Actions Taken During Stop by Disability Group



2.5. Result of Stop

Officers can select up to 13 different result of stop options. Officers may select multiple results of stop for a given 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 (52.0%), followed by a warning (26.3%), and then arrest (12.8%).¹³⁴ Officers indicated they took no reportable action towards 7.6 percent of stopped individuals. Each of the other results represented less than 6 percent of the data.¹³⁵

If officers do not take any action as a result of a stop, it may indicate, in part, that there was an unfounded suspicion of wrongdoing and that explicit or implicit bias may have influenced the officer in making the stop.¹³⁶

Race/Ethnicity. Officers reported taking no action as the result of stop most frequently during stops of individuals they perceived to be Black (13.2%), relative to stops of other racial/ethnic groups. The proportion of Black individuals with no action taken towards them as the result of stop was more

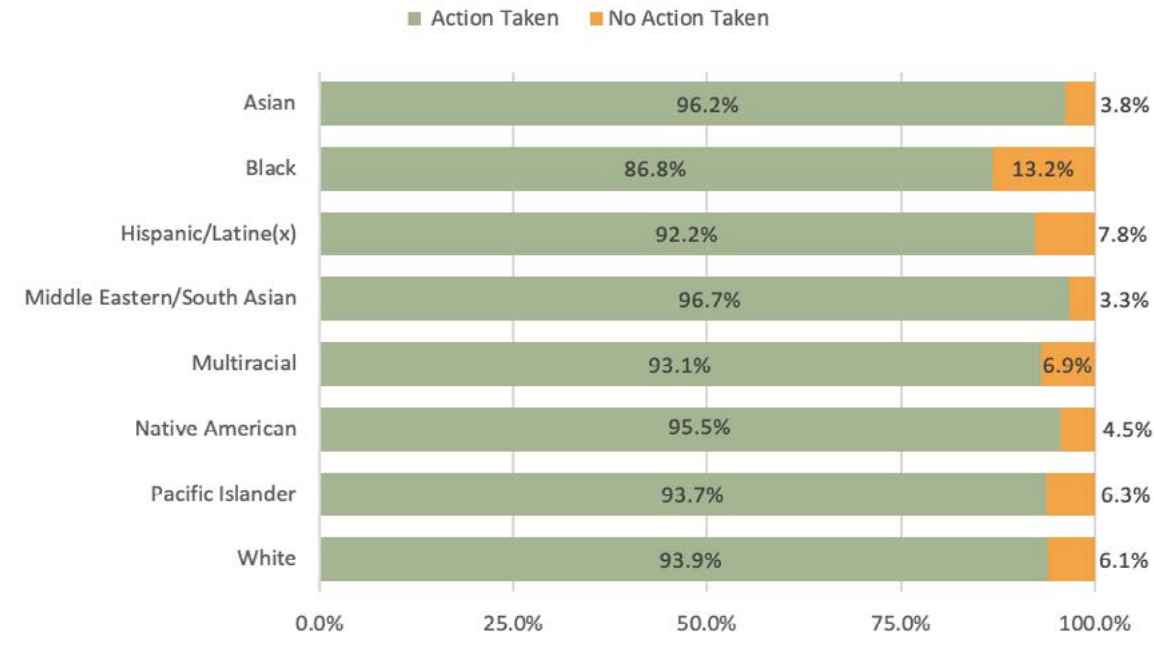
¹³⁴ Arrests here include three unique result types: in-field cite and release (5.6% of stopped individuals), custodial arrest without a warrant (5.8% of stopped individuals), and custodial arrest with a warrant (1.7% of stopped individuals). See Cal. Code Regs., tit. 11, § 999.226, subd. (a)(13). It is possible for multiple arrest conditions to apply to the same individual in a single stop.

¹³⁵ Other result categories included field interview card completed (3.8%), noncriminal/caretaking transport (0.4%), contacted parent/legal guardian (0.1%), psychiatric hold (0.8%), contacted U.S. Department of Homeland Security (<0.1%), referred to a school administrator (<0.1%), or referred to a school counselor (<0.1%). See Cal. Code Regs., tit. 11, § 999.226, subd. (a)(13). Officers can only select “referred to a school administrator” or “referred to a school counselor” as the result category if the stop is of a student in a K-12 public school.

¹³⁶ See Investigation of the Baltimore City Police Department (Aug. 10, 2016) U.S. DOJ, p. 28 <<https://www.justice.gov/opa/file/883366/download>> [as of Nov. 29, 2022] (stating that “low ‘hit rates’ [or actions taken as a result of stops] are a strong indication that officers make stops based on a threshold of suspicion that falls below constitutional requirements”).

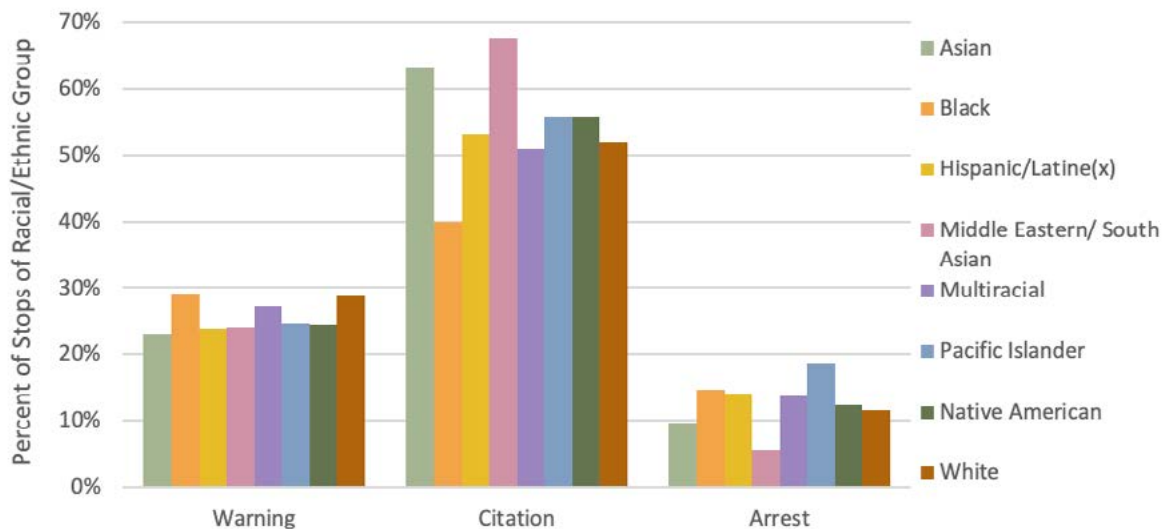
than double (2.2 times) the proportion of stops of White individuals (6.1%) that resulted in no action. Officers tended to take no action as the result of stop least often (3.3%) during stops of individuals they perceived to be Middle Eastern/South Asian.

Figure 15. Result of Stop – No Action by Race/Ethnicity



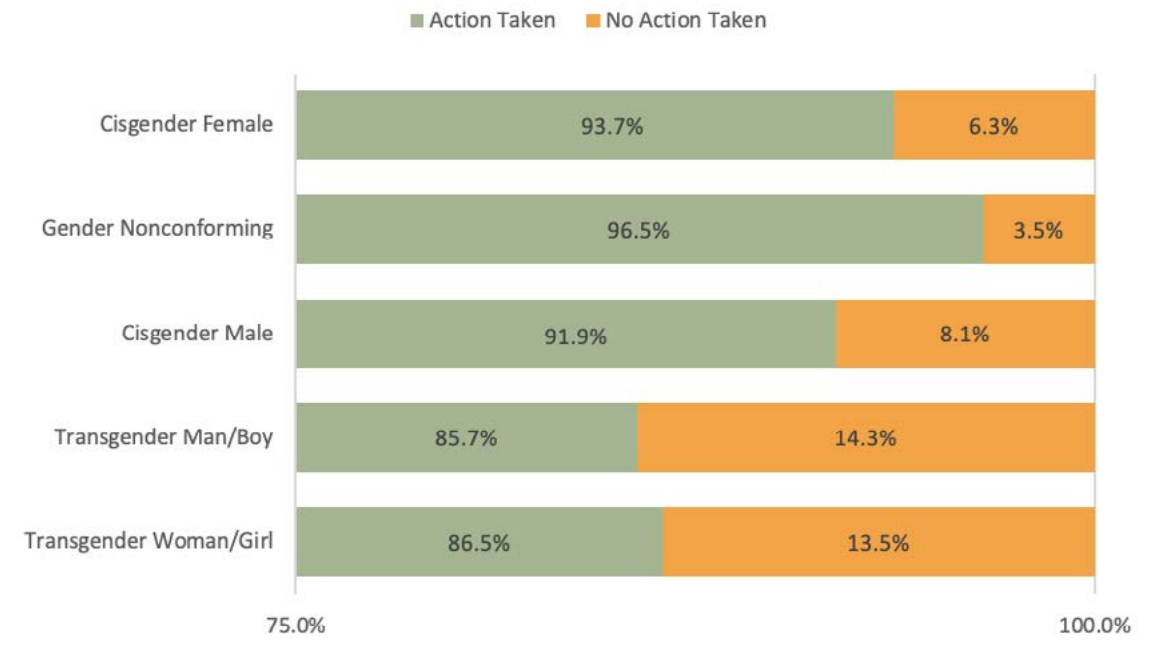
Compared to other races/ethnicities, stopped individuals perceived as Middle Eastern/South Asian were cited at the highest rate (67.5%), while individuals perceived to be Black were cited at the lowest rate (40.0%). Relative to other racial/ethnic groups, stopped individuals officers perceived to be Black were warned at the highest rate (29.1%); Asian individuals were warned at the lowest rate (23.0%). Officers arrested stopped individuals they perceived to be Native American at the highest rate (18.6%) and individuals they perceived as Middle Eastern/South Asian at the lowest rate (5.5%), relative to other racial/ethnic groups.

Figure 16. Warnings, Citations, and Arrests by Race/Ethnicity



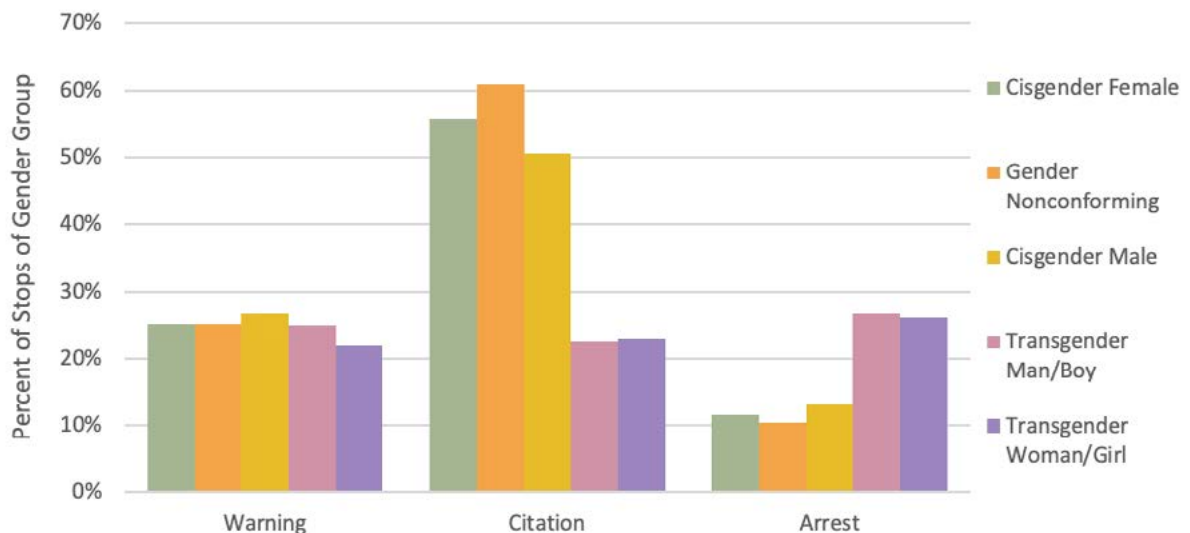
Gender. Officers took no action as the result of a stop most often during stops of individuals they perceived to be transgender men/boys (14.3%), relative to other genders; this rate exceeded the no action rate of cisgender males (8.1%). Similarly, officers took no action against stopped individuals whom officers perceived to be transgender women/girls at a higher rate (13.5%) than individuals whom officers perceived to be cisgender females (6.3%). Officers took no reportable action least frequently during stops of gender nonconforming individuals (3.5%).

Figure 17. Result of Stop – No Action by Gender



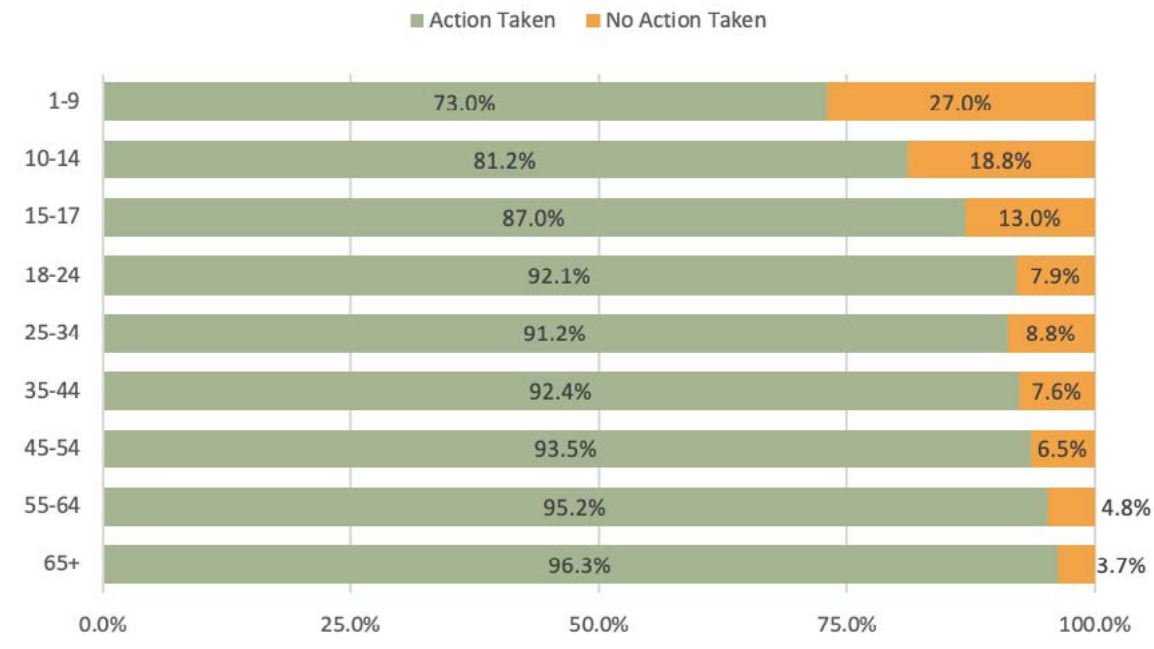
Citation rates ranged from 22.4 percent of stopped individuals perceived as transgender men/boys to 60.9 percent of individuals whom officers stopped and perceived as gender nonconforming. Warning rates ranged from 21.9 percent of stopped individuals perceived as transgender women/girls to 26.7 percent of individuals whom officers perceived as cisgender males. Finally, compared to other genders, officers arrested individuals perceived as transgender men/boys at the highest rate (26.7%), and arrested stopped individuals perceived as gender nonconforming at the lowest rate (10.4%).

Figure 18. Warnings, Citations, and Arrests by Gender



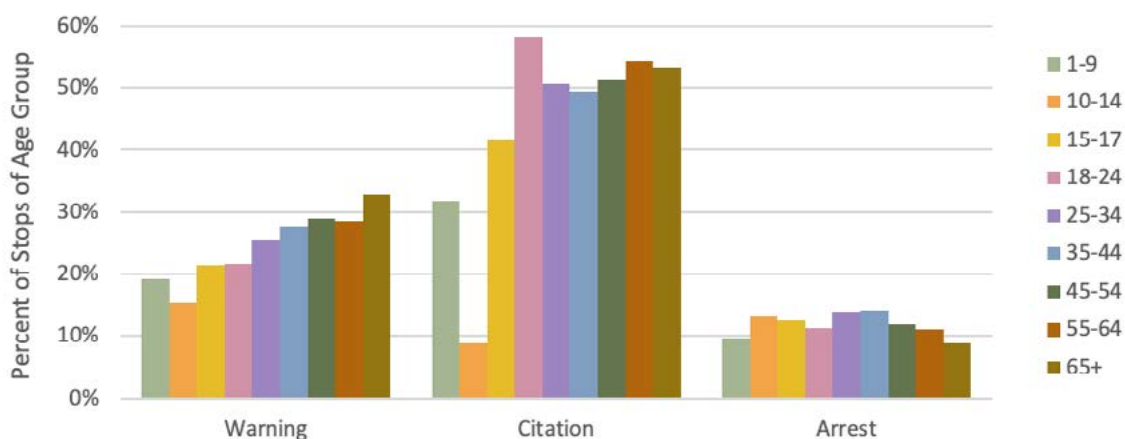
Age. The proportion of stopped individuals that had no action taken as the result of a stop tended to decrease as age groups increased, with individuals perceived to be between the ages of one and nine having the highest no action rate (27.0%) and individuals perceived to be 65 or more years old having the lowest no action rate (3.7%).

Figure 19. Result of Stop – No Action by Age Group



Citation rates ranged from 8.8 percent for stopped individuals perceived as 10 to 14 years old to 58.4 percent of individuals perceived as 18 to 24 years old. Relative to other age groups, individuals perceived as 10 to 14 years old had the lowest rate for being warned (15.5%), whereas individuals perceived as 65 and older had the highest rate of being arrested (32.8%). Arrest rates ranged from 8.9 percent for stopped individuals perceived as 65 and older to 14 percent of individuals perceived as 35 to 44 years old.

Figure 20. Warnings, Citations, and Arrests by Age Group



LGBT. Officers took no action as the result of stop during a higher proportion of stops of people they perceived to be LGBT (9.7%) than during stops of people they did not perceive to be LGBT (7.6%). Individuals whom officers perceived to be LGBT had a lower rate of being cited (38.5%) or warned (23.2%) while having a higher rate of being arrested (23.1%) than individuals whom officers did not perceive to be LGBT (52.1% cited, 26.3% warned, and 12.7% arrested).

Limited English Fluency. Officers took no action as the result of stop during a lower proportion of stops of individuals whom officers perceived to have limited or no English fluency (6.3%) than individuals whom officers perceived to be English fluent (7.7%). Individuals whom officers stopped and perceived to have no or limited English fluency had a lower rate of being cited (51.1%) or being warned (25.7%) while having a higher rate of being arrested (16.5%) when compared to individuals perceived to speak English fluently (52.1% cited, 26.3% warned, and 12.6% arrested).

Disability. Officers took no action as the result of the stop during a higher proportion of stops of people they perceived to have a disability (12.1%) than during stops of people they perceived to not have a disability (7.5%). Further, stopped individuals whom officers perceived as having a disability had much lower rates of being cited (7.2%) or warned (14.1%) and higher rates of being arrested (22.4%) than individuals perceived to not have a disability (52.6% cited, 26.4% warned, and 12.6% arrested).

3. Tests for Racial/Ethnic Disparities

A holistic approach to data analysis is critical, because there is no single approach or consensus in the research literature about what analyses can best help identify racial or identity profiling. For this reason, the following section contains multiple commonly used analyses designed to identify differences in various elements of police stops across racial/ethnic groups. These tests for racial/ethnic disparities include:

- a comparison to residential population data;
- an analysis of search discovery rates; and
- an analysis examining use of force rates.¹³⁷

Each of these analyses tests for racial/ethnic disparities in a different way. As a result, each analysis has methodological strengths and weaknesses. A detailed description of the methodology for each analysis is available in Appendix B, along with discussions of some considerations for each analytical approach.

3.1. Residential Population Comparison

Comparing stop data to residential population data is a common method of analysis. This type of analysis assumes that the distribution of who is stopped likely resembles the demographics of residents within a comparable geographic region. But this is, of course, 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, etc.). Residential population demographics from the United States Census Bureau's 2020 American Community Survey (ACS) provided the benchmark for estimating the expected demographic breakdown of the 2021 stop data.¹³⁸ Differences between stop population proportions and residential population proportions for each racial/ethnic group can be caused by several factors, including potential

¹³⁷ Previous reports have also included an additional analysis, referred to as the Veil of Darkness test, in this section. The Board voted to discontinue the inclusion of this analysis during a Board meeting on March 30, 2022. See Minutes from March 30, 2022 RIPA Board Meeting, available at <https://oag.ca.gov/system/files/media/ripa-mm-board-033022.pdf>.

¹³⁸ When these analyses were conducted, 2020 was the most recent year for which the five-year ACS data/information was available. The Census Bureau's methodology implemented for the 2020 five-year ACS data is different from previous years due to the significant impact of the COVID-19 pandemic on the Census Bureau's data collection efforts. Please see section B.1 of the Disparity Tests Methods Appendix (Appendix B) for further information.

differences in exposure to criminogenic¹³⁹ factors, allocation of law enforcement resources, elements that draw large populations of non-residents to congregate in a place (e.g., retail sectors, employment centers, tourist attractions, etc.), and officer bias.

Benchmarking using residential population data involves comparing the distribution of racial/ethnic groups stopped by agencies to the distribution of residents in the areas serviced by the same agencies. In 2021, not all agencies within the state collected RIPA data, which presents issues when trying to compare to state population data as a whole. Given that RIPA data collection happened primarily in the areas of the state patrolled by the 58 reporting agencies, the ACS estimates were weighted to display a distribution more reflective of just the areas served by the reporting agencies in 2021, rather than the state as a whole.¹⁴⁰

Figure 21 displays the racial/ethnic distribution from the 2021 RIPA stop data of individuals whom officers stopped, alongside the weighted distribution of residents from the ACS. These analyses were repeated for all reporting agencies, excluding California Highway Patrol, and for each individual agency.¹⁴¹

Overall, the disparity between the proportion of stops and the proportion of residential population was greatest for Multiracial and Black individuals. Multiracial individuals were stopped 87.4 percent less frequently than expected, while Black individuals were stopped 144.2 percent more frequently than expected.¹⁴² The proportion of stops of Native American individuals most closely matched estimates from residential population data (3.1% more frequent than expected). Compared to White individuals, who were stopped 11.4 percent less frequently than expected based on their share of the residential population, the greatest disparities between stop data and residential population data estimates occurred for Black and Multiracial individuals. The disparity for Black individuals was 2.8 times as great as the disparity for White individuals. For Multiracial individuals, the disparity was 0.1 times as great as the disparity for White individuals. This indicates that individuals perceived as Black were substantially more likely to be stopped compared to White individuals, while individuals perceived as Multiracial were substantially less likely to be stopped.¹⁴³ After excluding California Highway Patrol records from the analysis, the data continued to show the greatest disparities for the stops of Black and Multiracial individuals; relative disparities compared to those of White individuals were larger than the all-agency disparities for individuals perceived to be Asian, Black, and Native American.¹⁴⁴

139 “Criminogenic” is defined as “(of a system, situation, or place) causing or likely to cause criminal behavior.” Oxford English Dict. Online (2021) <<http://www.oed.com>> [as of Nov. 29, 2022].

140 See section B.1 of the Disparity Tests Methods Appendix (Appendix B) for a detailed explanation of the weighting schema used for the overall comparison. The need to adjust population estimates to be more reflective of the areas served by a subset of agencies will no longer exist once all agencies across the state are required to submit data in 2023.

141 These results can be found in Table C.1 of Appendix C. The California Highway Patrol (CHP) accounts for a large proportion of stop records from 2021 (54.9%). Given that the practices of municipal agencies may differ substantially from those of a state patrol agency like the California Highway Patrol, the Board also performs tests for disparities while only examining municipal agency data and exclude CHP.

142 Stop data classifying the race/ethnicity of stopped individuals is based upon officer perception, while race/ethnicity in the ACS is based on self-identification. Some research indicates that it is more difficult to classify the race of multiracial individuals than it is to classify the race of monoracial individuals and that people may often classify multiracial individuals as monoracial. See generally Iankilevitch et al., How Do Multiracial and Monoracial People Categorize Multiracial Faces? (2020) *Social Psychological and Personality Science* <<https://journals.sagepub.com/doi/10.1177/1948550619884563>> [as of Nov. 29, 2022]; see also Chen and Hamilton, Natural ambiguities: Racial categorization of multiracial individuals (2012) *J. of Experimental Social Psychology* <<https://www.sciencedirect.com/science/article/abs/pii/S0022103111002484?via%3Dihub>> [as of Nov. 29, 2022].

143 See Appendix C Table C.1 for all disparity ratios and how the ratios are calculated.

144 See Appendix C, Table C.1 for results of the ACS comparison with CHP data excluded.

Figure 21. Weighted Residential Population Comparison to Stop Data¹⁴⁵

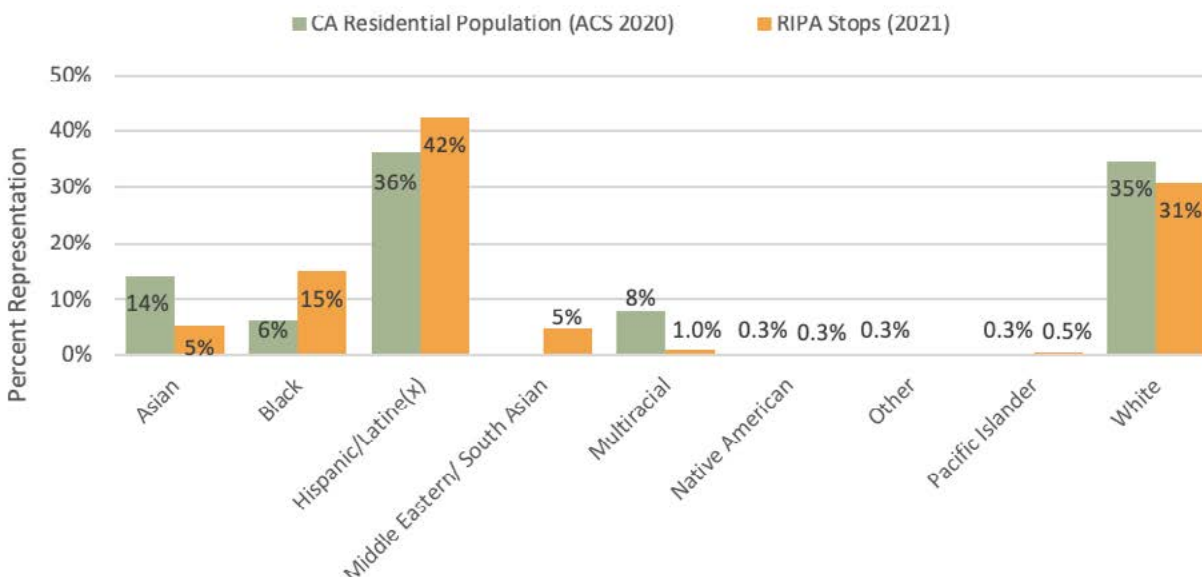


Figure 22 displays the racial/ethnic distribution from the 2021 RIPA stop data of individuals stopped by the California Highway Patrol alongside the unweighted distribution of residents from the ACS. Overall, the disparity between the proportion of stops and the proportion of residential population was greatest for Multiracial and Black individuals. Multiracial individuals were stopped 88.9 percent less frequently than expected, while Black individuals were stopped 107.8 percent more frequently than expected.¹⁴⁶ The proportion of stops of White individuals most closely matched estimates from residential population data (9.2 less frequent than expected).

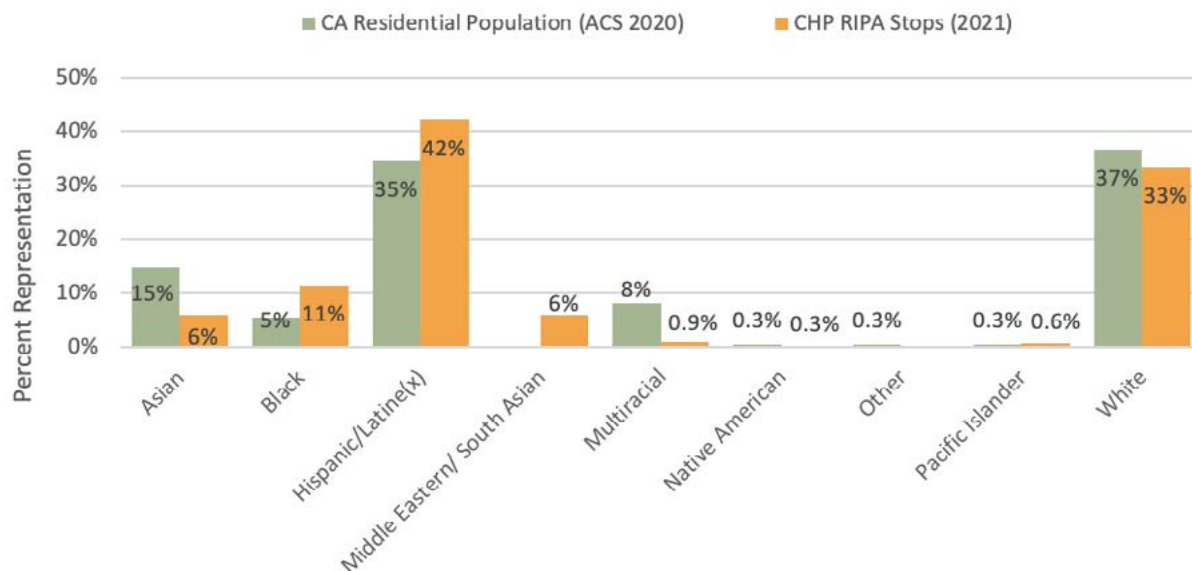
When examining the CHP distribution, the greatest disparities between stop data and residential population data estimates occurred for Black and Multiracial individuals when compared to White individuals, who were stopped 9.2 percent less frequently than expected based on their share of the residential population. The disparity for Black individuals was 2.3 times as great as the disparity for White individuals. For Multiracial individuals, the disparity was 0.1 times as great as the disparity for White individuals. This indicates that individuals perceived as Black were substantially more likely to be stopped compared to White individuals, while individuals perceived as Multiracial were substantially less likely to be stopped.¹⁴⁷

¹⁴⁵ Because the ACS table used for these analyses does not contain a race category that is comparable to the Middle Eastern/South Asian group within the RIPA data, there is no residential population bar for this group in Figure 21. For more information about the ACS data used in this section, see section B.1. of Appendix B.

¹⁴⁶ 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 it is to classify the race of monoracial individuals and that people may often classify multiracial individuals as monoracial. See Iankilevitch et al., *supra* note 142; see also Chen and Hamilton, *supra* note 142.

¹⁴⁷ Please see Appendix C Table C.1 for all disparity ratios and how the ratios are calculated.

Figure 22. Unweighted Statewide Residential Population Comparison to CHP Stop Data



The disparities between total stop numbers and the weighted population estimates within racial and ethnic groups provide important context to proportional descriptions of differences in reasons for stops and outcomes of stops among racial and ethnic groups. As stops unfold, events can be separated into stages, such as the decision to stop someone, actions taken by officers that occurred during the stop, and the result of the stop. Disparities between groups compound across these stages of interactions with law enforcement. For example, if a group has been stopped more frequently than expected given their ACS weighted population size, as is true with individuals perceived as Black or Hispanic/ Latine(x), and those same groups have a higher percentage of their stops occur for certain reasons, the actual disparity compounds across these two stages of interactions with law enforcement. As a specific example, not only were Black individuals 2.8 times as likely to be stopped compared to White individuals, but within those more frequent stops a larger percentage (0.37% Black vs. 0.27% White) were for bicycle offenses. These compounded disparities continue in further stages of interactions, such as elevated search rates during bicycle-related stops of Black individuals compared to White individuals (34.82% Black vs. 30.88% White), resulting in further diverging absolute risks between racial and ethnic groups.¹⁴⁸

3.2. Discovery Rate Analysis

Researchers developed an empirical test that examines the rate at which officers discover contraband or evidence across the racial/ethnic groups of individuals they search. The test assumes that if officers are searching people of a particular identity group more frequently but finding less contraband, the searches of individuals in that identity group may be, at least in part, because of their perceived identity.¹⁴⁹ Using this framework, we tested for differential treatment by conducting comparisons of search and discovery rates across identity groups.¹⁵⁰

Discovery Rates

These analyses measure the rates at which contraband or evidence is discovered in stops where a search was performed. The Board refers to these rates as discovery rates.

¹⁴⁸ See pages 74-78 for specific analyses of stops for bicycle-related violations.

¹⁴⁹ See Section B.2 of Appendix B for a discussion of the limitations of this type of analysis.

¹⁵⁰ For more discussion of search discovery rates (often referred to as search “hit” rates), please see Knowles et al., *Racial Bias in Motor Vehicle Searches: Theory and Evidence* (2001) 109 J. Political Econ. 203.

Descriptive Analysis. Overall, officers searched 11.9 percent of individuals they stopped. Officers discovered contraband or evidence from 24.6 percent of individuals they searched. Search and discovery rates varied across racial/ethnic groups. Out of all racial/ethnic groups, stopped individuals perceived as Black had the highest search rates (20.1%), while stopped individuals perceived as Middle Eastern/South Asian had the lowest search rate (3.5%). Individuals perceived as White were searched 9.2 percent of the time. This means that the search rate of Black individuals was 2.2 times the search rate of White individuals. Although officers stopped 498,895 more individuals perceived to be White than individuals perceived to be Black, officers searched 6,622 more Black individuals than White individuals.¹⁵¹ On the other end of the search rate distribution, officers searched individuals perceived to be Middle Eastern/South Asian less than half as often they searched individuals perceived to be White.

Search discovery rates did not vary as widely across racial/ethnic groups as did search rates. Discovery rates ranged from 21.0 percent of individuals officers searched and perceived as Middle Eastern/South Asian to 26.9 percent of individuals officers perceived as Multiracial. The discovery rate for individuals perceived as White was 25.5 percent.

Figure 23. Search and Discovery Rates by Race/Ethnicity (All Search Types)

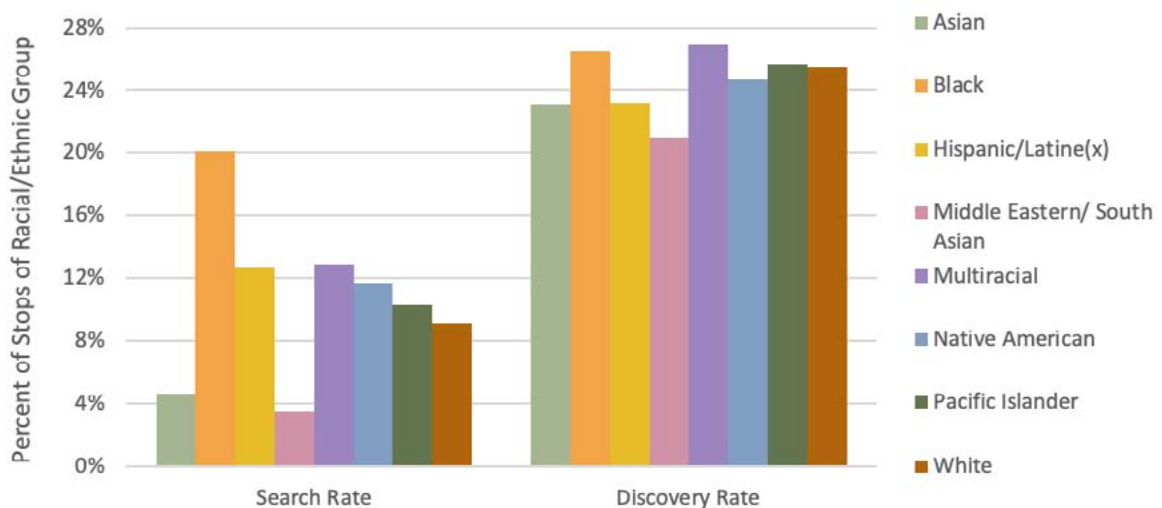
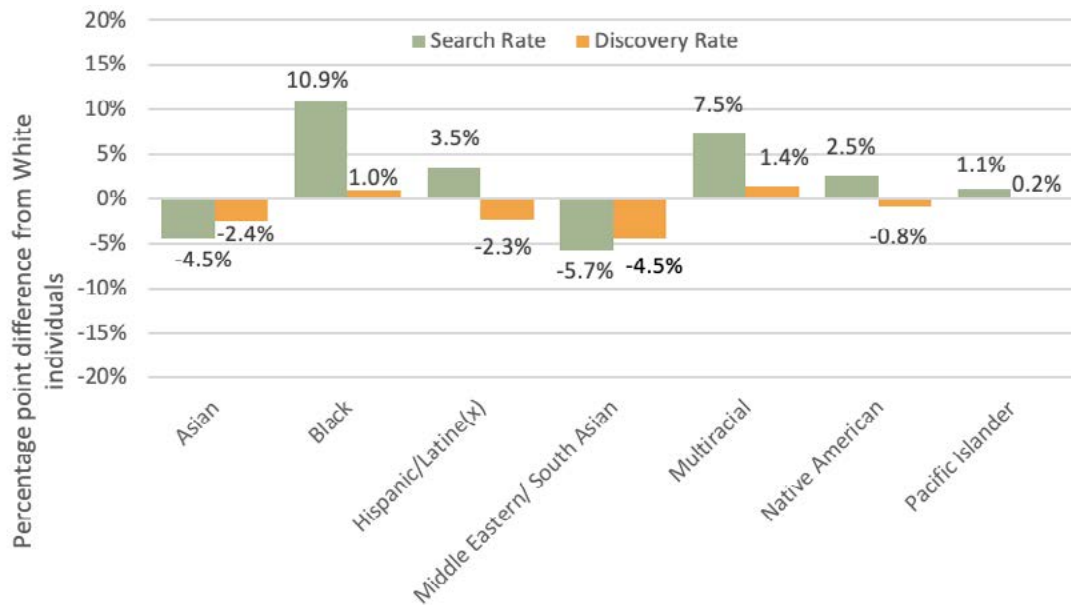


Figure 24 displays the difference in search and discovery rates for each racial/ethnic group of color from the search and discovery rates for individuals perceived as White (9.2% and 25.5%, respectively). All racial/ethnic groups of color had higher search rates than individuals perceived as White, except for individuals perceived as Asian and Middle Eastern/South Asian. Search rate disparities were largest for individuals perceived to be Black, who officers search 10.9 percent more often than individuals they perceived as White (20.1% vs. 9.2%). Officers also searched individuals perceived to be Multiracial (+7.5%), Hispanic/Latine(x) (+3.5%), Native American (+2.5%), and Pacific Islander (+1.1%) more often than stopped individuals perceived to be White. Discovery rates were higher during stops with searches of Black individuals (+1.0), Multiracial individuals (+1.4%), and Pacific Islander individuals (+0.2%) when compared to the discovery rate during searches of White individuals while discovery rates were lower during stops with searches of all other racial or ethnic groups of color: Asian (-2.4%), Hispanic/Latine(x) (-2.3%), Middle Eastern/South Asian (-4.5%), and Native American (-0.8%).

¹⁵¹ Officers also searched more individuals whom they perceived to be Hispanic (171,454) than they did individuals whom they perceived to be White (89,536). However, officers also stopped more Hispanic individuals (1,348,972) than White individuals (977,832), which was not the case for Black individuals (478,937).



Multivariate Analysis. To consider how multiple variables may be associated with officers' decisions to search and whether officers discovered contraband or evidence, these data were also analyzed using multivariate statistical models.¹⁵² One key consideration is the level of discretion available to officers in their decision to conduct a search. Some searches are based on protocol and are often required under departmental policy (hereafter, referred to as administrative searches), such as during an arrest, vehicle inventory, or search warrant. These administrative types of searches may afford little discretion to the officer in their decision to conduct a search because of agency policy.¹⁵³ Other types of searches occur in situations where more discretion is available to the officer and are based on some subjective threshold of suspicion that the officer may find contraband or evidence. Examples of these types of searches include those conducted when an officer asks for consent to search or when officers suspect an individual has a weapon. Previous research shows individuals of certain racial/ethnic groups have a greater chance of being subjected to discretionary searches, and when there is discretion or subjectivity, bias can play a role.¹⁵⁴ As such, the multivariate analysis was applied to (1) search rates overall, (2) discovery rates

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." 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 shows a very low likelihood that chance explains the resulting disparity.

¹⁵² Please see section B.2 of Appendix B for a full description of the methodology.

¹⁵³ Administrative searches are not instances where the police officer has no discretion at all, but rather where the officer makes an earlier choice that leads to a search, such as a choice to make an arrest that requires a search. Stops where officers perform administrative searches still possess the potential for bias to affect an interaction, either by the officer at points prior to the search, or at a command level when setting policies and priorities.

¹⁵⁴ See Hetey et al., *Data for Change: A Statistical Analysis of Police Stops, Searches, Handcuffings, and Arrests in Oakland, Calif., 2013-2014* (2016) Stanford SPARQ pp. 15-16 <<https://stacks.stanford.edu/file/druid:by412gh2838/>>

during discretionary searches, and (3) discovery rates during administrative searches.

The results showed multiple statistically significant differences in search and discovery rates across racial/ethnic groups, especially when comparing individuals perceived as Black or Hispanic to individuals perceived as White (see Table 2). Compared to White individuals, Black (+0.4 percentage points) and Hispanic/Latine(x) (+0.3 percentage points) individuals had a higher probability of being searched despite being less likely to be found in possession of contraband or evidence in stops with discretionary searches (-1.9 and -1.7 percentage points, respectively).¹⁵⁵ However, the difference in discovery rates between White and Black individuals during stops with administrative (i.e., low discretion) searches was relatively small (+0.3 percentage points) and not statistically significant. Asian individuals (-2.1 percentage points) and those from other racial/ethnic groups that were combined together¹⁵⁶ (-1.7 percentage points) were less likely to be searched compared to White individuals; however, there were no significant differences in the rate of contraband or evidence discovered during stops with discretionary searches for either group.¹⁵⁷ Asian individuals (-2.4% points), Hispanic/Latine(x) individuals (-0.9% points), and those from the combined group (-2.3% points) were less likely to have contraband or evidence discovered in stops with administrative searches. These analyses were repeated for all agencies excluding California Highway Patrol and for each individual agency in order to consider the impact of different locales on the findings; these results can be found in Appendix C.¹⁵⁸

Table 2. Summary of Multivariate Discovery Rate Analysis Findings by Race/Ethnicity

Group	Search Rates	Discovery Rates	
		Discretionary Searches	Administrative Searches
Asian	*** ↓ 2.1%	↓ 1.4%	** ↓ 2.4%
Black	*** ↑ 0.4%	*** ↓ 1.9%	↑ 0.3%
Hispanic/ Latine(x)	*** ↑ 0.3%	*** ↓ 1.7%	** ↓ 0.9%
Other	*** ↓ 1.7%	↓ 1.5%	*** ↓ 2.3%

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.

[Data%20for%20Change%20%28June%2023%29.pdf](#) [as of Nov. 29, 2022] (finding that police in Oakland, California were more likely to discretionarily search Black drivers during traffic stops than White drivers); Ridgeway, *Assessing the Effect of Race Bias in Post-Traffic Stop Outcomes Using Propensity Scores* (2006) 22 J. Quant. Criminol. 1 <<https://www.rand.org/pubs/reprints/RP1252.html>> [as of Nov. 29, 2022] (analyzing discretionary actions taken after traffic stops in Oakland, California and finding that police were more likely to subject Black drivers to pat-down searches and probable cause searches, as compared to White drivers); Hart, *Subjective Decisionmaking and Unconscious Discrimination* (2005) 56 Ala. L. Rev. 741, 769-771 <<https://ssrn.com/abstract=788066>> [as of Nov. 29, 2022] (analyzing Supreme Court precedent and finding that the Court recognized that “in a subjective evaluation system, there is a risk that evaluations will be based on unconscious discriminatory attitudes”). See also generally Greenwald and Krieger, *Implicit Bias: Scientific Foundations* (2006) 94 Calif. L. Rev. 945 (analyzing the role of implicit bias in racial discrimination); Greenwald and Banaji, *Implicit Social Cognition: Attitudes, Self-Esteem, and Stereotypes* (1995) 102 Psych. Rev. 4, 4-6 (analyzing the role of implicit bias in deliberate, or discretionary, decisions).

155 Please see Appendix C, Table C.2.1 and Table C.2.2 for model statistics.

156 Individuals whom officers 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.

157 Please see Appendix C, Table C.2.1 and Table C.2.2 for model statistics.

158 Please see Appendix C, Tables C.2.1, C.2.2, and C.2.3 for model statistics.

3.3. Use of Force Analysis

An officer uses force when they exert any physical coercion or control over a person. This can include a range of actions, such as taking a person out of their car by physically touching them or pointing or using a firearm when interacting with a person. The Board offers two approaches for examining use of force across racial/ethnic groups. The first uses a modified version of a use-of-force continuum from the National Institute of Justice to compare escalating levels of force across racial/ethnic groups. The second applies a statistical test to determine whether officers applied force disparately between White individuals and individuals from racial/ethnic groups of color. These data show use of force occurs in about one percent of reported stops. However, the Board recognizes that, despite the low occurrence rate relative to other actions officers take during stops, the gravity of the outcomes of many incidents that involve force necessitates examination of these data for disparate outcomes.

Use-of-force Continuum. Of the 23 actions taken by officers during stops that are reportable under RIPA, for purposes of these analyses, at least nine constitute types of force.¹⁵⁹ The statistics reported below divide these nine actions into three separate categories based on the level of force used, including lethal, less-lethal, and other physical or vehicle force. Table 3 displays the actions taken by officers during stops within level of force categories.¹⁶⁰ Officers reported using lethal force against 0.005 percent (155) of individuals they stopped. Officers reported using less-lethal force against 0.6 percent (18,605) of individuals they stopped. Lastly, officers reported taking actions constituting limited force towards 0.8 percent (26,989) of individuals they stopped.

Table 3. Actions Taken by Officers During Stops within Level of Force Categories

Lethal Force	Less-Lethal Force	Limited Force (Other Physical or Vehicle Contact)
Firearm discharged or used	- Electronic control device used - Impact projectile discharged or used - Canine bit or held person - Baton or other impact weapon used - Firearm pointed at person¹⁶¹ - Chemical spray used	- 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 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.

¹⁵⁹ For the purpose of these analyses, the nine actions taken by an officer during a stop included in Table 3, regardless of the officer's intent or civilian compliance level, are considered uses of force.

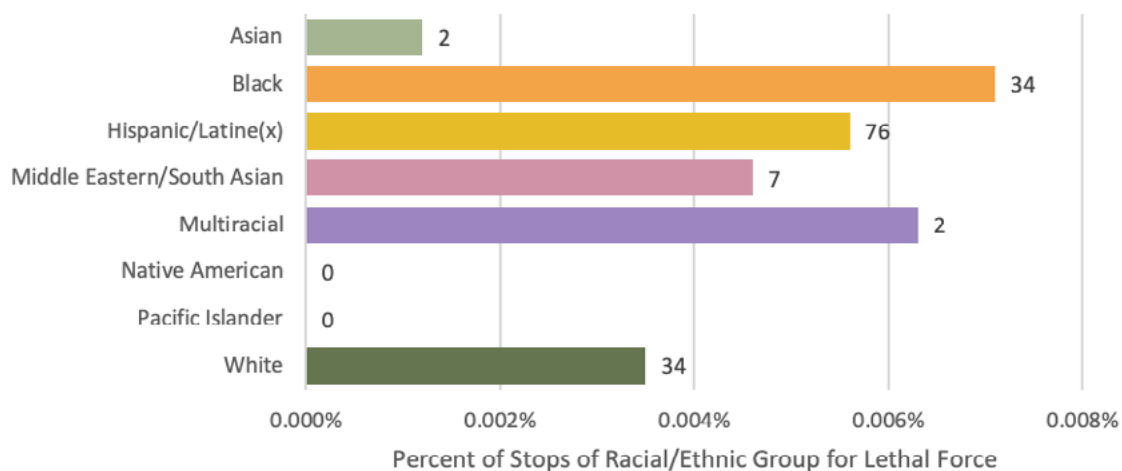
¹⁶⁰ The "Other physical or vehicle contact" data element within the "Action Taken by Officer During Stop" variable is defined in Title 11 of the California Code of Regulations, section 999.226, subdivision (a)(12)(A)(15). Officers are instructed to select this data element when they use a number of different types of force, such as hard hand controls or forcing someone to the ground. Cal. Code Regs., tit. 11, § 999.226, subd. (a)(12)(A)(15).

¹⁶¹ Other ongoing use-of-force data collection in the state of California classifies the threat of a firearm as a type of force. Given that the threat of a firearm is inherent to the intentional pointing of a firearm at another person, pointing a firearm was also classified as a use of force in this set of analyses, for consistency with other use of force reporting within California. See Cal. Gov. Code, § 12525.2; see also *Use of Force Incident Reporting* (2021) Cal. DOJ, pp. 1, 31 <<https://data-openjustice.doj.ca.gov/sites/default/files/2022-08/USE%20OF%20FORCE%202021.pdf>> [as of Nov. 29, 2022] (referring to use of force and "threat of firearm" incidents).

Comparisons of data about instances where officers discharged their firearms between the RIPA data and similar data collected by agencies in accordance with Government Code § 12525.2 (hereafter, referred to as AB 71) reveal that agencies reported fewer total lethal force incidents under RIPA (155) than under AB 71 (186).¹⁶² While half of agencies that reported stop data in 2021 did not report any instances of officers discharging their firearms in either data source, the data submitted by the other half of agencies tended not to align between sources. Previous findings comparing 2020 RIPA and AB 71 lethal force data against alternative sources of similar information, such as the Fatal Encounters crowd-sourced database¹⁶³ and agency press releases, indicated that data for instances of officers using lethal force collected under AB 71 tended to be more reliable than comparable RIPA data.¹⁶⁴ The Department of Justice has undertaken efforts to notify agencies of these issues so that the agencies may rectify deficiencies in their data collection practices in future data collection periods and will continue to monitor the data submitted by agencies between these sources to assess for quality concerns. However, given the concerns with this subset of the 2021 data, interpretation of lethal force data requires caution. The lethal force distribution shown in Figure 25 is included here in order to provide a complete depiction of the use of force data as reported by agencies.¹⁶⁵

Agencies reported using lethal force against less than 0.1 percent of stopped individuals from each racial/ethnic group. The total number of individuals who had lethal force used against them by racial/ethnic group included 2 Asian, 34 Black, 76 Hispanic/Latine(x), 7 Middle Eastern/South Asian, 34 White, and 2 Multiracial individuals. Officers did not report using lethal force against any individuals they perceived as Native American or Pacific Islander. Black individuals had the highest rates of less-lethal force (1.1%) and other physical or vehicle force (1.4%) used by officers against them during stops, while Middle Eastern/South Asian individuals had the lowest rates (0.2% limited force, 0.5% less-lethal force).

Figure 25. Use of Force Rates by Race/Ethnicity

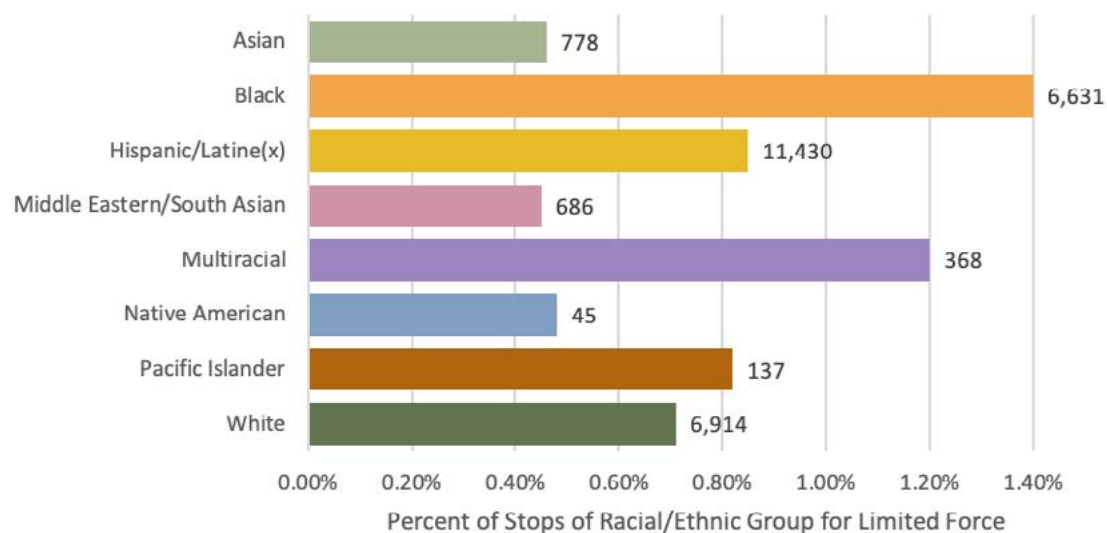
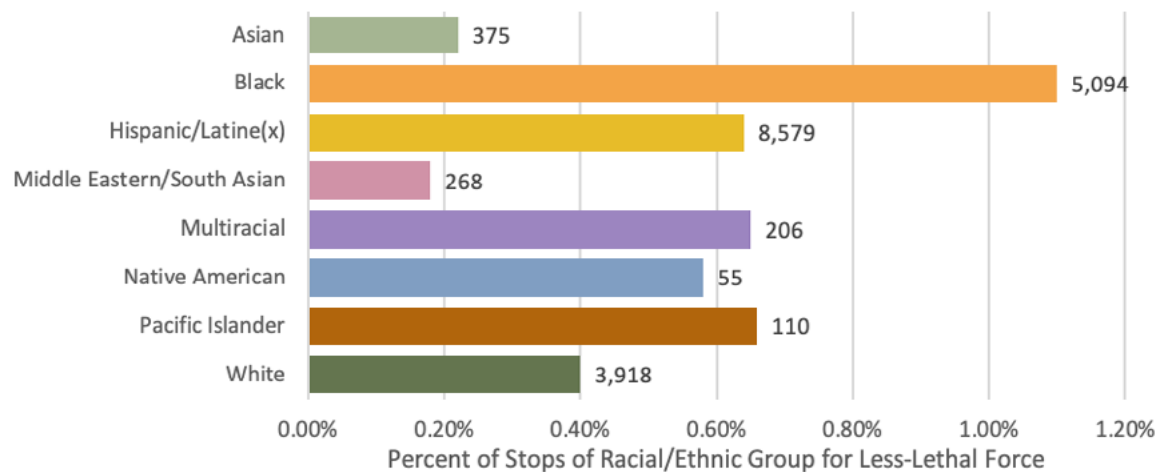


¹⁶² For the Board discussion of this data comparison, please see the video recording for the Oct. 4, 2022 Stop Data Subcommittee Meeting, available at: <https://oag.ca.gov/ab953/meetings> and <https://youtu.be/pFq4n-ejE5g>.

¹⁶³ Please see <https://fatalencounters.org/> for more information about the Fatal Encounters database.

¹⁶⁴ The associated content and video recording for the March 10, 2022 RIPA Stop Data Subcommittee meeting are available at: <https://oag.ca.gov/ab953/meetings> and https://www.youtube.com/watch?v=TpgBO_lpqik, respectively.

¹⁶⁵ The 2021 annual Use of Force Incident Reporting report, which summarizes AB 71 data, is available at <https://data-openjustice.doj.ca.gov/sites/default/files/2022-08/USE%20OF%20FORCE%202021.pdf>, and presents an alternative source for information collected on lethal uses of force by law enforcement agencies.



Multivariate Analysis. The data were also analyzed using multivariate statistical models to consider the impact of the stopped individuals' race/ethnicity and multiple other factors (e.g., officer who made the stop, time of day, etc.) on whether force was used during a stop.¹⁶⁶ Data for the four racial/ethnic groups least frequently stopped by officers were combined into a single group to increase statistical power for the test; these groups included Middle Eastern/South Asian, Multiracial, Native American, and Pacific Islander individuals.

Results of the analysis showed that Black and Hispanic/Latine(x) individuals were more likely to have force used against them compared to White individuals, while Asian and other individuals were less likely. Compared to White individuals, the odds of officers using force during a stop were 1.24 times and 1.09 times as high for Black and Hispanic/Latine(x) individuals, respectively. Asian and Other individuals whom officers stopped had lower odds of having force used against them (0.69 and 0.84, respectively), relative to the odds for individuals officers perceived as White.¹⁶⁷ When the analysis excluded data from California Highway Patrol, the disparities observed were similar to the findings when examining all stops.¹⁶⁸

¹⁶⁶ Please see section B.3 of Appendix B for a full description of the methodology.

¹⁶⁷ Please see Appendix C, Table C.3 for model statistics.

¹⁶⁸ Please see Appendix C, Table C.3 for model statistics.

Table 4. Summary of Multivariate Use of Force Rate Analysis Findings by Race/Ethnicity

Asian	Black	Hispanic/Latine(x)	Other
*** ↓ 0.69	*** ↑ 1.24	*** ↑ 1.09	*** ↓ 0.84
Note. Values represent the use of force rate for the listed racial/ethnic group relative to the rate for White individuals. The arrows indicate the direction of the difference (↓ indicating a lower and ↑ indicating a higher use of force rate than White individuals). Statistically significant disparities are indicated with asterisks; *** p < 0.001; ** p < 0.01; * p < 0.05.			

POLICY FOCUSED DATA ANALYSIS

1. Pretextual Stops

1.1. Introduction

“The Board calls on policymakers and law enforcement and municipal leaders to consider ways to eliminate pretextual stops and therefore reduce any potential for harm stemming from such stops.”¹⁶⁹

Efforts to eliminate or reduce pretextual stops and searches have gained national momentum in recent years. High-profile killings of young Black and Hispanic/Latine(x) people during stops, such as Daunte Wright,¹⁷⁰ Dijon Kizzee,¹⁷¹ and Kurt Reinhold,¹⁷² many years of community advocacy, and now widely available data have revealed not only the harm caused by pretextual stops and searches, including widespread racial profiling and the potential for minor traffic stops to turn deadly, but also an absence of a public safety benefit. As such, many localities and law enforcement agencies have determined a need for new policies to address and end pretextual stops.

A pretext stop is when an officer stops someone for a lawful traffic violation or minor infraction with the intention to use the stop to investigate a hunch regarding a different crime that by itself would not amount to reasonable suspicion or probable cause.¹⁷³ One example of this would be if an officer sees that a vehicle’s brake light is not working and stops the car because the officer thinks the driver might have drugs but has no facts to support that assumption.¹⁷⁴ Although widely used by law enforcement, this practice is also widely criticized and often described as a fishing expedition, which is supported by

- 169 Racial and Identity Profiling Advisory Board, Annual Report (2022), p. 141 <<https://oag.ca.gov/system/files/media/ripa-board-report-2022.pdf>> [as of Nov. 29, 2022].
- 170 In April 2021, 20-year-old Daunte Wright was shot and killed during a pretextual traffic stop for expired plates and an air freshener hanging from the window (obstructed window). See Siemaszko, *Daunte Wright was stopped for expired plates, but driving while Black may have been his ‘crime’* (Apr. 2021) NBC News <<https://www.nbcnews.com/news/us-news/daunte-wright-was-stopped-expired-plates-driving-while-black-may-n1263878>> [as of Nov. 29, 2022].
- 171 Dijon Kizzee was shot 15 times by Los Angeles Sheriff’s Deputies after officers tried to stop him for riding a bike in the wrong direction, sparking months of protest and igniting discussions about the deadly impacts of pretextual stops. See, *Dijon Kizzee wasn’t holding gun when LA deputies shot him 15 times* (Sept. 2020) The Guardian <<https://www.theguardian.com/us-news/2020/sep/23/dijon-kizzee-los-angeles-sheriffs-department-shooting>> [as of Nov. 29, 2022]; *Hundreds Protest Shooting of Dijon Kizzee by LASD Deputies* (Sept. 2020) Spectrum News <<https://spectrumnews1.com/ca/la-west/public-safety/2020/09/12/hundreds-protest-shooting-of-dijon-kizzee-by-lasd-deputies>> [as of Nov. 29, 2022]; *Dijon Kizzee shooting in South L.A. spurs protests* (Sept. 2020) L.A. Times <<https://www.latimes.com/california/story/2020-08-31/man-fatally-shot-by-los-angeles-county-deputy-in-westmont>> [as of Nov. 29, 2022].
- 172 Kurt Reinhold was shot and killed by two Orange County Sheriff’s deputies after they tried to stop him for crossing during a red hand signal. See Bellware, *A deputy fatally shot a Black homeless man during a jaywalking stop. He won’t face charges.* (Feb. 2022) Washington Post <<https://www.washingtonpost.com/nation/2022/02/12/kurt-reinhold-orange-county-homeless/>> [as of Nov. 29, 2022].
- 173 The amended RIPA regulations, which will be effective in 2024, define “reasonable suspicion” as requiring a set of specific facts that would lead a reasonable person to believe that the stopped person is committing a crime, recently committed a crime, or is about to commit a crime. Reasonable suspicion cannot be based solely on a hunch or instinct. “Reasonable suspicion” requires a lesser standard of proof than “probable cause to arrest or search.” See proposed Cal. Code Regs., tit. 11, § 999.224, subd. (a)(16) <<https://oag.ca.gov/system/files/media/RIPA%202022%20Rulemaking%20Final%20Text%20of%20Regulations.pdf>> [as of Nov. 29, 2022]. “Probable cause to arrest or search” is defined in the amended RIPA regulations as a set of specific facts that would lead a reasonable person to objectively believe and strongly suspect that a crime was committed by the person to be arrested. “Probable cause to arrest” requires a higher standard of proof than “reasonable suspicion.” See proposed Cal. Code Regs., tit. 11, § 999.224, subd. (a)(14)-(15) <<https://oag.ca.gov/system/files/media/RIPA%202022%20Rulemaking%20Final%20Text%20of%20Regulations.pdf>> [as of Nov. 29, 2022]; see also Asirvatham and Frakes, *Are Constitutional Rights Enough? An Empirical Assessment of Racial Bias in Police Stops* (Aug. 2020) Duke L. School Pub. L. & Legal Theory Series No. 2020-56, p. 5 <<http://dx.doi.org/10.2139/ssrn.3673574>> [as of Nov. 29, 2022].
- 174 Asirvatham and Frakes, *supra* note 173, at p. 5.

the data that shows these types of stops do not yield high rates of contraband or evidence.¹⁷⁵

During a pretextual stop, law enforcement officers often ask probing questions unrelated to the reason for the stop, such as inquiring whether a person is on probation or parole. In some cases, an officer may even ask the stopped individual for consent to search their person or their vehicle, allowing the officer to conduct a search without needing probable cause. Officers in these circumstances may also claim they smelled drugs or saw an ambiguous object that leads to a frisk of someone's person or a search of a car. In examining the impact of pretextual stops, we also need to consider the history of policing and the impact of policies that may have encouraged the use of such stops, discussed in detail below.¹⁷⁶

To understand the need for ending pretext stops, it is important to first look at the data, which shows officers conduct traffic stops and stops for other minor violations that can be pretextual in nature in a racially disparate manner. Second, an examination of pretext stops shows that they minimally benefit public safety. Third, the community's health and wellness is directly and negatively affected by actions that result in disparate treatment as well as the negative outcomes and sometimes fatal consequences that can happen during these stops. A discussion of the factors favoring the end of pretext stops follows.

1.2. Data-Driven Policy Reform on Pretextual Stops

Many states, including California, enacted laws such as RIPA to address racial and identity profiling by requiring agencies to collect data on their stops.¹⁷⁷ Data collection on pretextual police encounters is now more accessible and agencies and other stakeholders are using that data to shape policy regarding pretextual stops. This data collection has helped communities push for improving policing practices while reducing disparities in stops. The data shows *who* is being stopped and whether the stop is *effective* at protecting the community and improving public safety. In evaluating the effectiveness of any given police practice, we must consider not only the impact on improving public safety and reducing crime, but also the potential to have a racially disparate impact and affect the broader community's trust in and perceived legitimacy of the police.¹⁷⁸

1.3. Who is Stopped and How Do Pretext Stops Unfold?

Traffic stops are the number one reason people encounter law enforcement.¹⁷⁹ However, not all members of a community are equally subjected to pretext stops. Consistent with the findings in the 2022 RIPA Board Report, numerous studies show that Black drivers are searched more during traffic stops than White drivers, even though Black drivers are less likely to be found with contraband or arrested than White drivers who are searched.^{180, 181} A study by researchers at the Public Policy Institute

175 Westervelt, *Cities Looking To Reform Police Traffic Stops to Combat 'Fishing Expeditions'* (Apr. 2021) NPR <<https://www.npr.org/2021/04/16/988200868/cities-looking-to-reform-police-traffic-stops-to-combat-fishing-expeditions>> [as of Nov. 29, 2022]; Miller et al., *Public Opinions of the Police: The Influence of Friends, Family and News Media* (May 2004) Vera Inst. of Justice, p. 1 <<https://www.ojp.gov/pdffiles1/nij/grants/205619.pdf>> [as of Nov. 29, 2022] (citing Tyler, *Why People Obey the Law* (1990) Yale U. Press; Tyler, *Trust and Law Abidingness: A Proactive Model of Social Regulation* ("Trust and Law Abidingness") (2001) 81 Boston U. L. Rev. 361; Blanks, *Thin Blue Lies: How Pretextual Stops Undermine Police Legitimacy* (2016) 66 Case W. Res. L. Rev. 931 <<https://www.cato.org/sites/cato.org/files/articles/blanks-cwrlr-v66n4.pdf>> [as of Nov. 29, 2022].

176 See generally Cummings and Ramirez, *Roadmap for Anti-Racism: First Unwind the War on Drugs Now* ("Roadmap for Anti-Racism") (2022) 96 Tulane L. Rev. 469; Blanks, *supra* note 175; see also Kamalu and Onyeozili, *A Critical Analysis of the 'Broken Windows' Policing in New York City and Its Impact: Implications for the Criminal Justice System and the African American Community* (Apr. 2018) 11 African J. of Criminology and Justice Studies 71.

177 Assem. Bill No. 953 (2015-2016 Reg. Sess.).

178 Blanks, *supra* note 175, at p. 932.

179 See Woods, *Traffic Without the Police* (2021) 73 Stan. L. Rev. 1471.

180 See data on pp. 70-74.

181 See, e.g., Lofstrom et al., *Racial Disparities in Law Enforcement Stops* ("Law Enforcement Stops") (Oct. 2021) Public Policy Inst. of Cal. (PPIC) <<https://www.ppic.org/publication/racial-disparities-in-law-enforcement-stops/>> [as of Nov. 29, 2022]; Seguino et al., *Reducing pretext stops can lower racial disparities in Vermont Policing* (Feb. 2022) Vt. Digger <<https://vtdigger.org/2022/02/25/seguino-brooks-and-aulilio-reducing-pretext-stops-can-lower-racial->

of California (PPIC) using 2019 RIPA data found that traffic stops generally are the greatest source of Black-White disparities in routine law enforcement activity, and that individuals perceived as Black were searched at more than twice the rate as those perceived as White.¹⁸²

Not only are Black drivers stopped and searched more frequently, research shows they are also more likely to have force used against them during a traffic stop.¹⁸³ Throughout the country, during any type of stop, law enforcement killed Black individuals at more than twice the rate of White individuals and Hispanic/Latine(x) individuals at 1.3 to 1.4 times than White individuals.¹⁸⁴ Studies also show “Black Californians are about three times more likely to be seriously injured, shot, or killed by the police relative to their share of the state’s population.”¹⁸⁵ A majority of these killings by law enforcement began as a traffic violation stop or police responding to a non-violent offense.¹⁸⁶

Nationally, in just a five-year span, law enforcement killed nearly 600 people after a stop for a traffic ticket.¹⁸⁷ In California during that same five-year span, from 2017 to 2021, police killed 70 people during a traffic stop.^{188, 189} In a study that examined national data on how these traffic encounters can escalate and turn fatal, researchers found that more than three-quarters of these fatalities occurred when a driver attempted to flee. In other scenarios officers responded aggressively to perceived disrespect or “punishing what some officers call ‘contempt of cop.’”¹⁹⁰ More than 400 of the people who died during these stops were not in possession of “a gun or knife or under pursuit for a violent crime.”¹⁹¹

Given such stark disparities in the potential for deadly harm, the PPIC report ultimately concludes that law enforcement should examine how traffic stops – such as certain non-moving or equipment violations (e.g., expired registration or an obstructed window) – can be reduced without a negative impact on public safety.¹⁹²

The Board has examined how pretext stops affect public safety, as well as the actual cost and resources spent on these stops and the likelihood of discovering contraband, to determine their effectiveness.

1.4. How Do These Pretext Stops Impact Public Safety?

Research indicates reducing *pretextual* stops will not have a negative impact on public safety. Specifically, research shows pretextual stops are costly – with limited efficacy in reducing crimes – and

[disparities-in-vermont-policing/](#) [as of Nov. 29, 2022].

182 See Lofstrom et al., *Law Enforcement Stops*, *supra* note 181.

183 Lofstrom et al., *Racial Disparities in Traffic Stops (“Traffic Stops”)* (Oct. 2022) PPIC <<https://www.ppic.org/publication/racial-disparities-in-traffic-stops/>> [as of Nov. 29, 2022]; Washington Post Police Shooting Database: Fatal Force (“Fatal Police Shooting Database”) <<https://www.washingtonpost.com/graphics/investigations/police-shootings-database/>> [as of Nov. 29, 2022].

184 Edwards et al., *Risk of being killed by police use of force in the United States by age, race-ethnicity, and sex*. (2019) 116 Proceedings of the Nat. Academy of Sciences 16793; Fatal Police Shooting Database, *supra* note 183.

185 Lofstrom et al., *Traffic Stops*, *supra* note 183.

186 Mapping Police Violence <<https://mappingpoliceviolence.us/>> [as of Nov. 29, 2022].

187 *Ibid.* See also Levin, *US Police have killed nearly 600 people in traffic stops since 2017, data shows* (Apr. 2022) The Guardian <<https://www.theguardian.com/us-news/2022/apr/21/us-police-violence-traffic-stop-data>> [as of Nov. 29, 2022].

188 Mapping Police Violence, *supra* note 186.

189 While there is a risk to officers when initiating a traffic stop, studies have found that an officer’s chances of being killed at a vehicle stop are less than 1 in 3.6 million. Over the past five years, and at least 100 million traffic stops, motorists who had been pulled over killed about 60 police officers, primarily by gunshots, according to a Times analysis. Levenson, *Pulled Over: What to Know About Deadly Police Traffic Stops* (Oct. 2021) N.Y. Times <<https://www.nytimes.com/2021/10/31/us/police-killings-traffic-stops-takeaways.html>> [as of Nov. 29, 2022].

190 “The Times examined video or audio from more than 180 encounters; interviewed dozens of chiefs, officers, trainers and prosecutors; analyzed information from the U.S. Census Bureau; and reviewed hundreds of lawsuits, municipal audit reports, town budgets, court files and state highway records. The investigation built on data collected by *The Washington Post* and the research groups *Mapping Police Violence* and *Fatal Encounters*.” See *ibid.*

191 *Ibid.*

192 Lofstrom et al., *Law Enforcement Stops*, *supra* note 181.

utilize valuable resources that could be redirected to more effective public safety measures.¹⁹³ Studies of RIPA data show officers spend a significant amount of time – nearly 80,000 hours in 2019 – on traffic stops that lead to no enforcement action or discovery of contraband; for local law enforcement departments, 28,000 of those hours were spent on enforcing non-moving violations,¹⁹⁴ which are more likely to be pretextual. Not only do these stops take away time from investigating crimes that are more serious, they are also costly. One study estimates that Sacramento County Sheriff’s Department spent \$35.5 million and San Diego County Sheriff’s Department spent \$43.9 million annually on enforcing traffic violations that resulted in a warning or no action taken.¹⁹⁵

Studies also show pretextual stops do not often recover contraband or weapons.¹⁹⁶ PPIC conducted a study of RIPA data that revealed searches during traffic stops are generally less likely to lead to the discovery of contraband or evidence than when the stop is for reasonable suspicion, an outstanding warrant, or known parole/probation.¹⁹⁷ A review of New York Police Department’s (NYPD) frisks for weapons showed that of nearly 300,000 people searched, weapons were only recovered 2% of the time.¹⁹⁸ The NYPD report explains that pretextual stops – for both traffic and pedestrian stops – are not an effective crime reduction strategy.¹⁹⁹ Another study in Washington, D.C. found that out of approximately 63,000 traffic stops, only 1% resulted in the seizure of weapons or drugs.²⁰⁰ The Los Angeles Police Commissioner President William Briggs notes that pretextual stops are not effective at locating illegal firearms and they are not an effective crime reduction strategy.²⁰¹

A study of Missouri stop data found that reducing policing contacts for low-level offenses or certain traffic stops, which are more likely to be pretextual, had no negative effects on crime rates, meaning crime did not increase when police contacts decreased.²⁰² Another review of traffic stops, collision rates, and racial disparities found that the reprioritization of traffic stops to focus on public safety violations²⁰³ had positive effects on reducing motor vehicle injuries and racial disparities and did not increase non-traffic crimes.²⁰⁴

The Board notes that the reduction of pretext stops is a separate question from the reduction or elimination of traffic enforcement to address emergent public traffic safety concerns. In fact, the

193 Lofstrom et al., *Law Enforcement Stops*, *supra* note 181.

194 Lofstrom et al., *Traffic Stops*, *supra* note 183; *Reimagining Community Safety in California: From Deadly and Expensive Sheriffs to Equity and Care-Centered Wellbeing* (“*Reimagining Community Safety in California*”) (Oct. 2022) Catalyst Cal. and ACLU of Southern Cal. <https://catalyst-ca.cdn.prismic.io/catalyst-ca/756c4775-6bc1-448b-8447-e609133951ed_CATALYST+CA+%26+ACLU+-+REIMAGINING+COMMUNITY+SAFETY+2022.pdf> [as of Nov. 29, 2022].

195 See *Reimagining Community Safety in California*, *supra* note 194.

196 Lofstrom et al., *Law Enforcement Stops*, *supra* note 181.

197 *Ibid.*

198 *Motion for Justice Refuse: Decline arrest from pretextual stops*, Vera Inst. of Justice <<https://motionforjustice.vera.org/strategies/refuse>> [as of Nov. 29, 2022] (citing Rudovsky and Harris, *Terry Stops-and-Frisks: The Troubling Use of Common Sense in a World of Empirical Data* (2018) 79 *Ohio State L. J.* 501, 509).

199 See MacDonald et al., *The Effects of Local Police Surges on Crime and Arrests in New York City* (2016) 11 *PLoS One* 6 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4911104/>> [as of Nov. 29, 2022]; see also *Motion for Justice Refuse: Decline arrest from pretextual stops*, *supra* note 198.

200 *Racial Disparities in Stops by the D.C. Metropolitan Police Department: Review of Five Months of Data* (Jun. 2020) ACLU-DC and ACLU Analytics, pp. 8-9 <https://www.acludc.org/sites/default/files/2020_06_15_aclu_stops_report_final.pdf> [as of Nov. 29, 2022]; Hodge and Johnson, *Ending Pretextual Stops is an Important Step towards Racial Justice* (Dec. 2020) Vera Inst. of Justice <<https://www.vera.org/news/ending-pretextual-stops-is-an-important-step-toward-racial-justice?msclkid=3207d900bab111ec983c0b878264cbec>> [as of Nov. 29, 2022].

201 *LAPD Officers Now Required to Explain ‘Pretextual Stops’* (Mar. 1, 2022) NBC L.A. <<https://www.nbclosangeles.com/local-2/whats-lapd-pretextual-stops/2838133/>> [as of Nov. 29, 2022].

202 Shjarback et al., *De-policing and crime in the wake of Ferguson: Racialized changes in the quantity and quality of policing among Missouri police departments* (May 2017) 50 *J. Crim. Justice* 42 <<https://doi.org/10.1016/j.jcrimjus.2017.04.003>> [as of Nov. 29, 2022].

203 In this study researchers defined public safety stops as speeding, failing to yield at a stops sign, unsafe movement, or driving while impaired. Fliss et al., *Re-prioritizing traffic stops to reduce motor vehicle crash outcomes and racial disparities* (Jan. 20, 2020) 7 *J. of Injury Epidemiology* 3 <<https://injejournal.biomedcentral.com/articles/10.1186/s40621-019-0227-6>> [as of Nov. 29, 2022].

204 *Ibid.*

Board acknowledges that specific traffic enforcement recommendations directed toward eliminating pretext stops will need to be balanced with the existing public traffic safety benefits.²⁰⁵ The Board plans to discuss this in more depth in the future, but in this Report the Board focuses on pretext stops, as defined in this Report, where a minor traffic or equipment violation forms the basis of the stop but is not the principal reason for making the stop.

Rather than using pretextual stops and searches, studies suggest that law enforcement should focus instead on intelligence-led stops.²⁰⁶ For example, in the 2022 RIPA Report, the Board examined two agencies that created policies to address pretextual stops. In New Haven, Connecticut, the agency found that pretextual stops were ineffective at locating contraband and instead focused traffic enforcement on hazardous driving, rather than low-level violations.²⁰⁷ This policy change resulted in lower crime rates, fewer traffic accidents, and an increase in the rate at which searches yielded contraband.²⁰⁸ Another agency in Hartford, Connecticut also had a policy of stopping cars for lighting violations (e.g., broken taillight) in an effort to catch DUI drivers.²⁰⁹ After a review of their data, they found that these stops were not effective at locating DUI drivers and were the primary source of disparities in their data.²¹⁰ As a result, they changed their policy so officers would instead focus on objective evidence of DUI, which resulted in an increase in DUI arrests as well as reduced disparities.²¹¹

205 See, e.g., Taylor et al., *Synthesis of Studies That Related Amount of Enforcement to Magnitude of Safety Outcomes* (June 2022) Nat. Highway Traffic Safety Admin, p. 14 <<https://rosap.nhtl.bts.gov/view/dot/62379>> [as of Nov. 29, 2022] (finding that enforcement campaigns are effective at reducing prohibited behaviors, even though the magnitude of the observed safety improvements cannot be explained by the level of enforcement used in the effort); DeAngelo and Hansen, *Life and Death in the Fast Lane: Police Enforcement and Traffic Fatalities* (May 2014) 6 Am. Economic J. Economic Policy 231 <<https://www.aeaweb.org/articles?id=10.1257/pol.6.2.231>> [as of Nov. 29, 2022] (finding a reduction in state police enforcement in Oregon was associated with an increase in injuries, deaths, and non-fatal injuries on Oregon highways); *Evidence-Based Practices Using Data to Drive Down Traffic Fatalities* (Feb. 2019) U.S. Dept. of Justice: National Institute of Justice <<https://nij.ojp.gov/topics/articles/evidence-based-practices-using-data-drive-down-traffic-fatalities>> [as of Nov. 29, 2022] (discussing evidence suggesting that traffic enforcement can lead to reductions in crashes, injuries, and fatalities, but for enforcement to be effective, enforcement efforts have to be sustained and overt and public must perceive they will likely be caught if they commit violation); Sarode et al., *Traffic stops do not prevent traffic deaths* (July 2021) 91 J. Trauma Acute Care Surg. 141 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8900371/>> [as of Nov. 29, 2022]; see also *An Assessment of Traffic Stops and Policing Strategies in Nashville* (2018) Policing Project at New York University School of Law <<https://static1.squarespace.com/static/58a33e881b631bc60d4f8b31/t/5bf2d18d562fa747a554f6b0/1542640014294/Policing+Project+Nashville+Report.pdf>> [as of Nov. 29, 2022] (study of motor vehicle collisions using data from Stanford Open Policing Project and NHTSA showed that state patrol traffic stops are not associated with reducing motor vehicle deaths and there is not a significant association between increased stops and reducing risk of motor vehicle deaths). The National Highway and Traffic Safety Administration (NHTSA) also released a study in 2022 regarding “high visibility enforcement” – when agencies increase their presence and use media campaigns to target certain types of traffic infractions. The study concluded that increased police presence as well as the use of media education and outreach plans were effective at reducing the number of seatbelt violations but there was no measurable difference for campaigns related to distracted driving, driving under the influence, speeding, and aggressive driving. See Taylor et al., *supra* note 205, at p. 14.

206 Charbonneau and Glaser, *Suspicion and discretion in policing: How laws and policies contribute to inequity* (2020) 11 UC Irvine L. Rev. 1327; See generally Ridgeway, *supra* note 154, at p. 17; see also, e.g., Eberhardt, *How racial bias works -- and how to disrupt it* (June 2020) TED <https://www.ted.com/talks/jennifer_l_eberhardt_how_racial_bias_works_and_how_to_disrupt_it/transcript?language=en> [as of Nov. 29, 2022]; Quattlebaum, *Let's Get Real: Behavioral Realism, Implicit Bias, and the Reasonable Police Officer* (2018) 14 Stan. J. C.R. & C.L. 1, 17 <<https://law.stanford.edu/publications/lets-get-real-behavioral-realism-implicit-bias-and-the-reasonable-police-officer/>> [as of Nov. 29, 2022] (citing Casey et al., *Addressing Implicit Bias in the Courts* (2013) 49 Ct. Rev. 64, 67).

207 See Ross et al., *Testing for Disparities in Traffic Stops: Best Practices from the Connecticut Model* (2020) 19 Criminology and Public Policy 1067, 1297 <<https://onlinelibrary.wiley.com/doi/epdf/10.1111/1745-9133.12528>> [as of Nov. 29, 2022].

208 See *ibid.*

209 Testimony by Ken Barone before House Com. on Transportation and Infrastructure, Subcom. on Highways and Transit, 117th Congress, 1st Sess., Examining Equity in Transportation Safety Enforcement (“Examining Equity”) (Feb. 24, 2021) p. 6 <<https://transportation.house.gov/imo/media/doc/Barone%20Testimony.pdf>> [as of Nov. 29, 2022].

210 *Ibid.*

211 *Id.*

Taking measures to limit officer discretion in stops can also reduce disparities while keeping communities safer. Studies by the National Highway Traffic Safety Administration (NHTSA) suggest that more modern traffic safety measures, such as automated speed enforcement²¹² and red-light cameras,²¹³ can improve public safety while reducing officer discretion. PPIC found that nighttime traffic stops for non-moving violations – especially those made by local police and sheriff departments – were more likely to demonstrate racial disparities for Black and Latine(x) drivers, and therefore warranted consideration for alternative enforcement strategies.²¹⁴ PPIC suggested potential alternative enforcement methods “including mailing warnings or citations to the registered owner of the vehicle, especially if the reason for the stop is a non-moving violation and concerns about road safety may not be immediate.”²¹⁵ PPIC also indicated that red light cameras “have been found to reduce traffic violations and crashes” and noted that “while automatic speed cameras are not currently legal in California, they have been shown to be an effective tool to reduce speeding-related crashes in other places.”²¹⁶

Taking measures to reduce officer discretion in stops and traffic enforcement and instead focus on intelligence-led and evidence-based stops has the potential to reduce disparities and instances of profiling while focusing on public safety. Given these findings, it is important to reflect on what effects these policies have on the community, public health, and perception of police legitimacy.

1.5. How Do These Pretext Stops Affect the Community’s Health and Their Perception of Police Legitimacy?

Another consideration is the impact pretextual stops have on both the community’s health as well as their perception of police legitimacy. Researchers have found these stops can have a significant mental health impact on the person stopped and also the entire community.²¹⁷ Frequent involuntary interactions with police are harmful for communities, especially when stops are seen as intrusive or unfair, and can cause post-traumatic stress as well as lead to fears of being arrested.²¹⁸ Ultimately, these stops can be dehumanizing, as they send the message to the stopped individuals – particularly people of color – that they are at risk of being stopped pretextually at any time without repercussion, even if the stop is racially motivated.^{219,220}

Researchers have likewise looked at the impact pretextual stops have on the community’s perception of the legitimacy of an agency or police department.²²¹ One survey showed drivers generally thought stops for minor infractions that led to officers asking additional questions, such as for consent to search, were illegitimate uses of police authority, because there was no objective reason for the additional

212 *Reducing Speeding-Related Crashes Involving Passenger Vehicles* (2017) Nat. Transportation Safety Board, NTSB/SS 17/01 <<https://www.nts.gov/safety/safety-studies/Pages/DCA15SS002.aspx>> [as of Nov. 29, 2022].

213 *Red light Running*, Insurance Inst. for Highway Safety <<https://www.iihs.org/topics/red-light-running>> [as of Nov. 29, 2022].

214 Lofstrom et al., *Traffic Stops*, *supra* note 183.

215 *Ibid.*

216 *Ibid.*

217 See pages 23-31 for more information on the mental health impacts of over policing. See also Sewell and Jefferson, *supra* note 18, at p. 43.

218 *Reimagining Community Safety in California*, *supra* note 194, at p. 27; see also Sewell and Jefferson, *supra* note 18, at p. 43 (citing Goldberg DT, *Racist culture* (1993) Blackwell Publishers); Geller et al., *Aggressive Policing*, *supra* note 7.

219 *Reimagining Community Safety in California*, *supra* note 194, at p. 27.

220 See p. 23-31 of this Report for a discussion of the impact of inequitable treatment by law enforcement on the community’s health and well-being.

221 The survey uncovered “[a]mong white, Asian, Latino and Black respondents, more than half of the people in each group disagreed either somewhat or strongly with the idea that police officers treat all racial and ethnic groups equally. That sentiment was strongest among Black respondents, nearly two-thirds of whom believe police treat all groups unequally, according to the survey.” Jany, *Survey Most Angelenos have favorable view of LAPD, despite lingering concerns around bias* (Sept. 2022) L.A. Times <<https://www.latimes.com/california/story/2022-09-28/survey-most-angelenos-support-lapd>> [as of Nov. 29, 2022]; see also Miller et al., *supra* note 175, at p. 1 (citing Tyler, *Why People Obey the Law*, *supra* note 175; Tyler, *Trust and Law Abidingness*, *supra* note 175; Blanks, *supra* note 175, at pp. 931-932).

questioning.²²² Another survey found that only 18 percent of Black Californians said police treat people fairly compared to 54 percent of adults surveyed overall.²²³ Agencies and law enforcement leadership are increasingly considering the harms of pretextual stops on community relations as well as mental health and cite those harms as a reason to end the practice of pretextual stops and reduce even the perception of biased policing.²²⁴

Given the evidence of the limited effectiveness of these stops and the harms pretextual stops may cause, we must critically evaluate law enforcement’s purported justifications for pretextual stops, including assertions about a weapon being recovered or a violent criminal being apprehended during a minor traffic stop. Even viewed through a pure efficiency lens, the low rate of contraband discovery may not justify a practice that raises concerns about officer discretion and which comes at a high cost to police-community relations.

1.6. History of Pretext Stops

To understand fully the distrust and harms caused by this practice, it is also important to consider the historical origins of pretextual stops. The practice of pretextual stops is deeply intertwined with the history of policing – including the war on drugs and broken windows policing – which encouraged their use.²²⁵ The “war on drugs” began in the 1970s as a campaign to address drug addiction by incarcerating people even for minor offenses.²²⁶ This policy promoted aggressive policing tactics, such as using traffic stops, as a pretext to investigate for potential drug activity. An acknowledgement of the racial inequities underlying the war on drugs did not occur until decades later.²²⁷

Broken windows policing, which theorized that the level of “disorder” in a neighborhood (e.g., broken windows) leads to an increase in crime, caused law enforcement efforts to be concentrated in lower income communities.²²⁸ In practice, these policies resulted in the incarceration of millions of people, largely people of color, for minor offenses while drug use, overdose rates, and crime continued to climb.²²⁹ It was not until the 1990s, however, that the term “driving while Black” became mainstream after a series of highly publicized cases of racial profiling, such as the Rodney King beating, that originated from minor traffic infractions or pretext stops.²³⁰

Amidst this historical background, the United States Supreme Court decided *Whren v. United States*.²³¹ *Whren* held that any traffic offense committed by a driver was a legitimate legal basis for a stop and

222 See Blanks, *supra* note 175, at pp. 933-934; see also Miller et al., *supra* note 175, at p. 1 (citing Tyler, *Why People Obey the Law*, *supra* note 175; Tyler, *Trust and Law Abidingness*, *supra* note 175).

223 Lofstrom et al., *Traffic Stops*, *supra* note 183 (citing Lawler et al., *Black Californians Stand Out in Views of Police Treatment* (Apr. 2021) PPIC <<https://www.ppic.org/blog/black-californians-stand-out-in-views-of-police-treatment/>> [as of Nov. 29, 2022]).

224 The Police Chief in Lansing Michigan explained their new policies limiting pretext stops are “focused on protecting the individual constitutional rights of our citizens while eliminating any aspect, inferred or otherwise, of bias-based traffic policing practices.” Lansing Police Dept., Internal Memorandum: New Guidelines for Traffic Stops (“Lansing PD Guidelines for Traffic Stops”) (Jul. 1, 2020) p. 2.

225 See Cummings and Ramirez, *Roadmap for Anti-Racism*, *supra* note 176; Blanks, *supra* note 175, at p. 943; see also Kamalu and Onyeozili, *supra* note 176.

226 Cummings and Ramirez, *The Racist Roots of the War on Drugs & the Myth of Equal Protection for People of Color* (“*Racist Roots of the War on Drugs*”) (Jun. 2022) 44 U. Ark. Little Rock L. Rev. 453, 464; Cummings and Ramirez, *Roadmap for Anti-Racism*, *supra* note 176; see also Blanks, *supra* note 175, at p. 943.

227 See Cummings and Ramirez, *Racist Roots of the War on Drugs*, *supra* note 226, at p. 453.

228 See Kamalu and Onyeozili, *supra* note 176; *End Broken Windows Policing*, Campaign Zero <<https://campaignzero.org/brokenwindows.html>> [as of Nov. 29, 2022].

229 A commission found these aggressive interventions actually increased the level of violence and a homicide rates in communities. See Report of the Global Commission on Drug Policy (June 2011) War on Drugs, p. 15 <https://www.globalcommissionondrugs.org/wp-content/themes/gcdp_v1/pdf/Global_Commission_Report_English.pdf> [as of Nov. 29, 2022]; *Ending the War on Drugs: By the Numbers* (Jun 2018) Center for American Progress <<https://www.americanprogress.org/article/ending-war-drugs-numbers/>> [as of Nov. 29, 2022].

230 See *Driving While Black: Race, Space and Mobility in America* (Oct. 2020) PBS <<https://www.pbs.org/show/driving-while-black/>> [as of Nov. 29, 2022].

231 *Whren v. United States* (1996) 517 U.S. 806.

that the personal or subjective pretextual motives of an officer were not a factor in the Court’s Fourth Amendment constitutional analysis.²³² *Whren* has been sharply criticized because if an officer can point to an objective reason for the stop, such as a broken tail light, a subjective and biased motivation for the stop would not affect the constitutionality of the stop.²³³ Counsel for the accused youth in the case pointed out that because traffic is so heavily regulated, a police officer would likely be able to catch any driver on some technical violation.²³⁴ In response to disparities observed in these types of traffic and pedestrian stops, many localities are now examining the harmful impact of *Whren*, the historical practice of pretextual stops, and the role bias may play in these encounters.

In 2015, the Racial and Identity Profiling Act was established, in part, to address these subjective and sometimes biased reasons for police stops and encounters. The statute explicitly states an officer shall not engage in racial or identity profiling and expands the definition of racial and identity profiling to include “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.”²³⁵ These changes in the law gave communities, law enforcement agencies, and lawmakers the tools to collect data in order to develop strategies and interventions to address bias as well as some of the policy issues raised in *Whren*.

1.7. Leadership’s Calls to Action to Prevent Harms of Pretextual Stops

Although pretextual stops and *Whren* are still established law, many people, including Supreme Court Justices, have spoken out against the ruling and emphasized its damaging effects.²³⁶ Since the Board first issued its recommendation to end pretextual stops in its 2022 RIPA Report, the White House similarly called for the end of pretextual stops in an Executive Order issued this past May:

Building trust between law enforcement agencies and the communities they are sworn to protect and serve also requires accountability for misconduct and transparency through data collection and public reporting. It requires proactive measures to prevent profiling based on actual or perceived race, ethnicity, national origin, religion, sex (including sexual orientation and gender identity), or disability, including by ensuring that new law enforcement technologies do not exacerbate disparities based on these characteristics. It includes ending discriminatory pretextual stops²³⁷

²³² *Id.* at pp. 813-19.

²³³ *Id.* at p. 813; see also Chin and Vernon, *Reasonable but Unconstitutional: Racial Profiling and the Radical Objectivity of Whren v. United States* (2015) 83 Geo. Wash. L. Rev. 882, 941.

²³⁴ The Court did find it is unconstitutional to racially profile but the remedy for such a violation is a civil cause of action under the Equal Protection Clause or the Fourteenth Amendment. See *Whren v. United States*, *supra* note 231, 517 U.S. at p. 813.

²³⁵ Cal. Pen. Code, § 13519.4, subd. (e), (f).

²³⁶ Justice Kennedy wrote in a dissent in *Maryland v. Wilson*, just a year after the *Whren* decision, that “[t]he practical effect of our holding in *Whren*, of course, is to allow the police to stop vehicles in almost countless circumstances.” *Md. v. Wilson* (1997) 519 U.S. 408, 423. Justice Ginsburg later argued in a concurrence in *District of Columbia v. Wesby* that “[t]he Court’s jurisprudence, I am concerned, sets the balance too heavily in favor of police unaccountability to the detriment of Fourth Amendment protection . . . [citing Professor Wayne LaFave] ‘The apparent assumption of the Court in *Whren*, that no significant problem of police arbitrariness can exist as to actions taken with probable cause, blinks at reality.’” *District of Columbia v. Wesby* (2018) ___ U.S. ___ [138 S.Ct. 577, 594, 199 L.Ed.2d 453, 472] (citing 1 LaFave, *Search and Seizure* §1.4(f) (5th ed. 2012) p. 186).

²³⁷ *Executive Order on Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety* (May 25, 2022).

United States Supreme Court Justice Sonia Sotomayor summarized why this practice is so troubling in a noteworthy dissent in a 2016 case:

Although many Americans have been stopped for speeding or jaywalking, few may realize how degrading a stop can be when the officer is looking for more. This Court has allowed an officer to stop you for whatever reason he wants—so long as he can point to a pretextual justification after the fact.²³⁸

She further explained:

For generations, black and brown parents have given their children ‘the talk’—instructing them never to run down the street; always keep your hands where they can be seen; do not even think of talking back to a stranger—all out of fear of how an officer with a gun will react to them.²³⁹

... We must not pretend that the countless people who are routinely targeted by police are ‘isolated.’ They are the canaries in the coal mine whose deaths, civil and literal, warn us that no one can breathe in this atmosphere. They are the ones who recognize that unlawful police stops corrode all our civil liberties and threaten all our lives. Until their voices matter too, our justice system will continue to be anything but.²⁴⁰

At each intersection of the vast criminal legal system, there is an opportunity to intervene in practices that result in racial and identity profiling. The RIPA data provides agencies with the tools to identify areas where there are disparities and helps them address those harms through policy changes. District attorneys also have the discretion to not proceed with cases affected by bias, as well as, a duty to ensure that any conviction is not obtained on the basis of race, ethnicity, or national origin. Municipalities and legislatures too can use the data as a guide to policy changes that can improve public safety. Data affords a unique opportunity to evaluate the impact of these pretextual stops from a scientific approach.

1.8. Data Analysis

The RIPA data can inform policy decisions for agencies and lawmakers, as well as assist community advocacy groups working on police reform. Many local agencies are taking this opportunity to examine their own practices for disparities, use evidence-based policing strategies to improve public safety, including placing limits on officer discretion. Discretionary searches generally increase the opportunity for bias because there are not objective criteria for determining when to conduct a search.²⁴¹ High discretion means there is more subjectivity on the part of the officer in deciding whether to conduct the stop or search, as opposed to circumstances in which there is a stronger legal basis or an exigent public safety reason. The pretext stops discussed in this report fall into this high discretion category, along with consent searches and probation inquiries. High discretion stops usually refer more broadly to stops that include the typical pretexts (e.g., expired tags), but may also include more serious violations (e.g., speeding) where officers may choose to stop based on their own judgment, which could be influenced by suspicion of another crime or just an unsupported hunch.²⁴² Similarly, officers have discretion to initiate a search, and in the case of a pretext stop, there is consequentially a higher chance an officer will conduct a search because the officer is using the pretext stop to investigate another unknown, yet to be discovered crime.²⁴³

238 *Utah v. Strieff* (2016) 579 U.S. 232, 252 (citing *Whren v. United States*, *supra* note 231, 517 U.S. at p. 813).

239 *Utah v. Strieff*, *supra* note 238, at p. 254 (citing Du Bois, *The Souls of Black Folk* (1903); Baldwin, *The Fire Next Time* (1963); Coates, *Between the World and Me* (2015)).

240 *Utah v. Strieff*, *supra* note 238, at p. 254 (citing Guinier and Torres, *The Miner’s Canary* (2002), pp. 274-283).

241 See generally Ridgeway, *supra* note 154; see also, e.g., Eberhardt, *supra* note 206; Quattlebaum, *supra* note 206, at p. 17 (citing Casey et al., *supra* note 206, at p. 67).

242 Charbonneau and Glaser, *supra* note 206, at pp. 1335-1342.

243 *Id.* at pp. 1338-1342.

Some jurisdictions have acted to limit if not prohibit pretext stops entirely. One reason is the fact that because pretextual stops allow officers to exercise significant discretion, they can open the door for the influence of explicit and implicit bias. For example, an officer may not have explicit animus towards Black individuals, but may stop them more frequently because of societal stereotypes linking Blackness and crime, which can cause officers to become more vigilant toward Black individuals, even in the absence of criminal behavior.²⁴⁴ Implicit bias is more likely to come into play in ambiguous or subjective situations. Thus, discretionary stop and search practices by their very nature are especially susceptible to the influence of bias, because there are no objective criteria guiding whom to stop or search and why to stop or search.²⁴⁵ Traffic stops are particularly problematic, because there are countless violations an officer could use to legally justify the stop and officers have broad discretion whether or not to even stop a driver.²⁴⁶

In the next section, the RIPA Board highlights its data analysis and makes recommendations to eliminate racial and identity profiling, while also increasing community safety and well-being.

1.9. Consent and Supervision Searches During Stops for Traffic Violations

During a pretextual stop, officers will often ask for consent to search a person’s car or the person themselves. Consent searches can be particularly problematic, because the officer does not need to suspect any wrongdoing or have probable cause to search, and officers can use their discretion to decide when to request a consent search.²⁴⁷ Traffic stops also leave a tremendous amount of discretion to officers regarding who to stop and why, because traffic is so heavily regulated an officer could easily stop most drivers on technical violations.²⁴⁸ Because of these factors, consent searches during traffic stops merit further exploration regarding how bias may affect who is stopped and searched.

The rate at which consent to search is requested during stops of different racial and ethnic groups is one measure of whether officers may be allowing bias to influence their decision to request a search. Officers requested consent to search stopped persons or their property during 2.07 percent of all stops (57,166) when the primary reason for stop was a traffic violation. During traffic violation stops, officers requested a search more often when they perceived individuals to be Black (4.3%), Hispanic/Latine(x) (2.5%), or Multiracial (2.3%). During traffic stops, officers were less likely to request a search when they perceived individuals to be Pacific Islander (1.3%), White (1%), Native American (0.8%), Asian (0.6%), or Middle Eastern/South Asian (0.4%).²⁴⁹

244 See generally Glaser, *Suspect race: Causes and consequences of racial profiling* (2015) Oxford U. Press, USA; Ridgeway, *supra* note 154. Discussing the impact of implicit bias generally, see Greenwald and Krieger, *supra* note 154; Hart, *supra* note 154, at pp. 769-771; Greenwald and Banaji, *supra* note 154, at pp. 4-6; Hetey et al., *supra* note 154, at p. 178.

245 Ridgeway, *supra* note 154. See also, e.g., Eberhardt, *supra* note 206; Quattlebaum, *supra* note 06, at p. 17 (citing Casey et al., *supra* note 206, at p. 67).

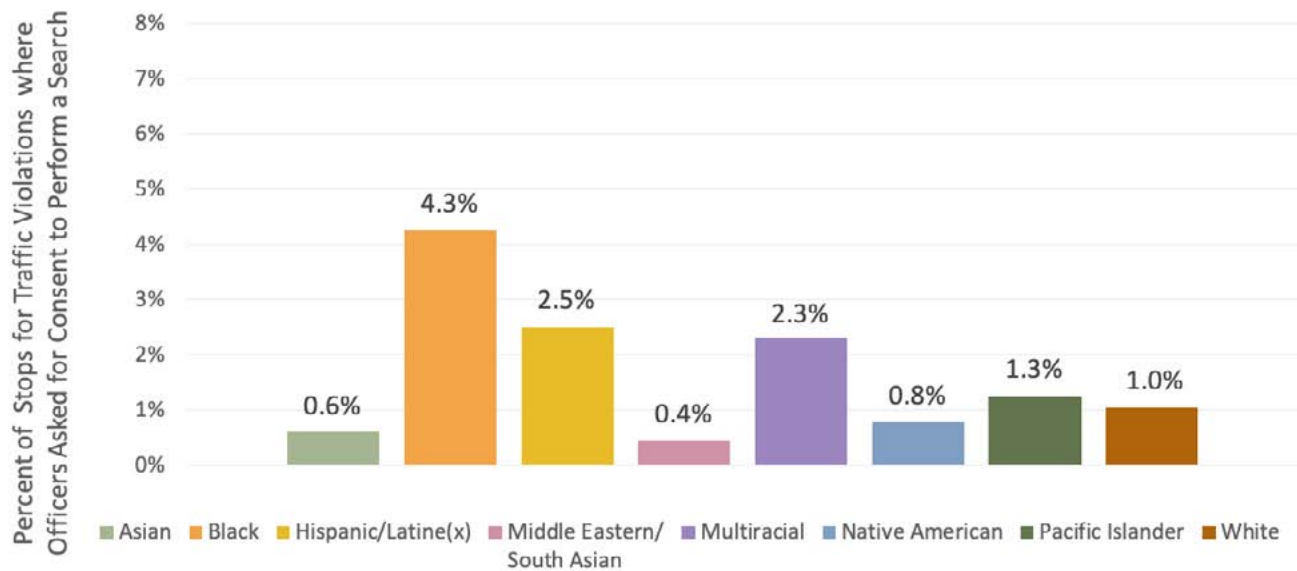
246 Doyle and Nembhard, *Police Traffic Stops Have Little to Do with Public Safety* (Apr. 2021) Urban Inst. <<https://www.urban.org/urban-wire/police-traffic-stops-have-little-do-public-safety> [as of Nov. 29, 2022].

247 See *Florida v. Royer* (1983) 460 U.S. 491, 497; see also *Schneckloth v. Bustamonte* (1973) 412 U.S. 218, 227.

248 See *Whren*, *supra* note 231, 517 U.S. at p. 810.

249 For the purpose of this section, “traffic stops” refers to stops where officers selected “traffic violation” as the primary reason for stop.

Figure 26. Stopped Individuals Asked for Consent to Search During Traffic Violations by Race/Ethnicity



The data reveal Black individuals were 4 times as likely, Hispanic/Latine(x) individuals were 2.4 times as likely, and Multiracial individuals were 2.2 times as likely to be asked for consent to search during a traffic stop than White individuals. During stops for traffic violations, officers requested to perform a search of nearly twice as many Black individuals than White individuals (16,414 requests and 8,863 requests, respectively), despite stopping 2.2 times more White individuals (845,418) for traffic violations than Black individuals (385,773). These results reveal a continued trend from the 2019, 2020, and now 2021 RIPA Data – that Black, Hispanic/Latine(x), and Multiracial individuals generally are asked consent to search at higher rates than those who are perceived as White.

Although a person has the right tell an officer they do not agree to a consent search, in practice, very few people deny an officer’s request when a person is already detained. In a traffic encounter, the power dynamics are such that these searches may not actually be consensual or voluntary. The vast majority (98.5%) of people consented to a search of either their person or property when an officer requested to perform a search during a traffic stop. Individuals perceived to be Hispanic/Latine(x) (99%) and Asian (98.9%) were more likely to consent, and individuals who were Middle Eastern/South Asian (98.3%), Black (98.2%), Multiracial (96.6%), White (97.2%), Pacific Islander (97.7%), or Native American (96.6%) were less likely to consent to a requested search during a traffic stop.

The high rates of consent may be influenced by stopped individuals perceiving their likelihood of being searched to be high even absent their consent. This perception may be accurate – in the rare cases when an individual denied the officer their consent (i.e., the individual was asked for consent to search either property or person but did not provide consent for either), a search still occurred with another basis for search 56.2 percent of the time.

During RIPA data collection, officers report whether “consent given” was among other bases for search and whether the officer actually conducted a search of that person. Consent only searches (searches in which the only basis provided by the officer is “consent given”) occurred in 0.8 percent (1 in 125) of traffic stops. During a traffic stop, officers performed consent only searches more often when individuals were perceived to be Black (1.5%) or Hispanic/Latine(x) (1.0%). Officers performed consent only searches less often during traffic stops when individuals were perceived to be any other racial and ethnic group, including Multiracial (0.7%), Pacific Islander (0.5%), White (0.4%), Asian (0.3%), Native American (0.2%), and Middle Eastern/South Asian (0.2%). This means that during traffic stops those who were perceived as Black were searched with the sole basis for search being “consent given” 3.75

times more and Hispanic/Latine(x) 2.5 times more than those who are perceived as White. Disparities in rates of consent only searches across racial and ethnic groups resulted in a larger total number of consent only searches of individuals perceived as Black (5,863) compared to individuals perceived as White (3,280).

One way to examine disparities in the data is to calculate the rate contraband is discovered during consensual searches during traffic stops. Search discovery rates analyses operate under the assumption that if officers are searching people of a particular identity group more frequently but finding less contraband, the searches of individuals in that identity group may be, at least in part, because of their perceived identity.²⁵⁰ The rate of contraband discovery during traffic stops where officers performed a consent only search was lowest among individuals perceived to be Black (6.8%), Pacific Islander (9.1%), Hispanic/Latine(x) (10.3%). The discovery rate of contraband during traffic stops with consent only searches was highest amongst individuals perceived to be White (19.1%), Multiracial (18.4%), Native American (15.0%), Asian (14.3%), and Middle Eastern/South Asian (12.2%).

Figure 27. Consent Only Search and Discovery Rates During Traffic Stops



Here, the data shows a continued trend from the 2019, 2020, and now 2021 data that during stops where officers perform consent only searches, officers are least likely to find contraband in the possession of those perceived as Black. Despite this, a far higher percentage of stops of individuals perceived as Black involve consent only searches compared to any other identity group.

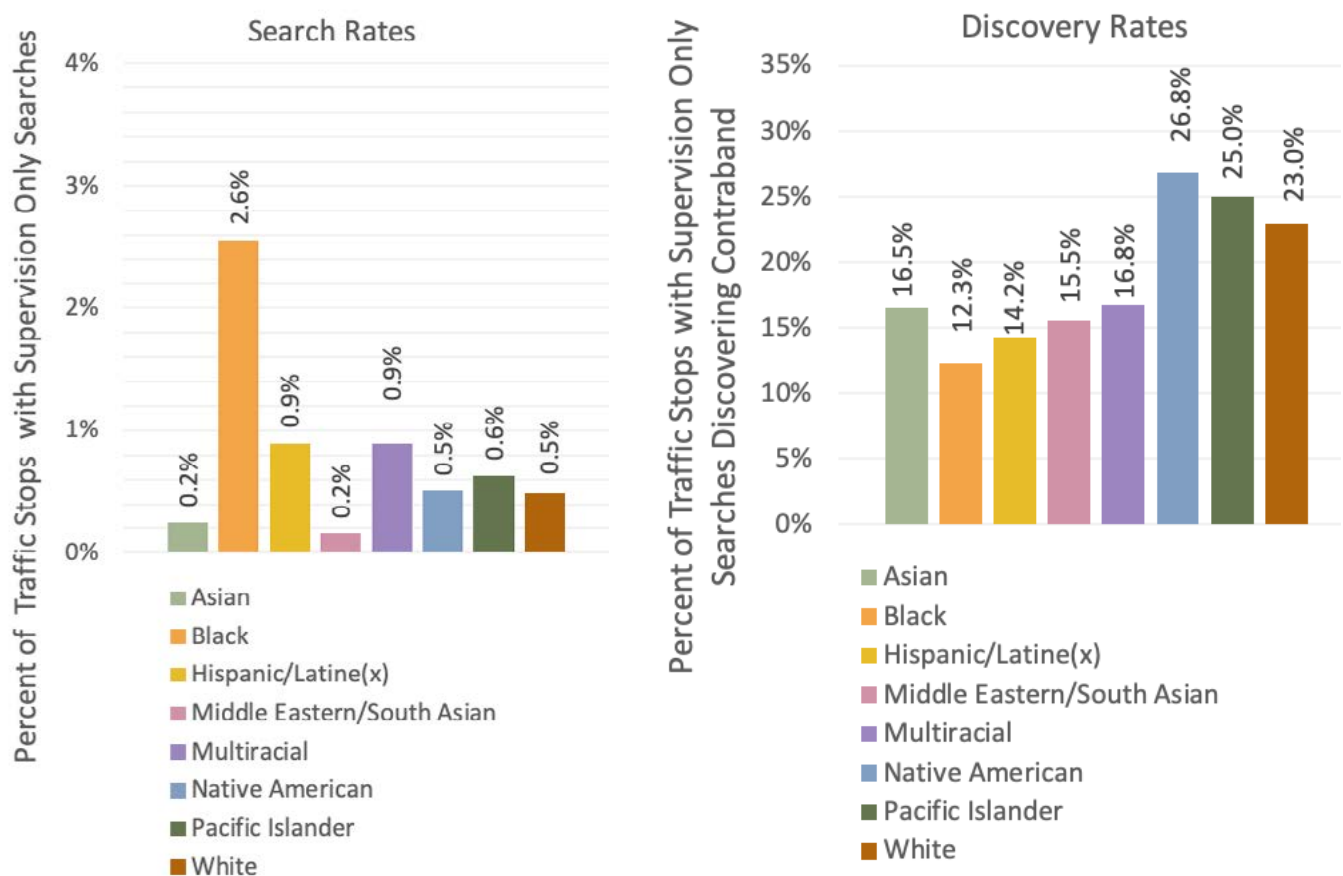
During a traffic stop, an officer can also conduct a search based on an individual being on parole, probation, post-release community supervision, or mandatory supervision. Similar to consent searches, probation and parole searches do not require the officer to suspect any criminal wrongdoing or have probable cause. A common condition of supervision is a Fourth Amendment waiver, which allows officers to search a person and their home even if the officer does not have reasonable suspicion or probable cause that the person is engaged in criminal activity. However, the law requires that an officer know of the waiver prior to conducting any searches.

²⁵⁰ See section B.2 of Appendix B for a discussion of the limitations of this type of analysis.

During supervision only searches, supervision status is the only basis for search provided by the officer. Supervision only searches occur during one percent of all traffic stops. The percentage of traffic stops that involved supervision only searches was highest among individuals perceived to be Black (2.6%). All other groups had a lower percentage of stops involving supervision only searches (Hispanic/Latine(x) 0.9%, Multiracial 0.9%, Pacific Islander 0.6%, Native American 0.5%, White 0.5%, Asian 0.2%, and Middle Eastern/South Asian 0.2%). Disparities in supervision search rates during traffic stops led to more than twice as many supervision searches of individuals perceived as Black (9,863) compared to individuals perceived as White (4,172).

During only fifteen percent of all traffic stops involving supervision only stops, some type of contraband was discovered. Compared to this average, traffic stops involving supervision searches resulted in contraband discovery less frequently when individuals were perceived to be Black (12.3%) or Hispanic/Latine(x) (14.2%). By contrast, supervision only searches during traffic stops resulted in discovery of contraband more frequently when individuals were perceived to be Middle Eastern/South Asian (15.5%), Asian (16.5%), Multiracial (16.8%), White (23.0%), Pacific Islander (25.0%), and Native American (26.8%). This means that officers were only about half as likely to discover contraband or evidence during supervision only searches during stops for traffic violations of Black individuals as White individuals. However, Black individuals stopped by officers for traffic offenses were still 5.2 times as likely to experience a search based solely upon supervision status compared to White individuals stopped for traffic offenses.

Figure 28. Search and Discovery Rates for Supervision Only Searches Conducted During Traffic Stops by Race/Ethnicity



Consent and supervision searches during bicycle, pedestrian roadway (i.e., jaywalking),²⁵¹ and loitering stops raise similar concerns. Not only is a person detained by an officer when they are asked for consent to search, but during these types of non-motor vehicle stops, the person is often ordered to sit on the curb or, in some cases, handcuffed. Officers requested consent to perform a search of either a person or their property during 3.48 percent of all stops (traffic, consensual encounters, supervision, reasonable suspicion, warrant/wanted person, etc.). Compared to the search request rate for all stops (3.48%), officers asked for consent to perform a search a higher proportion of the time when they conducted bicycle-related stops (18.43%), pedestrian roadway stops (4.65%), and loitering stops (10.97%) and less frequently during traffic stops (2.07%).

More frequent requests by officers for searches during bicycle, pedestrian roadway, and loitering stops correspond to more frequent consent only searches occurring during these stop types. Compared to the overall rates of consent only searches in traffic stops (0.8%) or when compared to all stops (1.2%), officers performed consent only searches at a higher rate during bicycle-related stops (6.21%), pedestrian roadway stops (1.60%), and loitering stops (3.12%).

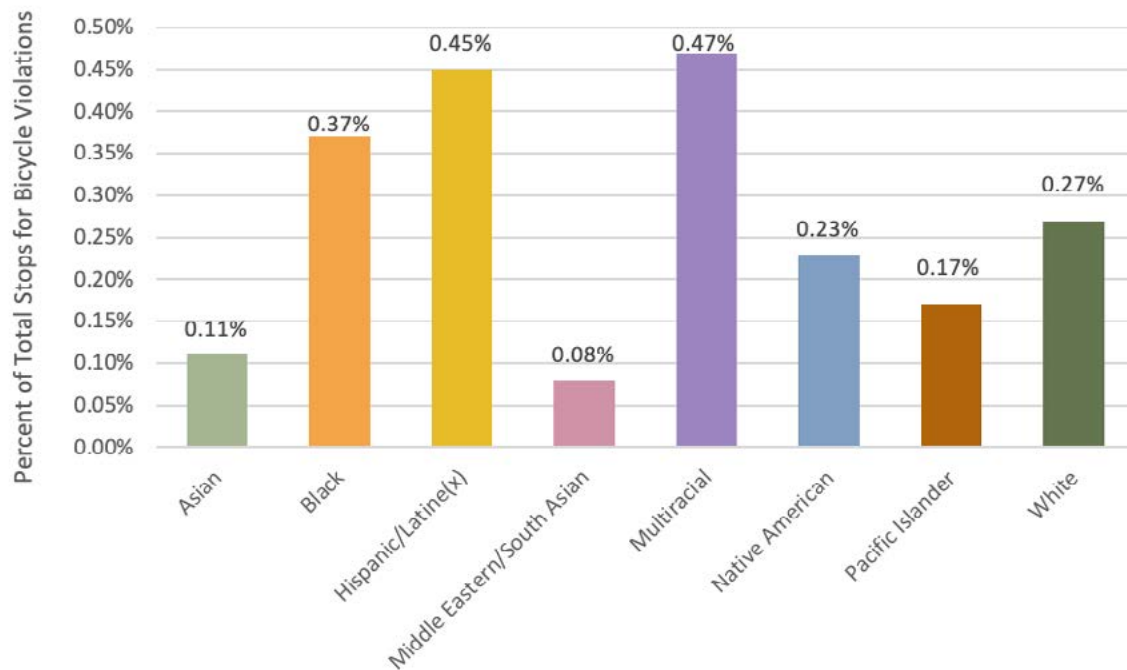
Supervision only searches occurred during 1.5 percent of all stops. During traffic stops specifically, the rate is lower with supervision only stops occurring during 0.9 percent of stops. By contrast, the percentage of stops during which a supervision only search occurred is higher during stops for bicycle violations (7.4%), pedestrian roadway violations (1.6%), and loitering violations (3.9%).

1.10. Bicycle-Related Violations

Examining stops of bicyclists can shed further light on the practice of pretextual stops and experiences individuals have when they are stopped. Overall, bicycle-related violations represent 0.35 percent of all reported stops or approximately 1 in 300 stops (11,023 total stops for bicycle violations). Bicycle-related stops made up a larger percentage of stops of individuals perceived to be Multiracial (0.47%), Hispanic/Latine(x) (0.45%), and Black (0.37%). In contrast, bicycle-related stops made up a smaller percentage of all stops amongst individuals perceived to be White (0.27%), Native American (0.23%), Pacific Islander (0.17%), Asian (0.11%), and Middle Eastern/South Asian (0.08%).

251 The Board is not using the term “jaywalking” because of its problematic origins. “[T]he term ‘jaywalking’ was meant as an insult. The term ‘jaywalking’ stems from the etymology of the word ‘jay,’ which at the time was a pejorative that meant ‘rube’ or ‘hick.’” See Assemb. Bill No. 1238 (2021-2022 Reg. Sess.) Assemb. Floor Analysis, (Sept. 8, 2021). These origins, coupled with the historical abuse and discriminatory enforcement of this statute, requires a shift in language. For these reasons, the RIPA Report refers to these violations as “pedestrian roadway violations.”

Figure 29. Bicycle-Related Violations by Race/Ethnicity



This particular analysis also reveals a continued trend from the 2020 data and now 2021 data that out of all stops, bicycle-related stops are a larger percentage among those who are perceived to be Multiracial, Hispanic/Latine(x), or Black than those who are perceived as White.

During stops for bicycle violations generally, the rates of search, curbside or patrol car detention, and handcuffing were much higher compared to stops for all other reasons.²⁵² When officers stopped individuals for bicycle violations, they performed searches during 37.5 percent of stops compared to 11.8 percent of all other stops. Similarly, when officers stopped individuals for bicycle violations, they performed detentions during 43 percent of stops compared to 11.2 percent of all other stops. Finally, when officers stopped individuals for bicycle violations, they handcuffed an individual during 25.8 percent of stops compared to 9.7 percent of all other stops. The percent of bicycle-related stops that involved no-custody handcuffing (stops where officers handcuffed individuals in the absence of the following results of stops: custodial arrest pursuant to a warrant, custodial arrest without a warrant, U.S. Homeland Security release, in-field cite and release, or psychiatric hold) was 16.1 percent compared to 3.3 percent during stops for any other reasons.

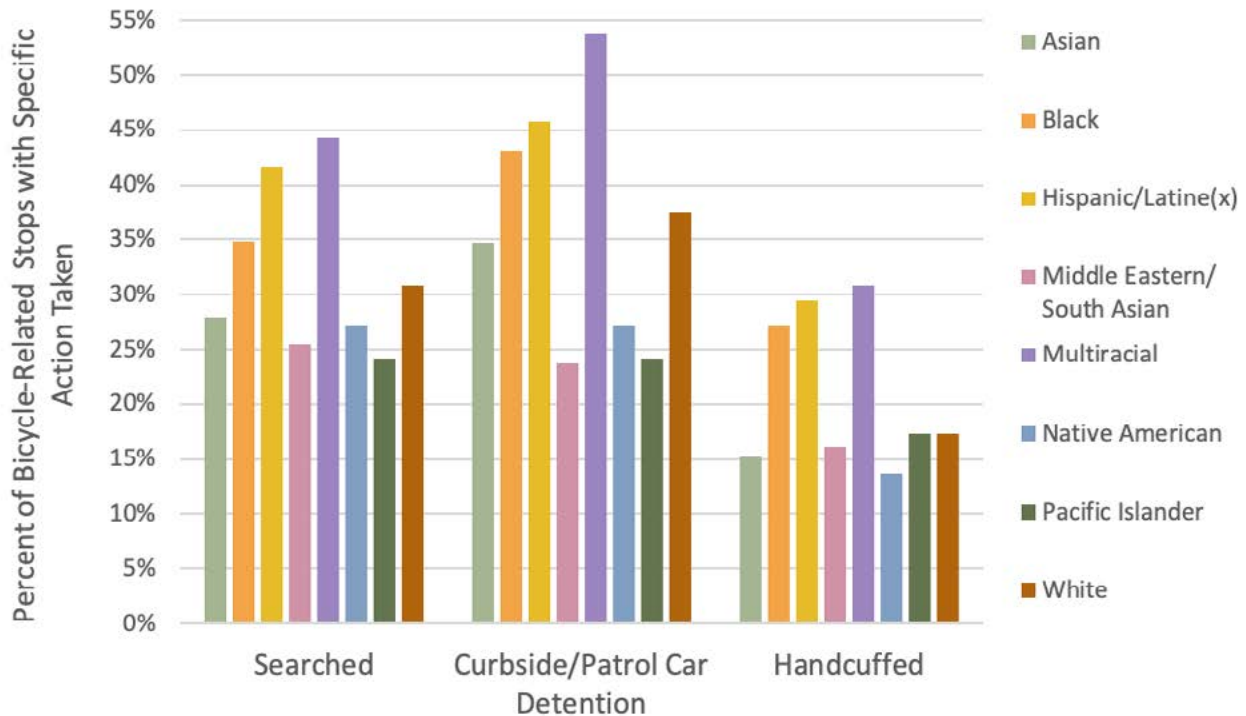
During stops for bicycle related offenses, officers were 3.2 times as likely to perform a search, 3.8 times as likely to detain the individual, and 2.7 times as likely to handcuff the individual. Overall, officers were more likely to search, detain, or handcuff a person during a bicycle-related stop when compared to stops for reasons other than bicycle violations.

When testing for disparate treatment, it is important to consider not only who is stopped, but how a person is treated during a stop. Compared to overall action rates during bicycle-related stops described above, an officer was more likely to search, detain, or handcuff individuals who were perceived to be Multiracial or Hispanic/Latine(x) and more likely to detain or handcuff individuals perceived to be Black. In contrast, during bicycle related stops, the rate of search, curbside or patrol car detention, and handcuffing are lower among individuals perceived to be White, Asian, Middle Eastern/South Asian, Pacific Islander, and Native American.²⁵³

252 Officers may sometimes order that bicyclist wait curbside while the officers perform tasks, such as using mobile data terminals or writing citations. In some cases, officers may forgo this type of request during comparable stops of motorists, instead asking that the motorist wait in their vehicle.

253 Relative disparities between racial and ethnic groups in no-custody handcuffings during bicycle-related stops were

Figure 30. Search, Detention, and Handcuffing During Bicycle-Related Stops by Race/Ethnicity



The data helps bring light to the varied experiences one may have with law enforcement when stopped for a bicycle violation. Across the board, those who are Multiracial, Hispanic/Latine(x), or Black were more likely to be searched, detained in a patrol car or on the curb, and handcuffed than any other race or ethnicity. These data are consistent with patterns we would observe if officer biases based on perceived race and ethnicity contributed towards additional actions taken toward Multiracial, Hispanic/Latine(x), and Black individuals.

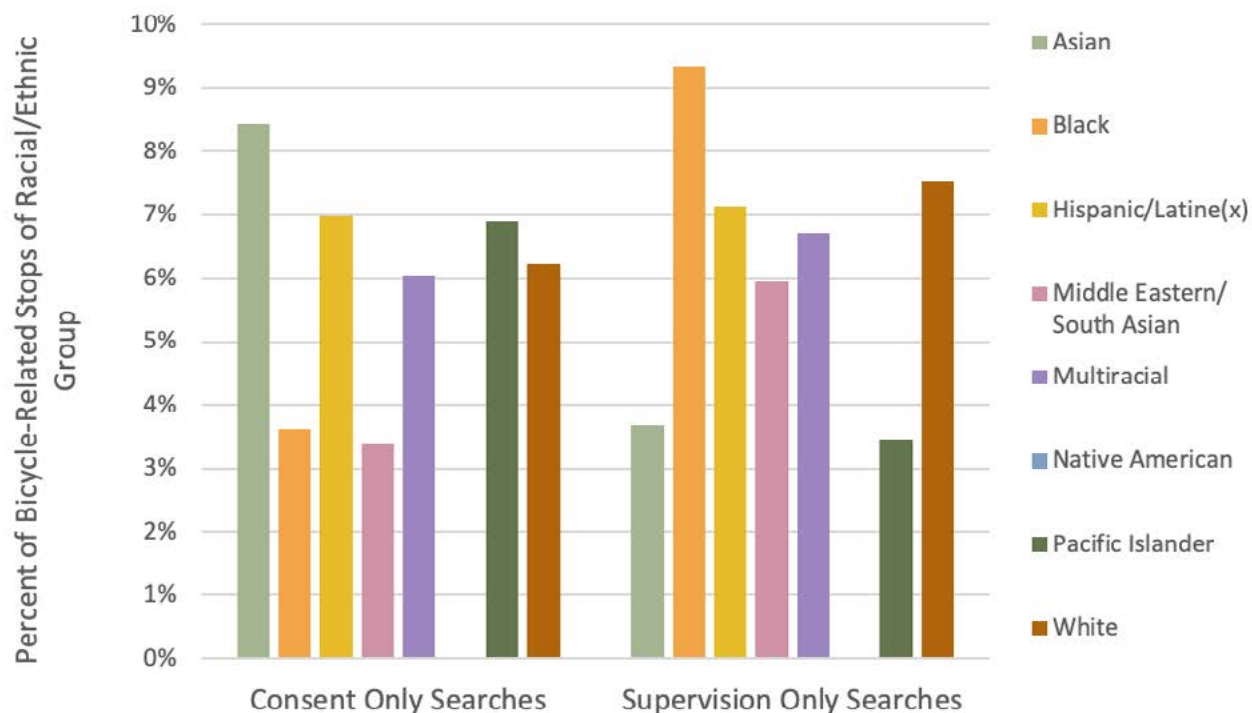
Among the searches occurring during bicycle-related stops, consent only and supervision only searches may be particularly susceptible to bias since officers do not need to have reasonable suspicion or probable cause to conduct those types of searches. Supervision only searches occurred during 1.5 percent of all non-bicycle-related stops, and consent only searches occurred during 1.2 percent of all non-bicycle-related stops. During bicycle-related stops, these rates were substantially higher, with 7.5 percent of bicycle-related stops involving a supervision only search and 6.2 percent of bicycle-related stops involving a consent only search. This means that supervision searches were 5 times as likely during a stop for a bicycle violation compared to a stop for a reason other than a bicycle violation. Similarly, consent only searches were 5.2 times as likely during a stop for a bicycle violation compared to a stop for a reason other than a bicycle violation.

The rates of consent and supervision only searches that occur during stops for bicycle violations are high compared to all other stops, but also vary between racial and ethnic groups. Compared to the average of 6.2% of bicycle-related stops involving a consent only search, rates of consent only searches were higher among bicycle-related stops of individuals perceived to be Asian (8.4%), Hispanic/Latine(x) (7.0%), and Pacific Islander (6.9%). Rates were equal to the average among individuals perceived to be White (6.2%) and lower among individuals perceived to be Multiracial (6.0%), Black (3.6%), Middle Eastern/South Asian (3.4%), and Native American (0.0%). Compared to the average of 7.5% of bicycle-

qualitatively similar to overall handcuffing rates (above). Specifically, the highest no custody handcuffing rates during bicycle-related stops were among Hispanic (20%), Multiracial (18.8%), and Black individuals (15.8%). See Appendix D Table D.1 for a complete comparison of handcuffing rates between racial and ethnic groups during stops with and without custody events.

related stops involving a supervision only search, rates of supervision only searches were higher among bicycle-related stops of individuals perceived to be Black (9.3%). Rates were equal to the average among individuals perceived to be White (7.5%) and lower among individuals perceived to be Hispanic/Latine(x) (7.1%), Multiracial (6.7%), Middle Eastern/South Asian (5.9%), Pacific Islander (3.4%), and Native American (0.0%).

Figure 31. Search Bases During Bicycle-Related Stops by Race/Ethnicity

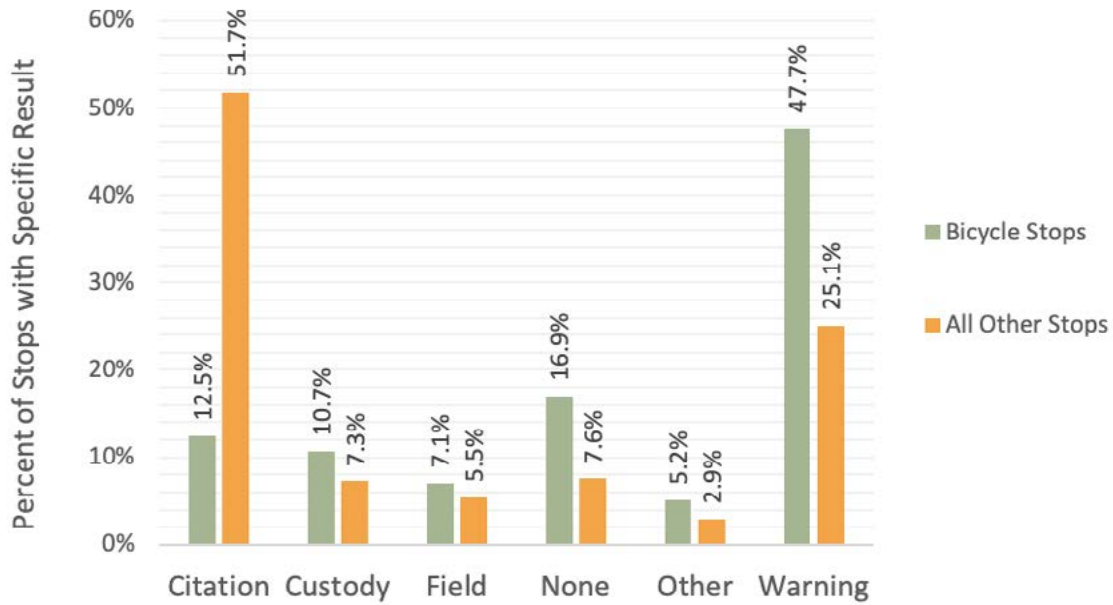


The data elements for the result of stop fall into six categories (citation, custody, in field cite and release, no action taken, warning, and other).²⁵⁴ A comparison of the results of stops for bicycle violations with those from all other stops could provide evidence of the extent to which bicycle-related stops were used as pretext. Bicycle-related stops contained a lower citation rate (12.5% compared to 51.7% in all other stops). In contrast, all other stop outcomes were more common during bicycle related stops. This includes no action (16.9% of bicycle-related stops compared to 7.6% of all other stops) and warning (47.7% of bicycle-related stops compared to 25.1% of all other stops). Bicycle-related stops more frequently resulted in a custodial arrest²⁵⁵ (10.7% vs 7.3%) and in-field cite and release (7.1% vs 5.5%) compared to all other stops in aggregate. Other results of stops (field interview cards, contacted Homeland Security, noncustodial transport, psychiatric hold, and contact parent or guardian) were collectively more common during pedestrian roadway stops (5.2% vs 2.9%).

²⁵⁴ The “other” category used in this set of analyses includes the following result of stop categories, all of which occurred in less than 3.7 percent of stops: field interview card completed, non-criminal transport or caretaking transport, contacted parent/legal guardian or other person responsible for the minor, psychiatric hold, referred to U.S. Department of Homeland Security, referral to school administrator, and referral to school counselor or other support staff.

²⁵⁵ Stops resulting in custodial arrest is a combination of two results of stop – custodial arrest with a warrant and custodial arrest without a warrant.

Figure 32. Comparison of Results of Stop – Bicycle-Related Stops and All Traffic Stops



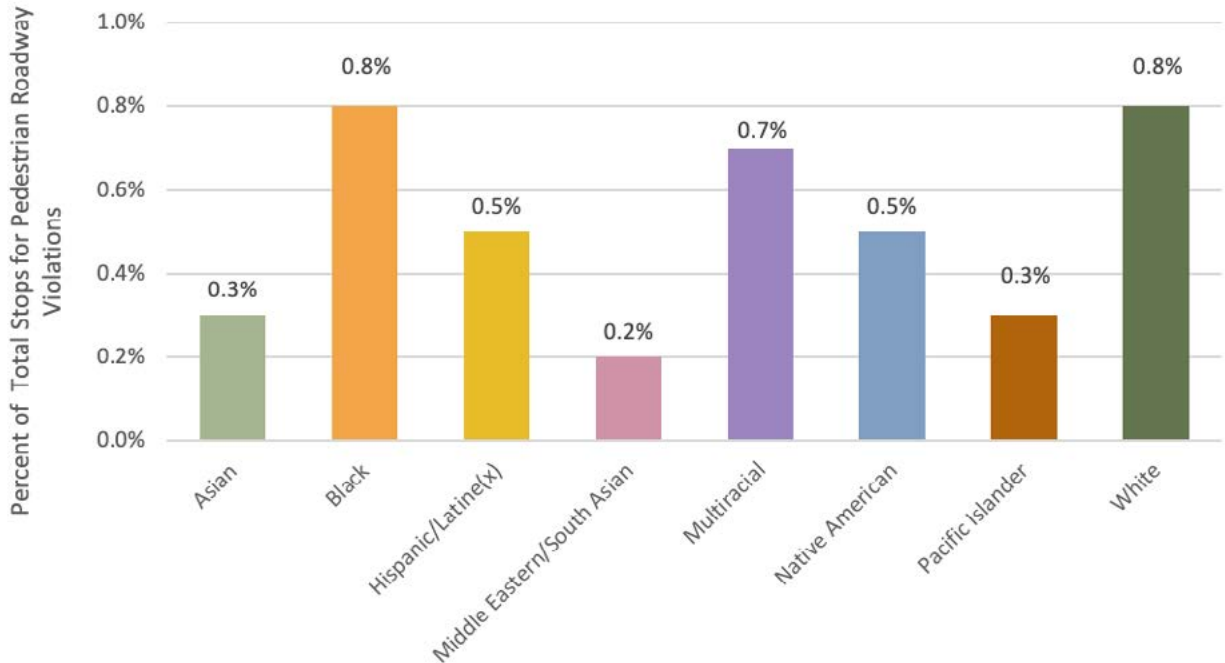
1.11. Pedestrian Roadway Violation Stops

Stops of pedestrians for roadway violations can be pretextual in nature and merit closer examination to determine if certain violations are disparately used against a certain group of individuals. Pedestrian roadway stops include offenses such as not crossing at a designated intersection or failure to obey a traffic sign.²⁵⁶

Pedestrian roadway violations represent 0.6 percent, or approximately 1 in 150, of all stops (19,929 total stops for pedestrian roadway violations). Pedestrian roadway violations were identified as the reason for stop a higher proportion of the time when individuals stopped were perceived to be Black (0.81%), White (0.80%), and Multiracial (0.66%). Officers listed a pedestrian roadway violation as the primary reason for stop for a smaller proportion of stops of individuals perceived to be Native American (0.54%), Hispanic/Latine(x) (0.53%), Pacific Islander (0.33%), Asian (0.27%), and Middle Eastern/South Asian (0.22%).

²⁵⁶ See Cal. Veh. Code, §§ 21106, subd. (B), 21451, subd. (C), 21452, subd. (B), 21453, subd. (D), 21456, subd. (B), 21461.5, 21950, subd. (B), 21953, 21955, 21954, subd. (a), 21956.

Figure 33. Pedestrian Roadway Violations by Race/Ethnicity



During stops for pedestrian roadway violations, the rates of search, curbside or patrol car detention, and handcuffing were higher when compared to stops made for reasons other than pedestrian roadway violations. Officers conducted searches during 13.7 percent of pedestrian roadway stops, compared to 11.8 percent in other stops. The detention rate of individuals during pedestrian roadway stops was 17.2 percent, compared to 11.2 percent for all other stops. Handcuffing occurred in 11.5 percent of pedestrian roadway stops and 9.8 percent of all other stops.²⁵⁷

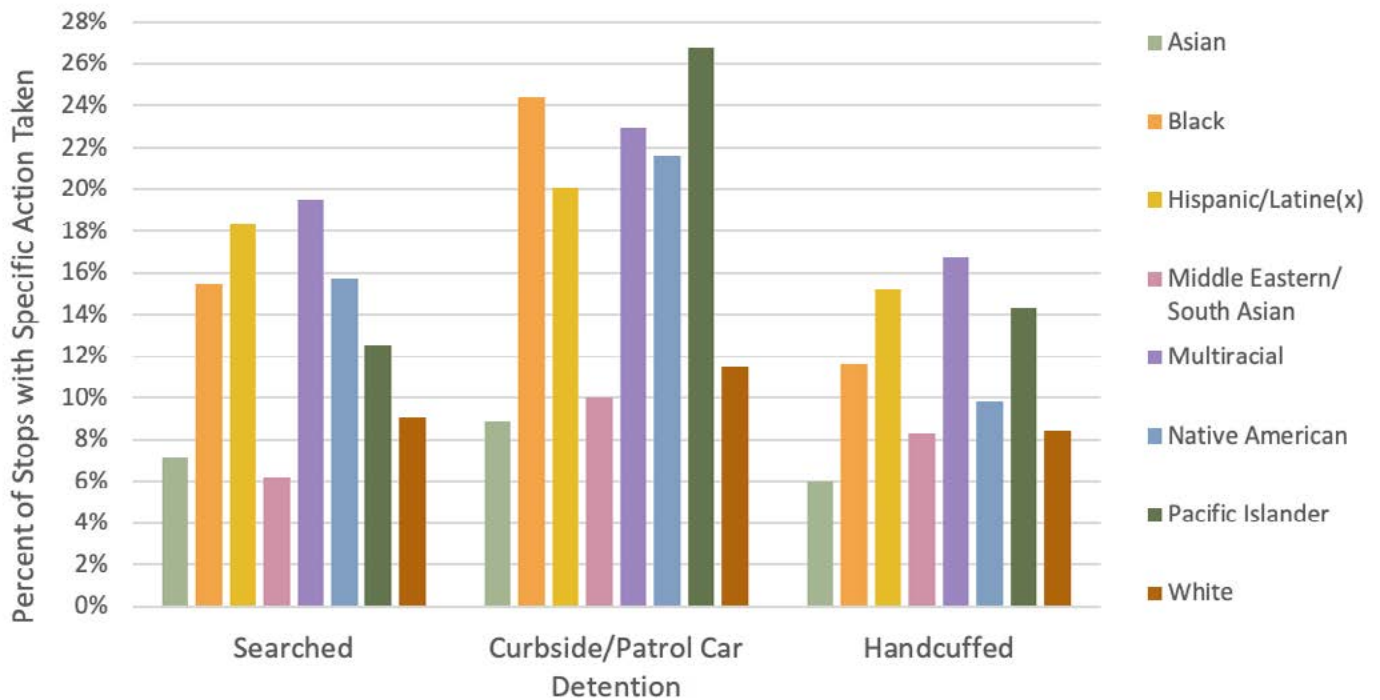
It is also important to contrast the different actions officers take during a stop for a particular violation to understand if disparities exist. Compared to the average rates among pedestrian roadway stops, officers more frequently searched, detained, and handcuffed individuals when they perceived them to be Multiracial, Black, or Hispanic/Latine(x).²⁵⁸ Individuals perceived to be Native American were more frequently searched or detained, but were less frequently handcuffed during pedestrian roadway stops. Individuals perceived to be Pacific Islander were more frequently detained and handcuffed, but were less frequently searched during pedestrian roadway violation stops. In contrast, individuals who were perceived to be White, Asian, or Middle Eastern/South Asian were less likely to be searched, detained, or handcuffed during pedestrian roadway stops.²⁵⁹

²⁵⁷ The percent of pedestrian roadway stops with no-custody handcuffing was 6.5 percent compared to 3.3 percent during stops for any other reasons.

²⁵⁸ Officers may sometimes order that pedestrians wait curbside while the officers perform tasks, such as using mobile data terminals or writing citations. In some cases, officers may forgo this type of request during comparable stops of motorists, instead asking that the motorist to wait in their vehicle.

²⁵⁹ Relative disparities between racial and ethnic groups in no-custody handcuffings during pedestrian roadway stops were qualitatively similar to overall handcuffing rates (above). Specifically, the highest no custody handcuffing rates during bicycle-related stops were among Hispanic/Latine(x) (9.9%), Multiracial (8.1%), and Black individuals (6.9%). See Appendix D Table D.1 for a complete comparison of handcuffing rates between racial and ethnic groups during stops with and without custody.

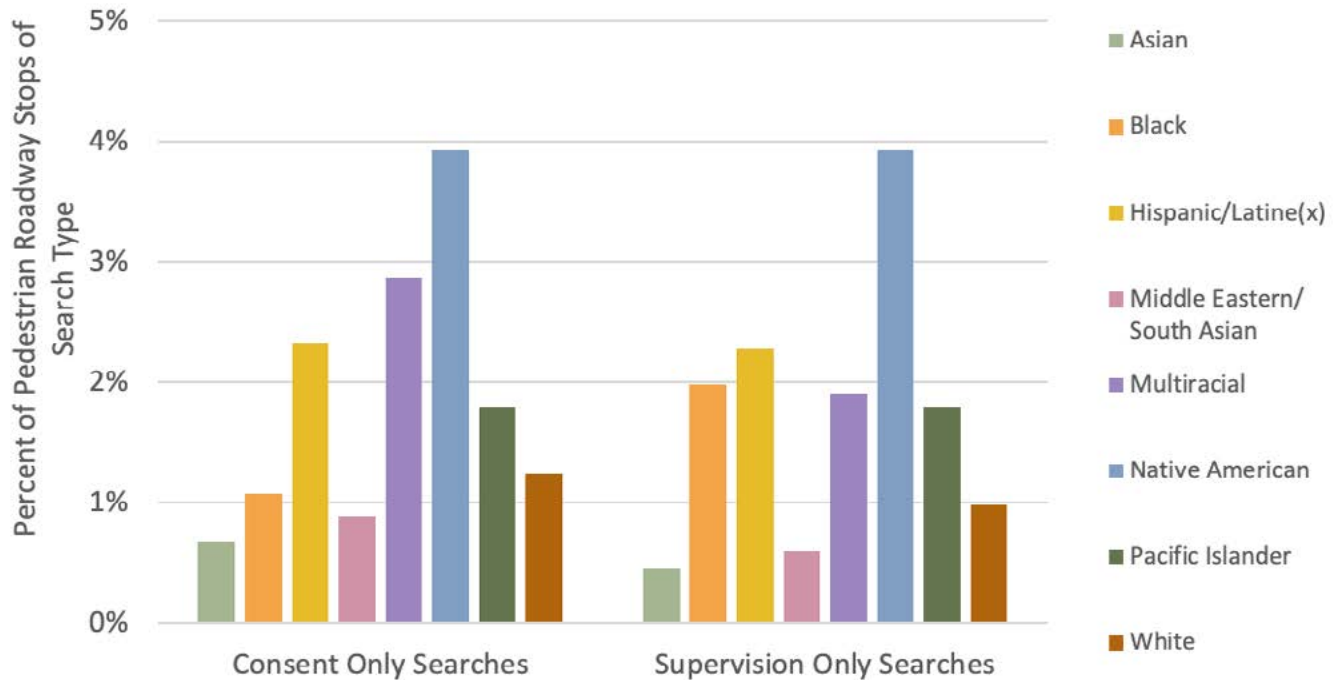
Figure 34. Search, Detention, and Handcuffing During Pedestrian Roadway Violation Stops by Race/Ethnicity



Among the searches occurring during pedestrian roadway violation stops, consent only and supervision only searches may be particularly susceptible to bias since officers do not need to have reasonable suspicion or probable cause to conduct those types of searches. A higher percentage of stops resulting in consent or supervision stops could be an indicator that those stops are being used as a pretext to search individuals. Supervision only searches occurred during 1.5 percent of all non-pedestrian roadway stops, while consent only searches occurred during 1.2 percent of all stops made for other reasons. During pedestrian roadway stops, these rates were slightly higher with 1.6 percent of pedestrian roadway stops involving a supervision only search and the same percentage (1.6%) of pedestrian roadway stops involving a consent only search.

The rates of consent and supervision only searches that occur during stops for pedestrian roadway violations are slightly elevated compared to all other stops, but also vary between racial and ethnic groups. Compared to the 1.6 percent overall consent only search rate during pedestrian roadway stops, rates of consent only searches were higher among pedestrian roadway stops of individuals perceived to be Native American (3.9%), Multiracial (2.9%), Hispanic/Latine(x) (2.3%), and Pacific Islander (1.8%) and were lower among individuals perceived to be White (1.2%), Black (1.1%), Middle Eastern/South Asian (0.9%), and Asian (0.7%). Compared to the average of 1.6 percent of pedestrian roadway stops involving a supervision only search, rates of supervision only searches were higher among pedestrian roadway stops of individuals perceived to be Native American (3.9%), Hispanic/Latine(x) (2.3%), Black (2.0%), Multiracial (1.9%), or Pacific Islander (1.8%) and lower among individuals perceived to be White (1.0%), Middle Eastern/South Asian (0.6%), or Asian (0.4%).

Figure 35. Pedestrian Roadway Stops by Search Type and Race/Ethnicity



Stops where an officer takes no action at the conclusion of the stop should be evaluated to assess the reasons for these stops, if they actually promote public safety, and if these enforcement strategies result in disparate treatment of individuals. Overall, pedestrian roadway violation stops typically resulted in action taken as the result of the stop with just 5.4 percent of stops resulting in no action (i.e., no citation, no warning, no custodial arrest, and no other reportable actions). Pedestrian roadway violation stops more frequently resulted in no action when the person stopped was perceived to be Black (8%), Pacific Islander (7.1%), Hispanic/Latine(x) (6.9%), Multiracial (6.7%), or Native American (5.9%) and less likely to result in no action when individuals were perceived to be Asian (3.8%), White (3.1%), or Middle Eastern/South Asian (1.8%).

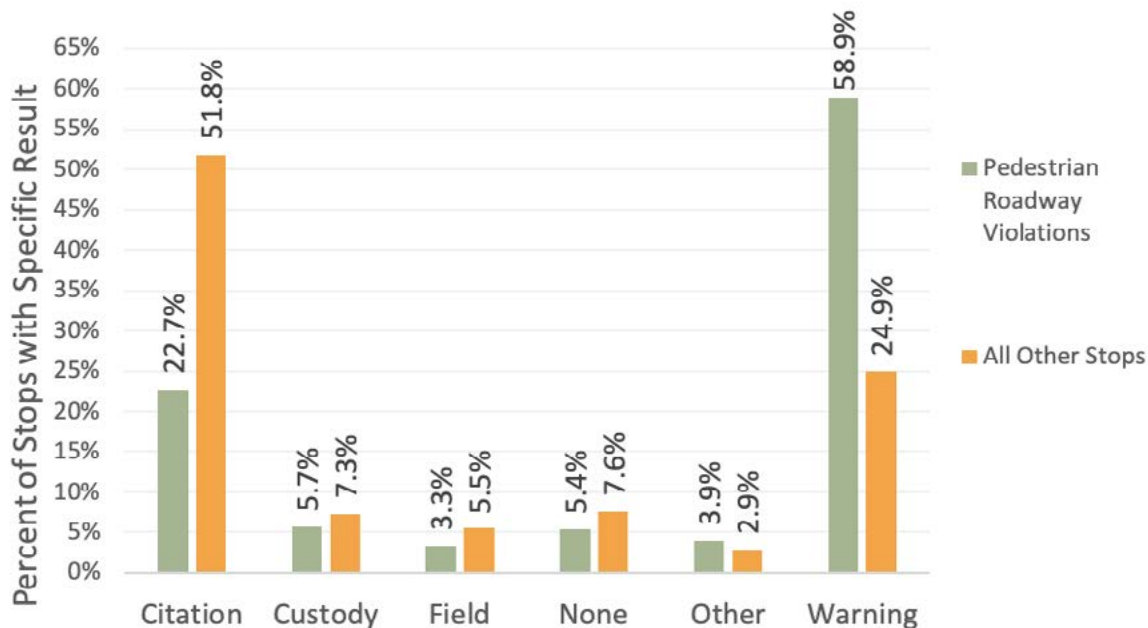
Figure 36. Action Taken as a Result of Stop by Race/Ethnicity During Pedestrian Roadway Stops



Individuals whom officers stopped and perceived to be Black were 2.6 times as likely to have no action taken at the end of a stop for a pedestrian crossing violation than those who were perceived as White. These stops should be examined closely to determine if bias or profiling might be a cause for the initial reason for the stop. The Board commends the Legislature for eliminating many of these violations and the Board hopes to analyze the data in future reports for any reduction in disparities.²⁶⁰ The Board, below, discusses this in more detail when examining state laws that may reduce pretextual stops and profiling.

A comparison of the primary results of stops for pedestrian roadway violations with those from all other violation codes could provide evidence of the extent to which pedestrian roadway stops were used as pretext. Pedestrian roadway stops contained a lower citation rate (22.7% compared to 51.8% in all other stops). In contrast, warnings were more common during pedestrian roadway stops (58.9% of stops compared to 24.9% of all other stops). Pedestrian roadway stops less frequently resulted in custodial arrests (5.7% vs 7.3%), in field cite and release (3.3% vs 5.5%), and no action taken (5.4% vs 7.6%) compared to all other stops in aggregate. Other results of stops (field interview cards, contacted homeland security, noncustodial transport, psychiatric hold, contact parent or guardian, referral to school administrator, and referral to school counselor) were collectively more common during pedestrian roadway stops (3.9% vs. 2.9%).

Figure 37. Result of Stop for Pedestrian Roadway Stops and All Other Stops



1.12. Loitering Related Stops

Laws that cover loitering behavior, because of their breadth and ambiguity, are also vulnerable to bias.²⁶¹ In California, generally it is a crime to loiter or linger on a property without a lawful purpose (i.e., trespass),²⁶² giving law enforcement broad discretion to stop a person if there is a reasonable suspicion the person has the intent to commit a crime on the property and does not seem to have a lawful purpose for being there.²⁶³ Overall, loitering violations were reported as the primary reason for stop in 1.03 percent of all stops, or approximately 1 in 97 stops (32,785 total stops for loitering

²⁶⁰ See Assemb. Bill No. 2147 (2021-2022 Reg. Sess.).

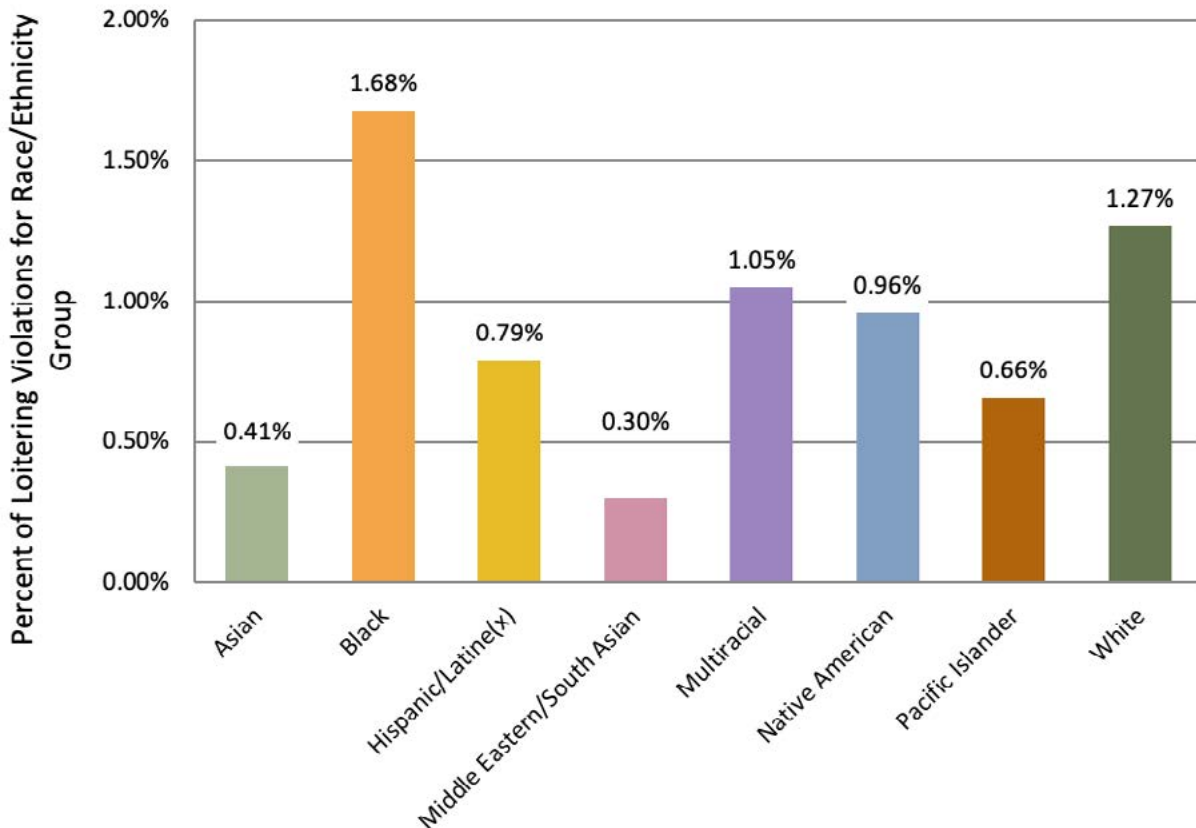
²⁶¹ See Cal. Pen. Code, §§ 602, 647, subd. (B), 647, subd. (B)(1), 647, subd. (B)(2), 647, subd. (C), 647, subd. (E), 647, subd. (H), 653.22, subd. (A), 653.23, subd. (A)(1), 653.23, subd. (A)(2), 653B, subd. (A), 653B, subd. (A); Cal. Health & Saf. Code, § 11532, subd. (A).

²⁶² See Cal. Pen. Code, § 647, subd. (h); see also CALCRIM No. 2915 (2022 edition).

²⁶³ See Cal. Pen. Code, § 647, subd. (h).

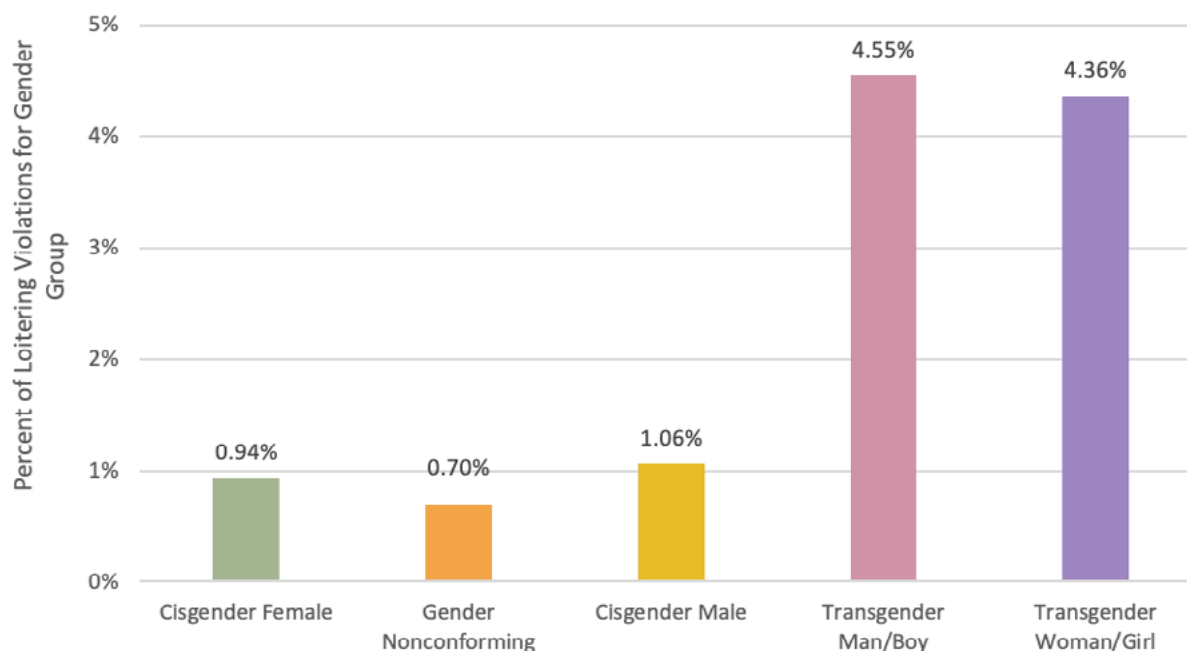
offenses). Loitering violations made up a larger percentage of stops when the individual was perceived to be Black (1.68%), White (1.27%), or Multiracial (1.05%). In contrast, loitering violations made up a smaller percentage of stops when the individuals were perceived to be Native American (0.96%), Hispanic/Latine(x) (0.79%), Pacific Islander (0.66%), Asian (0.41%), or Middle Eastern/South Asian (0.30%).

Figure 38. Loitering Related Violations by Race/Ethnicity



Loitering violations made up a larger percentage of all stops when officers perceived individuals to be Transgender Men/Boys (4.55%) or Transgender Women/Girls (4.36%) – a four times higher percentage of stops that were for loitering than the overall proportion of stops that were for loitering (1.03%). Among cisgender males, loitering violations make up a slightly higher than average percentage of all stops (1.06%). In contrast, loitering stops make up a smaller percentage of all stops among individuals perceived to be Cisgender Females (0.94%) and Gender Nonconforming individuals (0.70%).

Figure 39. Loitering Related Violations by Gender



In 2022, California passed the Safer Streets for All Act, which decriminalized certain loitering offenses in order to address pretextual stops, particularly those of Black and Latine(x) transgender individuals.²⁶⁴ The author of the bill noted “due to the broad subjective nature of the language that criminalizes loitering for the intent to engage in sex work, this offense permits law enforcement to stop and arrest people for discriminatory reasons, such as wearing revealing clothing while walking in an area where sex work has occurred before.”²⁶⁵ This is a direct effort by the legislature to specifically address the “legal harassment of LGBTQ+, Black, and Brown communities” through loitering offenses.²⁶⁶

The Board applauds the change in the law and hopes to track any changes in disparities attributed to the new law.

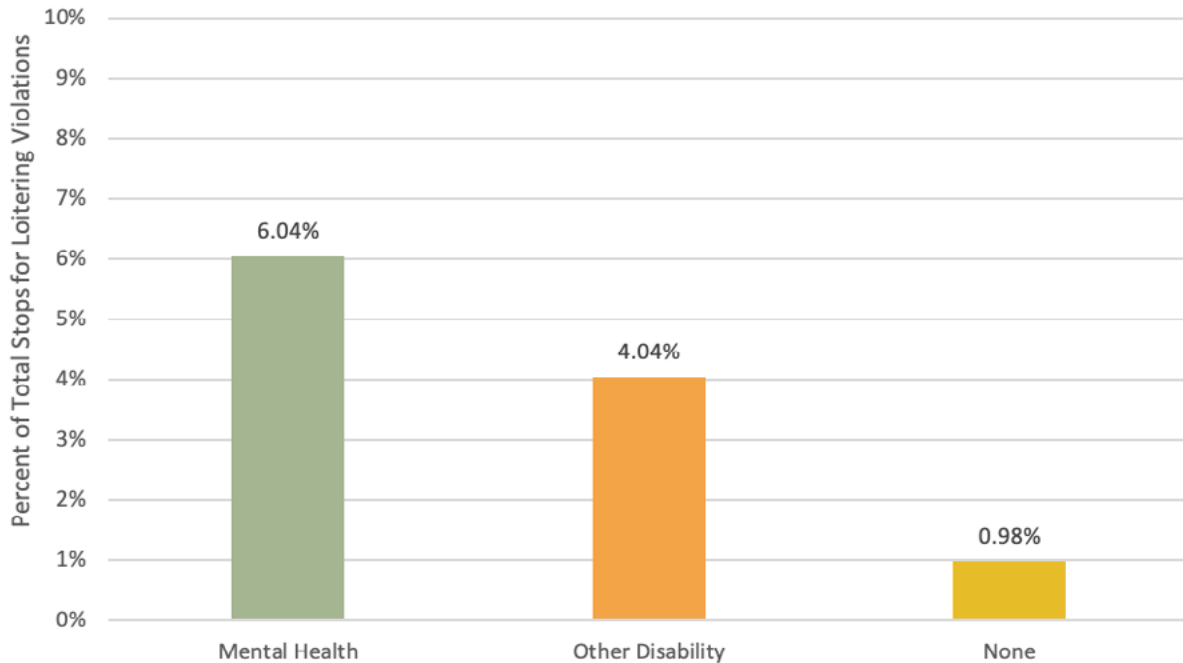
Stops for loitering also constituted a disproportionate percentage of stops of persons whom officers perceived to have a disability or disabilities compared to persons whom officers perceive not to have a disability. Loitering violations made up a larger percentage of all stops when officers perceived individuals to be have a mental health disability (6.04%) or another disability (4.04%). Among individuals whom officers perceived to not have a disability, loitering was reported as the primary reason for stop for 0.98 percent of stops.

²⁶⁴ See Sen. Rules Com., Off. of Sen. Floor Analyses of Sen. Bill No. 357 (2021-2022 Reg. Sess.) (as amended Sept. 1, 2021) pp. 4-5.

²⁶⁵ See *id.* at p. 2.

²⁶⁶ See *ibid.*

Figure 40. Loitering Related Violations by Perceived Disability



Here, loitering stops made up a 6 times larger percentage of total stops for people with perceived mental health disabilities and a 4 times larger percentage of total stops for people with another disability compared to those perceived to have no disabilities.

During stops for loitering violations, the rates of search, curbside or patrol car detention, and handcuffing were much higher compared to all other stops.²⁶⁷ When officers stopped individuals for loitering violations, they performed searches during 34.8 percent of stops compared to 11.6 percent in all other stops. Similarly, when officers stopped individuals for loitering violations, they performed detentions during 46.2 percent of stops, compared to 10.9 percent in all other stops. Finally, when officers stopped individuals for loitering violations, they handcuffed an individual during 34.6 percent of stops compared to 9.5 percent in all other stops.²⁶⁸ During stops for loitering related offenses, officers were 3 times as likely to perform a search, 4.2 times as likely to detain the individual, and 3.6 times as likely to handcuff the individual compared to all other stops.

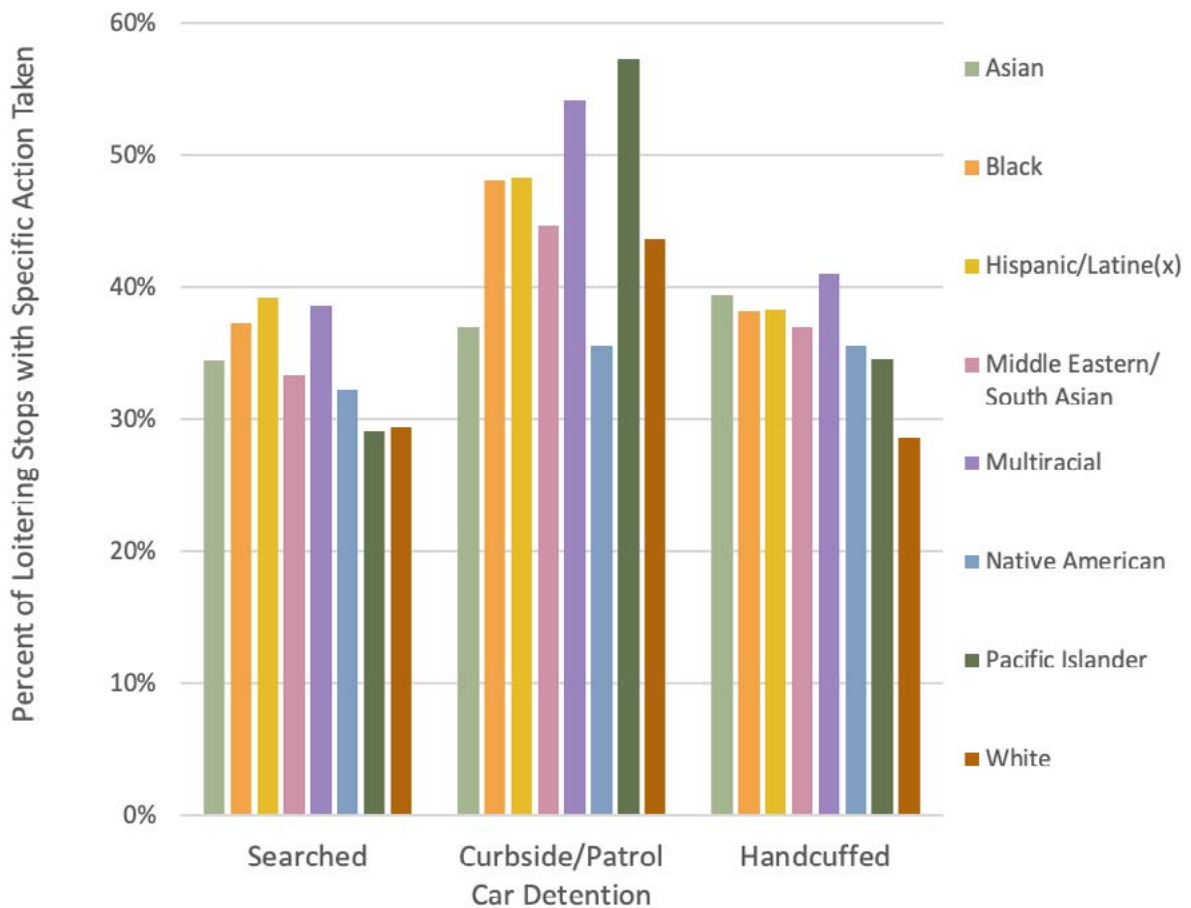
Examining the actions taken during a stop towards a particular identity group for the same charge can help shed further light on disparate treatment experienced by certain groups. When officers stopped individuals for loitering, they performed searches during 34.8 percent of stops, detentions during 46.2 percent of stops, and handcuffed an individual during 34.6 percent of stops. Compared to these averages, individuals perceived to be Multiracial, Black, or Hispanic/Latine(x) were even more likely to be searched, detained, and handcuffed during a stop for a loitering offense. During stops for loitering, individuals perceived to be Asian or Native American are searched and detained at lower frequencies, but were more commonly handcuffed than the average. Individuals perceived to be Pacific Islander are searched and handcuffed less, but more frequently detained during stops for loitering. In contrast, individuals perceived to be White are less likely to be searched, detained, or handcuffed during stops for loitering related violations compared to the averages across race/ethnicity groups. Relative disparities between racial and ethnic groups in no-custody handcuffing rates during loitering stops

²⁶⁷ Officers may sometimes order that pedestrians wait curbside while the officers perform tasks, such as using mobile data terminals or writing citations. In some cases, officers may forgo this type of request during comparable stops of motorists, instead asking that the motorist to wait in their vehicle.

²⁶⁸ The percent of loitering stops with no-custody handcuffing was 14.6 percent compared to 3.2 percent during stops for any other reasons.

were qualitatively similar to overall handcuffing rates during loitering stops (above). As an example, the highest no-custody handcuffing rates during bicycle-related stops were among Multiracial (18.3%), Hispanic/Latine(x) (15.9%), and Black individuals (15.4%).²⁶⁹

Figure 41. Search, Detention, and Handcuffing During Loitering Stops by Race/Ethnicity



Here, despite being stopped for the same set of violation codes, Multiracial, Black, or Hispanic/Latine(x) individuals were more likely to have certain actions taken against them. This supports the position that bias may play a role in who is searched, handcuffed, or detained on the curb or inside a patrol car.

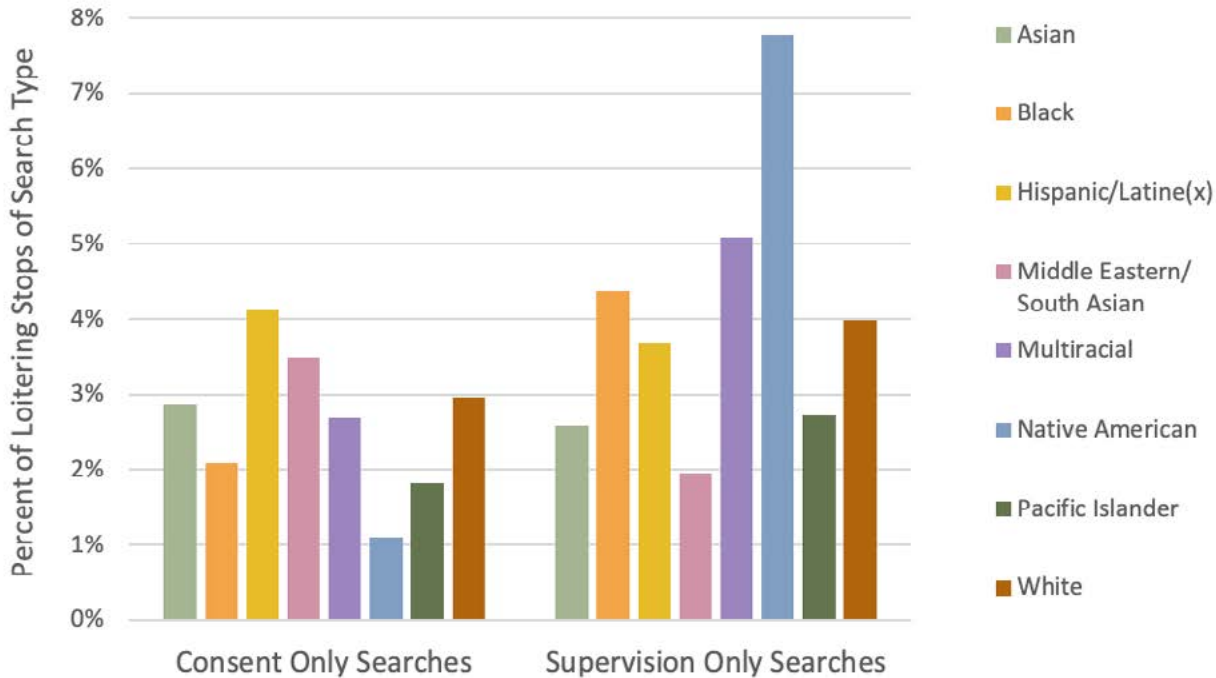
Among the searches occurring during loitering violation stops, consent only and supervision only searches may be particularly susceptible to bias since officers do not need to have reasonable suspicion or probable cause to conduct those types of searches. Supervision only searches occurred during 1.5 percent of all non-loitering stops, while consent only searches occurred during 1.2 percent of all non-loitering stops. During loitering stops, these rates were substantially higher with 3.9 percent of loitering stops involving a supervision only search and 3.1 percent of loitering stops involving a consent only search.

The rates of consent and supervision only searches that occur during stops for loitering violations are elevated compared to all other stops, but also vary between racial and ethnic groups. Compared to the average of 3.1 percent of loitering stops involving a consent only search, rates of consent only searches were higher among loitering stops of individuals perceived to be Hispanic/Latine(x) (4.1%) or Middle Eastern/South Asian (3.5%) and lower among individuals perceived to be White (3.0%), Asian (2.9%), Multiracial (2.7%), Black (2.1%), Pacific Islander (1.8%), and Native American (1.1%). Compared to the

²⁶⁹ See Appendix D Table D.1 for a complete comparison of handcuffing rates between racial and ethnic groups during stops with and without custody.

average of 3.9 percent of loitering stops involving a supervision only search, rates of supervision only search were higher among individuals perceived to be Native American (7.8%), Multiracial (5.1%), Black (4.4%), and White (4.0%) and lower among individuals perceived to be Hispanic/Latine(x) (3.7%), Pacific Islander (2.7%), Asian (2.6%), and Middle Eastern/South Asian (2.0%).

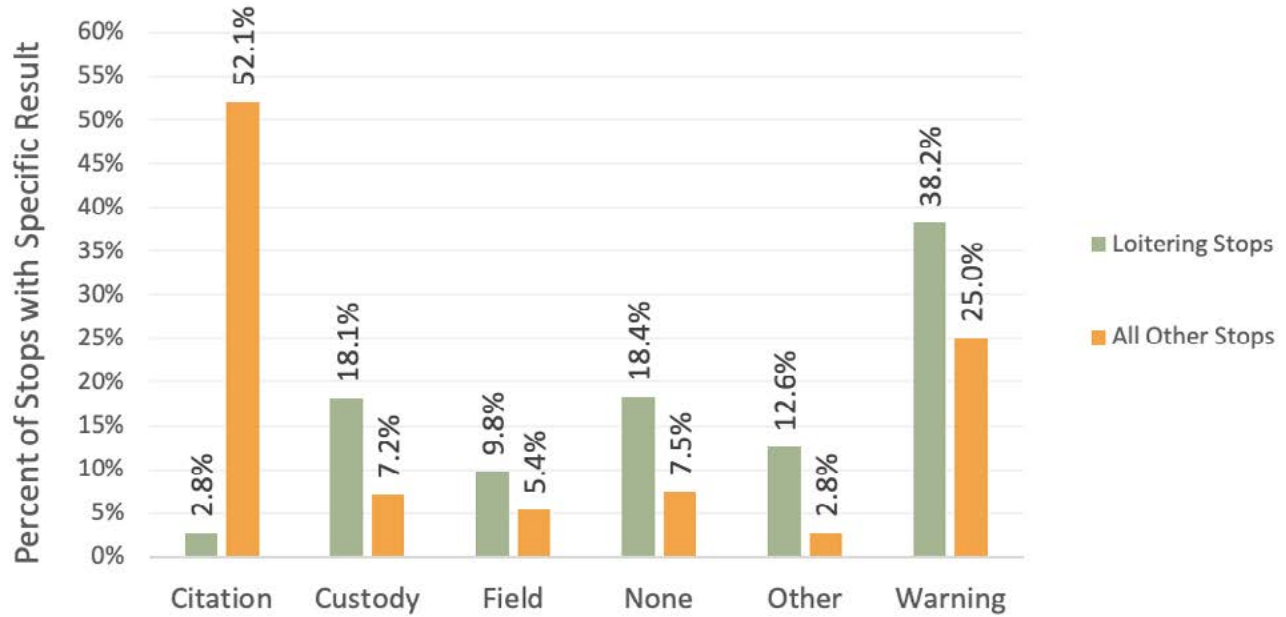
Figure 42. Loitering Stops by Search Type and Race/Ethnicity



A comparison of the results of loitering violation stops with those from all other stops could provide evidence of the extent to which loitering stops were used as pretext. Loitering stops contained a much lower citation rate (2.8% compared to 52.1% in all other stops). This means that during a non-loitering stop, an individual is 18.6 times as likely to receive a citation as compared to a stop for loitering.

In contrast, all other results of stop were more common during stops for loitering, including warnings (38.2% of stops compared to 25.0% of all other stops). Loitering stops more frequently resulted in custodial arrests (18.1% vs. 7.2%), in field cite and release (9.8% vs. 5.4%), and no action taken (18.4% vs. 7.5%) compared to all other stops in aggregate. Other results of stops (field interview cards, contacted Homeland Security, noncustodial transport, psychiatric hold, contact parent or guardian, referral to school administrator, and referral to school counselor) were collectively more common during loitering stops (12.6% vs. 2.8%).

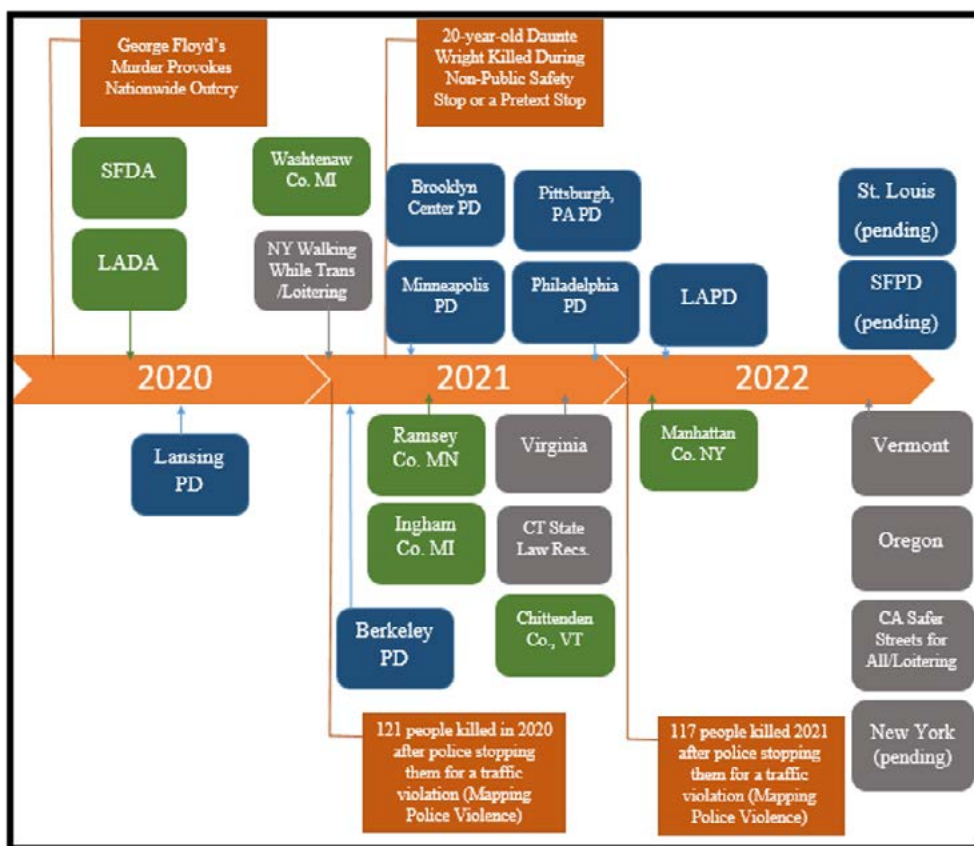
Figure 43. Result of Stop for Loitering Stops and All Other Stops



Given these disparities, leaders should consider the benefit these stops have, if any, in improving public safety and the potential harm to law enforcement-community relations. The California legislature has already taken steps to decriminalize some loitering stops related to sex work, but they may wish to consider additional measures or loitering charges that could be decriminalized.

1.13. Developing Models: Policies and Practices that Eliminate Pretextual Stops and Limit Officer Discretion in Routine Encounters.

The clear evidence of racial disparities in the RIPA data discussed above and in previous Reports as well as the fatal outcomes of some pretextual stops have helped fuel the movement to eliminate pretext stops and limit officer discretion. In an effort to reduce disparities shown by the data and make policing practices fairer, safer, and more equitable, some law enforcement agencies, municipalities, and states are working to end pretextual stops and searches. These reforms are taking root across the nation.



270

It is the position of the Board to encourage stakeholders to create data-driven policies to improve public safety and develop innovative ways to address racial and identity profiling through eliminating pretextual stops. Specifically regarding high discretion pretext stops and searches, which are vulnerable to bias, the Board calls on the legislature, law enforcement agencies, and local district attorneys to examine emerging approaches, including:

- (1) Identifying and taking action to limit enforcement of traffic laws and minor offenses that pose a low risk to public safety²⁷¹ and show significant disparities in the rate of enforcement.
- (2) Limit armed law enforcement responses with respect to traffic enforcement by allowing for stops only if there is a concern for public safety and explore amending the vehicle code to more broadly move traffic enforcement out of law enforcement's purview (e.g., to a civilian traffic unit).²⁷²
- (3) Prohibiting certain searches, such as consent searches or supervision searches, during traffic stops and instead requiring probable cause for any search.
- (4) Eliminating all pretextual stops and subsequent searches and ensuring that a stop or search is based on reasonable suspicion or probable cause, respectively.

The Board hopes to track the reported effectiveness of these efforts so they may serve as models for other communities exploring these issues.

270 Green indicates a policy created by a District Attorney's Office, Blue indicates a policy created by law enforcement, and Grey indicates a policy created statewide.

271 The Board recognizes that the term "public safety" will need further deliberation and consideration in future reports for purposes of making specific recommendations relating to mitigating the impacts of racial and identity profiling. In Appendices E, F, and G, the Board provides examples of policies aimed at reducing pretextual stops to demonstrate what other municipalities and states have defined as a public safety stop.

272 See Cal. Veh. Code, § 21100.

1.13.1. Low Enforcement Policies

Law enforcement agencies are already taking bold steps to rethink how officers engage in traffic encounters, including prohibiting consent searches or probation searches and instead requiring probable cause for all stops and searches. Traffic stops take up a substantial amount of law enforcement agencies' time and resources, but, as discussed above, studies have shown that these stops tend to have little benefit to public safety, which is evidenced in part by low rates of discovering contraband.²⁷³ By taking measured steps guided by stop data, agencies are developing policies to reduce or eliminate high discretion stops and searches during traffic encounters. Here, the Board highlights policies in California and throughout the nation for agencies and communities to consider when creating their own policies.

Berkeley Police Department (Berkeley PD):²⁷⁴ In 2022, Berkeley PD's interim chief implemented a new traffic enforcement policy encouraging officers to focus on stops that directly impact public safety.²⁷⁵ The Mayor's Fair and Impartial Working Group developed and recommended a three-prong test to aid officers in determining if the stop is related to public safety. Prong 1 includes stops for behavior shown to increase the risks of a collision, such as speeding, running red lights or stop signs, and failure to yield.²⁷⁶ Prong 2 focuses on responding to calls from community members about issues such as a DUI driver, unsafe driving incident, or a hit and run with a vehicle description.²⁷⁷ Finally, for Prong 3, the task force notes that violations for seatbelts or distracted driving are important public safety stops.²⁷⁸

The working group that helped develop the policy for Berkeley PD considered relevant data indicating individuals perceived as Black are stopped and searched during traffic stops at significantly higher rates than all other racial or ethnic groups.²⁷⁹ In an analysis of Berkeley PD traffic stops that included a search, data between 2015 and 2020 showed individuals perceived to be White were searched at significantly lower rates (5%) than those perceived to be Black (19%) or Hispanic/Latine(x) (12%).²⁸⁰ The search yield data also showed that contraband was recovered far less frequently during searches of individuals perceived to be Black (20%) compared to those who were perceived as White (40%).²⁸¹

Berkeley PD's approach is different from many of the other policies the Board reviewed in that it does not prohibit certain types of traffic stops, but rather positively identifies stops that further the

273 See Fliss et al., *supra* note 203, at pp. 11, 13; Carter-Oberstone, *America's Traffic Laws Give Police Way Too Much Power* (May 2022) TIME <<https://time.com/6175852/pretextual-traffic-stops/>> [as of Nov. 29, 2022]; see also McIntire and Keller, *The Demand for Money Behind Many Police Traffic Stops* (Nov. 2021) N.Y. Times <<https://www.nytimes.com/2021/10/31/us/police-ticket-quotas-money-funding.html>> [as of Nov. 29, 2022]. See also generally Asher and Horwitz, *How do the Police Actually Spend Their Time?* (2020) N.Y. Times <<https://www.nytimes.com/2020/06/19/upshot/unrest-police-time-violent-crime.html>> [as of Nov. 29, 2022]; *Reimagining Traffic Safety & Bold Political Leaders in Los Angeles* (2021) Race Counts and Push LA <<https://www.racecounts.org/push-la>> [as of Nov. 29, 2022]; Draft General Order, Traffic Enforcement & Curtailing the Use of Pretext Stops ("SFPD Draft Order Curtailing Pretext Stops") (2022) S.F. Police Dept. <https://sf.gov/sites/default/files/2022-05/DGO%209.01_DRAFT_05.06.22_v2.pdf> [as of Nov. 29, 2022].

274 In 2020, Berkeley established the Mayor's Fair and Impartial Policing Working Group tasked with listening to community experts, reviewing stop data, and developing recommendations to improve policing. The working group consists of representatives from BPD, Police Review Commission, ACLU of Northern Cal., NAACP, Latinxs Unidos de Berkeley, Berkeley Community Safety Coalition, Associated Students of U. of Cal., and an academic expert. In 2021, the working group issued a recommendation that Berkeley PD make decisions about traffic stops based on public safety. See City of Berkeley, Special Presentation to Mayor: Fair and Impartial Policing Working Group ("Berkeley Fair and Impartial Policing Working Group") (Feb. 2021) <https://berkeleyca.gov/sites/default/files/documents/2021-02-23_Special_Item_01_Report_and_Recommendations_-_Pres_Mayor.pdf> [as of Nov. 29, 2022].

275 City of Berkeley, Supplemental Materials Related to Mar. 8, 2022 Quarterly Update on Implementation of Fair and Impartial Policing Recommendations ("Berkeley Update on Implementation") (Mar. 2022) p. 4 <https://berkeleyca.gov/sites/default/files/2022-04/Supplemental_materials_FIP_032522.pdf> [as of Nov. 29, 2022].

276 *Ibid.*

277 *Ibid.*

278 *Ibid.*

279 See Berkeley Fair and Impartial Policing Working Group, *supra* note 274.

280 *Ibid.*

281 See *ibid.*

purpose of public safety.²⁸² The policy appears to provide officers with the discretion to determine if a stop's purpose is to increase public safety. Berkeley is developing other ways to address traffic safety, including civilian enforcement models, which are discussed more below.²⁸³

Los Angeles Police Department (LAPD): In 2022, the LAPD adopted a policy that establishes limitations on pretextual stops. Similar to the Berkeley PD policy, the LAPD policy allows for traffic stops only if the officer believes the violation “significantly interferes with public safety.”²⁸⁴ The LAPD policy, however, does not define which specific code sections pose a risk to public safety and instead leaves that determination to the officer's discretion. The department explicitly addresses the issue of pretext stops in its policy, stating: “[P]retextual stops shall not be conducted unless officers are acting upon articulable information in addition to the traffic violation, which may or may not amount to reasonable suspicion, regarding a serious crime (i.e., a crime with potential for great bodily injury or death).”²⁸⁵

If an officer conducts a pretextual stop, they must document the reasons for doing so on body-worn camera and state the articulable information or intelligence used as the basis to initiate the stop.²⁸⁶ Finally, officers' actions or questioning must be limited to the original legal basis for the stop absent additional basis for reasonable suspicion or probable cause that would justify “expanding the duration or the scope of the detention.”²⁸⁷ If an officer fails to sufficiently articulate the reason for the pretext stop in addition to the traffic violation, they may be disciplined and/or be required to receive additional training.²⁸⁸

The LAPD policy was developed in response to an analysis of data, including RIPA data, showing disparities in stops and searches of motorists.²⁸⁹ The Office of the Inspector General (OIG) audited the LAPD's stop data and body-worn camera videos and concluded that (1) some portion of the disparities observed in stops and the actions taken after stops were the result of pretextual stops; and (2) data indicate these pretextual stops have limited effectiveness in identifying evidence of illegal firearms or other serious crimes.²⁹⁰

Push LA, a coalition of advocates,²⁹¹ argued the policy still leaves too much discretion to determine if a stop is “intended to protect public safety” to officers “whose racist practices have been repeatedly

282 See Berkeley Update on Implementation, *supra* note 275, at pp. 4-5.

283 See *ibid.*

284 See L.A. Police Dept., Limitation on Use of Pretextual Stops: 1/240.06 (“LAPD Limitation on Pretextual Stops”) (Mar. 2022) p. 1.

285 Serious crimes include: “violent crime, driving under the influence (DUI), reckless driving, street racing, street takeovers, hit and run, human or narcotics trafficking, gun violence, burglary, or another similarly serious crime. Such decisions should not be based on a mere hunch or on generalized characteristics such as a person's race, gender, age, homeless circumstance, or presence in a high-crime location.” See LAPD Limitation on Pretextual Stops, *supra* note 284, at p. 1.

286 See LAPD Limitation on Pretextual Stops, *supra* note 284, at p. 2.

287 See *ibid.*

288 See *id.*

289 LAPD Officers Now Required to Explain ‘Pretextual Stops’, *supra* note 201; see also Los Angeles Police Will Have to Justify ‘Pretextual Stops’ or Face Discipline (March 2022) CBS Los Angeles <<https://www.cbsnews.com/losangeles/news/la-police-commission-changes-policy-on-pretextual-stops/>> [as of Nov. 29, 2022].

290 See Off. of the Inspector General, *Review of Stops Conducted by the Los Angeles Police Department in 2019* (“OIG Review of LAPD Stops”) (Oct. 2020) p. 5 <https://www.oig.lacity.org/_files/ugd/b2dd23_d3e88738022547acb55f3ad9dd7a1dcb.pdf> [as of Nov. 29, 2022].

291 The Push LA coalition is comprised of the ACLU SoCal, Advancement Project CA, Black Lives Matter L.A., Brotherhood Crusade, Brothers, Sons, Selves, Children's Defense Fund Cal., Community Coalition, Coalition for Humane Immigrant Rights L.A., LA Voice, Labor Community Strategy Center, Million Dollar Hoods, SEIU 2015, SEIU Local 99, Southern Christian Leadership Conference (SCLC), and Southern Cal., Social Justice Learning Inst. See generally PushLA Public Comment Letter to Police Commission, *Opposition Relative to policy revision regarding pretextual stops* (“PushLA Opposition to pretext stop policy revision”) (Feb. 2022) pp. 4-6 <<https://lapdonlinestrgeacc.blob.core.usgovcloudapi.net/lapdonlinemedia/2022/02/Public-Comment-Regarding-Pretextual-Stops-BOPC-22-023-Part-II.pdf>> [as of Nov. 29, 2022].

called into question.”²⁹² The coalition expressed frustration that the community was not directly involved in the development of this policy.²⁹³ Push LA urged the LAPD to instead adopt a policy ending all pretextual stops and consent searches, which the community has been demanding from the Police Commission for years.²⁹⁴

Since enacting the new policy, according to an analysis conducted by the Los Angeles Times, there have been a reduction in stops and searches involving minor violations.²⁹⁵ The analysis looked at stops from April through the end of August 2022 and compared it to data from April through August of 2021.²⁹⁶ The analysis uncovered there was a reduction in stops for offenses such as expired registration or obstructed window, which accounted for 12 percent of the stops in 2022 compared to 22 percent of stops in 2021.²⁹⁷ Searches also decreased in stops for minor offenses as well. LAPD officers received consent to search in 24 percent of cases in 2022 compared to 30 percent in 2021.²⁹⁸ Overall, even though there was a reduction in stops, searches, and seizures, when LAPD officers did conduct a search, they had higher rates of finding contraband – in 26 percent of searches – than in previous years.²⁹⁹

“The higher rates of contraband found since the policy took effect indicate that officers are being more selective about who they decide to stop and search.” – Jack Glaser, Professor of Public Policy, U.C. Berkeley³⁰⁰

More importantly, the new policy has shown to reduce some profiling and disparities observed in the data. In 2021, those perceived as Black were stopped 25 percent of the time for minor equipment violations and non-moving violations; in 2022 after the policy went into effect, there was a reduction in 10 percentage points in stops for minor violations.³⁰¹ However, those perceived as Black or Hispanic/Latine(x) were still stopped at higher rates than those who are perceived as White.³⁰²

The Board hopes to review additional studies or reviews based on stop data that show the impact and effectiveness of LAPD’s new policies in reducing disparities. The Board is interested in any future audits that may be conducted of body worn camera footage and compliance with these new directives. Further, the Board is interested in learning how LAPD engages community partners, such as Push LA, in the development of trainings and any additional policy changes related to pretextual stops.

San Francisco Police Department (SFPD) (Developing): SFPD is working on a new policy to reduce racial bias in traffic enforcement and limit the use of pretextual stops. The proposed policy,³⁰³ which is being reviewed by the civilian Police Commission and a community working group, bans all pretext stops and

292 PushLA also asserted the policy would likely increase funding for training – which is contrary to the community’s call to divest from systems of policing – and expressed frustration at not being involved in the development of the new policy. See *ibid.*

293 See *ibid.*

294 See *ibid.*

295 Jany and Poston, *Minor police encounters plummet after LAPD puts limits on stopping drivers and pedestrians* (Nov. 2022) L.A. Times <<https://www.latimes.com/california/story/2022-11-14/minor-traffic-stops-plummet-in-months-after-lapd-policy-change>> [as of Nov. 29, 2022].

296 *Ibid.*

297 *Ibid.*

298 *Ibid.*

299 *Ibid.*

300 *Ibid.*

301 *Ibid.*

302 *Ibid.*

303 The Board would like to make clear that the views expressed here regarding the San Francisco Police Department are those of the RIPA Board, and not the California Department of Justice, which is currently reviewing policies of the San Francisco Police Department related to bias under an MOU entered on February 5, 2018 and amended on November 15, 2021.

detentions for certain vehicle code violations.³⁰⁴ The policy also limits pedestrian and bicycle stops.³⁰⁵ The proposed policy outlines several exceptions and allows an officer to issue a citation for certain offenses, if the primary reason for the stop was a felony, misdemeanor, or infraction.³⁰⁶ In addition to prohibiting certain stops, the policy also limits searches and questioning during traffic stops.³⁰⁷ Officers may not ask investigatory questions regarding unrelated suspected criminal activity, unless there is reasonable suspicion or probable cause to question, such as seeing a gun in plain view.³⁰⁸ Similarly, officers may not ask for consent to search or if someone is on supervision, unless they have reasonable suspicion or probable cause of a criminal offense.³⁰⁹

The proposed policy change is intended to address racial disparities in traffic stops. The policy notes that pretext stops and searches are disproportionately used against people of color and “provide no demonstrable public safety benefit.”³¹⁰ The policy also explains that “limiting this ineffectual practice” will actually improve public safety by freeing up resources and enabling officers to focus only on public safety violations.³¹¹ This policy is similar to other traffic enforcement models, but takes the additional step of also prohibiting consent searches and supervision inquiries. In its 2022 Report, the RIPA Board made the recommendation to end consent searches and supervision inquiries. Consent searches and supervision inquiries and searches function a lot like pretext stops, and often follow from pretext stops, so eliminating them will be in the spirit of and promote the effectiveness of pretext bans.

These additional restrictions can further mitigate the harmful effects of pretextual stops and other routine police encounters by also limiting the actions an officer can take once a stop has been initiated.

Emerging National Models and Trends: Many agencies and municipalities outside of California have been examining pretextual traffic stops and developing policies and practices to reduce or eliminate disparities caused by such stops. When considering policy recommendations for California agencies, the Board examines these reforms to learn from documented efforts and successes. Overall, it appears there are three broad categories or types of policies agencies are adopting to eliminate pretextual stops, including policies establishing that: (1) tiered traffic enforcement, meaning officers can only stop a person for a primary public safety violation and not solely for one of the listed secondary violations; (2) officers can only stop a person for a traffic infraction or minor offense if it poses a risk to public safety; or (3) officers are prohibited from engaging in certain enforcement actions such as consent searches or probation inquiries.

304 Prohibited stops include: failure to display both license plates or registration, driving with expired registration, failure to illuminate license plate, driving without headlights, taillights, and break lights (except if no lights are functioning and the stop occurs at night), obstructed windows, failure to signal, littering, improper U-turn, sleeping in a car, and any parking infraction. See SFPD Draft Order Curtailing Pretext Stops, *supra* note 273, at pp. 2-3.

305 The policy prohibits stops for crossing the street outside of a crosswalk, riding a bike on a sidewalk, riding on a non-motorized scooter on a sidewalk, and failure to ride a bike as close as possible the edge of the road. *Id.* at p. 3.

306 The policy also allows for stops of any commercial vehicles or vehicles that match a suspect description in a serious or violent crime. Additionally, if a car is unoccupied, an officer can issue a citation for any of the listed offenses or mail the person a ticket. See *id.* at p. 4.

307 See *ibid.*

308 See *ibid.*

309 See *id.* at pp. 4-5.

310 See *id.* at p. 1.

311 See *ibid.*

LEA POLICIES PRETEXT STOPS	Traffic Stops Based on Public Safety Only	Primary and Secondary Traffic Enforcement	Prohibit Searches and Questioning During Traffic Stop Without Probable Cause
Berkeley PD	✓	✗	✗
Los Angeles PD	✓	✗	✗
San Francisco PD (watching)	✗	✓	✓
Brooklyn Center PD	✗	✗	✓
Lansing PD	✗	✓	✗
Minneapolis PD	✓	✓	✗
Philadelphia PD	✓	✓	✗
Pittsburgh PA PD	✗	✓	✗
St. Louis City PD (watching)	✓	✓	✓

✗ indicates there is not a policy addressing the issue; ✓ indicates there is a policy addressing the issue.

A primary and secondary traffic enforcement model is one of the more popular reform strategies adopted by several law enforcement agencies, including Lansing, Michigan; Minneapolis, Minnesota; and Pittsburgh, Pennsylvania. These policies direct that officers can only stop a person for a primary public safety violation and not solely for one of the listed secondary violations. In practice, each of these policies varies as to what is classified as a primary or secondary violation and what type of enforcement actions are appropriate for certain violations.³¹² Agencies such as Lansing³¹³ and Pittsburgh³¹⁴ largely prohibit all stops related to equipment violations. Others, such as Minneapolis,

312 For example, Lansing Police Department's secondary violations include: loud exhaust, inoperable license plate lamp, cracked taillights, cracked windshield, window tint, or dangling ornaments (obstructed window). By contrast, the Minneapolis Police Department officers may not initiate a traffic stop when the only suspected offense is expired registration, window obstruction, or inoperable license plate lights. See Lansing PD Guidelines for Traffic Stops, *supra* note 224; Minneapolis Police Dept. Policy and Procedure Manual, Traffic Stops No. 7-601 ("Minneapolis PD Traffic Stops Policy 7-601") (Oct. 8, 2021) pp. 444-45 <<https://www.minneapolismn.gov/media/-www-content-assets/documents/MPD-Policy-and-Procedure-Manual.pdf>> [as of Nov. 29, 2022]; *Reimagining Driver Safety Bill*, City Council of Philadelphia, Bill No. 210636 ("Philadelphia Bill Reimagining Driver Safety") (Oct. 2021); Deluca, *Pittsburgh councilman to introduce bill proven police from conducting certain traffic stops* (Nov. 2021) WPXI <<https://www.wpxi.com/news/top-stories/pittsburgh-councilman-introduce-bill-prevent-police-conducting-certain-traffic-stops/WDAIWIN7GZERTB67EMKFJ46TGA/>> [as of Nov. 29, 2022].

313 See Lansing PD Guidelines for Traffic Stops, *supra* note 224; Minneapolis PD Traffic Stops Policy 7-601, *supra* note 312, at pp. 444-45.

314 Philadelphia Bill Reimagining Driver Safety, *supra* note 312; Deluca, *supra* note 312.

allow officers to make stops for equipment violations, but only to provide the driver with a “Lights On” coupon to assist the driver in paying for the needed vehicle repair, rather than issuing a ticket.³¹⁵ Although the Minneapolis PD’s voucher program is promising, without prohibiting certain searches or questioning during a stop, there are still loopholes in the policies that may still allow for pretext stops. Other emerging models open up the possibility of completely removing these duties from law enforcement, which could be handled instead by a separate civilian traffic department.³¹⁶

In addition to tiered traffic enforcement models, other agencies have adopted policies that allow for officers to make traffic stops, but only if the infraction poses an imminent risk to public safety.³¹⁷

Some agencies, such as Berkeley PD and Philadelphia PD, specifically prescribe what stops are for the purposes of public safety, while the LAPD’s policy does not.³¹⁸ Philadelphia has a similar policy to Berkeley’s, but it is unique in that it requires officers to instead mail a warning or notice, thus reducing the footprint of policing and eliminating unnecessary contact between civilians and the police.³¹⁹

A third category of policies focuses on certain enforcement actions that are often taken during pretextual stops, like consent searches or probation inquiries, and reduces the incentives for making a traffic stop by forbidding an officer from searching or arresting someone, if the underlying basis of the stop is a traffic offense or misdemeanor. The City of Brooklyn Center, Minnesota,³²⁰ for example, passed an innovative resolution prohibiting “custodial arrests or searches of persons or vehicles, for any non-moving traffic infraction, non-felony offense, or non-felony warrant. . . .”³²¹

Other agencies, such as the city of St. Louis, Missouri, are considering policies similar to the SFPD. The Center for Policing Equity (CPE) issued a report with a number of recommendations for the city of St. Louis to address inequity in policing by banning the use of pretextual stops and prohibiting stops based on low-level violations (like obstructed windows, registration offenses, or pedestrian violations).³²²

CPE also recommended prohibiting officers from asking questions beyond the scope of the original

315 If the offense does not qualify for the voucher program, the officer can give a warning or ask that the car remain parked until it can be repaired. See Minneapolis PD Traffic Stops Policy 7-601, *supra* note 312, at pp. 444-45.

316 See, e.g., City of Philadelphia, Bill No. 140377, *Implementation of Driving Equality Policy* (“Philadelphia Implementation of Driving Equality”) (Jun. 2021) <<https://www.phila.gov/media/20211109145453/executive-order-2021-06.pdf>> [as of Nov. 29, 2022]; Philadelphia Bill Reimagining Driver Safety, *supra* note 312; Reimagining Public Safety/BerkDOT (May 2021) Task Force Meeting Agenda <<https://www.berkeleyside.org/wp-content/uploads/2021/05/Reimagining-5-19-BerkDOT.pdf>> [as of Nov. 29, 2022]; Oakland Reimagining Public Safety Task Force: Report and Recommendations (Apr. 2021) City of Oakland, p. 224 <<https://cao-94612.s3.amazonaws.com/documents/Oakland-RPSTF-Report-Final-4-29-21.pdf>> [as of Nov. 29, 2022].

317 See Berkeley Update on Implementation, *supra* note 275, at pp. 4-5; LAPD Limitation on Pretextual Stops, *supra* note 284, at p. 1; Philadelphia Implementation of Driving Equality, *supra* note 316.

318 See Philadelphia Implementation of Driving Equality, *supra* note 316; Berkeley Update on Implementation, *supra* note 275, at pp. 4-5; see also generally, Philadelphia Bill Reimagining Driver Safety, *supra* note 312.

319 See Philadelphia Implementation of Driving Equality, *supra* note 316; see also generally Philadelphia Bill Reimagining Driver Safety, *supra* note 312.

320 In April 2021, Daunte Wright was shot and killed during what could be characterized as a pretextual traffic stop for expired plates and an air freshener hanging from the window (obstructed window). The officer who shot him was convicted of manslaughter. In the wake of this killing, a month later the city of Brooklyn Center passed “The Daunte Wright and Kobe Dimock-Heisler Community Safety and Violence Prevention Resolution.” *What to Know About the Death of Daunte Wright* (Apr. 12, 2021) N.Y. Times <<https://www.nytimes.com/article/daunte-wright-death-minnesota.html>> [as of Nov. 29, 2022]; see also Daunte Wright and Kobe Dimock-Heisler Community Safety and Violence Prevention Act (“Wright and Dimock-Heisler Act”), City Council of the City of Brooklyn Center, Minn., Resolution 2021-73 (May 15, 2021).

321 See Wright and Dimock-Heisler Act, *supra* note 320, at p. 3.

322 *Reimagining Public Safety in the City of St. Louis: A Vision for Change* (Apr. 2022) Center for Policing Equity, p. 7 <https://policingequity.org/images/pdfs-doc/Reimagining_Public_Safety_in_St._Louis_Final_Report.pdf> [as of Nov. 29, 2022]. The Center for Policing Equity (CPE) is a national organization that applies evidence-based approaches with the goal of “protecting, empowering, and supporting vulnerable communities – particularly Black and Brown communities – to redesign their public safety systems. CPE provides decision-makers with data, stories, and relationships to facilitate change that’s bold, innovating, and lasting.” See Center for Policing Equity, *Who We Are* (2022) <<https://www.policingequity.org/about/who-we-are>> [as of Nov. 29, 2022].

reason for the stop unless the officer has reasonable suspicion of serious additional criminal activity.³²³ CPE argues these policy changes will promote procedural justice and reduce racial disparities in police stops.³²⁴

Many community advocacy groups believe that in order to truly address the significant disparities seen in high discretion stops and searches, such practices would need to be eliminated entirely.³²⁵

When agencies begin developing their own policies, communities should be a critical and necessary participant in discussions as to what types of changes are necessary to address the harms caused by these stops. Advocacy groups have been pushing for these changes for many years and continue to lead the way in creating innovative reforms. Partnership between the community and law enforcement agencies is key to creating policies that have the greatest impact at reducing racial and identity profiling while also meaningfully addressing community concerns.

These models contain key provisions other law enforcement agencies and municipalities may wish to explore when developing their own policies. Based on these models, the Board makes the following recommendations:

(1) The Board recommends agencies' policies should prescribe the specific types of prohibited stops and, thus, limit the discretion officers have to determine what can be characterized as a public safety stop.

(2) The Board recommends that the Legislature evaluate moving to a probable cause standard for stops³²⁶ that the RIPA data shows have a statistically significant disparate outcome with little benefit to public safety.

(3) Policies should prohibit specific types of enforcement actions traditionally allowed in the absence of probable cause or reasonable suspicion. Specifically, the Board believes that law enforcement policies should prohibit both consent searches and supervision searches, unless there are articulable facts establishing probable cause that a crime has been committed.

(4) The Board recommends that the Legislature prohibit asking an individual their probation, parole, or supervision status, unless there are articulable facts establishing probable cause that a crime has been committed.

1.13.2. District Attorneys' Offices

*Dr. Angela Davis explains, "[J]ust as the power and discretion of prosecutors have contributed to mass incarceration and racial disparities in the criminal justice system, that same power and discretion may be used to institute reforms to correct these injustices."*³²⁷

District attorneys are a critical piece of the puzzle to reduce law enforcement's role in traffic stops and refocus limited resources on evidence-based crime prevention strategies. By changing incentives, district attorneys have discretion and power to influence the way officers behave in the field. As a result, many prosecutors' offices are using data to identify disparities in policing practices and creating

323 See *Reimagining Public Safety in the City of St. Louis: A Vision for Change*, *supra* note 322, at p. 27.

324 See *ibid.*

325 See *ibid.*; PushLA Opposition to pretext stop policy revision, *supra* note 291, at pp. 4-6.

326 For example, a probation stop does not require law enforcement to suspect any criminal wrongdoing to stop someone. Similarly, a *Terry* stop and frisk only requires the officer to have a reasonable suspicion the person is armed. See *Terry v. Ohio* (1968) 392 U.S. 1. The Board's recommendation would require officers to have probable cause for all stops or searches

327 Fryer, *Race, Reform, & Progressive Prosecution* (2020) 110 J. Criminal L. & Criminology 769, 771 <<https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7681&context=jclc>> [as of Nov. 29, 2022] (citing Davis, *Reimagining Prosecution: A Growing Progressive Movement* (2019) 3 UCLA CRIM. JUST. L. REV. 1, 5).

policy directives to discourage practices that contribute to such disparities, such as prohibiting prosecutors from filing charges that stem from pretextual stops.

Under the Racial Justice Act, California prosecutors have a duty to ensure any conviction is not obtained on the basis of race, ethnicity, or national origin.³²⁸ Any bias towards the person charged, including by the arresting officer or attorneys, can result in a sentence or enhancement being overturned or even result in a mistrial.³²⁹ Under this law, many people accused of crimes have challenged their convictions, citing stop data to demonstrate that bias regarding the person's race, ethnicity or national origin played a role in their conviction.³³⁰ The RIPA data presents compelling evidence for prosecutors that pretextual stops and consent searches are sources of racial and identity disparities. Prosecutors are now taking measures to end pretextual stops and other high discretion enforcement tactics, like consent searches, to address these known discriminatory practices. Here, the Board highlights a few such policies as examples of directives district attorneys can consider implementing in partnership with local community organizations and stakeholders.

Los Angeles District Attorney (L.A. District Attorney): In 2020, the L.A. District Attorney issued special directives identifying specific misdemeanor charges, such as trespass, that have minimal effects on public safety.³³¹ The goal of the policy is to improve public safety by saving resources and redirecting issues that are not criminal in nature from the criminal legal system to another more appropriate agency, thus reducing the overall footprint of the criminal legal system in traffic enforcement.³³² The L.A. District Attorney's policies broadly address misdemeanor convictions, such as declining to file charges on loitering offenses and, more specifically, addresses charges that can stem from pretextual stops. Further, the policies identify "quality of life offenses" that would be better suited for agencies with expertise in working with individuals affected by mental health disabilities, those who are unhoused, or drug misuse.³³³

One of the driving forces for this policy change is data analysis showing misdemeanor cases disproportionately affect those with disabilities. In Los Angeles County, 47 percent of those in custody for misdemeanor cases have a mental health disability and 60 percent of those released each day have substantial substance use disorders.³³⁴ Those who are unhoused account for 20 percent of arrests in the county but only represent 1.7 percent of the overall county population.³³⁵ The policy also notes that misdemeanor convictions, such as driving on a suspended license, can have serious disparate impacts based on someone's immigration status.³³⁶

The policy explains that in order to best serve the interests of public safety, people in need of services or treatment should be helped by treatment providers in the community rather than funneled into the criminal legal system, thus freeing prosecutors to focus their limited time and resources on the most serious criminal cases.³³⁷

328 Cal. Pen. Code, § 745, subd. (a).

329 Cal. Pen. Code, §§ 745, subd. (a)(1), (e)(2).

330 In challenging the conviction, "evidence may be presented by either party, including, but not limited to, statistical evidence, aggregate data, expert testimony, and the sworn testimony of witnesses." Cal. Pen. Code, § 745, subd. (c) (1). See also *Young v. Superior Court* (May 2022) 79 Cal. App. 5th 138.

331 See L.A. District Attorney's Off., Special Directive: Misdemeanor Case Management (Dec. 2020), p. 1.

332 See *ibid.*

333 Misdemeanor charges will be declined or dismissed in the following types of cases, unless a specific exception enumerated in the policy applies: trespass, disturbing the peace, driving without a license, driving on a suspended license, criminal threats, drug and paraphernalia possession, minor in possession of alcohol, drinking in public, under the influence of a controlled substance, public intoxication, loitering, loitering to commit prostitution, and certain types of misdemeanor resisting arrest. See *id.* at pp. 2-4.

334 See *id.* at p. 1.

335 See *ibid.*

336 See *ibid.*

337 See *id.* at pp. 1-2.

San Francisco District Attorney (S.F. District Attorney): In 2020, the S.F. District Attorney created a groundbreaking policy to address racial and identity profiling by declining to file contraband charges that resulted from pretextual stops. The policy is “intended to discourage the use of traffic laws as a pretext to stop and search people of color based on implicit or express bias.”³³⁸ The policy establishes a presumption against filing charges based on possession of contraband if (1) the search stems from an infraction-related stop, such as a broken taillight, and (2) there is no other legal justification for the search, such as contraband seen in plain view.³³⁹

The policy further includes declining to file charges for “consent only” searches, citing “long-standing and documented racial and ethnic disparities in law enforcement request for consent to search.”³⁴⁰ Additionally, the District Attorney will not file contraband-related charges stemming from any detention for an infraction, such as a traffic ticket, that is prolonged based on a subsequent supervision inquiry or search.³⁴¹ This directive applies specifically to infraction-related stops and post stop searches where there is “no other articulable suspicion of criminal activity,” and to any possession-related charges that may result from the stop or search.³⁴²

Based on the numerous studies cited above, the use of this enforcement tactic causes great harm to individuals and communities in relation to the minimal yield rate associated with this invasive law enforcement tactic, has a negative effect on building necessary trust with affected communities, and has hindered the effective prosecution of criminal cases. – SFDA Policy Directive, p. 5, see footnote 338

In 2020, the San Francisco Police Department conducted its own analysis of the RIPA stop data and found that Black individuals were stopped at almost 5 times the rate of White individuals, despite making up a smaller percentage of the city’s population. The analysis also found that, among those stopped, those perceived as Black were searched at 2.9 times the rate of those perceived to be White, yet had lower yield rates of contraband when searched.³⁴³

In addition to SFPD’s analysis, the S.F. District Attorney’s policy reviewed nearly 20 years of reporting showing sharp disparities in stops and searches during pretext traffic infraction stops.³⁴⁴ The policy explains that numerous studies have shown that pretext stops are not an effective crime prevention strategy and cause significant harms to targeted communities.³⁴⁵ The S.F. District Attorney’s policy targets the types of enforcement action, such as consensual search stemming from a traffic violation, and establishes a presumption that a charging district attorney will not pursue charges from those stops.³⁴⁶

Emerging National Models and Trends: District attorneys throughout the country are also developing policies to reduce or eliminate pretextual stops and searches. Although agencies are taking different

338 See S.F. District Attorney’s Off., Policy Directive: Declination of Contraband Charges Based on Pretextual Stops (2020), p. 2 <<https://sfdistrictattorney.org/wp-content/uploads/2020/11/Declination-of-Contraband-Charges-Based-on-Pretextual-Stops.pdf>> [as of Nov. 29, 2022].

339 See *id.* at p. 1.

340 See *ibid.*

341 See *ibid.*

342 The policy does not prevent prosecution for non-possessionary crimes (such as a DUI) nor is it meant to discourage enforcement of traffic offenses. See *id.* at p. 2.

343 See *id.* at p. 4.

344 For example, in 2002, the ACLU issued a report analyzing San Francisco’s stop data, and found that Black motorists were twice as likely to be asked for consent to search and 3.3 times more likely to be searched than White motorists during a traffic stop. Hispanic/Latine(x) drivers were 2.6 more likely times to be searched during a traffic stop. Years later, the trend persisted. In 2016, researchers found that Black and Hispanic/Latine(x) drivers in the city of San Francisco were significantly more likely to be searched in a traffic stop than any other racial or ethnic group. In another report issued that year by the U.S. Department of Justice, researchers noted across the country that Black and Hispanic/Latine(x) drivers were less likely to be found with contraband but “Black people were 24% more likely to be stopped for a traffic violation than their estimated population in the driving community and 9% more likely than their estimated population among potential traffic violators.” See *ibid.*

345 See *id.* at p. 5.

346 See *id.* at p. 1.

approaches, there are some emerging models, namely: (1) preventing deputy district attorneys from filing possession of contraband charges stemming from an infraction-related stop; (2) preventing deputy district attorneys from filing charges stemming from certain types of searches, including consent and probation searches; (3) requiring deputies to apply heightened scrutiny to any case arising from an infraction-related stop; and (4) declining to file charges for specific violations. The below chart shows how different agencies are addressing pretextual stops in their charging policies.

DA POLICIES REGARDING PRETEXT STOPS	Prohibits Filing Possession of Contraband Charges Stemming from an Infraction-Related Stop	Prohibits Certain Searches, such as Consent	Requires Heightened Scrutiny of Any Case Arising from Infraction-Related Stops	Will Not file Specific Charges
Los Angeles DA	x	x	x	✓
San Francisco DA	✓	✓	✓	✓
Chittenden Co. Vermont	✓	✓	x	x
Ingham Co. Michigan	✓	✓	x	x
Ramsey Co. Minnesota	✓	✓	✓	✓
Washtenaw Co. Michigan	✓	✓	x	✓

x indicates there is not a policy addressing the issue; ✓ indicates there is a policy addressing the issue.

Counties such as Washtenaw County (Ann Arbor, Michigan), Ramsey County (Minneapolis, Minnesota), and Ingham County (Lansing, Michigan) have all issued directives similar to the San Francisco model preventing deputies from filing a charge for possession of contraband stemming from a search during a non-public safety traffic encounter.³⁴⁷ Additionally, many of these counties' policies specifically state that deputies will not file charges that stem from consensual searches.³⁴⁸

Other policies take a broader approach and leave more discretion to the deputy district attorneys to determine whether to file a charge. Chittenden County (Burlington, Vermont) deputies are instructed to preemptively decline to file charges stemming from a non-public safety stop; even in cases of a public safety stop, the office will look closely to determine if the stop was pretextual in nature.³⁴⁹ Though

347 See Washtenaw County Off. of the Prosecuting Atty., Policy Directive 2021-09: Policy Regarding Pretext Stops ("Washtenaw Policy Regarding Pretext Stops") p. 3 <<https://www.washtenaw.org/DocumentCenter/View/19235/Pretext-Stops-Policy>> [as of Nov. 29, 2022]; Off. of the Ramsey County District Attorney, *Charging Policy Regarding Non-Public Safety Traffic Stops* ("Ramsey County Charging Policy for Non-Safety Traffic Stops") (Sept. 2021), p. 2; Ingham County Prosecutor's Off., Policy Regarding Heightened Scrutiny of Traffic Stops and Automobile Searches ("Ingham County Policy for Heightened Scrutiny of Traffic Stops") (July 2021), p. 4 <https://eastlansinginfo.news/wp-content/uploads/2021/07/Heightened-Scrutiny-of-Traffic-Stops.Final_.7.26.21-1-1.pdf> [as of Nov. 29, 2022].

348 See Washtenaw Policy Regarding Pretext Stops, *supra* note 347, at p. 3; Ramsey County Charging Policy for Non-Safety Traffic Stops, *supra* note 347, at p. 2; Ingham County Policy for Heightened Scrutiny of Traffic Stops, *supra* note 347, at p. 4; Off. of the Chittenden County State's Atty., Non-Public Safety Stop Policy (Dec. 2021), p. 4 <<https://s3.documentcloud.org/documents/21177955/sarah-george-memo.pdf>> [as of Nov. 29, 2022].

349 See Chittenden County Non-Public Safety Stop Policy, *supra* note 348, at pp. 1, 4-5.

prohibiting the prosecution of certain charges or traffic infractions can be beneficial to the community, nonetheless these new policies raise some concerns. An officer may still be able to stop someone pretextually, and if the stop uncovers a misdemeanor offense, the person may still be prosecuted. Although this is a step in the right direction, there are additional measures agencies and legislatures should consider.

Similar to some of the law enforcement agency policies already discussed, many of the district attorneys define stops for the purpose of public safety and limit deputies to filing charges only when a stop meets this definition.³⁵⁰

Many of these policies contain several core components the Board recommends that District Attorneys consider when developing strategies to address pretextual stops, namely:

- (1) Declining to file charges that stem from a pretextual stop or search.
- (2) Creating policies that direct deputy district attorneys to decline to file possessory charges based on a search that occurred during a traffic encounter or misdemeanor offense, such as a consent or probation search.
- (3) Developing directives that clearly prescribe the types of stops that are restricted or prohibited, such as obstructed window or expired registration.

The Board encourages district attorneys to review their own data for charges that may be a source of disparities and work with community members to develop solutions. By creating policies to end pretextual stops, they may greatly reduce law enforcement's incentives to conduct them. Such directives can help end harmful pretextual practices that punish people whose offenses stem from unmet social needs, such as lack of adequate housing, and do not undermine public safety.

1.13.3. State Legislatures

State legislatures are taking varied measures to reduce or eliminate the practice of high discretion stops, searches, and pretextual stops by identifying violations that show high racial disparities in stop data and are not public safety related.³⁵¹ Similar to the law enforcement policies reviewed above, states are also adopting laws to establish primary- and secondary-tiered traffic enforcement models, meaning officers can only stop a person for a primary public safety violation and not solely for one of the listed secondary violations; these new laws would prevent an officer from stopping someone or issuing a citation for specified secondary offenses, unless there is another legal cause to stop the person.³⁵² Other states are taking the approach of eliminating certain types of enforcement tactics, such

350 For example, the Ramsey County policy specifies that non-public traffic safety stops include violations for: expired vehicle registration, improper illumination of license plates, muffler noise violations, window obstruction, window tint, and certain vehicle lighting violations. Ramsey County Charging Policy for Non-Safety Traffic Stops, *supra* note 347, at p. 2. Ingham County defines non-public safety as “common infractions that do not typically pose an actual danger to a person, property, or the general public [and] include: window tint, expired registration, a single defective tail light, failing to stop leaving a private drive, driving in the left lane, some defective equipment infractions, and driving while license suspended.” Ingham County Policy for Heightened Scrutiny of Traffic Stops, *supra* note 347, at p. 3.

351 For example, “During the 2020 Special Session, Virginia passed new legislation that eliminates many of the most commonly used pretexts, which police use to conduct investigations of “hunches” for which they have no evidence. Those “hunches” are often driven by implicit if not explicit racial bias, leading to dramatic racial disparities in traffic and pedestrian encounters.” *Success Story: Many Policing ‘Pretexts’ Eliminated in Virginia* (2021) Justice Forward Va. <<https://justiceforwardva.com/pretextual-policing>> [as of Nov. 29, 2022]. See, e.g., H 5058, Va. Acts of Assembly (2020 Special Sess.) <<https://static1.squarespace.com/static/58afc5861b631bb7fa6729f6/t/609325f4e3157f0a949d8c45/1620256244752/legp604.exe-14.pdf>; <https://acluva.org/en/know-your-rights/police?msclkid=a3559f6cb9c411ec9d06ca64814e29c4>> [as of Nov. 29, 2021]

352 See, e.g., Or. Sen. Bill No. 1510 (2022 Reg. Sess.); Vt. House Act 635 (2022); H 5058, Va. Acts of Assembly (2020 Special Sess.), *supra* note 351; see also Conn. Police Transparency & Accountability Task Force: Final Report (Jan. 2022) pp. 48-49 <PDF Connecticut Police Transparency & Accountability Task Force: Final Report> [as of Nov. 29, 2022].

as consent searches or probation inquiries.³⁵³ A third group of states are targeting and removing specific charges in response to data demonstrating the charges resulted in disparate treatment of individuals.³⁵⁴ The table below shows state laws enacted throughout the country to end or limit pretextual stops.

STATE LIMITS ON PRETEXT STOPS	Primary and Secondary Traffic Enforcement	Prohibit Searches and Questioning During Traffic Stop	Eliminate Certain Charges (Loitering or Drug possession)
California	✗	✗	✓(L)(P)
Connecticut (proposal)	✓	✓	✗
New York	✗	✗	✓(L)
Oregon	✓	✗	✓(D)
Vermont	✓	✗	✗
Virginia	✓	✗	✗

✗ indicates there is not a policy addressing the issue; ✓ indicates there is a policy addressing the issue; L indicates eliminating loitering charges; P indicates eliminating certain pedestrian offenses, and D indicates policies eliminating drug possession.

Here, the Board highlights several laws and policy trends throughout the nation that may serve as helpful examples when considering what legislative changes could be implemented to improve policing in California. In July 2021, the state of Virginia passed a groundbreaking law to curtail pretext stops and searches.³⁵⁵ Virginia’s law has been a model for similar laws around the country. The law develops a primary- and secondary-tiered traffic enforcement system like many of the law enforcement policies

353 See Conn. Gen. Stats. §§ 54-33b, 54-33o. Advocates in other parts of the country are pushing for similar changes in upcoming legislative sessions. For example, “Justice Forward Virginia will continue to make ending pretextual policing a priority. In particular, we will seek to prohibit requests for consent searches after traffic stops, and potentially prohibit warrant checks, as well. Eliminating the two most common objectives of a pretextual stop will make traffic enforcement about traffic enforcement again, and the safety of motorists, rather than an opportunity for evidence-free harassment of Black and Brown motorists.” *Success Story: Many Policing ‘Pretexts’ Eliminated in Virginia*, *supra* note 351.

354 Or. Measure 110 Drug Decriminalization and Addiction Treatment Initiative (2020); N.Y., Sen. Bill 1351 (2021-2022 Reg. Session); Sen. Bill No. 357 (2021-2022 Reg. Sess.); Assemb. Bill No. 2147 (2021-2022 Reg. Sess.).

355 The Virginia law provides that “no law-enforcement officer may lawfully stop a motor vehicle for operating (i) without a light illuminating a license plate, (ii) with defective and unsafe equipment, (iii) without brake lights or a high mount stop light, (iv) without an exhaust system that prevents excessive or unusual levels of noise, (v) with certain sun-shading materials and tinting films, and (vi) with certain objects suspended in the vehicle. No evidence discovered or obtained as a result of such unlawful stop shall be admissible in any trial, hearing, or other proceeding.” See generally H 5058, Va. Acts of Assembly (2020 Special Sess.), *supra* note 351.

reviewed above.³⁵⁶ By 2022, Vermont³⁵⁷ and Oregon³⁵⁸ adopted similar tiered enforcement models, but each state defined a primary or public safety violation differently. States such as Connecticut³⁵⁹ and New York³⁶⁰ have also considered similar legislation.

Since Virginia enacted these laws, traffic stops declined by 7.5% and stops that resulted in a search declined from 3.8% to 2.4%.³⁶¹ Despite the reduction in stops, there is evidence indicating the racial disparities is similar for stops but searches of Black drivers decreased from 5.2% to 2.8%.³⁶² While advocacy organizations in Virginia have applauded the efforts to limit pretextual stops, they also encourage leaders to push further and also prohibit consent searches during traffic stops, create a civilian traffic enforcement agency, and identify over-enforced misdemeanors.³⁶³

In addition, several states have limited certain practices that are associated with pretextual stops, such as consent searches or probation inquiries. Connecticut, for example, prohibits officers from requesting consent to search a vehicle stopped for a motor vehicle violation.³⁶⁴ Others have taken the approach of decriminalizing certain offenses, such as drug offenses or loitering. For example, Oregon's laws address both the practice of pretext stops and the incentives for making those stops by decriminalizing drug offenses.³⁶⁵ Because of these reforms, thousands of people avoid entering the criminal legal system and all of the consequent harms that can affect people for life (e.g., trouble finding a job and other barriers to re-entry).³⁶⁶ The program directs funds – from the tax increase that accompanied the legislation – to evidence-based crime prevention strategies, such as funding community-based organizations that provide harm reduction services, peer support specialists, and housing.³⁶⁷

356 The law defines secondary infractions to include window tints, dangling objects, expired registration, loud exhaust, jaywalking, marijuana odor, or defective equipment such as lights out. See H 5058, Va. Acts of Assembly (2020 Special Sess.), *supra* note 351.

357 The traffic violations include: failure to carry registration, failure to display registration or display unobstructed license numbers, operating with a learner's permit, obstructed windshield, headlights and certain lighting violations, and seat belts. The pedestrian violations include: not crossing at control signals, pedestrians on roadways, pedestrians misusing the crosswalk, panhandling or highway solicitations, and duties of pedestrians generally. See Vt. House Bill No. 635 (2022).

358 The law includes stops for operating a vehicle without required lighting equipment such as headlights, taillights, and break lights as long as one corresponding light is in compliance. See Or. Sen. Bill No. 1510 (2022 Reg. Sess.).

359 A secondary traffic violation may include stops for violations regarding window tints, display-of-plate, certain vehicle lighting, obstructed windshield, vehicle licensing (such as expired registration), driving without a license, and some equipment violations. See Conn. Police Transparency & Accountability Task Force: Final Report, *supra* note 352, at pp. 58-66.

360 The law narrowly prohibits traffic stops for obstructed windshield or obstructed view unless there is reasonable cause to believe the person has committed another vehicle code violation. See N.Y. Assemb. Bill No. 7599 (2021-2022 Reg. Sess.).

361 Oliver, *Virginia's traffic stops decline, but disparities persist* (Oct. 2022) Axios <<https://www.axios.com/local/richmond/2022/10/12/virginia-traffic-stops-disparities>> [as of Nov. 29, 2022].

362 *Ibid.*

363 See *Success Story: Many Policing 'Pretexts' Eliminated in Virginia*, *supra* note 351.

364 See Conn. Gen. Stats. §§ 54-33b, 54-33o ("The consent of a person given to a law enforcement official to conduct a search of such person shall not, absent the existence of probable cause, constitute justification for such law enforcement official to conduct such search").

365 "Such legislation also affects departmental incentives to conduct pretextual stops and militarize police personnel and divisions. With the diminished capacity and incentive to pursue drug possession arrests, police can redirect resources toward crimes with victims, crime prevention, and public safety." Brown, *Decriminalization as Police Reform* (Sept. 2022) Reason Foundation and Ohio State U. Drug Enforcement and Policy Center, p. 34 <<https://reason.org/wp-content/uploads/drug-decriminalization-impacts-policing.pdf>> [as of Nov. 29, 2022]. See generally *Drug Decriminalization in Oregon, One Year Later: Thousands of Lives Not Ruined by Possession Arrests, \$300 Million+ in Funding for Services* (Nov. 2021) Drug Policy Alliance <<https://drugpolicy.org/press-release/2021/11/drug-decriminalization-oregon-one-year-later-thousands-lives-not-ruined>> [as of Nov. 29, 2022].

366 See *Drug Decriminalization in Oregon, One Year Later: Thousands of Lives Not Ruined by Possession Arrests, \$300 Million+ in Funding for Services*, *supra* note 365.

367 See *ibid.*

In an effort to prevent racial and identity profiling and limit pretextual stops, New York³⁶⁸ and California³⁶⁹ have also decriminalized charges related to loitering.³⁷⁰ In 2020, New York repealed its anti-loitering statutes, known as the “Walking While Trans” ban.³⁷¹ In 2022, California passed the Safer Streets for All Act in an effort to address pretextual stops, predominantly of Black and Latine(x) LGBTQ+ community members, by removing from the Penal Code the law criminalizing loitering to engage in sex work.³⁷²

*Miguel Bustos, Senior Director of GLIDE’s Center for Social Justice, said, “Many GLIDE clients have been harmed by racially-biased pretext stops and repeated harassment. Pretext stops further alienate some of our most marginalized neighbors and make them feel as though they are not welcome in their own community. These negative interactions perpetrate physical, psychological, and financial harm; they inflict and reinforce trauma on our community, particularly communities of color.”*³⁷³

In 2022 California also passed the “Freedom to Walk Act,” which decriminalizes most pedestrian roadway violations, such as crossing outside of a designated intersection.³⁷⁴ Data prior to the act passing shows that in 2021, officers from reporting agencies performed 2,721 searches during stops for pedestrian roadway violations (19,929 stops in total). Among these searches, 318 were consent only, while 326 were supervision only. These types of searches – which the Board has recommended that agencies eliminate – leave broad discretion to officers. Pedestrian roadway stops involved a total of 161 incidents where officers indicated that they used force against the individual stopped. Stops for pedestrian roadway violations resulted in the issuance of 4,585 citations. The total amount of time officers reported spending on pedestrian roadway stops was approximately 5,551 hours, with 2,531 of these hours spent on stops that resulted in either a warning or no action.³⁷⁵ The Board hopes to monitor the data in future reports to examine any reduction in disparities and to see if these outcomes could be avoided in the future.

*Two Orange County Sheriff’s Deputies are heard on dash-cam video debating whether to stop Mr. Reinhold, a Black man, for an infraction. A deputy is heard saying, “Don’t make case law,” suggesting there may not be probable cause to initiate the stop. The deputies ask Reinhold if he’s going to stop, or “Are we gonna make you stop?” When Reinhold asks why he’s being stopped, a deputy replies “for jaywalking.” The scene escalates as the deputies try to grab Reinhold’s backpack to force him to the ground and a struggle ensues. Eventually, one of the officers yells, “He’s got my gun!” and Mr. Reinhold was shot and killed by the deputies.”*³⁷⁶

368 See Diaz, *New York Repeals ‘Walking While Trans’ Law* (Feb. 2021) NPR <<https://www.npr.org/2021/02/03/963513022/new-york-repeals-walking-while-trans-law?msclkid=9ababd9cbaae11eca704261ccccab707>> [as of Nov. 29, 2022].

369 See Sen. Bill No. 357 (2021-2022 Reg. Sess.).

370 See Diaz, *supra* note 368; Sen. Bill No. 357, *supra* note 369.

371 See Diaz, *supra* note 368.

372 See Sen. Bill No. 357 (2021-2022 Reg. Sess.).

373 *Coalition of 60 Civil Rights, Traffic Safety, and Community Groups Urging S.F. Police Commission to End Racially-Biased Pretext Stops* (May 2022) Off. of the Public Defender S.F. <<https://sfpublicdefender.org/news/2022/05/coalition-of-60-civil-rights-traffic-safety-and-community-groups-urging-san-francisco-police-commission-to-end-racially-biased-pretext-stops/>> [as of Nov. 29, 2022].

374 See Assemb. Bill No. 2147 (2021-2022 Reg. Sess.).

375 This sum of stop durations excludes any single observed stop durations over six hours long (123 of the reported 19,929 stops) because a high proportion of these stops lasting six hours or more are suspected to have stop durations that were entered in error.

376 Bellware, *supra* note 172.

These new laws rely on a variety of approaches to end pretextual stops. The Board recommends several considerations for the California legislature to review when evaluating potential state policy reforms:

- (1) Consider various measures, including prohibiting consent searches or creating primary and secondary traffic enforcement systems, and how they might reduce disparities and inequitable enforcement of laws.
- (2) Consider addressing pretextual stops beyond just traffic violations, such as pedestrian-related stops (for example, policies that address stop-and-frisk, such as in the State of New York).
- (3) Consider creating a package of reforms to address and end pretextual stops that includes decriminalization as a core component.

1.14. Reimagining Traffic Enforcement

Piecemeal constitutional and statutory interventions are insufficient to address these systemic problems, which necessitate structural police reform and require a fundamental rethinking of the role of police in the traffic space. – Jordan Woods, Stanford Law Review, “Traffic Without Police”³⁷⁷

Some municipalities are considering entirely novel approaches to traffic enforcement to not only eliminate pretextual stops but also improve public safety. Both the inequities in traffic enforcement and the lack of efficacy in locating contraband raise questions about whether municipalities should continue allocating police resources to traffic enforcement or should instead study ways those resources could be better used.³⁷⁸ For example, one study of LAPD stops and arrests data showed law enforcement spends a substantial amount of time on traffic violations; from January through September 2019, the department spent 300,748 hours on pedestrian and traffic stops.³⁷⁹ The study also found “[b]lack individuals are 5 times more likely to be stopped and nearly 9 times more likely to be arrested for traffic violations than White individuals,” yet White drivers are more likely to be found with contraband.³⁸⁰

Leaders should consider how they could eliminate unnecessary contacts with law enforcement and, by extension, the criminal legal system. There are several key issues municipalities may wish to focus on when considering strategies to reduce the footprint of policing, including: (1) limiting the use of fines and fees for traffic violations to reduce the collateral effect of some pretextual stops; and (2) creating a traffic program that involves unarmed civilians rather than law enforcement.

1.14.1. Limiting Traffic Fines and Fees

The Board is interested in further exploring how fines and fees disproportionately affect lower-income Black and Hispanic/Latine(x) individuals.³⁸¹ For example, if someone cannot afford to fix a broken taillight and they receive a ticket, the cost of the ticket compounds with the financial cost of repairing the light.³⁸² California has some of the highest traffic citation fines in the country, resulting in drivers

³⁷⁷ See Woods, *supra* note 179, at p. 1471.

³⁷⁸ See *Reimagining Traffic Safety & Bold Political Leadership in Los Angeles*, *supra* note 273.

³⁷⁹ See *ibid.*

³⁸⁰ See *ibid.*

³⁸¹ See *Redesigning Public Safety: Traffic Safety Recommendations* (2022) Center for Policing Equity <<https://policingequity.org/images/pdfs-doc/RPS-ShortForm-TrafficSafety-Final.pdf>> [as of Nov. 29, 2022]; see also *Reimagining Community Safety in California*, *supra* note 194, at p. 27.

³⁸² One report highlights and explains this issue of compounding fees and fines. “A base fine for speeding, for example, can amount to \$100. On top of that, numerous fees and penalties are added—to fund a variety of government services and projects—that increase the actual citation costs to nearly \$500. If a person gets sick, cannot miss work, or is unable to make it to court for another reason, an added \$300 civil assessment may be imposed to bring the total cost to over \$800. And, on top of that, the person’s driver’s license can be suspended until all of the fines and fees are paid.” *Reimagining Community Safety in California*, *supra* note 194, at pp. 27-28 (citing *Fines, Fees, and the Poverty Penalty, Fair and Just Prosecution* (2017) SPUR <https://www.spur.org/sites/default/files/2021-06/SPUR_More

paying billions of dollars yearly in fines.³⁸³ In Los Angeles, tickets can cost \$500 dollars or more, creating financial challenges and, in some cases, impeding individuals' ability to make necessary vehicle repairs.³⁸⁴ Instead, agencies should consider ways to support community members in correcting those violations, such as voucher programs. Such programs have been shown to improve public safety while addressing the inequitable impacts of fines and fees.³⁸⁵

Another important reason to reduce fines and fees is to eliminate any financial conflict of interest with respect to law enforcement and traffic revenues.³⁸⁶ These financial interests unfortunately led some communities to “essentially repurpose armed officers as revenue agents searching for infractions largely unrelated to public safety.”³⁸⁷

The Board encourages both the Legislature and municipalities to consider reducing fines and fees. The Board recommends that jurisdictions instead consider policies and programs that assist a person in making needed vehicle repairs, such as the voucher program in Minneapolis, Minnesota, discussed above.³⁸⁸

1.14.2. Civilian Enforcement Models

One approach municipalities are taking to eliminate pretextual stops is the creation of a traffic enforcement program made up of civilians instead of armed officers. The purpose of removing officers from certain types of traffic enforcement is twofold: to increase public safety by having officers focus their skills and resources on serious criminal activity and to reduce unnecessary interactions between the public and the police.

In a Stanford Law Review article, *Traffic Without the Police*, Associate Professor Jordan Woods outlines several considerations agencies may wish to implement in developing a civilian traffic enforcement program: (1) the traffic department should operate independently of the police department and should not conduct any criminal investigations;³⁸⁹ (2) the traffic monitors should not be armed and should only have the authority to issue a traffic ticket;³⁹⁰ and (3) in the event there is a suspected criminal violation, traffic enforcement can radio for police to request assistance (which may also occur if a parking attendant locates a stolen vehicle).³⁹¹ There are several cities in California and nationally that have started developing policies to create a civilian traffic department. In California, because of how ‘traffic officers’ are defined in the law, cities are also petitioning the Legislature to amend the vehicle code to allow municipalities more flexibility in creating traffic departments.³⁹² These developing models may

Harm Than Good 0.pdf> [as of Nov. 29, 2022]]. See *Redesigning Public Safety: Traffic Safety Recommendations*, *supra* note 381.

383 See *Hidden Fees* (Mar. 2022) Debt Free Justice Cal., p. 6 <https://lccrsf.org/wp-content/uploads/2022/03/Civil-Assessments-Issue-Brief_v3.pdf> [as of Nov. 29, 2022] (citing *Paying more for Being Poor: Bias and Disparity in California's Traffic Court System* (2017) Lawyers' Com. for Civil Rights of the S.F. Area <<https://lccrsf.org/wp-content/uploads/LCCR-Re-port-Paying-More-for-Being-Poor-May-2017-5.4.17.pdf>> [as of Nov. 29, 2022]); see also Lewis, *State Lifts Suspensions on Half a Million Driver's Licenses* (Jan. 2021) CALMATTERS <<https://calmatters.org/justice/2021/01/california-drivers-licenses-traffic-ticket/>> [as of Nov. 29, 2022].

384 See *Reimagining Traffic Safety & Bold Political Leadership in Los Angeles*, *supra* note 273.

385 See *Redesigning Public Safety: Traffic Safety Recommendations*, *supra* note 381, at pp. 1-3.

386 As early as the 1910's, law enforcement agencies found “taking on traffic meant they could hire officers and expand their investigative powers.” In the 1920's, the Los Angeles Police Department's traffic division was entirely funded by fines and fees. Several studies reviewing traffic-ticketing practices found ticketing increases when municipalities are struggling financially. See McIntire and Keller, *supra* note 273; see also *Redesigning Public Safety: Traffic Safety Recommendations*, *supra* note 381, at p. 2.

387 See McIntire and Keller, *supra* note 273; see also Investigation of the Ferguson Police Dept. (Mar. 2015) U.S. Dept. of Justice Civil Rights Div., p. 2 <https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf> [as of Nov. 29, 2022].

388 Minneapolis PD Traffic Stops Policy 7-601, *supra* note 312, at pp. 444-446.

389 See Woods, *supra* note 179, at p. 1495.

390 See *ibid.*

391 See *id.* at p. 1496.

392 Reimagining Public Safety Task Force Special Meeting (May 2021) City of Berkeley, p. 57 <<https://berkeleyca.gov/>

serve as a starting point for other jurisdictions considering their own traffic departments.

Berkeley, Oakland, and Los Angeles are all developing traffic safety departments that will absorb some of the responsibilities of police departments. In Berkeley, the new program known as BerkDOT will include an unarmed traffic unit, crossing guards, parking enforcement, paving, collision investigations, and traffic control.³⁹³ In Oakland, OakDOT will focus on places with high collision rates, while police officers will focus on high-risk traffic violations and serious crimes. The early steps of this transition included transferring resources and duties such as crossing guards, towing, and special event traffic support to OakDOT.³⁹⁴ Los Angeles is also conducting a study to explore “alternative models that do not rely on armed officers to conduct traffic enforcement, moving violations and vehicle code enforcement, DUI details, traffic collision reporting and investigation, fare enforcement, bandit cab enforcement, and other programmatic areas.”³⁹⁵

As these policies developed, these cities began to put into practice what the community has long advocated for—that law enforcement should not play a significant role in traffic enforcement if they want to eliminate racial and identity profiling. In fact, studies show reprioritizing traffic stops has positive public health benefits by reducing fatal vehicle collisions and racial disparities.³⁹⁶

Similarly, the Oakland Police Department acknowledged that the policy of reducing traffic stops for minor violations was not enough to meaningfully reduce the disparities seen in their stop data.³⁹⁷ In Oakland, the task force working on these recommendations explained that it is not an efficient use of resources to have police officers enforce traffic laws and make stops for non-violent infractions, which do not require a response by an armed officer. The city hopes this change will allow the police department to save additional funds in the budget that could be reallocated to implementing other recommendations to improve policing and reduce crime in the city.³⁹⁸

Other cities such as Minneapolis³⁹⁹ and Brooklyn Center⁴⁰⁰ in Minnesota have also created civilian traffic enforcement departments with the same goal of increasing public safety by focusing on problem solving to address traffic safety concerns.⁴⁰¹ Brooklyn Center’s policy asserts that alternative responses to traffic stops allow officers to focus their “time, training and expertise on serious threats to the

[sites/default/files/legislative-body-meeting-agendas/Reimagining-Public-Safety-Task-Force-5-19-Meeting-Packet-\(rev\).pdf](#)> [as of Nov. 29, 2022]; see also Cal. Veh. Code, § 21100.

393 Another measure Berkeley is exploring is the use of automated speed cameras and ways to target areas with high risks (like school zones). The city will consult with the community on the appropriate deployment of these license plate readers to ensure equitable enforcement. The city has allocated \$175K for research, development, and community engagement to create the BerkDOT program. *Reimagining Public Safety/BerkDOT*, *supra* note 316, at p. 57.

394 See Oakland Reimagining Public Safety Task Force: Report and Recommendations, *supra* note 316, at p. 224.

395 See L.A. Motion 20-0875 (2021) Ad Hoc Police Reform, p. 2 <https://clkrep.lacity.org/online/docs/2020/20-0875_mot_06-30-2020.pdf> [as of Nov. 29, 2022].

396 See Response and Recommendations to NICJR Report (Mar. 2022) Reimagining Public Safety Berkeley Task Force, pp. 86-87 <<https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/RPSTF%20Agenda%20Packet-%20February%2010%202022.pdf>> [as of Nov. 29, 2022] (citing Conner, *Traffic Justice: Achieving Effective and Equitable Traffic Enforcement in the Age of Vision Zero* (2017) 44 Fordham Urban L.J. 969 <<https://ir.lawnet.fordham.edu/ulj/vol44/iss4/2/>> [as of Nov. 29, 2022]; Donnell et al., *Self-Enforcing Roadways: A Guidance Report* (Jan. 2018) U.S. Federal Highway Admin., No. FHWA-HRT-17-098 <<https://www.fhwa.dot.gov/publications/research/safety/17098/17098.pdf>> [as of Nov. 29, 2022]).

397 See Oakland Reimagining Public Safety Task Force: Report and Recommendations, *supra* note 316, at pp. 44-45, 224; see also generally Woods, *supra* note 179.

398 See Oakland Reimagining Public Safety Task Force: Report and Recommendations, *supra* note 316, at pp. 44-45, 224.

399 The city council of Minneapolis is developing a division dedicated to traffic control services. The department addresses issues such as enforcement of all non-moving violations, removal of abandoned or illegally parked cars, and traffic control for large events. See City of Minneapolis, *Traffic Control Services* (“Minneapolis Traffic Control Services”) <<https://www2.minneapolismn.gov/government/departments/reg-services/divisions/traffic-control/>> [as of Nov. 29, 2022].

400 The new department developed by Brooklyn Center will take on the responsibility of enforcing all non-moving traffic violations and the city will eliminate some traffic infractions. See *Wright and Dimock-Heisler Act*, *supra* note 320.

401 See *Minneapolis Traffic Control Services*, *supra* note 399.

immediate safety of our residents.”⁴⁰² The policy asserts, “relying on our armed law enforcement officers as first responders in these situations has resulted in escalation, harm, and a tragic and potentially avoidable loss of life for our residents, including the lives of Daunte Wright and Kobe Drimock-Heisler.”⁴⁰³ As communities explore ways to address pretextual stops, they should consider the potential benefits of having officers focus strictly on crime prevention and creating a separate department dedicated to traffic safety. In the coming years, as more pilot programs develop, the Board is interested in reviewing data to see if there is a reduction in disparities from stops as well as positive impacts to traffic safety.

1.15. Board Recommendations and Conclusions

Eliminating pretextual stops necessitates a variety of approaches. Removing officers from certain types of traffic enforcement can be a way to minimize pretextual stops, but it cannot be the only way in which agencies and communities address these issues. Agencies, district attorneys, and lawmakers must listen to the communities they serve to develop their own policies to address pretextual stops in addition to looking at new types of traffic enforcement programs.

2. Youth Contacts with Law Enforcement

2.1. Introduction

Many children and teens experience police contact. In one study of fifteen year olds in large cities across the United States, more than 25 percent of the youth reported that they had personally been stopped by police.⁴⁰⁴ Nearly 80 percent of the youth experienced vicarious police contact, in which they witnessed a police stop of someone else or personally knew someone who had been stopped, and approximately 25 percent experienced both personal and vicarious police contact.⁴⁰⁵ Of those who reported personal police contact:

- Approximately one-third reported they were frisked or searched;
- More than 20 percent reported the officer used harsh language;
- 8 percent reported the officer used racial slurs; and
- More than 10 percent reported the officer threatened or used physical force.⁴⁰⁶

Racial disparities exist among youth contacts with police, including differences in the frequency of contact, the type of contact (i.e., personal or vicarious), and actions taken as a result of the contact.⁴⁰⁷ For example, Black and Hispanic/Latine(x) youth are more likely than White youth to experience personal, as opposed to vicarious, contact with police.⁴⁰⁸ Personal contacts between non-White youth and police may also be qualitatively different and more aggressive than contacts with White youth.⁴⁰⁹

402 See *Wright and Dimock-Heisler Act*, *supra* note 320.

403 See *ibid.*

404 Geller and Fagan, *Police Contact and the Legal Socialization of Urban Teens* (2019) 5(1) The Russell Sage Foundation J. of the Social Sciences. 26, 33-34 <<https://www.rsfjournal.org/content/5/1/26>> [as of Nov. 29, 2022] (citing *Fragile Families and Child Wellbeing Study* (2020) Princeton U. <<https://fragilefamilies.princeton.edu/documentation>> [as of Nov. 29, 2022]).

405 *Id.* at pp. 31, 33-34.

406 *Id.* at p. 34.

407 *Id.* at pp. 33-34; see also Rovner, *Racial Disparities in Youth Incarceration Persist* (Feb. 2021) The Sentencing Project, p. 6 <<https://www.sentencingproject.org/app/uploads/2022/08/Racial-Disparities-in-Youth-Incarceration-Persist.pdf>> [as of Nov. 29, 2022].

408 Geller and Fagan, *supra* note 404, at pp. 33-34.

409 Geller, *Youth-Police Contact: Burdens and Inequities in an Adverse Childhood Experience, 2014-2017* (“Youth-Police Contact: Burdens and Inequities”) (2021) 11 Am. J. Public Health 1300, 1306 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8493138/>> [as of Nov. 29, 2022]; see also Rovner, *supra* note 407, at p. 6 (citing Rodriguez, *The*

Black youth are more likely than their White peers to be stopped and detained for identical behavior, including offenses that are minor such as vandalism and disorderly conduct, and are more likely to have force used against them.⁴¹⁰ Researchers studying the impact of police stops on the psychological well-being and future behavior of Black and Hispanic/Latine(x) boys also found that “prior law abiding behaviors did not protect boys against future police stops.”⁴¹¹ Similarly, youth of color are less likely to be diverted from the criminal legal system and are more likely to be incarcerated than White youth.⁴¹² What happens to youth during their initial contacts or encounters with law enforcement can influence how children are later treated in adult court, including harsher punishments, which in turn can contribute to overrepresentation of people of color in the later stages of the adult criminal legal system.⁴¹³ These law enforcement actions also can affect a youth’s future employment and educational opportunities.⁴¹⁴

Youth leaders from the Los Angeles County Youth Justice Working Group have conveyed their lived experience with increased police contact in the 2020 Youth Justice Reimagined Report:

All youth deserve multiple chances. Some get them. Others do not. Whether you end up incarcerated or in college should not be based on where you live, the color of your skin or how much money your family makes. Some communities have Youth Development while others have containment and suppression. We are a product of those communities that are over-policed and disinvested in. We are more likely to make police contact, not based on our behavior, but how our public resources are spent.⁴¹⁵

The disparities in youth encounters with law enforcement may be attributed to several factors, including the different social contexts non-White youth and White youth inhabit.⁴¹⁶ For example, non-White youth are more likely to live in densely populated, urban areas with a heavier police presence,⁴¹⁷ meaning they experience a greater likelihood of police contact than White youth who live in less policed neighborhoods. Additionally, misbehavior by non-White youth is less likely to be ignored and more likely to be treated as a disciplinary or policing issue, unlike misbehavior by their White peers, which is more frequently perceived as a “behavioral health concern” to be addressed by school officials instead of police.⁴¹⁸

The disparities in youth encounters with law enforcement may also be explained by differences in the perceived maturity of non-White youth. For example, multiple studies have found that Black children are perceived as less innocent than children of other racial identities.⁴¹⁹ This disparity begins as early as

Cumulative Effect of Race and Ethnicity in Juvenile Court Outcomes and Why Preadjudication Detention Matters (2010) 47 J. of Research in Crime and Delinquency 391).

410 Bratton and Smith, *Growing Up a Suspect: An Examination of Racial Profiling of Black Children and Effective Strategies to Reduce Racial Disparities in Arrests* (2018) 45 N. Ky. L. Rev. 137, 158-59; Klein, *More cops in schools mean more Black kids in the criminal justice system* (Feb. 2018) Huffington Post <https://www.huffpost.com/entry/school-to-prison-pipeline_n_5a8ee0afe4b077f5bfec2cf3> [as of Nov. 29, 2022].

411 Del Toro et al., *The criminogenic and psychological effects of police stops on adolescent Black and Latino boys* (2019) 116 Proceedings of the Nat. Academy of Sciences 8261, 8261-8262. <<https://www.pnas.org/doi/full/10.1073/pnas.1808976116>> [as of Nov. 29, 2022].

412 Rovner, *supra* note 407, at pp. 4, 6.

413 Bratton and Smith, *supra* note 410, at p. 148.

414 Del Toro et al., *supra* note 411, at p. 8267.

415 Hayward Burns Institute, *Los Angeles County: Youth Justice Reimagined* (Oct. 2020) L.A. County, p. 9 <<https://lacyouthjustice.org/wp-content/uploads/2020/10/Youth-Justice-Reimagined-1.pdf>> [as of Nov. 29, 2022].

416 Geller, *Youth-Police Contact: Burdens and Inequities*, *supra* note 409, at p. 1306. <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8493138/>> [as of Nov. 29, 2022].

417 *Ibid.*

418 See Rovner, *supra* note 407, at p. 6 (citing Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons* (2016) The Sentencing Project <<https://www.sentencingproject.org/reports/the-color-of-justice-racial-and-ethnic-disparity-in-state-prisons-the-sentencing-project/>> [as of Nov. 29, 2022]).

419 See Goff et al, *The Essence of Innocence: Consequences of dehumanizing Black children* (2014) 106 J. of Personality and Social Psychology 526, 536 <<https://search.issueelab.org/resource/the-essence-of-innocence-consequences-of-dehumanizing-black-children.html>> [as of Nov. 29, 2022].

age ten.⁴²⁰ Thus, Black children are more likely to be perceived as adults prematurely⁴²¹ and, in turn, as more culpable and with less need for the protections typically afforded to children.⁴²²

At the individual level, police encounters can undermine children's and teens' sense of safety and stability and contribute to the development of stress, anxiety, post-traumatic stress disorder, and depression.⁴²³

The Board is concerned by the disparities shown in the RIPA data relating to youth-police contacts and their effect on youth of color. Accordingly, the Board offers the following data analysis and recommendations to mitigate disparate treatment of youth by law enforcement in California.

2.2. Data Analysis

While data on police stops of youth likely understates the severity of the interactions and how youth behaviors affect officer behavior,⁴²⁴ the RIPA data shows racial disparities in stop rates and actions taken by officers during stops of individuals in younger age groups are larger than the disparities for older age groups. For this reason, the RIPA Board has decided to examine the racial distribution of stops, actions during stops, and stop outcomes across age groups.

2.2.1. Age Distribution of Individuals Stopped

Officers reported 35,284 stops of individuals who they perceived to be 15 to 17 years old. Officers reported 4,460 stops of individuals perceived to be 10 to 14 years old and 1,542 stops of individuals perceived to be 1 to 9 years old. Officers perceived 17.4 percent of individuals they stopped (552,627) to be transition age youth who are 18 to 24 years old. As discussed previously in this section, research shows that adults are more likely to perceive Black children as adults prematurely, suggesting that some of the youth in this subset of the data may actually be younger than they have been perceived to be by officers and that these youth are likely disproportionately Black.

Among the 58 agencies reporting RIPA stops in 2021, there was a wide range in both the total number of youth stops (1 to 15,088) and the percentage of total stops that were of individuals aged 17 or younger (0.02% to 15%). The California Highway Patrol (CHP) reported a total of 1.75 million stops (54.94% of all reported stops) in 2021. Likely related to CHP's primary focus on traffic enforcement and the age restriction on motor vehicle operation, youth accounted for a smaller proportion of stops from the state's top reporting agency (0.86% of CHP stops were of individuals perceived to be 17 or younger vs. 1.82% of all non-CHP stops).

Among agencies that reported greater than 5,000 total stops (the 2021 median number of stops by agencies was 4,999), two agencies reported particularly high percentages of stops of individuals less than 18 years of age, more than doubling the non-CHP average percentage of youth stops: Oakland PD (4.45%, or 613 youth stops) and Carlsbad PD (4.11%, or 219 youth stops). In contrast, among

420 See *id.* at p. 529.

421 *Ibid.*

422 Bratton and Smith, *supra* note 410, at p. 154.

423 Geller, *Youth-Police Contact: Burdens and Inequities*, *supra* note 409, at pp. 1300-02; Bratton and Smith, *supra* note 410, at p. 159.

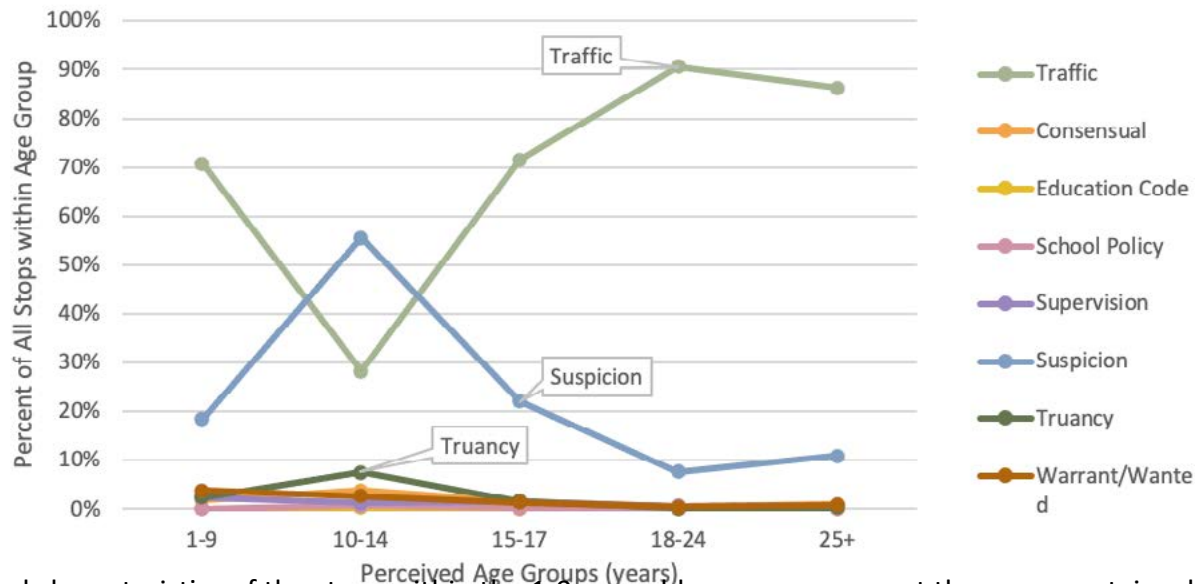
424 "Though official police data provides useful context for understanding the prevalence of police-youth contact, the data does not provide information on police-youth interactions in terms of the nature of the incidents or how youth behaviors affect the actions of police officers, and vice versa." Office of Juvenile Justice and Delinquency Prevention (Jan. 2018) *Literature Review: A Product of the Model Programs Guide*, p. 1 <https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/interactions_between_youth_and_law_enforcement.pdf> [as of Nov. 29, 2022] (citing Skogan et al., *Fairness and Effectiveness in Policing: The Evidence*. Washington D.C. (2004) The National Academic Press; Mastrofski et al., *Compliance on Demand: The Public's Response to Specific Police Requests* (1996) 33 J. of Research in Crime and Delinquency 269). Underreporting of RIPA data generally impacts the youth data. See generally County of Los Angeles Office of the Inspector Gen., *Underreporting of Civilian Stop Data to the California Attorney General*, *supra* note 104.

agencies reporting greater than 5,000 total stops, four reported a low percentage of stops of individuals less than 18 years of age with less than half of the non-CHP youth percentage average: Berkeley PD (0.77%, 42), Culver City PD (0.80%, 76), California Highway Patrol (0.86%, 15,088), and Alameda County Sheriff's Office (0.88%, 136).

2.2.2. Primary Reason for Stop

Traffic offenses represented the largest percentage of reasons for stop within most age groups (1 to 9 (70.8%), 15 to 17 (71.6%), 18 to 24 (90.5%), and 25+ years old (86.3%). In contrast, among individuals perceived to be 10 to 14 years old, reasonable suspicion accounted for the largest percentage of reasons for stop (55.5%), with traffic offenses being the second most common reason for stop (28.2%). Truancy, consensual encounters,⁴²⁵ warrant/wanted person, supervision, school policy, and education code (all remaining categories) made up a larger portion of stops of youth under 18 (1 to 9, 10 to 14, 15 to 17) compared to individuals perceived to be transition age youth or adults (18 to 24 or 25+). Truancy and consensual encounters were a larger percentage of stops of youth perceived to be 10 to 14 years old compared any other age group.

Figure 44. Reason for Stops within Each Age Group



Several characteristics of the stops within the 1-9 year old age group suggest they may contain a higher proportion of errors within the age field or misunderstandings by officers relating to proper data entry practices. For example, the top traffic offense listed as the reason for stop among individuals perceived to be 1-9 year olds was “unsafe speeds for prevailing conditions,” and all common traffic offenses listed for individuals perceived to be 1-9 years old were among common traffic offenses occurring among adults. Traffic offenses that may be associated with operating a vehicle without a license or taking a

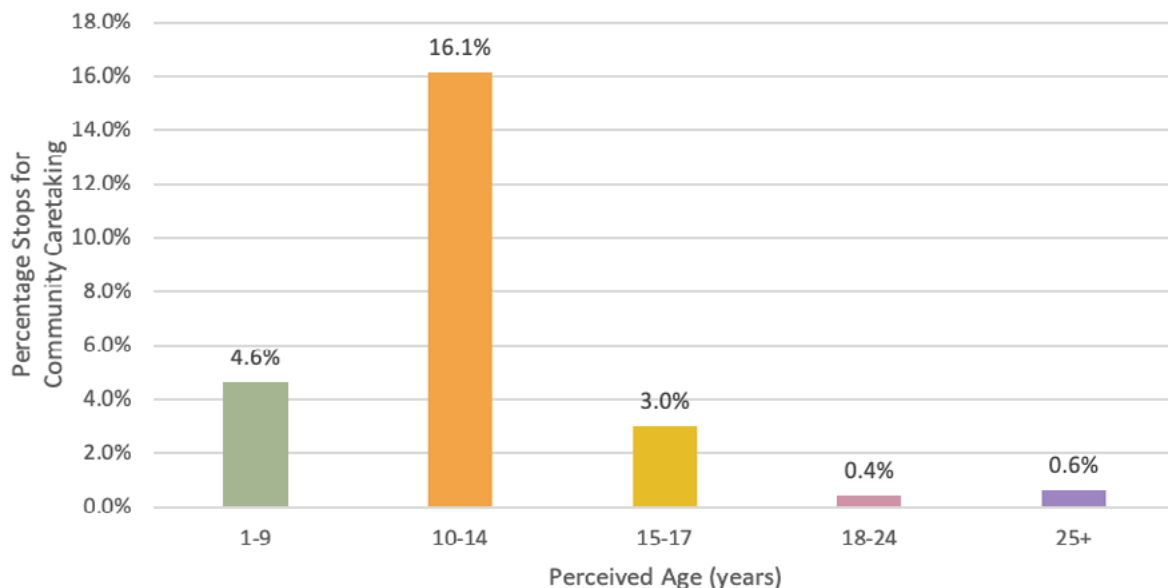
⁴²⁵ “A consensual encounter is an interaction in which the officer does not exert any authority over, or use any force on, a person and the person is free to leave. The officer shall only select this data value if a consensual encounter results in a search, regardless of whether the resulting search is consensual.” See Cal. Code Regs. tit. 11 § 999.226, subd. (a) (14)(A)(6). Youth are especially susceptible to comply with an officer’s request to either speak with them or a request to search., Generally, the U.S. Supreme Court has recognized that “children are generally more vulnerable to outside influences than adults and have limited understandings of the criminal justice system and the roles of the institutional actors within it.” See Racial and Identity Profiling Advisory Board, Annual Report (2022), *supra* note 169, at p. 110 (citing Sen. Bill No. 203 (2019-2020 Reg. Sess. § 1); *Roper v. Simmons* (2005) 543 U.S. 551, 569). Generally, consent may not truly be voluntary because of the power dynamics at play between a law enforcement officer and a member of the public, particularly with more vulnerable populations. See Racial and Identity Profiling Advisory Board, Annual Report (2022), *supra* note 169, at p. 114 (citing Sommers, *Are Consent Searches Truly Voluntary?* (May 2019) Scholars Strategy Network <<https://scholars.org/contribution/are-consent-searches-truly-voluntary>> [as of Nov. 29, 2022]).

vehicle without the owner's permission⁴²⁶ were no more common among 1-9 year olds (0.3% traffic stops) compared to adults (0.5% traffic stops for 18-24 year olds and 0.3% traffic stops for 25+ year olds). These unauthorized driving offenses were more common among 10-14 year olds (3.8% traffic stops) and 15-17 year olds (1.4% traffic stops) compared to adults.

Instead of indicating the officer stopped a child of less than ten years of age, it is possible that in some of these stops officers inadvertently missed a digit when typing in the age value of someone whom they perceived to be older (e.g., officer typed "5" when they intended to type "35"). In some cases, officers may have incorrectly entered a stop record for a child that was a passenger of a vehicle being operated by another person. Additionally, among reasonable suspicion stops of 1-9 year olds, several of the most common offense codes relate to crimes that involve children as victims (e.g., lewd and lascivious conduct with a child under 14 and willful cruelty to a child). This may suggest that some stop records of 1-9 year olds may have been entered for child victims, which would not be in accordance with correct data collection practices. These sorts of errors may be present for other age groups, but likely constitute a much smaller proportion of the stops for the other age groups, given how few stops of persons perceived to be 1-9 years old occurred, relative to other age categories.

Overall, 0.6% of all stops reported in 2021 were for community caretaking (19,671 stops). Among youth, a much larger percentage of stops were for community caretaking: 16.1% of 10-14 year olds (719 total), 4.6% of 1-9 year olds (71 total), and 3.0% of 15-17 year olds (1,057 total) as compared to adults (0.4% of 18-24 year olds, or 2,352 total, and 0.6% of 25+ year olds, or 15,472 total).

Figure 45. Percentage of Stops for Community Caretaking by Age



2.2.3. Result of Stop

The most common result of stop within all age categories except 10-14 year olds was a citation being issued (31.9% of all stops of 1-9 year olds, 41.6% of stops of 15-17 year olds, 58.3% of stops of 18-24 year olds, and 50.9% of stops of 25+ year olds). Within 10-14 year olds, the most common result of stop was psychiatric hold (21.6% of all stops). The composition of results of stops of 10-14 year olds differed in other regards. Compared to other age categories, stops of 10-14 year olds had the highest percentage of stops resulting in custodial arrest without a warrant (7.8%), a field interview card (14.9%), contact of a legal guardian (13.6%), non-criminal transport (9.4%), and referral to school administrator (1.3%).

⁴²⁶ Vehicle Code §§ 12500(A), 12951(A), 14607, 10851(A).)

Figure 46. Results of Stop by Age Category – Common Results

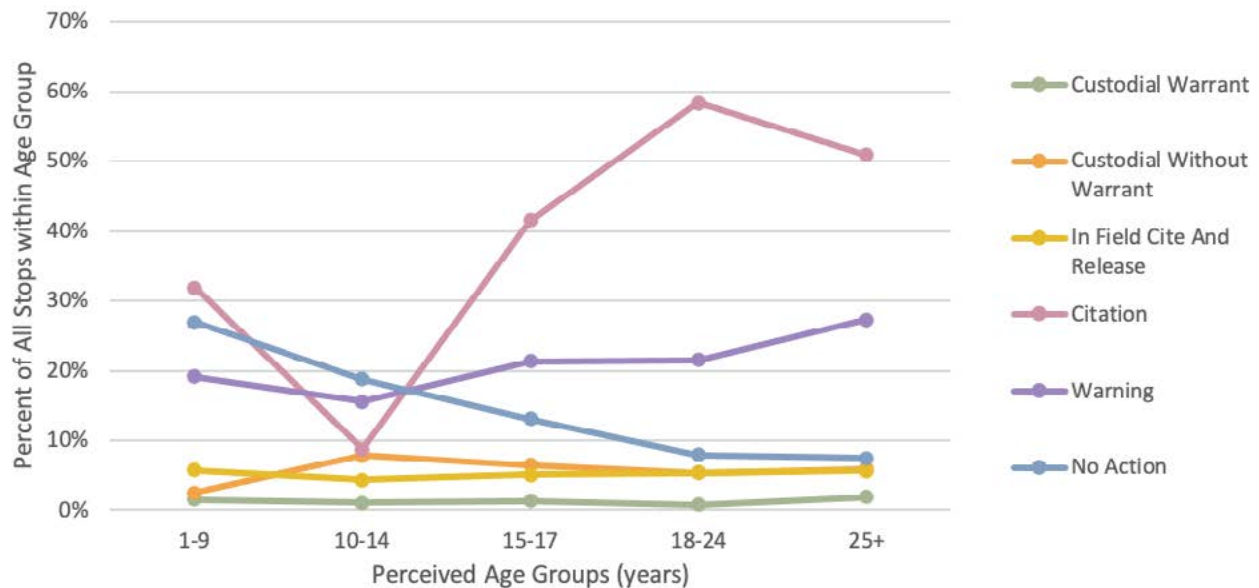
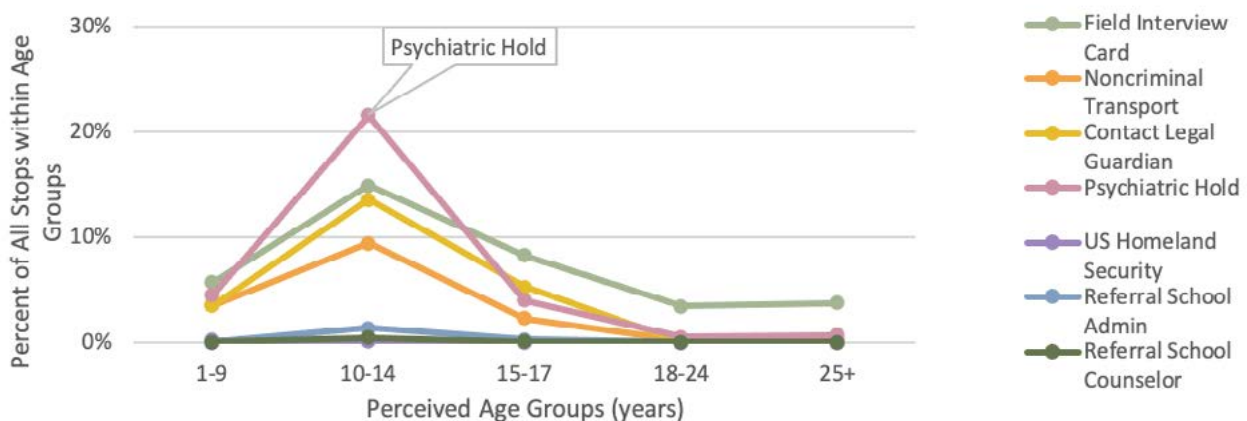


Figure 47. Results of Stop by Age Category – Less Common Results

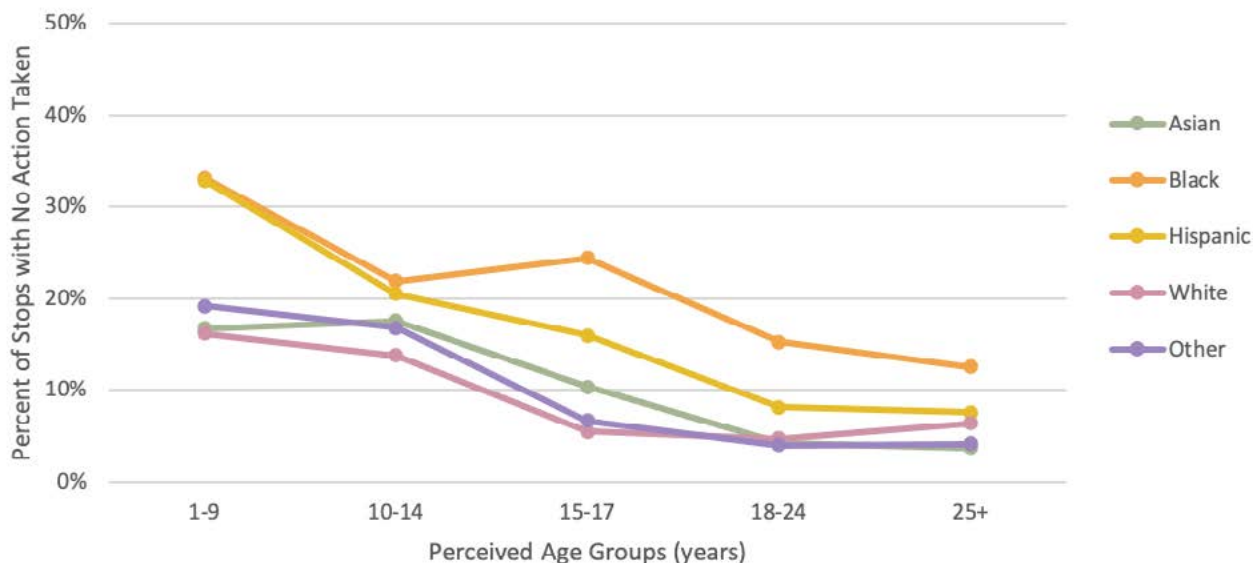


Overall, 7.6 percent of all stops result in no reportable action taken (i.e., no citation, no warning, no custodial arrest, and no other reportable stop results.) The percentage of stops that result in no reportable action taken is higher among younger age groups (1-9, 10-14, 14-17) and lower among transitional age youth and adults (perceived 18-25 and 25+) both overall and within all racial and ethnic groups. The percent of stops resulting in no reportable action taken was highest among individuals perceived as Black across all age groups and second highest among individuals perceived as Hispanic across all age groups. The largest disparity between racial groups in the percent of stops that result in no reportable action taken within an age group (largest range of observed percentages of stops that result in no action taken) occurs in 15 to 17 year olds.

Disparities in stops that result in officers taking no reportable action should be carefully evaluated to determine whether the stop was sufficiently supported by reasonable suspicion and whether it should have occurred in the first place. Of all stops of individuals perceived to be 15 to 17 years old, Black adolescents had no action taken as the result of the stop 24.4 percent of the time, Hispanic/Latine(x) adolescents had no action taken 15.8 percent of the time, Asian adolescents had no action taken 10.3 percent of the time, adolescents in other racial/ethnic groups had no action taken 6.6 percent of the time, and White adolescents had no action taken 5.5 percent of the time. The higher percentages

of stops with no action taken could indicate those stopped individuals were not engaged in criminal activity, and, perhaps, they are a sign of police intrusion that yielded nothing, demonstrating that the stops should not have occurred at all. Moreover, as discussed in detail in another section in this report, stops that end in no action taken by police can be traumatic for the involved community member, especially when that person is a child.

Figure 48. Rate of No Reportable Action Taken as Result of Stop by Age and Racial and Ethnic Group



2.3. Profiling of Youth – Trends and Impacts

The data highlights the criminalization that youth, particularly Black and Hispanic/Latine(x) youth, experience at a young age. This is evidenced in part by the high rates of no action taken at the end of a stop, indicating Black and Hispanic/Latine(x) youth are detained more frequently for reasons unrelated to illegal activity.

RIPA data also shows that although 12 years is the minimum age for criminal prosecution for most offenses,⁴²⁷ too many children under the age of 10 are being handcuffed by law enforcement, detained in patrol cars or on the curbside, and searched. This type of law enforcement behavior, especially when directed at such young children, is traumatizing.⁴²⁸

2.3.1. What Happens During Stops of Youth?

Children and adolescents can face the same treatment as adults during police encounters – they may be detained, searched, handcuffed, pepper sprayed, tased, and even shot.^{429, 430} When these encounters go wrong, the consequences can be devastating and have far-reaching effects that go beyond what the data shows. Here, the Board highlights a few instances where youth were stopped by police and unpacks how those stops can go wrong when youth are treated as adults. These horrific incidents have made the news both in California and nationally and still impact how many individuals and communities interact with law enforcement.

Most everyone in America is familiar with the tragedy involving Tamir Rice. Tamir was 12-years old when he was killed by a Cleveland police officer during a response to a call for service.⁴³¹ Tamir was

427 See Cal. Welf. Inst. Code, § 602.

428 Geller, *Youth-Police Contact: Burdens and Inequities*, *supra* note 409, at pp. 1300-02.

429 See Fatal Police Shooting Database, *supra* note 183.

430 See Report p. 116-117, to review RIPA data regarding detaining, searching, and handcuffing of youth.

431 Dewan and Oppel, *In Tamir Rice Case, Many Errors by Cleveland Police, Then a Fatal One* (Jan. 2015) New York Times < <https://www.nytimes.com/2015/01/23/us/in-tamir-rice-shooting-in-cleveland-many-errors-by-police-then-a-fatal-one.html> > [as of Nov. 29, 2022].

playing with a toy airsoft gun in the park and a 9-1-1 caller reported that Tamir had what was likely a fake or toy gun.⁴³² Dispatch never conveyed to the officers that the gun was likely fake nor the age of the young boy.⁴³³ The officers arrived at the scene and, within a matter of seconds, shot Tamir in the abdomen at point-blank range, giving little to no warning prior to firing.⁴³⁴ The officers radioed immediately that they perceived Tamir to be 20 years old, rather than the very young 12 year old child that he was.⁴³⁵ Tamir's sister came running to his aid just a few minutes later and was tackled and handcuffed by officers. When his grieving mother arrived, the officers also threatened to arrest her unless she calmed down.⁴³⁶ Research shows that Black youth are often perceived as older than they are and that Black youth are more likely to have force used against them.⁴³⁷ Perhaps Tamir would still be here if the responding officer had addressed the situation with less fear and more understanding of the fragility of his youth.

Similarly, another case that drew national attention because of police-youth interaction involves Dajerria Becton. Dajerria, a 15 year old girl, was attending a pool party when police were called to a disturbance.⁴³⁸ Once the officer arrived, video shows him getting out of the car and drawing his gun and pointing it at the youth.⁴³⁹ The officers ordered several of the youth to get on the ground.⁴⁴⁰ Shocked by this, Dajerria yelled at officers to stop.⁴⁴¹ The officer pulled her to the ground, dragged her by her hair, shoved her face into the ground, and placed a knee on her back.⁴⁴² The video went viral and millions watched as the slight, young Black girl – wearing only a bikini and posing no threat – was brutally slammed on the ground by the officer.⁴⁴³ In this stop, the officers resorted to force immediately when responding to a call about a pool party, and there was no apparent consideration of the age or behaviors of the involved youth. Dajerria's attorney reported that not only was she harmed by the officer on the day of the incident, but she was bullied on social media as a result of the viral video.⁴⁴⁴

In addition to these and other violent incidents between law enforcement and youth captured around the nation, in California there have also been numerous high-profile instances of force used against youth. The Board highlights two instances where the officer's lack of consideration for the age of the youth involved resulted in the child being harmed.

Isiah Brown, a 12 year old boy in Sacramento, was cuffed, and officers covered the child's head with a "spit mask."⁴⁴⁵ The child was visiting the carnival and was stopped by a security guard who accused the child of stealing.⁴⁴⁶ When officers arrived, there was a brief verbal disagreement, but shortly after that, the boy was thrown to the ground and cuffed. There was no de-escalation by the officer. The officer pinned the young boy to the ground and pulled the spit hood over the child's head covering his face, as

432 *Ibid.*

433 *Ibid.*

434 *Ibid.*

435 *Ibid.*

436 *Ibid.*

437 Goff et al, *supra* note 419, at p. 529; see also Geller and Fagan, *supra* note 404, at pp. 33-34; Bratton and Smith, *supra* note 410, at p. 154.

438 Phillips, *Black teen who was slammed to the ground by White cop at Texas pool party sues for 5\$ million* (Jan. 2017) The Washington Post <<https://www.washingtonpost.com/news/post-nation/wp/2017/01/05/black-teenager-who-was-slammed-to-the-ground-at-texas-pool-party-sues-ex-cop-city-for-5m/>> [as of Nov. 29, 2022].

439 *Ibid.*; see also Ansari, *Texas teen tackled by police officer at pool party files federal lawsuit* (Jan. 2017) CNN <<https://www.cnn.com/2017/01/05/us/texas-mckinney-pool-party-officer-lawsuit>> [as of Nov. 29, 2022]; Brooks, *Cops Crash Pool Party* (Jun. 2015) YouTube <<https://www.youtube.com/watch?v=R46-XTqXkzE>> [as of Nov. 29, 2022].

440 Phillips, *supra* note 438.

441 Brooks, *supra* note 439; Ansari, *supra* note 439.

442 Phillips, *supra* note 438.

443 Ansari, *supra* note 439; Brooks, *supra* note 439.

444 Phillips, *supra* note 438.

445 Burke, *Video of 12-year-old Sacramento boy getting handcuffed by officers sparks outrage* (May 2019) NCB News <<https://www.nbcnews.com/news/us-news/video-12-year-old-sacramento-boy-getting-handcuffed-officers-sparks-n1008816>> [as of Nov. 29, 2022].

446 *Ibid.*

bystanders yelled for officers to take off the mask.⁴⁴⁷ This may have been avoided if the officer paused and recognized he was interacting with a child, taking the time to deescalate and verbally attempt to resolve any issue.

In Burbank a 16 year old with autism was tased during a routine traffic stop.⁴⁴⁸ The youth was pulled over for not wearing a seatbelt and the situation escalated to the child “being tased, pepper-sprayed and having a seizure.”⁴⁴⁹ The family’s attorney told reporters, “A person with special needs should not have a negative encounter with police simply because they don’t know how to address them.”⁴⁵⁰ The officer’s failure to recognize a youth with a disability, as well as the signs of a medical emergency, unnecessarily escalated a stop for a minor traffic infraction to an encounter that damaged the youth’s health and will likely have far-reaching effects.

Though these incidents do not encompass the full range of possible outcomes between youth and law enforcement and some interactions can be positive. However, the Board highlights some of these incidents to demonstrate the harm that can occur when law enforcement officers do not consider the vulnerability of youth, especially when using physical force against a child. The negative consequences of officers treating youth as adults instead of the children they are can be profound – for the youth, their families, and their communities. No child should ever be unnecessarily treated in the way that these and countless other examples show.

2.3.2. The High Costs of Youth Vulnerability in the Criminal Legal System

Considering the high cost of treating youth as adults, a recent movement in policy development – informed by science and many years of strong community-based advocacy – acknowledges that age and developmental stages are necessarily relevant to youth interactions with the criminal legal system.⁴⁵¹ Failure to recognize these developmental differences has been shown to increase the risk that a youth may become entangled in the legal system.⁴⁵²

Some policy reforms in California have focused on the questioning of youth and require that a youth who is in custody cannot be questioned without the presence of an attorney.⁴⁵³ These changes in the law were made, in part, in response to a growing body of research showing that youth are less capable of understanding their constitutional rights than their adult counterparts and that they are more prone to falsely confessing to a crime they did not commit.⁴⁵⁴ Research demonstrates that “[b]ecause adolescents are more impulsive, are easily influenced by others (especially by figures of authority), are more sensitive to rewards (especially immediate rewards), and are less able to weigh in on the long-term consequences of their actions, they become more receptive to coercion.”⁴⁵⁵

These developmental differences affect how youth respond to authority figures and makes them more prone to falsely confessing.⁴⁵⁶ Youth are provided with additional protections in other areas of the law

447 *Ibid.*

448 Suter, *Family crushed after autistic teen is tasered by Burbank police* (July 2016) ABC 7 <<https://abc7.com/autistic-teen-tasered-boy-by-cops-police-taser/1429360/>> [as of Nov. 29, 2022].

449 *Ibid.*

450 Klemack, *Teen With Autism Accused of Charging at Burbank Police Officer* (July 2016) NBC Los Angeles <<https://www.nbclangeles.com/news/teen-with-autism-charged-with-attack-on-burbank-police-officer/53015/>> [as of Nov. 29, 2022].

451 See Luna, *Juvenile False Confessions: Juvenile Psychology, Police Interrogation Tactics, And Prosecutorial Discretion* (2018) 18 Nev. L.J. 291, 297; see Sen. Rules Com., Off. of Sen Floor Analyses, Sen. Bill No. 203 (2019-2020 Reg. Sess.).

452 See Trejos-Castillo et al., *The Square One Project Learned Helplessness, Criminalization, and Victimization in Vulnerable Youth* (Dec. 2020) p. 13 <<https://squareonejustice.org/paper/learned-helplessness-criminalization-and-victimization-in-vulnerable-youth-by-elizabeth-trejos-castillo-evangelina-lopoo-and-anamika-dwivedi-december-2020/>> [as of Nov. 29, 2022].

453 Sen. Rules Com., Off. of Sen Floor Analyses, Sen. Bill No. 203 (2019-2020 Reg. Sess.) as amended July 27, 2020 (“Amended SB 203”), p. 2.

454 See Luna, *supra* note 451, at p. 297; Amended SB 203, *supra* note 453, p. 5 (citing Luna, *supra* note 451, at p. 297).

455 Amended SB 203, *supra* note 453, at p. 5 (citing Luna, *supra* note 451, at p. 297).

456 See Luna, *supra* note 451, at p. 297; Amended SB 203, *supra* note 453, at p. 5.

– for example, laws restricts certain types of physical restraints of youth during criminal proceedings.⁴⁵⁷ Policymakers should consider if these protections should also extend to other areas of law enforcement practice, such as consent searches and field interview cards. Youth may also need additional protections and safeguards prior to waiving any rights, particularly if any statements they make could be used against them in criminal proceedings.

Additionally, youth may respond differently in an encounter with officers than adults. Policymakers may also consider how use of force policies and practices can be reformed to take into account the physical and developmental differences of youth.

The 9-year-old Black girl sat handcuffed in the backseat of a police car, distraught and crying for her father as the white officers grew increasingly impatient while they tried to wrangle her fully into the vehicle. “This is your last chance,” one officer warned. “Otherwise pepper spray is going in your eyeballs.” Less than 90 seconds later, the girl had been sprayed and was screaming, “Please, wipe my eyes! Wipe my eyes, please!” ... There’s a point in the video when an officer says, “You’re acting like a child!” to which the girl replies, “I am a child!”⁴⁵⁸

2.4. Use of Force/Actions Taken Towards Youth

Youth can experience physical violence when interacting with the police. In a survey of about 5,000 children who grew up in the 20 largest cities in the United States, 10 percent reported either police threatening to use force or using force against them.⁴⁵⁹ A recent study by the American Academy of Pediatrics found that Black and Hispanic/Latine(x) youth are more likely to die from being shot by law enforcement than White adolescents.⁴⁶⁰ The research revealed that Black youth are about six times more likely to be killed by police than their White peers, while Hispanic/Latine(x) youth are about three times more likely to be killed by police than their White peers.⁴⁶¹ According to the Washington Post Police Shooting Database, from 2015 to 2022, 134 youth under the age of 18 were shot and killed by law enforcement across the nation.⁴⁶² In California during that same time period, 19 children under the age of 18 were killed by law enforcement.⁴⁶³ An analysis by the Associated Press of approximately 3,000 instances of use of force against youth in the United States in the last 11 years uncovered the most common types of police force used against youth were forcibly taking a child to the ground, physical strikes or punching, and firearms pointed or used on children.⁴⁶⁴ The data were collected by Accountable Now, a project aiming to create a comprehensive use-of-force database, and includes incidents from 25 police departments in 17 states.⁴⁶⁵ Disturbingly, Black children made up more than 50% of children handled forcibly, but only represent 15 percent of children in the United States.⁴⁶⁶

The highest observed percentage of stops in which officers detained, handcuffed, or searched individuals within all racial and ethnic groups was among adolescents (10-14 years old and 15-17 years old). Disparities between racial and ethnic groups in the percentage of stops in which officers searched,

457 Cal. Welf. & Inst. Code, § 210.6.

458 Hajela and Whitehurst, ‘I am a child’ Pepper spray reflects policing of Black kids (Jan. 2022) ABC News <<https://abcnews4.com/news/nation-world/i-am-a-child-pepper-spray-reflects-policing-of-black-kids>> [as of Nov. 29, 2022].

459 Geller and Fagan, *supra* note 404, at p. 34.

460 *Black Children Are Six Times More Likely to Be Shot to Death by the Police* (Dec. 2020) Equal Justice Initiative <<https://eji.org/news/black-children-are-six-times-more-likely-to-be-shot-to-death-by-police/>> [as of Nov. 29, 2022]; see also Goyal et al., *Racial and Ethnic Disparities in Firearm-Related Pediatric Deaths Related to Legal Intervention* (Dec. 2020) 146 American J. of Pediatrics e2020015917 <<https://doi.org/10.1542/peds.2020-015917>> [as of Nov. 29, 2022].

461 Goyal et al., *supra* note 460, at p. e2020015917; see also Equal Justice Initiative, *supra* note 460.

462 See Fatal Police Shooting Database, *supra* note 183.

463 See *ibid.*

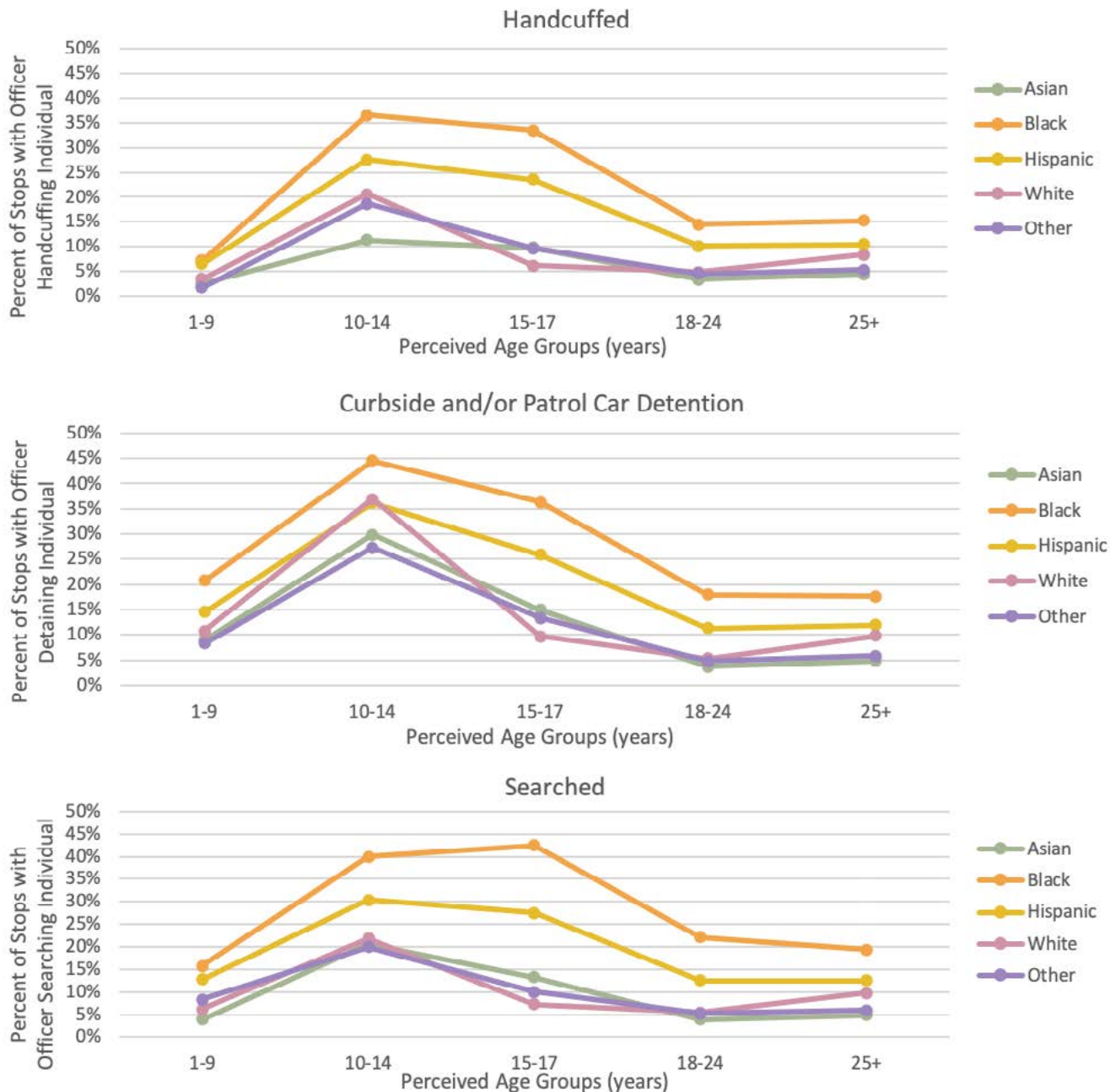
464 The Associated Press, *Tiny wrists in cuffs: How police use force against children* (Oct. 2021) NPR <<https://www.npr.org/2021/10/20/1047618263/tiny-wrists-in-cuffs-how-police-use-force-against-children>> [as of Nov. 29, 2022].

465 *Ibid.*

466 *Ibid.*

handcuffed, or detained youth curbside and/or in a patrol car were largest among those perceived to be 15-17 years old.⁴⁶⁷ Within intersections of perceived age and racial and ethnic identity, Black youth (10-14 and 15-17 years old) were detained (36.2-44.5% of the time), searched (39.9-42.4% of the time), or handcuffed (33.5-36.5% of the time) during a higher percentage of stops than any other combinations of race and ethnicity with age groups.

Figure 49. Search, Curbside and/or Patrol Car Detainment, and Handcuff Rates by Age and Racial and Ethnic Groups



⁴⁶⁷ Disparities among the intersectional identity characteristics of age and race and ethnicity are qualitatively similar regardless of whether handcuffings overall are considered (as above) or whether no-custody handcuffings are considered (stops where officers handcuffed the individual but none of the following were the result of stop: custodial arrest pursuant to a warrant, custodial arrest without a warrant, US Homeland Security release, in-field cite and release, or psychiatric hold).

Despite numerous protections for children under the law, there are no laws that specifically prohibit police from using force against children and few use of force policies address a use of force continuum based upon age appropriate factors.⁴⁶⁸ Some agencies have policies addressing issues such as the minimum age to be handcuffed or how to approach a youth experiencing a mental health crisis, but the vast majority do not discuss any of these issues.⁴⁶⁹ The Board in future reports would like to explore different types of policies or best practices surrounding law enforcement interactions with youth – particularly with respect to use of force – and how officers are trained to interact with youth.

2.5. Searches of Youth

The RIPA data reveals that search rates during stops varied among age categories of youth (10-14 (29.7% search rate), 15-17 (21.7% search rate), and 18-24 years old (11.4% search rate)). For stopped individuals who are perceived to be 15-17 years old, individuals perceived as Black are searched at nearly six times the rate of individuals perceived to be White, and individuals perceived to be Hispanic/Latine(x) are searched at nearly four times the rate of individuals perceived to be White. This data confirms not only what youth self-report about their experiences, but also confirms reports about being searched or frisked during their encounters with police.⁴⁷⁰ As background, a frisk is when an officer conducts a pat down search of a youth's clothing if the officer has a reasonable suspicion that the person may be armed and dangerous.⁴⁷¹ Conversely, a search requires probable cause and is more intrusive and involves searching the inside of a person's pockets, clothing, or property.⁴⁷²

A law enforcement officer can also request consent to search someone's person or property and does not need to have reasonable suspicion or proof the person committed any crime.⁴⁷³ As discussed in detail in the 2022 RIPA report on consensual encounters, agreeing to an officer's request to conduct a search is not necessarily voluntary given the inherent power inequality between law enforcement officers and members of the public.⁴⁷⁴ Those inequities can be exacerbated when considering consent searches of youth because of their susceptibility to comply with an officer's request.⁴⁷⁵

The RIPA data shows that in 2021, officers performed a consent only search 1.2 percent of all stops. The highest percentage of stops with consent only searches was reported among individuals who were perceived to be both Black and between the ages of 15 and 17 years old (3.3%). Within all five of the racial and ethnic groups, the percentage of stops that involved consent only searches was highest during one of two perceived adolescent age groups (10 to 14 years old for White (2.3%), Asian (3.1%), and Other (1.2%) and 15 to 17 years old for Black (3.3%) and Hispanic/Latine(x) (3.0%)). The percentage of stops involving consent only searches among individuals perceived to be 25+ years old is lower

Specifically, the highest observed no-custody handcuffing rate was among individuals that were perceived as Black and between 15 and 17 years old (16.2% of stops) and across all age groups individuals perceived as Black experienced higher no-custody handcuffing rates than all other racial and ethnic groups, with individuals perceived as Hispanic/Latine(x) experiencing the second highest no-custody handcuffing rate across all age groups. See Appendix D, Tables D.2 and D.3 for handcuffing rates between racial/ethnic and age groups during stops with and without custody events.

468 See, e.g., the San Francisco Police Department's policy, which states "The use of force against vulnerable populations –including children, elderly persons, pregnant women, people with physical and mental disabilities and people with limited English proficiency – can undermine public trust and should be used as a last resort, when all other reasonable means have been exhausted." The policy also prohibits the use of electronic control weapons or tasers on elderly or children unless the use of deadly force is appropriate. See General Order 5.01 Use of Force Policy and Proper Control of a Person (2022) pp. 2, 12; see also The Associated Press, *supra* note 464.

469 The Associated Press, *supra* note 464.

470 Geller and Fagan, *supra* note 404, at p. 34.

471 See *Terry v. Ohio* (1968) 392 U.S. 1, 27.

472 See Cal. Code Regs., tit. 11, § 999.226, subd. (a)(15)(B)(9) (citing *Terry v. Ohio* (1968) 392 U.S. 1).

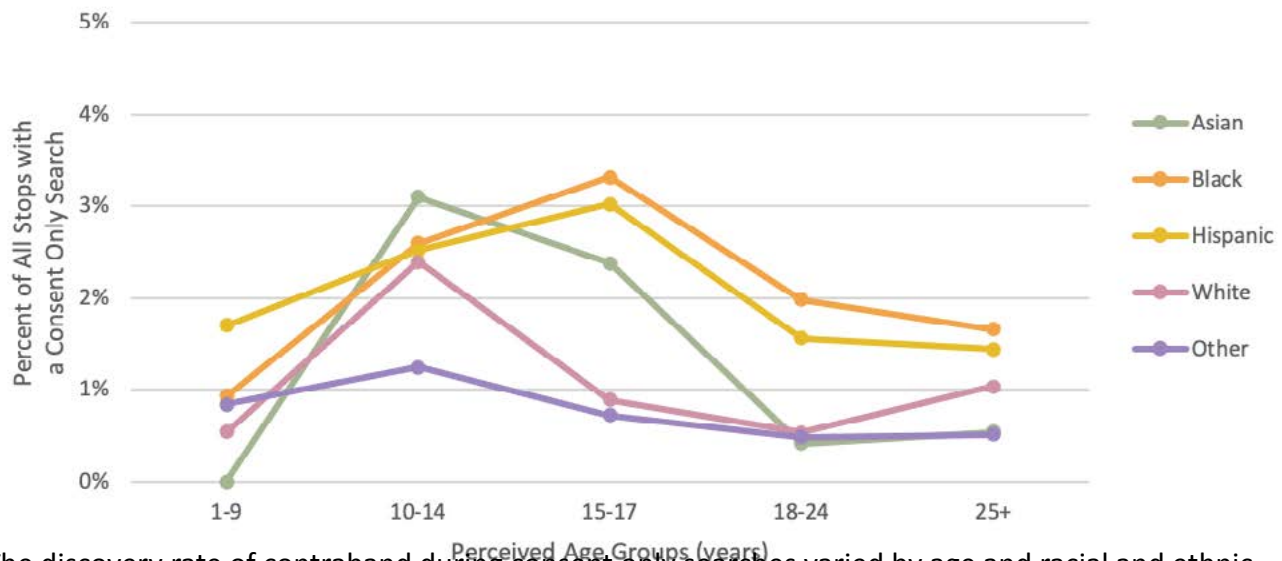
473 See *Florida v. Royer*, *supra* note 247, 460 U.S. 491; *Schneekloth v. Bustamonte*, *supra* note 247, 412 U.S. 218.

474 See Racial and Identity Profiling Advisory Board, Annual Report (2022), *supra* note 169, at pp. 108-109 (citing Sommers, *Are Consent Searches Truly Voluntary?*, *supra* note 425).

475 See Annitto, *Consent Searches of Minors* (2014) 38 N.Y.U. Rev. of L. & Social Change 1, 18, 36, 41 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2412356> [as of Nov. 29, 2022] (noting that children are more likely to acquiesce to authority and outside pressures, which can impact their ability to consent to searches).

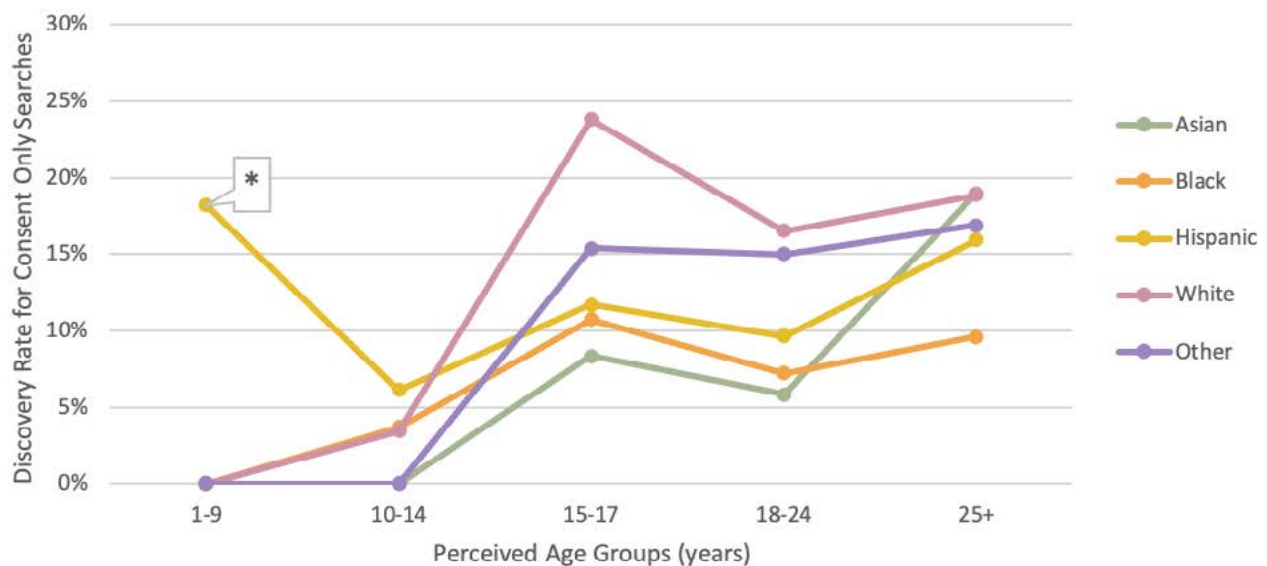
relative to these peak rates of occurrence during adolescence within all racial and ethnic groups despite persistent racial and ethnic disparities (Black 1.7%, Hispanic/Latine(x) 1.4%, White 1.0%, Asian 0.5%, and Other 0.5%).

Figure 50. Consent Only Searches by Age Group and Race and Ethnicity



The discovery rate of contraband during consent only searches varied by age and racial and ethnic group. The highest discovery rate among all intersections of age and racial and ethnic identity was of individuals who were perceived as being White and the ages of 15 and 17 years old (23.8%). Consent only searches of perceived 1-9 year olds were reported during 17 stops and may have included erroneous reporting of age by officers. The 2 stops discovering contraband of the total of 11 stops of individuals perceived as Hispanic/Latine(x) and aged 1-9 years old in which a consent only search was performed produces a potentially misleading discovery percentage for this specific identity intersection (marked in Figure 51 with *). All other age categories had larger totals of consent only searches: 110 total consent only searches of perceived 10-14 year olds, 780 total consent searches for perceived 15-17 year olds, 6,904 consent only searches for perceived 18-24 year olds, and 31,844 consent only searches for those perceived to be 25 years or older.

Figure 51. Discovery Rate of Contraband during Consent Only Searches by Racial and Ethnic Group and Age Category



Some scholars have suggested that because of these disparities and the lack of voluntariness in agreeing to a search, officers should be required to have probable cause prior to conducting a search of anyone, but especially of youth.⁴⁷⁶ States such as Washington are taking measures to address disparities in searches of youth by prohibiting an officer from requesting consent to search without an attorney present.⁴⁷⁷ Policymakers may wish to consider similar measures to provide more protections for youth.

2.6. Field Interview Cards and Criminalization of Youth

During a consensual encounter, officers may talk to a child and ask questions without suspecting they did anything wrong.⁴⁷⁸ Also during a consensual encounter, anyone has the right to leave and does not have to respond to an officer's consensual request,⁴⁷⁹ but youth likely do not know their rights or feel comfortable leaving. In many police departments in California, a field interview card is a document officers fill out to record and "track[] contacts made during stops and investigations, as well as arrests . . . [that] is generally [but not always]⁴⁸⁰ entered into a searchable database."⁴⁸¹ The databases record information about the interaction, such as who the person is with, if they have any monikers or nicknames, and any alleged criminal affiliations.⁴⁸² Some of the agency field interview cards, such as LAPD's, collect information about a person's social media accounts, below is a copy of the field interview card from LAPD's website.⁴⁸³ In its 2022 Report, the Board began to explore the use of field interview cards and observed disparities in the treatment of transgender individuals.⁴⁸⁴ This year, the Board focuses on the use of field interview cards in stops of youth.

⁴⁷⁶ See Annitto, *supra* note 475, at pp. 2, 7, 37, 45, 48-49 (recommending the adoption of a reasonable suspicion standard for searches of youth, due to the influence of age on the ability to consent to a search).

⁴⁷⁷ Washington State Leg. House Bill 1140 (2021-2022 Reg. Sess.); New Law Puts Washington at forefront in Protecting Youth Rights (Apr. 2021) ACLU Press Release <<https://www.aclu.org/press-releases/new-law-puts-washington-forefront-protecting-youth-rights>> [as of Nov. 29, 2022].

⁴⁷⁸ See *United States v. Mendenhall* (1980) 446 U.S. 544, 553-554.

⁴⁷⁹ *Ibid.*

⁴⁸⁰ The practices around field interview cards are not standardized or codified in California, and thus the practices vary among agencies. In fact, some agencies do not use the field interview card practice at all.

⁴⁸¹ OIG Review of LAPD Stops, *supra* note 290, at p. 39.

⁴⁸² *The CalGang Criminal Intelligence System* (Aug. 2016) Cal. State Auditor Report 2021-130, at p. 11 <<https://www.auditor.ca.gov/pdfs/reports/2015-130.pdf>> [as of Nov. 29, 2022]; see OIG Review of LAPD Stops, *supra* note 290, at pp. 39-40; *LAPD Field Interview (FI) Cards NR21240jl* ("Field Interview Cards") (Sep. 2021) <<https://www.lapdonline.org/newsroom/lapd-field-interview-fi-cards-nr21240jl/>> [as of Nov. 29, 2022].

⁴⁸³ *Field Interview Cards*, *supra* note 482; Levin, *Revealed: LAPD officers told to collect social media data on every civilian they stop* (Sep. 2021) The Guardian <<https://www.theguardian.com/us-news/2021/sep/08/revealed-los-angeles-police-officers-gathering-social-media>> [as of Nov. 29, 2022].

⁴⁸⁴ Specifically, the 2022 RIPA Report highlighted: "In 2020, 26.6 percent of the stops of individuals perceived as transgender men/boys resulted in officers completing a field interview card. A similar proportion of the stops of individuals perceived as transgender women/girls (26.2%) resulted in the completion of a field interview card. Individuals perceived as gender nonconforming had the lowest proportion (5.4%) of stops resulting in the completion of a field interview card, followed by (cisgender) female and male individuals with 9.0 percent and 13.0 percent of their stops resulting in field interview cards, respectively." See Racial and Identity Profiling Advisory Board, Annual Report (2022), *supra* note 169, at p. 72.

OP. LIC. NO. O		STATE F	NAME (LAST, FIRST, MIDDLE) N		SUFFIX (JR., ETC.) J	
RESIDENCE ADDRESS A			CITY C	STATE	SEX S	DESCENT D
HAIR H	EYES E	CLOTHING				
HEIGHT T	WEIGHT W	BIRTHDATE B				
PERSONAL ODDITIES					PHONE NO.	
BUSINESS ADDRESS/SCHOOL						
MONIKER/ALIAS				GANG/CLUB		
SUBJ INFO		1 LOITERER	3 HOMELESS	5 GANG ACTIVITY	7 ON PAROLE	☐ DRIVER
		2 PROWLER	4 WITNESS	6 HAS RECORD	8 ON PROBATION	☐ PASSENGER
V	YEAR	MAKE	MODEL	TYPE	COLOR	VEH. LIC. NO.
E	INT COLOR	1 BUCKET SEAT	2 DAMAGED INSIDE	1 CUSTOM WHEELS	3 LEVEL ALTER	5 CUSTOM PAINT
		2 PAINTED MURAL	4 RUST/PRIMER	6 VINYL TOP		
H	BODY	1 DAMAGE	3 STICKER	4 LEFT	6 FRONT	WIN-DOWS
		2 MODIFIED	5 RIGHT	7 REAR	1 DAMAGE	3 CURTAINS
					2 CUSTOM TINT	4 LEFT
						5 RIGHT
						6 FRONT
						7 REAR

485

Persons with subject			
NAME (LAST, FIRST)		DOB	SEX
NAME (LAST, FIRST)		DOB	SEX
ADDITIONAL INFO (ADDITIONAL PERSONS, BOOKING NO., NARRATIVE, E-MAIL, SOCIAL MEDIA ACCOUNT(S) (E.G., TWITTER, INSTAGRAM, FACEBOOK), ETC.)			
DATE	TIME	LOCATION	RD
OFFICER	SERIAL NO.	OFFICER	SERIAL NO.
FIELD INTERVIEW	INCIDENT NO.	DIVISION	DETAIL
15 43.00 (01/20)			SUPV. INITS.
Z * IF SOCIAL SECURITY NUMBER IS REQUESTED THE FOLLOWING DISCLAIMER MUST BE READ: "Federal law requires that you be informed, when asked for your Social Security number, that it must be provided for use in identification. Authority for requiring this information is based upon field interview procedures operational prior to January 1, 1975." ☐ DISCLAIMER GIVEN SOCIAL SECURITY NO.: _____			

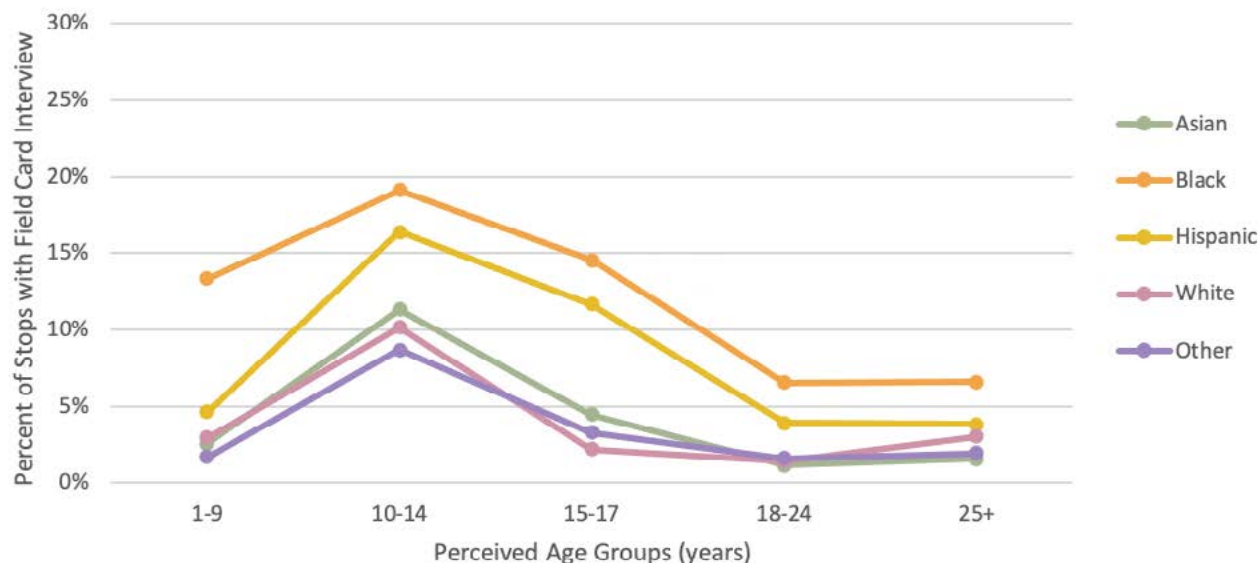
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Overall, officers indicated in the 2021 RIPA data they completed a field interview card as a result of stop during 3.7 percent of all stops. Across all age groups, officers completed field interview cards during a higher percentage of stops of individuals perceived to be Black, and the second highest percentage during stops of individuals perceived to be Hispanic/Latine(x). Within the different age groups, officers completed field interview cards during a higher percentage of stops of individuals perceived to be 10-14 years old from all perceived racial and ethnic groups (Black 19.1%, Hispanic/Latine(x) 16.4%, Asian 11.3%, White 10.1%, and Other 8.6%).

485 The Board is including this card for reference only and does not support the context of the card. See *Field Interview Cards*, *supra* note 482.

486 *Ibid.*

Figure 52. Field Interview Card Completed Result of Stop Rates by Age and Racial and Ethnic Group



If field interview cards are being used to then enter data into law enforcement databases, including gang databases,⁴⁸⁷ that could violate the constitutional rights of youth in particular because of their greater vulnerability and willingness to comply with authority figures and answer officers' questions.⁴⁸⁸ There is also potential for great harm, because children may not be able to weigh the long-term consequences of speaking to the police about information that could later be put into a database.⁴⁸⁹ Additionally, because children have a lessened ability to weigh such consequences, youth may also implicate other people as gang members without understanding the negative ramifications of making those statements to an officer.⁴⁹⁰ For these reasons, some advocates have called for eliminating the use of children's statements implicating either themselves or others as a basis for inclusion in the gang database or use as evidence of gang membership.⁴⁹¹ Further, the consequences of a youth being labeled as a gang member can have serious repercussions. If youth are "known to police" because their names are in a database, even if due to a consensual encounter, they may later be treated by law enforcement as having a criminal history even if they do not.⁴⁹²

*The use of field interview cards and their entry into criminal databases have tremendous impacts on youth in heavily policed communities since "as a practical matter, it may be difficult for a minor, or a young-adult, living in a gang-heavy community to avoid being labeled by police as a gang member when the list of behaviors includes items such as 'is in a photograph with known gang members,' 'name is on a gang document, hit list or gang-related graffiti' or 'corresponds with known gang members or writes and/or receives correspondence.'"*⁴⁹³

487 See Assem. Bill No. 90 (2017-2018 Reg. Sess.).

488 See Flores, *Challenging Guilt by Association: Rethinking Youths' First Amendment Right to Associate and Their Protection from Gang Databases* (2022) 107 Cornell L. Rev. 847, 872-874, 880-893 <<https://live-cornell-law-review.pantheonsite.io/wp-content/uploads/2022/06/Flores-note-final.pdf>> [as of Nov. 29, 2022].

489 See *ibid.*

490 See ACLU Comment Letter to California Department of Justice Regulations Coordinator, Regulations for the Fair and Accurate Governance of the CalGang Database Title 11, Division 1, Chapter 7.5; Regulations for the Fair and Accurate Governance of Shared Gang Databases, Title 11, Division 1, Chapter 7.6 ("ACLU Comment Letter") (Jun. 24, 2019) p. 7 <https://www.aclusocal.org/sites/default/files/20190625_civil_rights_calgang_reg_cmts.pdf> [as of Nov. 29, 2022].

491 Specifically the ACLU recommends that youth cannot be a reliable source of information or evidence that would qualify for inclusion in the gang database. See *ibid.*

492 See *id.* at p. 2 (noting that placement in CalGang may influence how law enforcement officer engage with individuals and may also impact legal outcomes, such as decisions to grant bail or adjustments to an individual's immigration status).

493 Assemb. Comm. Pub. Safety, Assem. Bill No. 90 (2017-2018 Reg. Sess.) (Apr. 17, 2017) p. 6.

Throughout the country, youth advocates and organizers, such as the Youth Justice Coalition in Los Angeles, have advocated against the criminalization of youth through gang databases.⁴⁹⁴ CalGang, a shared database that is used by over 6,000 law enforcement officers across the state, labels and tracks thousands of people suspected of gang membership.⁴⁹⁵ A 2018 analysis of CalGang data by the ACLU uncovered that “over 65% of those included in CalGang are Hispanic or Latino, almost 24 percent are Black and under 7 percent are white. The statistics do not reflect the population demographics of California: statewide, Hispanic or Latino people and Black people comprise only 39.1 percent and 6.5 percent of the general population, respectively, while white people make up 72.4 percent.”⁴⁹⁶ In 2021, there were over 30,000 people in the CalGang database, and of those, 351 are youth from ages 13 to 17.⁴⁹⁷ Children as young as 13 years old can be entered into the CalGang system. Given these findings, in future reports, the Board is interested in further examining this issue of interview cards and CalGang entries to explore whether they are a source of racial and identity disparities.

In summary, youth are provided with additional protections in many areas of the law, such as custodial interrogations,⁴⁹⁸ to assure statements are given voluntarily. Therefore, policymakers should consider whether these same protections should extend to the practice of consent searches and field interview cards, given the potential negative consequences to youth, particularly if any statements made by youth could be used against them criminally. Similarly, as illustrated in this section, law enforcement agencies and lawmakers should consider additional protections and safeguards for youth with regard to any uses of force and searches given the potential for the long-term severe negative consequences for youth.

2.7. Conclusion and Vision for Future Reports

Given the legal and ethical concerns surrounding questioning and searching children, in future reports, the Board would like to further explore policies geared toward creating added protections for youth during these encounters. Some policy reforms the Board would like to consider in future reports include:

- (1) requiring that an attorney be present to search or question youth and that probable cause be required prior to any frisk or pat search of a youth;
- (2) prohibiting entries into criminal databases after youth are questioned or a field interview is conducted without the presence of an attorney; and
- (3) mandating that use of force policies address interactions with youth and prohibit certain types of use of force against youth.

The Board emphasizes the importance of creating policies or laws that account for the vulnerability of youth⁴⁹⁹ and plans to review additional policies or best practices for police encounters with youth for inclusion in next year’s Report.

494 See Vitale, *The Criminalization of Youth* (2018) Jacobin <<https://jacobin.com/2018/08/the-criminalization-of-youth>> [as of Nov. 29, 2022].

495 *Id.* at p. 4.

496 ACLU Comment Letter, *supra*, note 490.

497 Of both children and adults there are 22,905 Hispanic/Latine(x) individuals, 7,383 Black individuals, and 2,570 White individuals in the CalGang database. See *Attorney General’s Annual Report on CalGang* (2021) pp. 4-6 <<https://oag.ca.gov/system/files/media/ag-annual-report-calgang-2021.pdf>> [as of Nov. 29, 2022].

498 See Cal. Welf. & Inst. Code, § 625.6.

499 See Flores, *supra* note 488, at pp. 872-874; Annitto, *supra* note 475, at pp. 18, 36, 41.

3. Youth Contacts with Law Enforcement: Addressing the Profiling of Students

3.1. Introduction

As the Board examines youth and law enforcement interactions, it is essential to examine these interactions in schools, both because youth spend significant time in school and because in recent decades, the presence of law enforcement in schools has greatly increased.⁵⁰⁰ The trend of increased school-based law enforcement has in turn increased contact for recent generations of youth with law enforcement. School attendance in California is compulsory for youth ages 6 to 18; therefore, examining in-school interactions between youth and law enforcement is essential in shaping policy because of the State's role in imposing these interactions.

There is a large body of research regarding school-based law enforcement. Within this section, the Board reviews this research as it relates to racial and identity profiling, presents analyses of the 2021 RIPA stop data, and discusses policy considerations and recommendations.

3.2. Current Context of Schools

In California, 1,021 school districts served 5,892,240 students during the 2021-2022 school year.⁵⁰¹ Data generally shows a decrease in school violence and safety issues across multiple measures over the decade between 2009 and 2019, with a few exceptions,⁵⁰² and provides context about the school environment for the Board's work to eliminate racial and identity profiling in schools. Later in this section, the Board discusses the trajectory of increased school-based law enforcement.⁵⁰³ Concerns about school violence and safety issues are a frequent motivation for increasing school-based law enforcement,⁵⁰⁴ and the Board examines the research regarding such concerns.

3.2.1. Student Safety

The Board first reviews data from state and national sources regarding student safety before examining the relationship between student safety and school-based law enforcement.

Statewide data, as self-reported by approximately 1.3 million 7th, 9th, and 11th graders in the state's California Healthy Kids Survey, shows that there are racial/ethnic gaps related to safety in elementary and high school levels.⁵⁰⁵ Black and Latine(x) students are less likely than White students to report that they feel safe or very safe at school.⁵⁰⁶ In both middle and high school, researchers found that

500 Nationally, only one percent of schools had a police officer presence in 1975. By 2018, approximately 58 percent of schools were patrolled by police officers. Connery, *The Prevalence and the Price of Police in Schools* (2020) U. Conn. Center for Education Public Analysis, p. 1 <https://cepa.uconn.edu/wp-content/uploads/sites/399/2020/10/Issue-Brief-CEPA_C-Connery.pdf> [as of Nov. 29, 2022].

501 In 2020-21, 6,002,523 K-12 students were enrolled statewide. *Fingertip Facts on Education in California* (Sept. 2022) Cal. Dept. of Education <<https://www.cde.ca.gov/ds/ad/ceffingertipfacts.asp>> [as of Nov. 29, 2022]; *California Department of Education Releases 2020-21 Statewide School Enrollment Data* (Apr. 2021) Cal. Dept. of Education <<https://www.cde.ca.gov/nr/ne/yr21/yr21rel32.asp>> [as of Nov. 29, 2022].

502 Irwin et al. *Report on Indicators of School Crime and Safety: 2021* (June 2022) Inst. of Education Services and Bur. of Justice Statistics, p. 2 <<https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/iscs21.pdf>> [as of Nov. 29, 2022].

503 Theriot and Orme, *School Resource Officers and Students' Feelings of Safety at School* (Apr. 2016) 14 Youth Violence and Juvenile Justice 130 <https://www.researchgate.net/profile/Matthew-Theriot-3/publication/285980423_School_ResourceOfficers_and_Students'_Feelings_of_Safety_at_School/links/5aae71d6458515e3cebe96b8f/School-Resource-Officers-and-Students-Feelings-of-Safety-at-School.pdf> [as of Nov. 29, 2022].

504 Connery, *supra* note 500, at p. 1.

505 Hanson et al., *California Healthy Kids Survey Factsheet #13: Racial/Ethnic Differences in Student Achievement, Engagement, Supports, and Safety: Are they greater within schools or between schools in California?* (2012) WestEd Health and Human Development Program for the Cal. Dept. of Education, p. 2 <https://data.calschls.org/resources/FACTSHEET-13_20120405.pdf> [as of Nov. 29, 2022].

506 *Id.* at p. 4.

about half of the gap related to safety between Black and White students was due to disparities across students within the same schools and half was due to disparities across students attending different schools.⁵⁰⁷ The same pattern was identified for the gap related to safety among Latine(x) and White high school students.⁵⁰⁸ Among middle school students, however, the gap between Latine(x) and White students was primarily attributable to disparities across students attending different schools.⁵⁰⁹ Based on findings regarding the ethnic/racial gap related to safety, WestEd researchers recommended practices designed to ensure that Black, Latine(x), White, and Asian students have equal access to resources and adult supports within the same school that may be effective in ameliorating the school safety gap.⁵¹⁰

3.2.1.1. Student Experiences and Perception of Safety in School

The U.S. Department of Education and the U.S. Department of Justice reported on students' experiences and perceptions of safety in schools between 2009 and 2019 at a national level:

- “In 2019, about 5 percent of students ages 12-18 reported that they had been afraid of attack or harm at school during the school year, which was higher than the percentage of students who reported that they had been afraid of attack or harm away from school (3 percent). The percentages of students who reported being afraid of attack or harm at school and away from school in 2019 were not measurably different from those in 2009.”⁵¹¹
- “In 2019, about 9 percent of students ages 12-18 reported a gang presence at their school. . . . These unfavorable conditions were less prevalent than they were a decade prior in 2009, when 20 percent of students reported a gang presence.”⁵¹²
- “[B]etween 2009 and 2019, the percentage of students in grades 9-12 who reported carrying a weapon anywhere during the previous 30 days decreased (from 17 to 13 percent), as did the percentage of students who reported carrying a weapon on school property (decrease from 6 to 3 percent).”⁵¹³
- In 2019, 22 percent of students in grades 9-12 reported that someone had offered, sold, or given them an illegal drug on school property in the previous twelve months.⁵¹⁴

3.2.1.2. Incidents of Crime in Schools

Between 2009 and 2020, several crime and safety issues became less prevalent at elementary and secondary schools.⁵¹⁵ During this period, the rate of nonfatal criminal victimization, including theft and violent crime, decreased from 51 to 11 incidents per 1,000 students; the crime rate also decreased for students at school and away from school.⁵¹⁶ The national report *Indicators of School Crime and Safety: 2021* reported that “[i]n 2020, students ages 12-18 experienced 285,400 crimes at school and 380,900 crimes away from school.” In contrast to the decreased crime rate, there were 93 shootings with casualties at schools in 2020-21, the highest number since 2000-01, and 53 school shootings with no casualties.⁵¹⁷

507 *Ibid.*

508 *Ibid.*

509 *Ibid.*

510 *Id.* at p. 5.

511 Irwin et al., *supra* note 502, at p. 19.

512 *Id.* at p. 13.

513 *Id.* at p. 15.

514 *Id.* at p. 17.

515 Elementary schools are defined as schools that enroll students in more of grades K through 4 than in higher grades. Secondary schools are defined as schools that enroll students in more of grade 9 through 12 than in lower grades. See *id.* at p. 11, note 24 <<https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/iscs21.pdf>> [as of Nov. 29, 2022].

516 *Id.* at pp. 2, 5.

517 *Id.* at p. 3.

The U.S. Department of Education and the U.S. Department of Justice data reflect:

- There were 39 school-associated violent deaths in the 2018-19 school year. This included 29 homicides and 10 suicides. Of these 39 school-associated violent deaths, 10 homicides and 3 suicides were of school-age youth.⁵¹⁸
- During the 2019-20 school year, 77 percent of schools reported that one or more incidents of crime had taken place and 47 percent of schools reported one or more incidents of crime to law enforcement.⁵¹⁹ The percentage of schools that recorded one or more incidents of crime was lower in 2019-20 than in 2009-10 (77 vs. 85 percent) as was the percentage of schools that reported one or more criminal incidents to law enforcement (47 vs. 60 percent).⁵²⁰
- While violence in schools was 8.4 percent less likely to be reported to police than violence outside schools, when there was a police report of violence in school it was 6.3 percent more likely to result in arrest.⁵²¹ School violence was associated with an increased likelihood of arrest only for Black youth, not White youth, and only for boys, not girls.⁵²²

With respect to crimes on campuses of postsecondary institutions, the U.S. Department of Education and the U.S. Department of Justice reported:

“[B]etween 2009 and 2019, the rate of crime decreased from 23.0 to 18.7 incidents per 10,000 full-time-equivalent students. Despite the general downward trend over this period, the rate of reported forcible sex offenses on campus increased. . . Forcible sex offenses constituted 43 percent of all criminal incidents reported on campus in 2019.”⁵²³

Rate of Reported Sex Offenses on Postsecondary Campuses ⁵²⁴	
2009	2019
1.7 incidents per 10,000 students	8.0 incidents per 10,000 students

518 *Ibid.*

519 *Id.* at p. 9.

520 *Ibid.*

521 Hullenaar et al. *Youth Violent Offending in School and Out: Reporting, Arrest, and the School-to-Prison Pipeline* (Aug. 2021) Justice Q., 1319, 1332.

522 *Id.* at pp. 1332-1333.

523 Irwin et al., *supra* note 502, at p. 2.

524 *Ibid.*

3.3. School-Based Law Enforcement

School-based policing programs began in the 1950s and increased in the 1980s and 1990s, a period in which the escalation of punishments for children (e.g. suspension, expulsion) was often equated with safety.⁵²⁵ Nationally, only one percent of schools had a police officer presence in 1975.⁵²⁶

By 2018, approximately 58 percent of schools were patrolled by police officers.

By 2018, approximately 58 percent of schools were patrolled by police officers.⁵²⁷ In recent decades, the presence of law enforcement in schools has steadily increased.⁵²⁸ In 2018, 68 percent of U.S. public high school students attended schools with at least one police officer present.⁵²⁹ The U.S. Department of Justice, Office of Community Oriented Policing Services grant funding and state funding has supported this trend.⁵³⁰

California school districts reported 2,080 onsite law enforcement officers and 4,228 security guards in schools in the U.S. Department of Education's 2015-16 Civil Rights Data Collection.⁵³¹ While this number has been higher in the past, currently there are 19 school district police departments in California.⁵³² These school district police departments are independent of the municipal police agencies or sheriff's departments.⁵³³ Given the number of school-based officers in California and the number of school district police departments, we deduce that the most common school-based law enforcement

- 525 See, e.g., Gleit, *Cops on Campus: The Racial Patterning of Police in Schools* (2022) 8 *Socius* 1 <<https://journals.sagepub.com/doi/pdf/10.1177/23780231221108037>> [as of Nov. 29, 2022]; Lindberg, *False Sense of Security: Police make schools safer—right?* (2015) *Learning for Justice*, p. 22 <<https://www.learningforjustice.org/sites/default/files/general/False%20Sense%20of%20Security%20-%20TT50.pdf>> [as of Nov. 29, 2022]; Javdani, *Policing Education: An Empirical Review of the Challenges and Impact of the Work of School Police Officers* (Jun. 27, 2019) 63 *Am. J. of Community Psychol.* 253 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6597313/>> [as of Nov. 29, 2022]; Scott et al., *Law and Order in School and Society: How Discipline and Policing Policies Harm Students of Color, and What We Can Do About It* (2017) Nat. Education Policy Center, p. 12 <https://nepc.colorado.edu/sites/default/files/publications/PB%20Law%20and%20Order_0.pdf> [as of Nov. 29, 2022]; see also Hinton and Cook, *The Mass Criminalization of Black Americans: A Historical Overview* (Jan. 2021) 4 *Ann. Rev. of Criminology* 261 <<https://www.annualreviews.org/doi/10.1146/annurev-criminol-060520-033306>> [as of Nov. 29, 2022].
- 526 Connery, *supra* note 500, at p. 1.
- 527 *Ibid.*
- 528 Fisher and Petrosino, *What A Systematic Review of 32 Evaluations Says About the Impact of School-Based Law Enforcement* (May 2022) WestEd Justice and Prevention Research Center, p. 3 <<https://files.eric.ed.gov/fulltext/ED621156.pdf>> [as of Nov. 29, 2022].
- 529 Lindsay et al., *The prevalence of police officers in U.S. schools* (June 2018) Urban Inst. <<https://www.urban.org/urban-wire/prevalence-police-officers-us-schools#:~:text=Attending%20school%20with%20at%20least%20one%20police%20officer,%2868%20percent%29%20for%20US%20public%20high%20school%20students>> [as of Nov. 29, 2022].
- 530 See Connery, *supra* note 500, at pp. 1-3 (“Between 1999 and 2005, [the Office of Community Oriented Policing Services] awarded approximately \$823 million in grants to districts for hiring SROs, funding 7,242 positions in hundreds of communities across the nation. Funding for the COPS in Schools program ended in 2005. However, law enforcement agencies are encouraged to apply for funds to hire SROs via other COPS Office grants programs. This change made it more difficult to track the grants awarded exclusively for SROs. Overall, since 1998, the federal government has invested over \$1 billion to explicitly increase police presence in schools, 19 and over \$14 billion to advance community policing, which can include SROs.”). An example of state funding includes the \$431,459 awarded to the Pleasanton Police Department for fiscal year 2022-23 for school and community education and enforcement operations. See *Tobacco Grant Program Fiscal Year 2022-23* (2022) Cal. Dept. of Justice, p. 1 <<https://oag.ca.gov/system/files/media/tobacco-grant-2022-2023-grantees.pdf>> [as of Nov. 29, 2022].
- 531 Whitaker et al., *Cops and No Counselors: How the Lack of School Mental Health Staff Is Harming Students* (2019) American Civil Liberties Union, p. 17 <<https://www.aclunc.org/sites/default/files/030419-aclschooldisciplinereport.pdf>> [as of Nov. 29, 2022].
- 532 *Agency List by Name* (2022) Comm. on Peace Officer Stds. and Training <https://post.ca.gov/Portals/0/post_docs/hiring/Agency_List_Reimbursable_Info.pdf> [as of Nov. 29, 2022]; *Welcome to ERUSD School Police* (n/d) El Rancho Unified School District <https://www.erusd.org/apps/pages/index.jsp?uREC_ID=155468&type=d&pREC_ID=1337214> [as of Nov. 29, 2022]; *District Office Staff* (n/d) Inglewood Unified School District <https://www.inglewoodusd.com/apps/pages/index.jsp?uREC_ID=1471367&type=d&pREC_ID=2289277> [as of Nov. 29, 2022].
- 533 Petrosino et al., *Research in Brief: School-Based Law Enforcement* (2020) Regional Educational Laboratory at WestEd, p. 1 <<https://www.wested.org/resources/research-in-brief-school-based-law-enforcement/>> [as of Nov. 29, 2022].

strategy in California is to have an SRO who reports to a local police or sheriff's department, which is in line with the national data suggesting that more than half of SROs work for a local police or sheriff's department.⁵³⁴

As shown in the table and map below, the majority of school district police departments are concentrated in southern California. The school enrollment data included below also demonstrates that in each of these districts the majority of students is Latine(x). Six of the departments in Southern California are in Los Angeles County and five are in San Bernardino County.

Location of School District Administered Police Departments and District Enrollment by Race/ Ethnicity ⁵³⁵			
Northern California	Central California	Southern California	
Stockton Unified School District Police Department (68.8% Hispanic or Latino, 9.6% African American, 8.9% Asian)	Clovis Unified School District Police Department (near Fresno; 39.8% Hispanic or Latino, 35.1% White, 15% Asian)	Apple Valley Unified School District Police Department (in San Bernardino County; 53.9% Hispanic or Latino, 32.3% White, 7.5% African American)	Los Angeles School Police Department (74.5% Hispanic or Latino, 9.7% White, 7.3% African American)
Twin Rivers Unified School District Police Department (near Sacramento; 42.5% Hispanic or Latino, 24.9% White, 11.7% Asian; 11.4% African American)	San José Unified School District Police Department (53.8% Hispanic or Latino, 21.7% White, 13.5% Asian)	Compton Unified School District Police Department (79.1% Hispanic or Latino, 19.1% African American, 0.4% Pacific Islander)	Montebello Unified School District Police Department (in Montebello/Los Angeles; 94.5% Hispanic or Latino, 0.7% Asian, 0.5% White)
	Kern High School District Police Department (69.7% Hispanic or Latino, 18.1% White, 5.7% African American)	El Rancho Unified School District Police Department (near Pico Rivera/Los Angeles; 97.3% Hispanic or Latino, 1% White, 0.5% Asian)	San Bernardino Unified School District Police Department (79.9% Hispanic or Latino, 10.8% African American, 4.6% White)
		Fontana Unified School District Police Department (in San Bernardino County; 86.8% Hispanic or Latino, 5.1% African American, 3.9% White)	San Diego City Schools Police Department (47.1% Hispanic or Latino, 22.2% White, 8.5% Asian)
		Hacienda-La Puente Unified School District Police Department (in Los Angeles County; 75.7% Hispanic or Latino, 17.1% Asian, 2.5% White)	Santa Ana Unified School District Police Department (in Orange County; 95.9% Hispanic or Latino, 1.9% Asian, 0.8% White)
		Hesperia Unified School District Police Department (in San Bernardino County; 72.6% Hispanic or Latino, 17.2% White, 6.6% African American)	Snowline Joint Unified School District (in San Bernardino County; 55.8% Hispanic or Latino, 29.3% White, 4.6% African American)
		Inglewood Unified School District Police Department (59.5% Hispanic or Latino, 36.4% African American, 1.0% two or more races)	Val Verde Unified School District Police Department (in Riverside County; 79.5% Hispanic or Latino, 11.1% African American, 4.0% White)

534 Curran et al., *Why and When Do School Resource Officers Engage in School Discipline? The Role of Context in Shaping Disciplinary Involvement* (2019) 126 American J. of Education 33, 35.

535 We have listed the three racial/ethnic groups that represent the largest proportion of student enrollment within each district. Commission on Peace Officer Standards and Training. (2022); *DataQuest: 2021-22 Enrollment by Ethnicity and Grade* (2022) Cal. Dept. of Education <<https://dq.cde.ca.gov/dataquest/dqcensus/EnrEthGrd.aspx?cds=00&aggllevel=state&year=2021-22>> [as of Nov. 29, 2022].

Figure 53. Location of School District Administered Police Departments



Additionally, in 2021 Long Beach Unified School District (LBUSD) Safety Department, had a staff of armed school safety officers (SSOs), including nine full-time and two-part-time officers, plus four supervisors.⁵³⁶ A LBUSD spokesperson stated that SSOs do not investigate crimes and do not make arrests, but can detain individuals pending an investigation and may use deadly force in self-defense or in defense of others to prevent death or great bodily injury.⁵³⁷ This can have fatal consequences. In one devastating incident in September 2021, eighteen year old Manuela “Mona” Rodriguez, who was unarmed, was killed by a LBUSD SSO when she was shot by the officer who stopped to intervene in a fight between Ms. Rodriguez and another young person on a sidewalk one block away from one of the district high schools.⁵³⁸ LBUSD’s superintendent believed the SSO’s actions were in violation of

536 Guardabascio, *What are school safety officers and when do they have authority to shoot people?* (Sept. 2021) *Long Beach Post* <<https://lbpost.com/news/what-are-school-safety-officers-and-when-do-they-have-authority-to-shoot-people>> [as of Nov. 29, 2022].

537 *Ibid.*

538 Miller and Smith, *Long Beach school district officials fire safety officer after internal review of shooting* (Oct. 2021) *Los*

the District's use of force policy prohibiting firing on a moving vehicle.⁵³⁹ The SSO had worked for the District for nine months and had also been let go from a previous police departments.⁵⁴⁰ The SSO was fired by the school district, and the Los Angeles County District Attorney's Office charged him with one count of murder.⁵⁴¹ The trial has not yet begun.⁵⁴²

The largest professional organization for SROs, the National Association for School Resource Officers (NASRO), raises concerns about officers that are not specifically trained to work with youth responding to schools.⁵⁴³ Law enforcement officers employed by California K-12 school districts are required to complete a minimum 40-hour specialized training within two years of their employment.⁵⁴⁴

School-based probation officers are another element of law enforcement in many schools. School-based probation officers engage in their probation/supervision duties and provide referrals to resources for probation-involved youth in some schools.⁵⁴⁵ As part of Los Angeles County's process of transitioning its juvenile justice system from the Probation Department to the Department of Youth Development, the County will begin to replace school-based supervision with community-based alternatives.⁵⁴⁶

California districts reported a larger number of law enforcement officers than social workers and a greater number of security guards than nurses in the U.S. Department of Education's 2015-16 Civil Rights Data Collection.⁵⁴⁷ 6.3% of students (390,072 students) in California attended schools where law enforcement were present, but there was no counselor; this represents 23 percent of the students nationally in schools with law enforcement, but no counselors.⁵⁴⁸ In California, the student-to-school-based law enforcement ratio was 2,989-to-1.⁵⁴⁹ The student-to-counselor ratio was 682-to-1; California is the state with the third highest counselor caseload in the country.⁵⁵⁰ The student-to-social worker ratio was 6,132-to-1, the student to psychologist ratio was 998-to-1, and the student-to-nurse ratio was 1,482-to-1.⁵⁵¹ Standards developed by professional associations recommend at least one counselor and one social worker for every 250 students, one psychologist for every 500-700 students, depending on

Angeles Times <<https://www.latimes.com/california/story/2021-10-06/long-beach-school-district-officials-fire-school-safety-officer-after-internal-review-of-shooting>> [as of Nov. 29, 2022]; *Long Beach School Safety Officer Charged with Murder* (Oct. 2021) Los Angeles County District Attorney's Office <<https://da.lacounty.gov/media/news/long-beach-school-safety-officer-charged-murder>> [as of Nov. 29, 2022].

539 Miller and Smith, *supra* note 538.

540 *Ibid.*

541 *Long Beach School Safety Officer Charged with Murder*, *supra* note 538.

542 Percy, *Ex-Long Beach school safety officer charged with murder posts bond, released from jail*. (Aug. 2022) Press Telegram <<https://www.presstelegram.com/2022/08/03/ex-long-beach-school-safety-officer-charged-with-murder-posts-bond-released-from-jail/>> [as of Nov. 29, 2022].

543 Kirby, *Policing in Schools: Reimagining school safety in the wake of more tragedy* (2020) Cal. Schools, Cal. School Bds. Assn. <<https://publications.csba.org/issue/winter-2020/policing-in-schools/>> [as of Nov. 29, 2022].

544 *Campus Law Enforcement* (2022) Com. on Peace Officer Stds. and Training <<https://post.ca.gov/Campus-Law-Enforcement>> [as of Nov. 22, 2029]. The training currently being offered is described as meeting "the minimum training standards for K-12 and Community College Peace Officers as defined by 832.3(G) and (H) PC. It includes criminal law, education code law, operational tactics, and hands-on exercises that draw upon the experience of the students and instructor." *Course Catalog: Campus Law Enforcement* (n/d) Cal. Peace Officer Stds. and Training <https://catalog.post.ca.gov/SearchResult.aspx?crs_no=22294&crs_title=CAMPUS%20LAW%20ENFORCEMENT&pageId=10&MAC=MoGztiv3krNSHCdyVR4IIZSywVs> [as of Nov. 29, 2022]; Towne, *Chief: Having SROs better than calling police to schools* (Oct. 27, 2015) WPRI.com12 <<https://www.wpri.com/news/chief-having-sros-better-than-calling-police-to-schools/>> [as of Nov. 29, 2022]

545 Hayward Burns Institute, *supra* note 415, at p. 16. Probation officers are not required to report stop data under RIPA. See Cal. Code Regs., tit. 11, § 999.225, subd. (b).

546 Hayward Burns Institute, *supra* note 415, at pp. 11, 13, 64.

547 Whitaker et al., *supra* note 531, at p. 17.

548 *Id.* at pp. 19-22. An interactive county-level map of California counties indicating the percentage of students in schools reporting law enforcement and no counselors can be found on the following page: <https://www.aclu.org/issues/juvenile-justice/school-prison-pipeline/race-discipline-and-safety-us-public-schools?redirect=schooldiscipline>.

549 *Id.* at p. 17. This ratio of students to school-based law enforcement was calculated by dividing the number of students (6,217,689) by the number of law enforcement officers (2,989).

550 *Id.* at p. 12.

551 *Id.* at pp. 13-14.

the comprehensiveness of the services being provided, and at least one nurse for every 750 students in healthy student populations.⁵⁵² Clearly, caseloads in California are substantially larger than these recommended scenarios.

Advocates for students' education rights indicate that "[w]hen there are no other behavioral resources at hand, some teachers request help from law enforcement."⁵⁵³ Data reported by schools in the Civil Rights Data Collection regarding schools' referrals of students to law enforcement shows that in California:

- Black students were referred to law enforcement at a rate more than four times that of White students. The disparity in referrals to law enforcement for these students in California is larger than the disparity between these students nationally.
- Native American students were referred to law enforcement at a rate more than two times that of White students.
- Latine(x) students were referred to law enforcement at a rate 1.5 times that of White students.
- Students with disabilities were referred to law enforcement at a rate more than three times that of students without disabilities.⁵⁵⁴

The California Department of Justice (CA DOJ) has investigated this practice of criminalizing students for minor misconduct and referring them to law enforcement. In 2019, CA DOJ entered into a settlement with the Stockton Unified School District and its police department "to address system-wide violations of civil and constitutional rights of African American and Latino students and students with disabilities."⁵⁵⁵ The CA DOJ investigation found that the District's law enforcement referrals discriminated against Black and Latino students and students with disabilities. The stipulated judgment contains mandatory reforms for the school district police policies, procedures, and practices.⁵⁵⁶ The Board will review these reforms in greater detail as it develops policy recommendations.

NASRO "suggests that as professional law enforcement officers, SROs should refrain from responding to student misbehaviors that may violate school rules but fall short of criminal behavior." SROs' involvement in discipline may "create disciplinary contexts that are more punitive and rule driven rather than focused on addressing the underlying causes of misbehavior."⁵⁵⁷ SRO involvement in school discipline has the potential to escalate common youth behavior into violence or arrestable offenses.⁵⁵⁸ This has happened in numerous instances throughout the country. For example, the ACLU sued a Kentucky sheriff after video showed a deputy handcuffing children with disabilities who did not follow directions.⁵⁵⁹ And in 2015, a federal judge ruled that school police in Birmingham, Alabama had used unconstitutional and excessive force when they routinely pepper-sprayed children for minor disciplinary infractions, including a pregnant student whose offense was crying in a hallway.⁵⁶⁰

552 *Id.* at p. 11.

553 *Id.* at p. 4.

554 *Id.* at p. 29.

555 *Press Release: California Department of Justice, Stockton Unified School District Enter into Agreement to Address Discriminatory Treatment of Minority Students and Students with Disabilities* (Jan. 22, 2019) Cal. Dept. of Justice <<https://oag.ca.gov/news/press-releases/california-department-justice-stockton-unified-school-district-enter-agreement>> [as of Nov. 29, 2022].

556 *Ibid.*

557 Curran et al., *supra* note 534, at p. 35.

558 *Id.* at pp. 46-47.

559 Equal Justice Society, *Breaking the Chains 2: The Preschool-to-Prison Pipeline* (Oct. 10, 2018) p. 8 <<https://equaljusticesociety.org/wp-content/uploads/2021/09/Breaking-The-Chains-2-The-Preschool-To-Prison-Pipeline-Epidemic-PDF.pdf>> [as of Nov. 29, 2022] (citing Brown, *ACLU files suit against sheriff who allegedly handcuffed disabled children at school* (Aug. 3, 2015) *The Washington Post* <<https://www.washingtonpost.com/news/local/wp/2015/08/03/aclu-files-suit-against-sheriff-who-allegedly-handcuffed-disabled-children-at-school/>> [as of Nov. 29, 2022]).

560 Equal Justice Society, *Breaking the Chains 2: The Preschool-to-Prison Pipeline* (Oct. 10, 2018) p. 8 <<https://>

A 2017 study of the variability in how SROs conceptualize and are involved in school discipline found:

SROs in middle and high schools were more willing to be engaged in school disciplinary infractions when those behaviors could also be read as illegal. One common way this happened was with unruly behaviors—explained by one SRO as behaviors that were noncompliant and did not involve violence, weapons, or drugs. For instance, a teacher or administrator might attempt to enforce school rules with a student, the student would not comply, and then the SRO would become involved, sometimes taking the student into custody if the school administration decided to file a petition.⁵⁶¹

An ACLU report detailed examples of students being arrested for common adolescent behaviors such as cursing, not following instructions, criticizing a police officer, or refusing to leave the lunchroom.⁵⁶²

Data from the National Center for Education Statistics shows that, compared to police in schools with predominantly White students, police in schools with predominantly students of color are significantly more likely to have duties focused on maintaining school discipline.⁵⁶³ Researchers studying why and when SROs engage in school discipline found that “SROs almost universally [79%] reported no formal involvement in writing disciplinary referrals or determining disciplinary outcomes (e.g., assigning a suspension).”⁵⁶⁴ The majority were involved in less formal disciplinary measures, “including verbal reprimands, one-on-one counseling or talks with students, lecturing classes in rules/consequences, being physically present for discipline responses (from school administrators), assisting school administrators with investigating misbehavior, and reporting misbehavior to school personnel.”⁵⁶⁵

CCRR recommends that districts with high rates of student referral to law enforcement “consider adding staff members who are well trained to respond to students’ mental health needs, such as counselors, nurses, and special educators.”⁵⁶⁶ CCRR indicates that by working with students on social emotional learning and restorative justice, these staff members could help deescalate conflicts.⁵⁶⁷ Additionally, CCRR recommends that districts could devote more resources to improving student engagement and classroom management.⁵⁶⁸

The California Department of Education has raised concerns about the unmet mental health needs of California’s students; California Superintendent of Public Instruction Tony Thurmond supported Senate Bill 1229 (SB 1229: the Mental Health Workforce Grant Program) to help recruit professionals to support students’ mental health needs.⁵⁶⁹ SB 1229 died in the Assembly.⁵⁷⁰ When behavioral health

equaljusticesociety.org/wp-content/uploads/2021/09/Breaking-The-Chains-2-The-Preschool-To-Prison-Pipeline-Epidemic-PDF.pdf [as of Nov. 29, 2022] (citing Brown, *Judge: Police can no longer pepper-spray students for minor misbehavior at school* (Oct. 1, 2015) *The Washington Post* <<https://www.washingtonpost.com/news/education/wp/2015/10/01/judge-police-can-no-longer-pepper-spray-students-for-minor-misbehavior-at-school/>> [as of Nov. 29, 2022]).

561 Curran et al., *supra* note 534, at App. 50-51.

562 Whitaker et al., *supra* note 531, at p. 23, Appen. D.

563 Curran et al., *supra* note 534, at p. 37.

564 *Id.* at p. 44

565 *Ibid.*

566 Losen et al. *Unmasking School Discipline Disparities in California: What the 2019-2020 data can tell us about problems and progress* (“*Unmasking School Discipline*”) (July 2022) Center for Civil Rights Remedies at the Civil Rights Project of UCLA, p. 23 <https://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/summary-reports/unmasking-school-discipline-disparities-in-california/Unmasking_School_Discipline_Disparities_CA_Report.pdf> [as of Nov. 29, 2022].

567 *Ibid.*

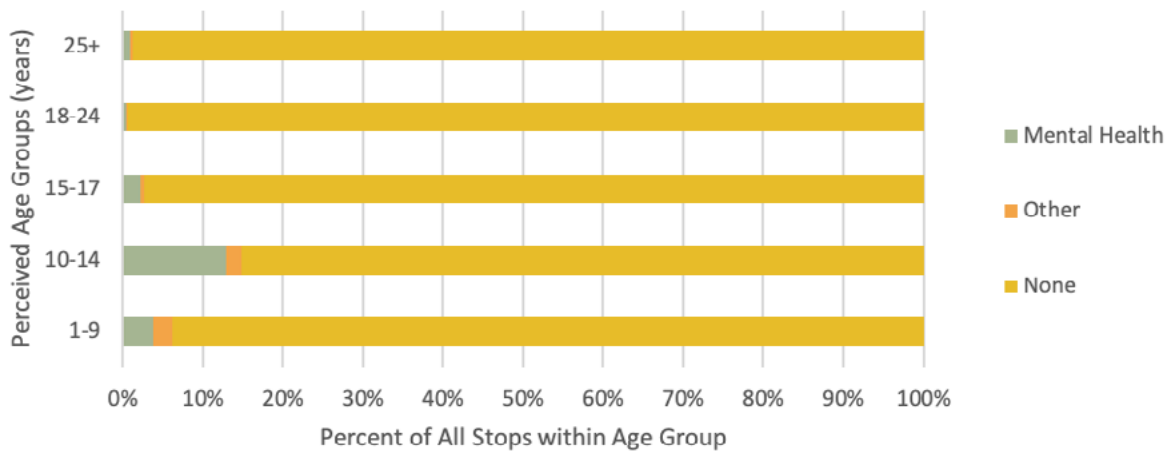
568 *Ibid.*

569 *State Superintendent Tony Thurmond Announces Support for Bill that Helps Recruit 10,000 Mental Health Clinicians for California Schools* (Mar. 2022) Cal. Dept. of Education <<https://www.cde.ca.gov/nr/ne/yr22/yr22rel14.asp>> [as of Nov. 29, 2022].

570 California Legislative Information. *SB-1299 Mental Health Workforce Grant Program (2021-2022)* Bill Information: Status <https://leginfo.ca.gov/faces/billStatusClient.xhtml?bill_id=202120220SB1229> [as of Dec. 1, 2022].

services are not available for youth, it may increase their exposure to contact with law enforcement.⁵⁷¹ Within the 2021 RIPA stop data, officers perceived 12.9% of youth (574 youth) between the ages of 10 and 14 to have a mental health disability, the highest of any within age group percentage.

Figure 54. Rate of Perceived Disabilities by Age Group



School-based health centers may improve student access. A study of adolescent use of mental health services across delivery sites found that adolescents are 21 times more likely to visit school-based health centers for mental health care than anywhere else.⁵⁷² In 2019-20 School Survey on Crime and Safety, the majority of schools reported that inadequate funding hindered their efforts to provide mental health services.⁵⁷³ Forty percent reported that their efforts were limited by inadequate access to licensed mental health professionals.⁵⁷⁴ Providing access to health care services at school – particularly mental health services – and funding to support those services may help decrease unnecessary interactions with youth and law enforcement.

CCRR’s preliminary review of 70 districts’ Local Control Accountability Plans (LCAPs) found that across districts different changes are being made to school-based law enforcement. “[W]hile some districts are cutting expenditures for school resource officers, or even eliminating school-employed police officers, others are increasing their budgets for school resource officers and school security guards.”⁵⁷⁵ In 2017, the California Department of Education resolved a complaint against Fresno Unified School District and directed the District to redirect some of the funds designated for high-needs students (Supplemental and Concentration Funds) away from expenses for policing and surveillance.⁵⁷⁶ CCRR’s Report recommended “closer scrutiny of LCAP details on improving school climate and the use of the concentration and supplemental grant funds designated for high-needs students.”^{577,578}

More broadly, the California Department of Education affirmed that “[d]istrict assertions that adding police is particularly serving the interests of high-needs students or is improving school climate lacks a research basis and raises serious questions about the legitimacy of those expenditures.”⁵⁷⁸

Black students are more likely than other students to experience intense security conditions, such as metal detectors, random sweeps, locked gates, surveillance cameras, and law enforcement

⁵⁷¹ Whitaker et al., *supra* note 531, at p. 5.

⁵⁷² *Id.* at p. 4.

⁵⁷³ Irwin et al., *supra* note 502, at p. 26.

⁵⁷⁴ *Ibid.*

⁵⁷⁵ Losen et al., *Unmasking School Discipline*, *supra* note 566, at p. 5.

⁵⁷⁶ *Id.* at pp. 23-24, 46, endnote 38.

⁵⁷⁷ *Id.* at p. 33.

⁵⁷⁸ *Id.* at p. 22.

officers, even when controlling for the level of serious misconduct in schools or violence in school neighborhoods. These intense security measures may create barriers of adversity and mistrust between students and educators.⁵⁷⁹

Over the past six decades, advocates have called for greater accountability for schools willingness to use police and the courts to criminalize students. In 1963, the president of the Northern California chapter of the NAACP encouraged Black residents to track and report school principals who frequently called the police on Black students.⁵⁸⁰ In 2022, CCRR recommended incorporating data, disaggregated by identity groups, about all law enforcement stops of students and the outcomes of these stops into California's existing school accountability system as an indicator of school climate.⁵⁸¹ CCRR indicates there is a need for "clear reporting of law enforcement involvement with students," especially in light of concerns about "inappropriate policing, and racial profiling by the police in general."⁵⁸² Given that California school districts "spend hundreds of millions of dollars each year" on police and security, the lack of data on police encounters with students, and the outcomes of those encounters, "is unsettling."⁵⁸³

The institution of school district police departments was prompted by biases related to the integration of schools.⁵⁸⁴ The Los Angeles School Police Department is thought to be the first school policing program in the nation.⁵⁸⁵ Donna Murch, a historian examining the social and political environments in Oakland in the 20th century, found that "Oakland Unified School District [OUSD] established its police force in the 1950s, partly in response to Black migration to Oakland during and after World War II."⁵⁸⁶ Prior to disbanding the police department in 2021,⁵⁸⁷ OUSD and the City of Oakland entered a Memorandum of Understanding (MOU) in 2014 regarding the role of Oakland Police Department Officers assigned to OUSD schools.⁵⁸⁸ Within the MOU, the District and the City identified a non-exhaustive list of disciplinary issues relating to students for which school administrators and staff should not notify or request assistance from Oakland Police Department officers.⁵⁸⁹ Those issues included, but were not limited to, trespassing, loitering, profanity, insubordination/defiance, verbal abuse and/or harassment, failure to wear or correctly wear school uniform or follow policies regarding clothing, possession of a prohibited item that does not violate the penal law (i.e. cell phones), lateness, cutting class, absenteeism or truancy, and alleged or witnessed promoting or claiming of a neighborhood or crew (including verbally, through graffiti, through clothing or hand signs).⁵⁹⁰

School-based policing increases the reach of law enforcement agencies in communities. While research consistently shows that school-based police do not prevent gun violence, there are mixed research

579 Nance, *Students, Security, and Race* (2013) U. Fla. Levin College of Law, 63 Emory L.J. 1, 1 <<https://scholarship.law.ufl.edu/cgi/viewcontent.cgi?article=1390&context=facultypub>> [as of Nov. 29, 2022].

580 Hullenaar et al., *supra* note 521, at p. 1332; McBride, *How Oakland Unified School District Got Its Own Police Force* (June 2020) The Oaklandside <<https://oaklandside.org/2020/06/23/how-oakland-unified-school-district-got-its-own-police-force/>> [as of Nov. 29, 2022].

581 See Losen et al., *Unmasking School Discipline*, *supra* note 566, at pp. 23, 31, 33.

582 *Id.* at p. 24.

583 *Ibid.*

584 See *The History of School Policing* [Timeline] (2021) The Center for Public Integrity <<https://publicintegrity.org/education/criminalizing-kids/the-history-of-school-policing/>> [as of Nov. 29, 2022]; Cremin, *School Policing Was Designed to Criminalize Black Students. We Must Follow Black Voices Calling for Its Abolition* (July 8, 2020) Harvard Civil Rights-Civil Liberties L. Rev. <<https://harvardcrl.org/school-policing-was-designed-to-criminalize-black-students-we-must-follow-black-voices-calling-for-its-abolition/>> [as of Nov. 29, 2022].

585 The Center for Public Integrity, *supra* note 584.

586 McBride, *How Oakland Unified School District Got Its Own Police Force* (Jun. 2020) The Oaklandside <<https://oaklandside.org/2020/06/23/how-oakland-unified-school-district-got-its-own-police-force/>> [as of Nov. 29, 2022].

587 McBride, *School Board Votes to Defund, Disband Oakland School Police* (June 2020) The Oaklandside <<https://oaklandside.org/2020/06/25/school-board-vote-defund-disband-oakland-school-police/>> [as of Nov. 29, 2022].

588 Memorandum of Understanding - City of Oakland - School Safety Officers ("Cops Grant") Program (Aug. 13, 2014) Oakland School District <<https://blackorganizingproject.org/wp-content/uploads/2021/07/Memorandum-of-Understanding-2.pdf>> [as of Nov. 29, 2022].

589 *Id.* at p. 8.

590 *Ibid.*

findings about school-based police reducing and preventing other types of crime. Nationally, between 2018 and 2021, there have been 139 school shootings that killed or injured at least one person.⁵⁹¹ Each event is terrifying. Furthermore, researchers studying the impacts of shootings on students found that “[a]lthough mass shootings at schools tend to receive significant media attention, 95 percent of shootings at schools between 2018 and 2019 resulted in fewer than two deaths, and nearly three-quarters of shootings led to no fatalities at all.”⁵⁹² While incidents in which there are no fatalities receive less media attention, these incidents reflect the exposure of large numbers of children to gun violence at school, which has a wide range of long-term detrimental effects.⁵⁹³ This certainly raises larger questions about gun violence in this country that we do not address in this Report.

The open source School Shooting database documented 602 incidents during the same 2018-2021 period; these include incidents when a gun is brandished, fired, or a bullet hit school property for any reason, regardless of the number of victims, time, or day of the week.⁵⁹⁴ An analysis of school shooting severity in the United States between 1999 through 2018 found no evidence that the presence of a school resource officer “lessened the severity of school shooting incidents.”⁵⁹⁵ Researchers at the Annenberg Institute at Brown University examined national school-level data from 2014 to 2018 and found that “SROs effectively reduce some forms of violence in schools, but do not prevent gun-related incidents.”⁵⁹⁶ They also found that SROs increase the use of suspension, expulsion, police referral, and arrest of students and “these increases in disciplinary and police action [were] consistently largest for Black students, male students, and students with disabilities.”⁵⁹⁷ In 2021, the School Policing Research to Policy Collaborative and the Federal School Discipline and Climate Coalition issued a briefing citing evidence that “[s]chool police do not reduce levels of school crime, nor prevent or reduce the severity of school shootings.”⁵⁹⁸ Evaluation of North Carolina’s state grant program for SROs concluded that “middle schools that used state grants to hire and train SROs did not report reductions in serious incidents like assaults, homicide, bomb threats, possession and use of alcohol and drugs, or the possession of weapons.”⁵⁹⁹

In a systematic review and meta-analysis of 32 evaluations on the impact of school-based law enforcement, WestEd researchers found that school-based law enforcement contributes to increased punishment of students without providing improvement in school safety.⁶⁰⁰ In studies that included student perceptions of safety, the researchers found “no conclusive evidence that the presence of school-based law enforcement has a positive effect on students’ perceptions of safety in schools.”⁶⁰¹ A study of the effects of federal hiring grants to place law enforcement officers in schools found that “law enforcement agencies learn more about crimes in schools upon receipt of a grant, and are more likely

591 *School Shootings Over Time: Incidents, Injuries, and Deaths* Education Week (Mar. 23, 2021) <<https://www.edweek.org/leadership/school-shootings-over-time-incidents-injuries-and-deaths>> [as of Nov. 29, 2022].

592 Cabral et al., *Trauma at School: The impacts of shootings on students’ human capital and economic outcomes* (2022) Nat. Bur. of Economic Research, p. 1 <https://www.nber.org/system/files/working_papers/w28311/w28311.pdf?utm_campaign=PANTHEON_STRIPPED&utm_medium=PANTHEON_STRIPPED&utm_source=PANTHEON_STRIPPED> [as of Nov. 29, 2022].

593 *Ibid.*

594 *All Shootings at Schools from 1970-Present* (2022) K-12 School Shooting Database <<https://k12ssdb.org/all-shootings>> [as of Nov. 29, 2022].

595 Livingston, et al., *A Descriptive Analysis of School and School Shooter Characteristics and the Severity of School Shootings in the United States, 1999-2018* (2019) 64 J. of Adolescent Health 797, 798 <[https://www.jahonline.org/article/S1054-139X\(18\)30832-2/fulltext](https://www.jahonline.org/article/S1054-139X(18)30832-2/fulltext)> [as of Nov. 29, 2022].

596 Sorensen et al., *The Thin Blue Line in Schools: New evidence on school-based policing across the U.S.* (2022) The Annenberg Inst. Brown U., p. 1 <https://www.edworkingpapers.com/sites/default/files/ThinBlueLine_WP_Aug6_clean_0.pdf> [as of Nov. 29, 2022].

597 *Ibid.*

598 School Police Research Briefing Series: *Police Presence in Schools Does Not Increase School Safety and Harms Students of Color* (Nov. 2021) The School Policing Research to Policy Collaborative and The Federal School Discipline and Climate Coalition, p. 1 <<http://www.schooldisciplinedata.org/ccrr/docs/Facts%20about%20School%20Policing.pdf>> [as of Nov. 29, 2022].

599 Whitaker et al., *supra* note 531, at p. 6.

600 Fisher and Petrosino, *supra* note 528, at p. 3.

601 Petrosino et al., *supra* note 533, at p. 2.

to make arrests for those crimes” primarily affecting children under the age of 15.⁶⁰² The study of the effects of federal grants for law enforcement hiring also found that “SROs increase school safety, and help law enforcement agencies make arrests for drug crimes occurring on and off school grounds.”⁶⁰³ The ACLU’s 2019 Report found that schools with police reported 3.5 times as many arrests as schools without police.⁶⁰⁴

Student arrest data included in the federal Civil Rights Data Collection shows that in California:

- Black students were arrested at a rate 4.5 times that of White students, which is larger than the race gap nationally.
- Native American students were arrested at a rate more than three times the arrest rate of White students.
- Pacific Island/Native Hawaiian students were arrested at a rate twice that of White students.
- Latine(x) students were arrested at a rate about 1.3 times the arrest rate of White students.
- Students with disabilities were arrested at a rate 1.4 times that of students without disabilities.⁶⁰⁵

Federal data from the Civil Rights Data Collection shows that:

- Black girls made up 16 percent of the female student population but were 39 percent of girls arrested in school. Black girls were arrested at a rate four times that of White girls.
- Native American girls had a school arrest rate 3.5 times that of White girls.
- Black and Latine(x) boys with disabilities were three percent of students but were 12 percent of school arrests.⁶⁰⁶

Additionally, legal scholars have found that the increasing presence of school-based police makes it “more likely that young people, especially Black and Latine(x) students, will be subject to gang allegations in schools.”⁶⁰⁷

3.3.1. Exclusionary Discipline

While school-related arrests and referrals to law enforcement are forms of discipline that directly involve the criminal legal system, in the long-term, students who experience higher rates of disciplinary exclusion, such as suspensions, expulsions, and transfers to alternative schools, may also be at higher risk for contact with the criminal legal system.⁶⁰⁸ California schools have reduced the rates of suspensions and expulsions over the past decade.⁶⁰⁹ However, studies show that students of color, students with disabilities, and LGBTQ+ students are the most likely to experience disciplinary

602 Owens, *Testing the School to Prison Pipeline*. (2017) 36 J. of Policy Analysis and Management 11 <<https://escholarship.org/uc/item/0b8976wk>> [as of Nov. 29, 2022]; Gonzalez, et al., *Structural school safety measures, SROs, and school-related delinquent behavior and perceptions of safety: A state-of-the-art review* (Aug. 2016) 39 Policing: An Internat. J. of Police Strategies & Management 438 <<https://escholarship.org/uc/item/0b8976wk>> [as of Nov. 29, 2022].

603 Owens, *supra* note 602.

604 Whitaker et al., *supra* note 531, at p. 5.

605 See *id.* at p. 28.

606 *Id.* at p. 5.

607 Flores, *supra* note 488, at p. 872.

608 Murphy and Hanson, *Racial and Ethnic Disparities in Student Perceptions of School Fairness, Discipline, and Racial/Ethnic Conflict* (2021) California Healthy Kids Survey Factsheet #18, p. 1 <https://calschls.org/docs/factsheet-18-disparities_fairness_discipline_racialconflict.pdf> [as of Nov. 29, 2022]; Johnson and Naughton, *Just Another School?: The need to strengthen legal protections for students facing disciplinary transfers* (2019) 33 Notre Dame J. of Law Ethics and Pub. Policy 69, 69-70 <<https://lawecommons.luc.edu/cgi/viewcontent.cgi?article=1642&context=facpubs>> [as of Nov. 29, 2022].

609 Murphy and Hanson, *supra* note 608, at p. 1 (citing Losen and Martinez, *Is California Doing Enough to Close the School Discipline Gap?* (2020) The Civil Rights Project / Proyecto Derechos Civiles) [as of Nov. 29, 2022].

exclusion, when compared to their peers, without evidence of higher rates of problematic behavior.⁶¹⁰ Furthermore, these disparities persist despite the recent declines in suspension and expulsion rates.⁶¹¹

Researchers have found evidence that higher numbers of school resource officers (SROs)⁶¹² are associated with higher rates of disciplinary exclusion and absenteeism as well as greater racial disparities in disciplinary exclusion.⁶¹³ Research demonstrates that disciplinary exclusion is “associated with poor short-term academic and socio-emotional outcomes such as low grades, absences, and [being pushed] out of school.”⁶¹⁴

The Center for Civil Right Remedies (CCRR) at the Civil Rights Project of UCLA found that “[d]enying instruction in response to misconduct is often counter-productive” and the disparate use of disciplinary exclusion “adds to racial inequity in the opportunity to learn.”⁶¹⁵ To potentially compound this issue, CCRR cautions that “the groups of students who were disproportionately harmed by COVID-19 are the same students who tend to be suspended disproportionately.” Students have returned to school after the suspension of in-person learning due to the COVID-19 pandemic with “greater and more intense social/emotional needs.”⁶¹⁶ If school discipline practices continue as they have in the past, students of color, those with disabilities, and those in high-needs groups could continue to lose more instruction time than their peers.⁶¹⁷ “To the extent that non-punitive responses [like restorative justice practices] are equally or more effective at fostering productive learning environments and can replace punitive disciplinary removal, the frequent and persistent use of punitive suspensions is hard to justify.”⁶¹⁸

The association of higher numbers of school resource officers with higher rates of disciplinary exclusion and absenteeism and greater racial disparities in disciplinary exclusion is an important finding that the Board hopes to review more closely in its future reports, as this raises a serious question about students’ ability to obtain their constitutional right to a public education.⁶¹⁹

3.4. Data Considerations

3.4.1. RIPA Stop Data Regarding Stops of Students in Schools and Stops by Officers with a K-12 Public School Assignment Type

RIPA stop data includes reporting of the assignment type of the officers who reported stops. This is the first year that the RIPA Board has included data from this category in its Report. Of the 26,134 officers who reported stops during 2021, 132 officers reported making one or more stops while working an assignment type of “K-12 Public School.” There were officers in twenty-two agencies who reported stops with this assignment type. The Los Angeles County Sheriff’s Department (36 officers), Los Angeles School Police Department (30 officers), Riverside County Sheriff’s Department (11 officers), and the

610 *Ibid.* (citing Morgan et al., *The School Discipline Consensus Report: Strategies From the Field to Keep Students Engaged in School and Out of the Juvenile Justice System* (2014) New York, NY: Council of State Governments, Justice Center.; Shirley et al., *The Contribution of Student Perceptions of School Climate to Understanding the Disproportionate Punishment of African American Students in a Middle School* (2012) 33 *School Psychology Internat.* 115; Wagner et al., *Changes Over Time on the Early Postschool Outcomes of Youth With Disabilities: A Report of Findings From the National Longitudinal Transition Study (NTLS) and the National Longitudinal Transition Study-2 (NTLS2)* (2005) [as of Nov. 29, 2022])

611 Murphy and Hanson, *Racial and Ethnic Disparities in Student Perceptions of School Fairness, Discipline, and Racial/Ethnic Conflict* (2021) California Healthy Kids Survey Factsheet #18, p. 1 <https://calschls.org/site/assets/files/1036/factsheet-18_disparities_fairness_discipline_racialconflict.pdf> [as of Nov. 29, 2022].

612 SROs are sworn officers with arrest power and who carry guns; they are assigned to a school or district on a full- or part-time basis and typically are not trained as educators. See Curran et al., *supra* note 534, at p. 35.

613 Losen et al., *Unmasking School Discipline*, *supra* note 566, at p. 5.

614 Murphy and Hanson, *supra* note 608, at p. 1.

615 Losen et al., *Unmasking School Discipline*, *supra* note 566, at p. 4.

616 *Ibid.*

617 *Ibid.*

618 *Ibid.*

619 The California Constitution has guaranteed children in our state a system of free schools since 1879. Cal. Const., art. IX, § 5.

Sacramento County Sheriff's Department⁶²⁰ (7 officers) were the agencies with the most officers reporting the K-12 public school assignment.

Officers who indicated that their assignment type was "K-12 Public School" made up a small proportion of all officers who reported stops in 2021. Officers reported conducting 1,687 stops during 2021 while working a K-12 public school assignment. San Bernardino County Sheriff's Office (406 stops, of which 99.51% were not made on K-12 grounds), Riverside County Sheriff's Office (380 stops, of which 97.63% were not made on K-12 grounds), Los Angeles County Sheriff's Department (374 stops, of which 76.47% were not made on K-12 grounds), and Los Angeles School Police Department (92 stops, of which 55.43% were not made on school grounds) were the agencies that reported the greatest number of stops by officers with a K-12 public school assignment type. 284 (16.8%) of stops made by officers with a K-12 public school assignment type occurred on K-12 grounds. When looking at all officer assignment types, 1,511 (0.05%) were made on K-12 grounds.

Of the 19 school district police departments in the state, the Los Angeles School Police Department (LASPD) was the only department required to report stop data during 2021. LASPD reported 100 stops in 2021.

Agency	# of Stops 2020	# of Stops 2021	Difference	% point difference from 2020
Los Angeles School Police Department	1,150	100	(-) 1,050	91.3% ⁶²¹

3.4.2. Center for Civil Rights Remedies Comparison of RIPA Stop Data for Stops of Students with Civil Rights Data Collection Data

The Center for Civil Rights Remedies performed a preliminary comparison of the RIPA data of K-12 students reported in the Fall 2018 through 2020 with data reported by school officials as part of the federal Office of Civil Rights (OCR) Civil Rights Data Collection (CRDC) regarding the unduplicated count of students referred to law enforcement from each school.⁶²² CCRR reported that this preliminary comparison suggested that stops of students were likely underreported in the RIPA data.⁶²³ The CRDC data count any student for whom school staff reported school-based misconduct to the police as "referred to law enforcement."⁶²⁴ Because they are unduplicated counts of students rather than incidents, they would not necessarily capture all police stops.⁶²⁵ In the future, the two datasets will cover identical time periods, which means they could be used to cross-check the reported numbers.⁶²⁶ "Although some differences in counts will result because of the differences described above, if the CRDC referrals are substantially higher than the reported stops, that would suggest that the RIPA data might be under-reported. However, differences might still arise if, when schools report student misconduct to police, the police do not engage in a 'student stop.' To the extent that staff are calling the police about student conduct that does not warrant police intervention, this raises concerns about the school staff's possible excessive reliance on police."⁶²⁷

620 Sacramento County Sheriff's Department oversees the Elk Grove Unified School District Safety and Security Department, Elk Grove Unified School District. See *Safety Information*, Elk Grove Unified School District <<https://www.egusd.net/District/About-EGUSD/Safety-Information/index.html>> [as of Nov. 29, 2022].

621 In response to follow-up about the reduction in stops reported between 2020 and 2021, LASPD shared with DOJ that there were several reasons for the reduction. LASPD has reduced their force from 400 to 175 officers. Additionally, officers are no longer assigned to school campuses and, at the direction of the School Board, are responding in a more limited way to calls for service. LASPD shared that supervisors are routinely following up with officers to ensure that stop data reports are completed.

622 Losen et al., *Unmasking School Discipline*, *supra* note 566, at p. 25.

623 *Ibid.*

624 *Ibid.*

625 *Ibid.*

626 *Ibid.*

627 *Ibid.*

Additionally, in the findings from this preliminary data comparison, CCRR found:

[W]hen school districts reported their counts of students with disabilities that they referred to law enforcement in 2017-18, students with disabilities were twice as likely to be referred than were non-disabled students. Yet, in the RIPA data reported from the identical districts, but where the student's disability status was based on officers' impression, students *without disabilities* appear to be more than three times as likely to be stopped as their peers that police identified as having disabilities. This stark contrast between RIPA and CRDC data in the selected sample runs contrary to the pattern of over-representation of students with disabilities observed throughout California and nationally in the CRDC data reported by schools (Losen, Martinez & Shin, 2021). It should be noted that CRDC data are reported by school staff who know the actual disability status of students when they report it. This comparison shows that, for students with disabilities, police reported much lower stop rates – just one-tenth of the number of referral rates by school staff. Considering that many students have problematic behaviors that are caused by their disability, our side-by-side review of these two datasets also raises the possibility that without knowing it, police are stopping students because of disability-caused behaviors. This important knowledge gap could contribute to inappropriate police engagement in the moment, and the likely inaccurate stop data might later misinform policy debates about the impact school policing has on students with disabilities.⁶²⁸

CCRR then recommended that,

To be sure that real progress is being made, it is necessary to conduct a broader review of the data covering all forms of disciplinary removal. This will help to ensure that a reduction of both in and out-of-school suspensions, for example, is not replaced by an increase in disciplinary transfers, police responses, or 'off the books' suspensions. Therefore, a comprehensive accountability system should include the policing data, where it is available, and consider other indicators such as disciplinary transfers and rates of chronic absenteeism.⁶²⁹

3.5. Policy Considerations and Vision for Future Reports

In this Report, the Board reviewed the context and outcomes of school policing. Concerns about school violence and safety issues are a frequent motivation for establishing school-based law enforcement. With the exception of shootings, incidents of school violence and safety issues decreased over the decade between 2009 and 2019. And despite the increase of law enforcement presence in schools over recent decades, communities continue to grieve shootings, and research consistently shows that school-based police do not prevent gun violence.⁶³⁰ Additionally, the presence of law enforcement in schools disproportionately exposes Black and Hispanic/Latine(x) students, students with disabilities, and LGBTQ students to exclusionary discipline, involvement with the criminal legal system, and the resulting associated psychological and educational harms and missed opportunities to learn.

628 *Id.* at pp. 25-26.

629 *Id.* at pp. 26-27.

630 See, e.g., Coronado, *Uvalde school police chief fired for response to shooting* (Aug. 25, 2022) AP News <<https://apnews.com/article/uvalde-school-shooting-police-shootings-texas-6c5ba12b382b5cc42a6e5816dc418383>> [as of Nov. 29, 2022]; Judge: *School officer who hid during shooting facing charges* (Aug. 19, 2021) AP News <<https://apnews.com/article/shootings-parkland-florida-school-shooting-bb5c5fe81cecb63886bd325b53b2e597>> [as of Nov. 29, 2022].

In 2023, the Board will examine policy recommendations and best practices regarding:

- Student disciplinary issues that school administrators and staff should address themselves rather than requesting assistance from or making referrals to law enforcement
- The efficacy of school-based police and whether school-based police should continue to be present in K-12 schools, given the research showing the negative impacts.

The Board is concerned by the research and data disparities in school discipline and referrals to law enforcement and will continue to develop its exploration of these critical issues.

POLICIES AND ACCOUNTABILITY

1. Introduction

The police killing of George Floyd catalyzed a national movement calling for deep systemic changes that would reduce the persistent violence against Black Americans by police officers.⁶³¹ Although Black Americans make up only thirteen percent of the population, they make-up twenty-one percent of police contact, are thirty-three percent of incarcerated individuals, and are over three times more likely to be killed by the police than White individuals.⁶³²

At the heart of the Floyd movement was an outcry for police accountability. Community and law enforcement leaders pushing for change led to jurisdictions restructuring law enforcement budgets and policies.⁶³³ For example, New York City ended qualified immunity for officers.⁶³⁴ Many states—including California—passed police reform legislation that amended laws regarding the reporting or decertification of officers engaged in misconduct or for failing to intervene, report, or give medical aid in cases of police misconduct.⁶³⁵ Police misconduct took center stage, highlighting the inefficacy of police accountability around the nation.

Most law enforcement agencies (LEA) have internal processes that should hold officers accountable. However, many of these processes are hindered by various institutional failures and hurdles; some examples of this include the misclassification of complaints leading to fewer investigations by agencies' internal affairs departments,⁶³⁶ the statutory limits on discipline imposed by the Peace Officer's Bill of Rights,⁶³⁷ and disciplinary appeals systems that favor officers and can therefore reverse the imposition of discipline by agencies. One overarching impediment to the imposition of accountability within law enforcement agencies is the "blue code of silence," an informal code grounded in a misguided sense of unity or loyalty that discourages officers from reporting police misconduct or thoroughly investigating it.⁶³⁸ From a practical standpoint, it is not difficult to understand how the "blue code of silence" could severely undercut investigations – if investigators fail to talk to witnesses or provide a biased account of the evidence, if supervisors are unwilling to sustain complaints or move them through a progressive discipline process, or if management does not impose significant penalties even for severe misconduct—all out of a misguided sense of loyalty to their fellow officers.

When these internal mechanisms failed to curtail misconduct, jurisdictions created agencies and other entities external to LEAs to serve as additional checks on departments.⁶³⁹ The police accountability section in this Report will survey a variety of police accountability mechanisms. Specifically, it will examine how internal accountability is affected by an LEA's culture and supervision. It will also discuss external accountability through a discussion of the Attorney General's oversight, civil investigations, criminal investigations, and other oversight entities such as civilian review boards, inspector generals, police commissions, and San Francisco's Department of Police Accountability, as a specific example. The mechanisms discussed are a sample and not meant as an exhaustive list of mechanisms that serve to hold law enforcement agencies accountable. Jurisdictions create mechanisms reflective of their community's needs, making it difficult to discuss every possible mechanism within the confines of this Report. As will be discussed further below, even the same mechanism may look different in one city

631 See Arzy & Subramanian, *State Policing Reforms Since George Floyd's Murder* (May 2021) Brennan Center for Justice <<https://www.brennancenter.org/our-work/research-reports/state-policing-reforms-george-floyds-murder>> [as of Nov. 29, 2022].

632 *Ibid.*

633 *Ibid.*

634 *Ibid.*

635 *Ibid.*

636 Racial and Identity Profiling Advisory Board, Annual Report (2022), *supra* note 169, at p. 227.

637 Cal. Gov. Code, §§ 3300-3313.

638 Flood, *Police Corruption Due to 'Blue Code of Silence'* (January 2013) UIC Today <<https://today.uic.edu/police-corruption-enabled-by-blue-code-of-silence>> [as of Nov. 29, 2022].

639 Prenzler, *Civilian Oversight of Police* (2000) 40 Brit. J. Criminol. 659, 659.

versus another nearby. For example, a civilian review board may vary because of the authority given to it, the membership of the board, and the resources provided to pursue investigations.

2. Internal Accountability

Many factors contribute to the effectiveness of internal accountability mechanisms. Such mechanisms often rely on civilian complaints or internal complaints, where sworn officers hold other sworn officers accountable (discussed in depth on pages 170-194 of this report). As discussed above, the effectiveness of internal mechanisms may depend on officers dutifully carrying out processes established by the agency, having checks on those processes and officers to ensure they are adhering to established policies and practices, and the view of accountability from the agency's leadership. The following section will discuss the effects of agency culture, the role supervisors may play in shaping that culture, and data and policy analysis.

2.1. Effects of Agency Culture

A law enforcement agency's culture regarding accountability influences the efficacy of internal affairs and other departmental accountability measures. A healthy culture that prizes and promotes accountability will boost the efficacy of an agency's internal accountability, while a negative one will serve as an impediment. Agencies should hold their officers to high standards, promote accountability, and provide the resources needed for officers to adjust and improve their behavior to meet those standards.⁶⁴⁰

Officers should expect to be held accountable and seek out feedback to improve and better serve their communities. Officers who are not well informed of accountability measures may be fearful and confused by them.⁶⁴¹ Standardizing accountability systems and integrating the systems into the everyday functioning of a department may take away some trepidation. For example, educating officers about the Early Intervention System (EIS), a tool supervisors use to identify officers who may be acting in a harmful manner,⁶⁴² will help prevent resistance to it.⁶⁴³ One study found that officers in an agency became more comfortable with the system and its purpose after EIS was explained.⁶⁴⁴ Supervisors may also set the tone for integrating accountability by encouraging officers to learn from their own mistakes and the mistakes of others. During roll call or briefings with patrol officers, supervisors may present common situations faced by officers or mistakes made by officers as a learning tool. Supervisors may discuss what was done well and how the situation could be handled differently such that officers have practical demonstratives on how to improve effective policing and relationships with the community. Doing this regularly integrates accountability into the day-to-day of policing.

2.2. Role of Supervisors

Supervisors play an integral role in building and shaping a department's culture. "[F]ront-line supervisors are largely responsible for translating the department's mission, vision, values, policies, rules and regulations into operational practice. By emphasizing some things and not others, they establish the organizational expectations for officers and shape the culture. Effective supervision is

640 See generally Walker et al., *Strategies for Intervening with Officers through Early Intervention Systems: A Guide for Front-Line Supervisors* ("Strategies for EIS") (2006) p. 32.

641 See, e.g., *id.* at p. 12.

642 EIS is a tool that assists supervisors in identifying officers who may be acting in a manner that is injurious to the officer, department, or community being served. *Id.* at p. 1. It does so by tracking various factors, such as number of civilian complaints or use of force incidents, for each officer within the agency. *Id.* at 2. Law enforcement agencies use EIS in a variety of ways. Some use EIS to identify officers who may be experiencing personal or professional hardships that are manifesting in poor performance on the job. Others use EIS to identify performance issues early and implement mechanisms to avoid future escalation of behavior, and still others will use EIS data to make personnel decisions, such as assignment decisions or performance evaluations. *Id.* at 1.

643 *Id.* at p. 12.

644 *Ibid.*

critical to creating an environment in which coaching, not the threat of discipline, helps mold officers into professionals.”⁶⁴⁵

First line supervisors, such as sergeants, are well-situated to observe changes or issues among line officers and prevent them from escalating.⁶⁴⁶ Supervisors should be “promoting healthy employees and keeping the organization ethically responsible to the community.”⁶⁴⁷ Officers may experience changes in behavior or attitudes—such as when an outgoing officer becomes withdrawn or when jokes begin to have an undertone of hostility—and the sergeants and their fellow officers may be in the best position to observe such a change.⁶⁴⁸ Upon noticing this, supervisors can check in with officers to determine the underlying reason for the change in behavior and to take appropriate action to prevent it from affecting the work further.⁶⁴⁹ Depending on the circumstances, a supervisor may determine how best to eliminate the behavior or take more extensive action,⁶⁵⁰ such as retraining, reassignment, or even termination, if the behavior becomes a pattern. Intervening early leads to fewer issues in the future⁶⁵¹ that may harm the community tangibly and intangibly. It also taps into officers’ desire to do their jobs well in order to serve their communities and advance within their agencies.

Officers may be “highly responsive to managerial directives,” despite variations in officers’ personalities.⁶⁵² For example, a memo produced by the New York City police chief mandating reform to the NYPD stop and frisk practices ultimately resulted in reduced unnecessary police-citizen interactions.⁶⁵³ The police chief issued a memo essentially mandating the changes requested by activists.⁶⁵⁴ The memo led officers to believe that supervisors would more closely scrutinize officers’ street interactions.⁶⁵⁵ This caused an immediate change in officer behavior, leading to a decline in stop and frisk encounters on the street.⁶⁵⁶ This suggests that institutional changes may lead to significant changes in officers’ behavior.⁶⁵⁷

2.3. Internal Affairs Departments

A law enforcement agency itself is the first line of accountability, as it has the most direct access to the officer in question and the evidence surrounding allegations of misconduct. Thus, a law enforcement agency must be held responsible for holding its officers accountable. The most common internal accountability mechanism is an internal affairs department.

Internal affairs units handle investigations of civilian complaints and complaints generated from within a department. Depending on the size and resources of a law enforcement agency, an internal

645 Stephens, *New Perspectives in Policing Police Discipline: A Case for Change* (June 2011) p. 4 <<https://www.ojp.gov/pdffiles1/nij/234052.pdf>> [as of Nov. 29, 2022].

646 Walker et al., *Strategies for EIS*, *supra* note 640, at p. 18.

647 *Id.* at p. 21 (quoting a supervisor from the Prince William County Police Department).

648 *Id.* at p. 19.

649 *Id.* at pp. 18-19.

650 *Id.* at pp. 20-21.

651 *Id.* at p. 23.

652 Mummolo, *Modern Police Tactics, Police-Citizen Interactions, and the Prospects for Reform* (2017) p. 1; see also Ba & Rivera, *The Effect of Police Oversight on Crime and Allegations of Misconduct: Evidence from Chicago* (Oct. 19, 2019) p. 31.

653 Mummolo, *supra* note 652, at p. 12. New York City’s stop and frisk practices were controversial and widely criticized for being based on racial profiling. *Id.* at p. 2. For ten years, agencies were calling for reform to no avail. *Ibid.* at 4 (citing Devereaux, *NYPD Stop-and-Frisk Memo Revealed in Civil Rights Court Battle*, *The Guardian* (Mar. 27, 2013) <https://www.theguardian.com/world/2013/mar/27/nypd-stop-and-frisk-memo> [as of Nov. 29, 2022]). At the precipice of a trial in *David Floyd v. City of New York*, the police chief issued the memo. *Id.* at p. 4.

654 *Ibid.*

655 *Id.* at pp. 7-9.

656 *Id.* at pp. 8, 12.

657 See *id.* at pp. 12-13. “The effect observed here is limited to a single aspect of police work, and it is possible that performance of other tasks that do not generate reports—or ones performed in environments where the press and public are less able to scrutinize police behavior—would be much more difficult to improve.” *Id.* at 13.

affairs department may conduct administrative or criminal investigations or both.⁶⁵⁸ Internal affairs departments should conduct investigations into serious allegations, such as officer-involved shootings and constitutional violations,⁶⁵⁹ allegations of misconduct that are likely to lead to litigation, and complaints initiated by department employees, such as those for harassment.⁶⁶⁰ Less serious and simpler complaints may be handled within a unit and by an immediate supervisor, rather than an internal affairs unit.⁶⁶¹ Internal affairs units also review complaints made against command-level personnel.⁶⁶² However, according to some experts, complaints leading to conflicts of interest or alleging misconduct by an agency executive should be delegated to an external investigative agency to legitimize the investigation and avoid the perception of impropriety.⁶⁶³

The efficacy of an internal affairs department in objectively investigating complaints significantly affects an agency's ability to hold officers accountable. This problem is exacerbated in small agencies where officers work closely together and most relationships have no degree of separation. This underscores the need for agencies to support internal affairs investigators/investigations by making clear the important role that internal affairs plays in any agency and that the department should work to maintain the impartiality and legitimacy of internal affairs.

2.4. Data and Policy Analysis

Internal affairs departments often work methodically and involve officers reviewing incidents to determine whether complained-of conduct aligned with policy. Some conduct that is reviewed may actually be a practice that is within policy or even lawful, but it could still be ineffective or harmful to the community. For example, in this Report the Board addresses the issue of pretextual stops. While pretextual stops are not illegal, the Board is recommending agencies and policy makers take a hard look at the data demonstrating that these types of stops are generally not effective uses of scarce police resources. As such, agencies must regularly review policies to ensure they are up-to-date and reflect best practices rooted in effective constitutional policing, in order to eliminate practices that are antiquated, a waste of resources, or negatively affecting the community. Agencies should question whether a policy is achieving what it is intended to achieve. They may do so through data analysis and review of policies.

Data can provide concrete evidence of the impact of a practice on the community.⁶⁶⁴ By analyzing data, agencies may determine whether a practice or policy is leading to racial and identity profiling.⁶⁶⁵ Specifically, agencies could analyze whether civilian complaints of racial or identity profiling increased in an area that has been the subject of recent proactive targeted enforcement.⁶⁶⁶ Agencies may also use data to review whether racial disparities exist in use of force, use of de-escalation techniques, and yield rates of contraband among perceived race of persons by holding constant age, gender, offense type, and neighborhood context (e.g., socioeconomic status, crime rates, etc.).⁶⁶⁷

658 See United States Department of Justice, *Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice* ("Standards and Guidelines for Internal Affairs"), pp. 30-31 <<https://cops.usdoj.gov/ric/Publications/cops-p164-pub.pdf>> [as of Nov. 29, 2022].

659 Serious allegations may also include: in-custody deaths, allegations of racial profiling, discriminatory policing or racial prejudice, dishonesty, drug use, sexual misconduct, cases handled for other jurisdictions, interagency cases, and cases referred directly by the agency head or command staff. *Id.* at p. 31.

660 *Ibid.*

661 *Id.* at p. 32. Examples of such conduct include: minor infractions of agency regulations or policies, preventable traffic collisions, or minor performance issues. *Ibid.*

662 *Id.* at p. 31.

663 *Id.* at p. 32.

664 Pryor et al., *Collecting, Analyzing, and Responding to Stop Data: A Guidebook for Law Enforcement Agencies, Government, and Communities* (2020) p. 10 <<https://oag.ca.gov/sites/all/files/agweb/pdfs/research/sd-guidebook.pdf>> [as of Nov. 29, 2022].

665 See *id.* at pp. 10-11.

666 *Id.* at p. 10.

667 *Id.* at p. 11.

A disparity without beneficial policing outcomes indicates a policy may need to be re-examined and revised. Data may also be used to identify and adjust officers' behavior.⁶⁶⁸ Data analysis may show the agency as a whole is over-citing for offenses that disproportionately burden low-income residents, such as broken taillights or expired tags.⁶⁶⁹ Data may also show that a particular officer is issuing citations when the agency prefers providing warnings or that a small number of officers are initiating a disproportionate share of stops.⁶⁷⁰ To uncover disproportionate stops, agencies should account for assignment type. Agencies should question what common factors exist among officers with the highest number of citizen complaints when controlling for offense type and neighborhood context.⁶⁷¹ With this evidence-based information, the agency could redirect officers' efforts to better serve the community.⁶⁷²

Analysis of body-worn camera footage is also a method to detect and prevent problematic practices through review of aggregated data.⁶⁷³ Body-worn camera footage can reveal recurring challenges and patterns across cases.⁶⁷⁴ "Data that may seem of minor evidentiary value in an individual case may be powerful when aggregated, revealing issues such as concentrating revenue generating stop and fines on minorities, escalating encounters through rude and aggressive behavior, or differences in the use of physical or verbal forcefulness by race of the community member encountered."⁶⁷⁵ Also, what constitutes a minor policy violation may be "in the eye of the beholder."⁶⁷⁶ For example, an officer quickly resorting to rude behavior, cursing at individuals, and escalating rather than de-escalating a situation can be a serious problem in the aggregate and increase harm to the community or even violate individual's rights, even if the one instance is perceived as a minor transgression.⁶⁷⁷ Thus, body-worn camera audits and reviews offer a means to detect harmful policies or practices before the problem exacerbates. While agencies are looking to promote accountability, many external agencies and non-government entities have taken up the mantle to move the accountability ball further.

3. External Accountability

As social media, cell phone video, and news reports draw more attention to police misconduct, communities, advocates, and lawmakers have questioned the sufficiency of law enforcement agencies' internal mechanisms to truly hold officers accountable. There are mechanisms outside of a law enforcement agency that may help fill in accountability gaps. The California Attorney General oversees law enforcement agencies and has the authority to investigate them. Advocates may also file civil lawsuits to compel an agency to perform an act it has a duty to perform.

Some jurisdictions have created accountability mechanisms external to law enforcement agencies. The types of mechanisms that exist in a locale depend on the community's resources and, in some instances, voters' will to create change.⁶⁷⁸ All of these systems function more effectively when they are

668 *Id.* at p. 12.

669 *Ibid.*

670 *Ibid.* To uncover disproportionate stops, agencies should adjust for assignment type. *Ibid.*

671 *Ibid.*

672 *Ibid.*

673 Fan, *Body Cameras, Big Data, and Police Accountability* (2018) 43 Law and Social Policy 1236, 1252 <<https://www.cambridge.org/core/journals/law-and-social-inquiry/article/body-cameras-big-data-and-police-accountability/18F4A081C63893E883123704B04C49C2>> [as of Nov. 29, 2022]. Truleo, a body camera analytics provider, has developed a platform that converts this data into "Baseball Card Stats for Cops," making data more easily digestible for law enforcement agencies. *Ibid.* The technology uses natural language processing to categorize incidents and analyze the language that the officer uses, then outputs performance metrics pertaining to professionalism and de-escalation. *Ibid.*

674 *Id.* at p. 1239.

675 *Id.* at p. 1250.

676 *Ibid.*

677 *Ibid.*

678 For example, the City of Los Angeles' Office of the Inspector General was created through a voter-approved amendment to the city charter after the death of Rodney King. See Office of the Inspector General, Los Angeles Police Department <<https://www.lapdonline.org/police-commission/office-of-the-inspector-general/>> [as of Nov. 29, 2022].

integrated and take a holistic view so that there are different checks on officers and agencies. Some of those external accountability mechanisms will be discussed below, including criminal oversight, civilian review boards, inspector generals, police commissions, and a city's Department of Police Accountability.

3.1. Attorney General Oversight

The California Attorney General is the chief law officer of the State and has the constitutional duty to see that the laws of the State are uniformly and adequately enforced.⁶⁷⁹ Similarly, Civil Code section 52.3 prohibits a pattern or practice of conduct by law enforcement officers that deprives any person of rights, privileges, or immunities secured or protected by the state and federal constitutions.⁶⁸⁰ That section provides that the Attorney General may bring a civil action in the name of the People of California to obtain appropriate equitable and declaratory relief for any pattern or practice violations. The United States Department of Justice also has the ability to file a pattern and practice case against a law enforcement agency under an analogous federal statute.⁶⁸¹ However, a pattern and practice investigation may last several years, requires extensive resources, and examines systemic issues of a law enforcement agency and not individual actions or incidents.

In California, the Legislature enacted Assembly Bill 1506 to help ensure the independence and objectivity of investigations of certain officer-involved shootings.⁶⁸² Beginning on July 1, 2021, the Legislature charged the Attorney General with the investigation of incidents of officer-involved shootings resulting in the death of an unarmed person in the state.⁶⁸³ If criminal charges are not appropriate, the Attorney General must prepare a public report containing a statement of facts, analysis of the law applied to the facts, an explanation of why criminal charges are not appropriate, and where applicable, recommendations for policy or practice modifications.⁶⁸⁴ This law removed that subset of officer-involved shooting deaths from local law enforcement investigation and elevated those to the state level. The Legislature reasoned that this was necessary because of the interdependence between district attorneys and the police.⁶⁸⁵ District attorneys work with police to investigate and prosecute crimes and rely on the endorsement of police chiefs for their elections.⁶⁸⁶ The Legislature believed giving the Attorney General authority to review officer-involved shootings of unarmed people killed by police would increase transparency, reliability, and independence to investigations.⁶⁸⁷

3.2. Civil Litigation

Civil lawsuits filed by advocates or individuals harmed by police also serve as a powerful check on police accountability. For example, *Floyd v. City of New York*, a landmark class action lawsuit, addressed New York City's controversial stop-and-frisk policy, leading to a federal monitor to oversee broad reforms.⁶⁸⁸ The case was the result of significant collaboration between multiple advocacy, legal, and community groups.⁶⁸⁹ It was a multi-year effort involving lengthy litigation resulting in a nine-week trial.⁶⁹⁰

679 Cal. Const., art. V, § 13.

680 Cal. Civ. Code, § 52.3

681 34 U.S.C., § 12601.

682 Senate Committee on Public Safety (Sess. 2019-2020), p. 7 <https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB1506> [as of Nov. 29, 2022].

683 See *AB 1506: Officer-Involved Shooting Investigations and Reviews* <<https://oag.ca.gov/ois-incidents>> [as of Nov. 29, 2022].

684 *Ibid.*

685 Senate Committee on Public Safety (Sess. 2019-2020), p. 7 <https://leginfo.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200AB1506> [as of Nov. 29, 2022].

686 *Ibid.*

687 *Ibid.*

688 *Floyd, et al. v. City of New York, et al.*, Center for Constitutional Rights (May 9, 2022) <<https://ccrjustice.org/home/what-we-do/our-cases/floyd-et-al-v-city-new-york-et-al>> [as of Nov. 29, 2022].

689 *Ibid.*

690 *Ibid.*

Another form of accountability oversight is a court proceeding in the form of a petition for writ of mandate. Under Code of Civil Procedure section 1085, any individual may file a writ of mandate that would compel a law enforcement agency to perform an act that it has a duty to perform, if the duty is not being performed.⁶⁹¹ For example, if an individual believed that an agency was not reporting any stops under RIPA, they could file a writ to compel that offending agency to comply with RIPA. Such actions typically take months rather than the years a typical lawsuit would take to resolve an issue and thus could be an expeditious oversight tool.

3.3. Criminal Oversight

Criminal investigations examine conduct that may be criminal. Generally, a law enforcement agency investigates a civilian complaint alleging criminal conduct, but if it is not resolved, the county district attorney's office may investigate.⁶⁹² Some jurisdictions may have agreements with the local district attorney's office to automatically investigate criminal conduct.⁶⁹³ District Attorney's Offices can also investigate officer-involved shootings or review the investigation conducted by the law enforcement agency regardless of the law enforcement agency's findings.⁶⁹⁴ When substantive allegations of unlawful conduct are made and all appropriate local resources for redress have been exhausted, the Attorney General's Office may step in.⁶⁹⁵ District attorneys often decide whether to charge officers for criminal conduct.⁶⁹⁶ Because the district attorney may work with its law enforcement agency on a regular basis, district attorneys may consider how the prosecution of officers may chill or change their relationships with the law enforcement agency with whom they regularly work.

While criminal oversight specifically looks at criminal conduct, many other agencies also handle misconduct in an administrative manner.

3.4. Civilian Review Boards

Civilian oversight is quite common throughout the country.⁶⁹⁷ As of late 2019, approximately 166 civilian oversight boards existed in 140 jurisdictions.⁶⁹⁸ The demand for civilian oversight began during the Civil Rights Movement, when it was perceived that law enforcement responded to racial unrest with excessive force.⁶⁹⁹ Most oversight mechanisms were results of high profile cases of police misconduct, often involving racial discrimination.⁷⁰⁰ This sub-section will give examples of various types of civilian review boards and some of their differences. Boards differ based on a community's needs, resources, and authority. Thus, different boards may be more or less appropriate for a given community, depending upon the community's ultimate goals.

There are a few types of civilian review boards, which vary based on their structure, function, and cost. Members of various boards may be appointed in a variety of ways such as by city council,⁷⁰¹ by

691 Cal. Code Civ. Pro., § 1085.

692 *Local Law Enforcement Agency Complaints* <<https://oag.ca.gov/police-complaints>> [as of Nov. 29, 2022].

693 See generally Solano County District Attorney's Office, Officer Involved Fatal Incident Protocol (November 2020) <https://www.solanocounty.com/civicax/filebank/blobdload.aspx?BlobID=33693> [as of Nov. 29, 2020].

694 See Los Angeles District Attorney's Office, *Officer Involved Shootings* <<https://da.lacounty.gov/reports/ois>> [as of Nov. 29, 2022]; San Diego County District Attorney's Office, *Officer Involved Shootings* <<https://www.sdcda.org/office/officer-involved-shootings.html>> [as of Nov. 29, 2022].

695 See *Local Law Enforcement Agency Complaints* <<https://oag.ca.gov/police-complaints>> [as of Nov. 29, 2022].

696 *It's a Complicated Relationship Between Prosecutors, Police, All Things Considered*, NPR, <<https://www.npr.org/2014/12/04/368529402/its-a-complicated-relationship-between-prosecutors-police>> [as of Nov. 29, 2022]

697 Finn, *Citizen Review of Police: Approaches and Implementation* (Mar. 2001) p. 4 (citing Walker and Samuel, *Achieving Police Accountability*, Research Brief, Occasional Paper Series no. 3 (1998) p. 5 <<https://www.ojp.gov/pdffiles1/nij/184430.pdf>> [as of Nov. 29, 2022].

698 Vitoroulis et al., *Evolution of Growth and Civilian Oversight: Key Principles and Practices for Effectiveness and Sustainability* (2021) p. 9.

699 Finn, *supra* note 697, at p. 4.

700 *Ibid.*

701 *Id.* at p. 21.

a commission,⁷⁰² or by a mayor,⁷⁰³ to name a few. In addition to investigating, reviewing, or auditing civilian complaints, civilian review boards may have other functions. They can recommend policy and training changes.⁷⁰⁴ They may arrange formal or informal mediation.⁷⁰⁵ They may also assist agencies in developing an early intervention system.⁷⁰⁶ Boards may have varying objectives, which may include: (1) maintaining effective police discipline; (2) providing satisfactory resolutions of complaints; (3) maintaining public confidence in the police; and (4) influencing police management by providing feedback.⁷⁰⁷ The following section will discuss the four types of boards and their costs, their efficacy, and principles that promote effectiveness.

3.4.1. Types and Costs of Civilian Review Boards

There are four main types of civilian review boards.⁷⁰⁸ Review boards need not be exclusively one of these types; they may be a mix of two or more.⁷⁰⁹

- Civilians investigate allegations of police misconduct and recommend findings to the head of the agency.⁷¹⁰ This means the board has access to the evidence and witnesses related to an incident and conducts an investigation. This is the most expensive type because an investigator must be hired, as those serving on the board may not have the skills necessary to conduct police misconduct investigations.⁷¹¹ The New York Civilian Complaint Review Board is an example of a board that falls in this category.⁷¹²
- A law enforcement agency investigates allegations and develops findings, and then the board reviews those findings and recommends to the agency head whether to accept or reject the findings.⁷¹³ This system is often inexpensive, because the review is handled by volunteers.⁷¹⁴ The Orange County Citizen Review Board is one such example.⁷¹⁵
- The civilian review board acts as an appellate process for civilian complainants, meaning an agency makes findings on a complaint, the complainant appeals those findings to the civilian review board, and the board reviews them and recommends their own findings.⁷¹⁶ This system is also often inexpensive, because volunteers handle the review.⁷¹⁷ The Portland Police Internal Investigations Auditing Committee has this authority.⁷¹⁸
- An auditor investigates the thoroughness and fairness of the process by which the law enforcement agency accepts and investigates complaints, and then the auditor reports its findings to the public and law enforcement agency.⁷¹⁹ The cost of this system falls in between

702 *Id.* at p. 37.

703 *Id.* at p. 55.

704 *Id.* at p. 6.

705 *Ibid.*

706 *Ibid.*

707 Walker and Bumphus, *The Effectiveness Of Civilian Review: Observations On Recent Trends And New Issues Regarding The Civilian Review Of The Police* (1992) 11 Am.J.Police 1, 8.

708 Finn, *supra* note 697, at p. 1.

709 *Id.* at p. 6.

710 *Id.* at p. 7.

711 *Id.* at p. vii.

712 See *About CCRB*, NY Civilian Complaint Review Board <<https://www1.nyc.gov/site/ccrb/about/about.page>> [as of Nov. 29, 2022]. Board members receive compensation on a per-session basis, though some board members choose to serve pro bono. See *The Board*, NY Civilian Complaint Review Board <<https://www.nyc.gov/site/ccrb/about/the-board.page>> [as of Nov. 29, 2022].

713 Finn, *supra* note 697, at p. vii.

714 *Id.* at p. x.

715 *Id.* at p. viii.

716 *Id.* at p. vii.

717 *Id.* at p. x.

718 *Id.* at p. viii.

719 *Id.* at p. vii.

the other systems' costs.⁷²⁰ An auditor must be hired, but audits are less time intensive than investigations.⁷²¹ The Tucson Independent Police Auditor and Citizen Police Advisory Board has this authority.⁷²²

3.4.2. Efficacy of Civilian Review Boards

Little empirical evidence exists to show the effectiveness of boards.⁷²³ Reason suggests that boards with greater resources and authority are likely more effective than those with fewer. However, it is difficult to track trends or make generalizations about the overall efficacy of boards, because boards differ in authority, investigative powers, and objectives.⁷²⁴ In measuring efficacy, what one may think is an indicator of an effective system may not be; for example, with a measure such as number of complaints filed,⁷²⁵ an increase in the number of civilian complaints filed may mean multiple things. Perhaps it is a reflection of the community's confidence in the civilian review board.⁷²⁶ Confidence in the system is a positive factor, but it does not necessarily mean that police behavior has changed. Conversely, an increase in complaints may also reflect increased police misconduct, which indicates the civilian review board is not an effective accountability mechanism.⁷²⁷

Civilian review boards also have several limitations. Civilian oversight alone cannot ensure police accountability; it must work in tandem with other oversight mechanisms.⁷²⁸ Boards often have limited authority and can only recommend discipline and changes rather than mandate them.⁷²⁹ Also, civilian boards may not hold supervisors accountable for line officer behavior.⁷³⁰ This is especially important because supervisors simultaneously mentor and advise multiple line officers who may then become supervisors. If one supervisor intentionally ignores misconduct or fails to correct it, that supervisor may be charged with supervision for several or more unaccountable officers, thus perpetuating a cycle of poor accountability. Without the power to make policy changes, civilian boards often cannot reform inadequate supervising,⁷³¹ which may in turn make the accountability mechanism ineffective at bringing about real change in practice or policy within the agency.

3.4.3. Principles of Effective Civilian Review Boards

While civilian oversight boards differ, the United States Department of Justice has identified thirteen principles that promote effective oversight.

(1) A board should be independent from real or perceived influence from special interests, including law enforcement and political actors.⁷³² "An oversight board must be able to act impartially, fairly, and in a manner that maintains community and stakeholder trust."⁷³³

720 *Id.* at p. x.

721 *Ibid.*

722 *Id.* at p. viii.

723 Stephens et al, *Civilian Oversight of the Police in Major Cities* (2018) p. 25 <<https://cops.usdoj.gov/RIC/Publications/cops-w0861-pub.pdf>> [as of Nov. 29, 2022].

724 *Id.* at p. 2; Walker and Bumphus, *supra* note 707, at p. 9.

725 See Walker and Bumphus, *supra* note 707, at p. 10.

726 *Ibid.*; see also Prenzler, *supra* note 639, at p. 661.

727 Moreover, some complaints may be classified as "inquiries" or "adverse comments" and not logged as a reportable civilian complaint, which affects the number of complaints. Racial Identity and Profiling Advisory Board, *Annual Report* (2020) p. 67 <<https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2020.pdf>> [as of Nov. 29, 2022]. If the number of complaints increases, it may also be a sign that agencies may also have made the civilian complaint forms or process more accessible.

728 Finn, *supra* note 697, at p. 13.

729 *Ibid.*

730 *Ibid.*

731 *Ibid.*

732 Vitoroulis et al., *supra* note 698, at p. 12.

733 *Ibid.*

(2) A board’s jurisdiction and authority must be clearly defined and adequate to prevent confusion and differing interpretations of the board’s authority.⁷³⁴

(3) A board that has unfettered access to records and facilities in a timely manner provides for effective, informed, and fact-driven oversight.⁷³⁵

(4) A board should have access to law enforcement executives and internal affairs staff, which would promote cooperation and ensure that those involved can develop mutual understanding and support for each other’s role in promoting accountability for the law enforcement board.⁷³⁶

(5) A board should have the full cooperation of officers and department staff, which will facilitate thorough investigations and obtaining sufficient information for work performed by the civilian board.⁷³⁷

(6) A board should have sustained stakeholder support, not just support in times of crises. Lack of prolonged support may look like leaving board appointments vacant for long periods or failing to provide adequate resources, both things that undermine the civilian board in the long term.⁷³⁸

(7) A board should have adequate funding and operational resources such that the board may perform its functions thoroughly, in a timely fashion, and skillfully.⁷³⁹

(8) A board should be transparent and be able to regularly report to the public in a manner free from influence by political actors or pressure or law enforcement boards. Civilian boards bring transparency to the otherwise opaque internal investigation process.⁷⁴⁰

(9) A board should have data-driven and evidence-based analyses of law enforcement policies and patterns, which may address systemic issues and result in recommendations that may improve community relations.⁷⁴¹

(10) A board should outreach to the community, which enables a board “to build awareness of its existence, share reports and findings with the public, build relationships with stakeholders, recruit volunteers, solicit community input and involvement, facilitate learning and greater understanding, broker improved relationships, build coalitions, and develop a greater capacity for problem-solving.”⁷⁴²

(11) A board should have community and stakeholder input about how civilian oversight should function and how the issues it should address will lead to the “best fit” oversight system to meet the particular community’s needs and expectations.⁷⁴³

(12) A board should have confidentiality, anonymity, and protection from retaliation to promote community involvement and bring legitimacy to the system.⁷⁴⁴

734 *Ibid.*

735 *Id.* at p. 13.

736 *Ibid.*

737 *Ibid.*

738 *Ibid.*

739 *Id.* at p. 14.

740 *Ibid.*

741 *Ibid.*

742 *Id.* at pp. 14-15 (citing Stewart, *Chapter 11. Community Outreach and Public Education in Citizen Oversight*, pp. 49-51).

743 *Id.* at p. 15.

744 *Ibid.*

(13) A board should have procedural justice regarding how authority is exercised. Legitimate and just processes positively impact a community's compliance with laws⁷⁴⁵ and willingness to assist in crime control efforts.⁷⁴⁶ Officers' perception of a procedurally just work environment is correlated to reduced misconduct and corruption⁷⁴⁷ and greater endorsement of policing reforms, reduced mistrust of and cynicism about the community, willingness to obey supervisors, and increased officer well-being.⁷⁴⁸

The Board encourages agencies and municipalities to work with community partners to incorporate these principles when establishing or maintaining a civilian review board. These boards are one type of external mechanism; another type is an inspector general.

3.5. Inspector General

Another example of an agency that operates external to a law enforcement agency is an inspector general. An inspector general analyzes policies and practices, rather than individual officers, in an ongoing and non-adversarial fashion to encourage cooperation from law enforcement agencies.⁷⁴⁹ In other words, an inspector general takes a high level view of a department to assess where improvements may be made and brings transparency to an otherwise closed police department.⁷⁵⁰ The following section will discuss characteristics that contribute to successful inspector general offices and highlight the work of the City and County of Los Angeles' offices as examples.

3.5.1. Characteristics of Successful Inspector General Offices

Several factors contribute to the success of an inspector general: credibility, access to information, and support from relevant government institutions.⁷⁵¹ To be credible, an inspector general must be viewed as neutral, independent, and possessing the expertise required for the position.⁷⁵² An inspector general is more likely to be perceived as neutral when they are not tied to a specific administration and chosen based on integrity and competence, rather than political affiliation.⁷⁵³

Community perception is also key to credibility.⁷⁵⁴ A community's confidence in an inspector general increases when the community perceives the inspector general as having actual authority.⁷⁵⁵ Often times, oversight agencies lose credibility when police departments reject recommendations from the agency; however, a mayor or city council may give credence to an inspector general's recommendations by implementing them.⁷⁵⁶ Access to a broad range of information also legitimizes an inspector general.⁷⁵⁷ They should have subpoena power and access to documents, databases, and people, at a minimum.⁷⁵⁸ Those who complain to an inspector general should be protected from retaliation.⁷⁵⁹

745 *Ibid.* (citing Sunshine et al., *The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing* (2003) 37 L.&Society Rev. 3 pp. 513-48).

746 *Ibid.* (citing Murphy et al., *Encouraging Public Cooperation and Support for Police* (2008) 18 Policing and Society 2, 136-155).

747 *Ibid.* (citing Wolfe and Piquero, *Organizational Justice and Police Misconduct* (2011) 38 Crim. Justice and Behavior 4 pp. 332-53).

748 *Ibid.* (citing Trinkner et al., *Justice from Within* Psychology (2016) 22 Pub. Policy, and Law 2, 158-172).

749 Patel and Sullivan, *A Proposal For an NYPD Inspector General* (2012) p. 19 <https://www.jstor.org/stable/pdf/resrep28472.9.pdf?refreqid=excelsior%3Ac07fe344afd7708a6a265e9f84b6a7b&ab_segments=&origin=> [as of Nov. 29, 2022].

750 *Id.* at p. 18.

751 *Id.* at pp. 18-20 <https://www.jstor.org/stable/pdf/resrep28472.9.pdf?refreqid=excelsior%3Ac07fe344afd7708a6a265e9f84b6a7b&ab_segments=&origin=> [as of Nov. 29, 2022].

752 *Id.* at p. 18.

753 *Ibid.*

754 *Ibid.*

755 See *ibid.*

756 *Ibid.*

757 *Id.* at pp. 18-19.

758 See *ibid.*

759 *Id.* at p. 19.

Policymakers should also ensure that even the inspector general's offices have protections against retaliation for their work.⁷⁶⁰ An inspector general should also have prompt access to evidence and databases.⁷⁶¹ Relevant government agencies should also support and provide resources to an inspector general; funding is required to carry out oversight.⁷⁶²

3.5.2. City of Los Angeles Office of the Inspector General

The Office of the Inspector General (OIG) in the City of Los Angeles is an external agency that provides civilian oversight to the Los Angeles Police Department (LAPD).⁷⁶³ It is an independent agency that reports to the Board of Police Commissioners (BOPC)⁷⁶⁴ and may audit or investigate any aspect of the LAPD; it has unfettered access to all LAPD records, facilities, databases, and personnel.⁷⁶⁵ OIG has four main focus areas. First, it reviews and analyzes all uses of force, including those resulting in death or hospitalization and officer-involved shootings.⁷⁶⁶ Second, it oversees LAPD's internal disciplinary process, so OIG can monitor investigations of misconduct and take complaints against employees.⁷⁶⁷ Third, it conducts community outreach in an effort to be an accessible and effective public service.⁷⁶⁸ Fourth, it reviews and audits LAPD's operations to ensure compliance with law and policy, identify systemic issues, and recommend corrective actions to the BOPC.⁷⁶⁹ Examples of reports by OIG include reviews of LAPD's stops, which relied on analysis of RIPA data, and a review of LAPD's data-driven policing strategies.⁷⁷⁰ After being asked by the BOPC, OIG also surveyed LAPD's out-of-policy discipline for officer-involved shootings.⁷⁷¹ As a result of OIG's reports and LAPD's own findings regarding stop practices, LAPD implemented a policy to audit and review stop videos and developing training to incorporate procedural justice principles during stops.⁷⁷²

3.5.3. County of Los Angeles Office of the Inspector General

The County of Los Angeles has an Office of the Inspector General (LA County OIG).⁷⁷³ This office oversees the Los Angeles Sheriff's Department (LASD) and Probation Department and is the investigative arm of the civilian oversight commissions that oversee each of those departments.⁷⁷⁴ The purpose of the LA County OIG is "to promote constitutional policing and the fair and impartial

- 760 The Los Angeles Sheriff's Department launched a criminal investigation into the Office of Inspector General that oversees the Sheriff's Department. Lau, L.A. *County Sheriff's Top Watchdog is Under Investigation — By the L.A. County Sheriff*, L.A. Times (Aug. 14, 2019) <<https://www.latimes.com/california/story/2019-08-14/la-county-sheriffs-department-launches-investigation-against-its-chief-watchdog>> [as of Nov. 29, 2022].
- 761 See Patel and Sullivan, *supra* note 749, at pp. 18-19.
- 762 *Id.* at p. 19.
- 763 An amendment to the city charter established the OIG as one of the major reform recommendations that followed the beating of Rodney King. *Office of the Inspector General*, Los Angeles Police Department <<https://www.lapdonline.org/police-commission/office-of-the-inspector-general/>> [as of Nov. 29, 2022].
- 764 *Ibid.* The Board of Police Commissioners is a five-member civilian board that sets policies and oversees the operations of the LAPD. *Police Commission*, Los Angeles Police Department <<https://www.lapdonline.org/police-commission/>> [as of Nov. 29, 2022].
- 765 *Office of the Inspector General*, Los Angeles Police Department <<https://www.lapdonline.org/police-commission/office-of-the-inspector-general/>> [as of Nov. 29, 2022].
- 766 *Ibid.*
- 767 *Ibid.*
- 768 *Ibid.*
- 769 *Ibid.*
- 770 Office of the Inspector General Los Angeles Police Commission, *Significant OIG Reports* <<https://www.oig.lacity.org/significant-reports>> [as of Nov. 29, 2022].
- 771 Office of the Inspector General, *Discipline Resulting From Out Of Policy Officer-Involved Shootings, 2015-2020* (Mar. 15, 2022) <https://www.oig.lacity.org/_files/ugd/b2dd23_6eccfe37cb17433ca7943b1a0ac43cfc.pdf> [as of Nov. 29, 2022].
- 772 OIG Review of LAPD Stops, *supra* note 290, at p. 10.
- 773 The County's Office of Inspector General was created as part of the Board of Supervisors' duty to supervise the official conduct of County officers. *About, Office of Inspector General County of Los Angeles* <<https://oig.lacounty.gov/about/>> [as of Nov. 29, 2022].
- 774 Office of Inspector General County of Los Angeles, *About the OIG* <<https://oig.lacounty.gov/about/>> [as of Nov. 29, 2022].

administration of justice and to facilitate the Board of Supervisors' responsibility."⁷⁷⁵

The LA County OIG June 2022 report, named "The Sheriff's Department's Underreporting of Civilian Stop Data to the California Attorney General," provides an example of how an external agency can serve as an added layer of accountability. It brought to light an issue LASD was aware of but did not rectify, putting more pressure on LASD to fix the issue.

The LA County OIG was concerned that certain RIPA data was underreported. LASD had two systems that were not interoperable and that required deputies to input data into two systems,⁷⁷⁶ which left ample room for error. The Office found that the new system underreported observation-based stops by at least 50,731 across all of LASD's patrol division, implying that the practice of entering data into only one system was widespread throughout LASD.⁷⁷⁷ The Office also found that one of the systems underreported arrests by at least 71,462.⁷⁷⁸

From the discrepancies, the LA County OIG inferred that (1) deputies are failing to enter the correct stop data in the new data tracking system, and (2) supervisors are not identifying the discrepancies.⁷⁷⁹ Even after being notified in December 2020 of RIPA non-compliance, the LASD failed to implement a plan to rectify deficiencies in data between the two systems or dedicate the resources or staffing necessary to upgrade them.⁷⁸⁰ Throughout this time, the LASD acknowledged that it was not in compliance with RIPA reporting requirements.⁷⁸¹ Data discrepancies between the two systems increased over time.⁷⁸² This indicated to OIG that supervisors did not establish adequate training on data entry nor conduct adequate oversight to ensure that data entry complied with RIPA.⁷⁸³

The LA County OIG provided several recommendations, some of which include:⁷⁸⁴

- Audit both data tracking systems from July 2018 to the present day in an attempt to identify errors in prior data reporting. Submit a comprehensive summary of the audit to the California Department of Justice.⁷⁸⁵
- Develop internal procedures to ensure that deputies are entering accurate stop data in both systems and to catch discrepancies, if data are underreported.⁷⁸⁶
- LASD should conduct annual trainings for deputies on the data collection requirements mandated by RIPA.⁷⁸⁷
- LASD should establish a financial plan to replace the two data tracking systems with one comprehensive system that can log all encounters with civilians.⁷⁸⁸

Inspector general's offices show that external agencies can provide some measure of accountability. When operating in concert with the internal mechanisms of any agency, they can help uncover issues and recommend resolutions. Police commissions are another external agency that can provide for additional accountability to supplement the internal mechanisms in place.

775 *Ibid.*

776 County of Los Angeles Office of the Inspector Gen., *Underreporting of Civilian Stop Data to the California Attorney General*, *supra* note 104, at p. 2.

777 *Id.* at p. 3.

778 *Ibid.*

779 *Id.* at pp. 3-4.

780 *Id.* at pp. 19-20.

781 *Ibid.*

782 *Id.* at pp. 11-12.

783 *Ibid.*

784 *Id.* at pp. 23-25.

785 *Id.* at p. 23.

786 *Id.* at pp. 23-24.

787 *Id.* at p. 25.

788 *Ibid.*

3.6. Police Commissions

Several jurisdictions have police commissions that serve as an added layer of police accountability. Police commissions differ based on their locale and community's needs, but often have a say in the police department's policies and discipline. Many have a direct influence on discipline for police misconduct,⁷⁸⁹ giving them significant authority over police accountability. One critic stated that many commissions across the country are held captive by the agencies they are overseeing, making them less effective than they potentially can be.⁷⁹⁰ Community advocates and municipalities play an important role in holding police commissions accountable in their oversight of law enforcement agencies. The Board reviewed a few examples of police commissions and highlights different ways they can operate. This report will discuss commissions for the following cities of San Francisco, Oakland, Los Angeles, and Burbank.

3.6.1. San Francisco

Established in 1878, San Francisco has one of the oldest police commissions, which is now codified in the city charter.⁷⁹¹ It plays a significant role in imposing discipline for police misconduct. It conducts the San Francisco Police Department's (SFPD) disciplinary hearings for police misconduct for charges brought by the Chief of Police or Director of the Department of Police Accountability (DPA), imposes discipline when warranted, and hears officers' appeals for discipline imposed by the Chief of Police.⁷⁹² The SF Police Commission also sets SFPD's internal policies.⁷⁹³ The San Francisco Public Defender's Office, and several community groups, recently urged the commission to change SFPD's pretext stop policies.⁷⁹⁴ The commission also has the authority to follow up on the DPA's (discussed in-depth below) audits and policy recommendations to ensure SFPD's compliance.⁷⁹⁵

3.6.2. Oakland

Oakland's Police Commission is comprised of seven regular members and two alternate members.⁷⁹⁶ All are Oakland residents and serve as volunteers.⁷⁹⁷ The Police Commission oversees the Oakland Police Department's policies, practices, and customs to ensure they meet national standards of constitutional policing.⁷⁹⁸ It also oversees the Community Police Review Agency that investigates police misconduct and recommends discipline to the Office of the Inspector General.⁷⁹⁹

3.6.3. Los Angeles

The Los Angeles City Charter mandates the Board of Police Commission as the head of the Police

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- 789 See, e.g., San Francisco Police Commission, *About Us* <<https://sf.gov/public-body/police-commission/about>> [as of Nov. 29, 2022]; *Function and Role of the Board of Police Commissioners*, Los Angeles Police Department <<https://www.lapdonline.org/police-commission/function-and-role-of-the-board-of-police-commissioners/>> [as of Nov. 29, 2022].
- 790 Balakrishnan, *Is Police Accountability Working in San Francisco? (Part II)* (August 12, 2022) Mission Local <<https://missionlocal.org/2022/08/is-police-accountability-working-in-san-francisco-commission/>> [as of Nov. 29, 2022].
- 791 San Francisco Police Commission, *About Us* <<https://sf.gov/public-body/police-commission/about>> [as of Nov. 29, 2022]. As of 2004, the city charter allows for a seven-member commission with the Mayor nominating four members, at least one of whom must be a retired judge or attorney with trial experience. The Rules Committee of the Board of Supervisors nominates the three other members. *Ibid.*
- 792 *Ibid.*
- 793 *Ibid.*
- 794 Office of the Public Defender, *Coalition of 60 Civil Rights, Traffic Safety, and Community Groups Urging San Francisco Police Commission to End Racially-Biased Pretext Stops*, *supra* note 373.
- 795 Balakrishnan, *Part II*, *supra* note 790.
- 796 City of Oakland *Police Commission* <<https://www.oaklandca.gov/boards-commissions/police-commission#page-about>> [as of Nov. 29, 2022].
- 797 *Ibid.*
- 798 *Ibid.*
- 799 *Ibid.*

Department.⁸⁰⁰ It was created in the 1920s and is comprised of five civilian volunteers who serve as the citizens' voice in police affairs.⁸⁰¹ The Board sets the overall policy of the Police Department, while the Chief manages daily operations and implements the Board's policies and goals.⁸⁰² The Office of Inspector General, an agency that investigates the LAPD, reports directly to the commission.⁸⁰³

3.6.4. Burbank

The Burbank Police Commission was established by the Municipal Code and consists of seven members who serve as volunteers.⁸⁰⁴ The City Council appoints the commissioners, who serve for a term of four years.⁸⁰⁵ The Commission monitors the Burbank Police Department to achieve and maintain a culture of respect and professionalism through accountability and transparency.⁸⁰⁶ It also provides civilian oversight to police policies.⁸⁰⁷ The Commission has the power to: (1) study law enforcement agencies and practices and make findings and recommendations; (2) at the request of City Council, hold hearings, investigations, or both to determine if additional legislation is needed for the sake of the community; (3) advise City Council regarding the police department; (4) accept complaints about the police department; (5) and review the police department's records and accounts.⁸⁰⁸

Police commissions are often agencies with investigatory or disciplinary power over law enforcement agencies. San Francisco has a different arrangement, and its department also holds investigatory and other powers.

3.7. San Francisco Department of Police Accountability

San Francisco has its own government department – created by the city charter – that oversees and is independent from the police department, known as the Department of Police Accountability (DPA).⁸⁰⁹ Its main functions are broken down into six divisions; the three most relevant to RIPA are Audits, Investigation, and Policy.⁸¹⁰ This section will address these divisions and critiques of the DPA.

800 Los Angeles Police Department, *Function and Role of the Board of Police Commissioners* <<https://www.lapdonline.org/police-commission/function-and-role-of-the-board-of-police-commissioners/>> [as of Nov. 29, 2022].

801 *Ibid.* The Mayor appoints the members of the board and the City Council confirms them. *Ibid.* They serve a maximum of two five-year terms. *Ibid.*

802 *Ibid.*

803 Office of the Inspector General Los Angeles Police Commission, *Frequently Asked Questions – Office of the Inspector General (OIG)* <<https://www.oig.lacity.org/faqs>> [as of Nov. 29, 2022].

804 Burbank Police Department, *Police Commission* <<https://www.burbankpd.org/inside-bpd/police-commission/>> [as of Nov. 29, 2022].

805 *Ibid.*

806 *Ibid.*

807 *Ibid.*

808 *Ibid.*

809 San Francisco Department of Police Accountability, *About Us* <<https://sf.gov/departments/departments-police-accountability/about>> [as of Nov. 29, 2022].

810 City of San Francisco, *Department of Police Accountability*, <<https://sf.gov/departments/departments-police-accountability>> [as of Nov. 29, 2022]. The three other divisions are Mediation, Outreach, and SB 1421 Records Division. DPA's Mediation Division works to improve the relationship between the community and SFPD by offering a voluntary forum in which the parties of a complaint may offer their perspectives of an interaction. City of San Francisco, *Mediation Division* <<https://sf.gov/departments/departments-police-accountability/mediation-division>> [as of Nov. 29, 2022]. The Outreach Division works to educate the community about DPA and its services through a community-based approach online and in person. City of San Francisco, *Outreach Division* <<https://sf.gov/departments/departments-police-accountability/outreach-division>> [as of Nov. 29, 2022]. The Records Division handles records requests made by members of the public for: (1) officer-involved shootings, (2) uses of force resulting in great bodily injury, (3) officer sexual assault, and (4) officer dishonesty. City of San Francisco, *SB 1421 Records Division* <<https://sf.gov/departments/departments-police-accountability/sb-1421-records-division>> [as of Nov. 29, 2022]. The division also responds to requests for (5) sustained findings of unnecessary force, (6) failure by an officer to intervene against another officer's use of unnecessary force, (7) unlawful searches or arrests, and (8) statements or gestures on the part of an officer that indicate prejudice or discrimination against protected classes. Peace Officers: Release of Records, Senate Bill No. 16 (2021-2022 Reg. Sess.).

3.7.1. Audits

DPA is mandated to conduct an audit every two years of the police department's use of force and handling of police misconduct.⁸¹¹ Its audits are independent and objective⁸¹² and look to the effectiveness of a policy, not just technical compliance. DPA ensures follow-through on their recommendations by following up with SFPD every six months and annually reporting SFPD's implementation of recommendations. Previous audits include audits of SFPD's use of force,⁸¹³ crisis intervention policy and training, and language access.

3.7.2. Investigations

DPA investigates police services, policy,⁸¹⁴ and civilian complaints of police misconduct.⁸¹⁵ Civilian complaints that may be investigated include an officer's unwarranted action,⁸¹⁶ neglect of duty,⁸¹⁷ use of force,⁸¹⁸ or conduct unbecoming of an officer.^{819, 820} An investigator may choose to interview an officer; officers must appear when they receive written notice from DPA.⁸²¹ If the DPA makes a sustained finding for misconduct, it can make recommendations regarding discipline. If the amount of discipline is ten days or less, the police chief makes the final decision regarding discipline. If it exceeds ten days, the police commissioner makes the final decision.

3.7.3. Policy

DPA is mandated to make policy recommendations to SFPD and the Police Commission, and does so through quarterly reports to the Police Commission, working groups with SFPD, and SFPD's Disciplinary Review Boards.⁸²²

811 City of San Francisco, *Audit Division* <<https://sf.gov/departments/departments-police-accountability/audit-division#:~:text=San%20Francisco%20Charter%20%28Section%204.136%29%20mandates%20DPA%20to,SFPD%20has%20followed%20all%20laws%2C%20ordinances%2C%20and%20policies>> [as of Nov. 29, 2022].

812 *Ibid.*

813 On May 19, 2021, the Association of Local Government Auditors (ALGA) presented San Francisco the Distinguished Knighton Award for its audit report titled *The Police Department Needs Clearer Guidance and More Proactive Government for Better Use-of-Force Data Collection and Reporting*. City and County of San Francisco, *The Use of Force Audit Report Wins National Recognition* (May 19, 2021). <https://sfgov.org/dpa/sites/default/files/ALGA_Press_Release_May_19_2021.pdf#:~:text=SAN%20FRANCISCO%E2%80%93%20On%20May%2019%2C%202021%2C%20the%20Association,Government%20for%20Better%20Use-of-Force%20Data%20Collection%20and%20Reporting> [as of Nov. 29, 2022].

814 City of San Francisco, *Investigations of Police Services* <<https://sf.gov/information/investigations-police-services>> [as of Nov. 29, 2022].

815 City of San Francisco, *Investigation Division* <<https://sf.gov/departments/departments-police-accountability/investigation-division>> [as of Nov. 29, 2022].

816 Unwarranted action includes: inappropriate comments or behavior, racial bias, sexual slurs, and misrepresenting the truth, and misuse of police authority. San Francisco Department of Police Accountability, PowerPoint Presentation (June 28, 2022).

817 Neglect of duty includes failure to: activate body-worn camera, follow SFPD policy or law, write an incident report, or provide name and star number upon request. San Francisco Department of Police Accountability, PowerPoint Presentation (June 28, 2022).

818 Unwarranted action includes: inappropriate comments or behavior, racial bias, sexual slurs, misrepresenting the truth, and misuse of police authority. San Francisco Department of Police Accountability, PowerPoint Presentation (June 28, 2022).

819 Uses of force include: used a carotid restraint hold, failure to comply the use of force policy, unnecessary or excessive force, intentionally and improperly discharged a firearm, on- or off-duty. San Francisco Department of Police Accountability, PowerPoint Presentation (June 28, 2022).

820 City of San Francisco, *Investigations of Police Services*, <<https://sf.gov/information/investigations-police-services>> [as of Nov. 29, 2022].

821 *Ibid.* Note that unlike complaints investigated by an internal affairs department, complaints investigated by DPA are not reviewed by investigators or officers who work with the officer about whom the complaint is made. This adds a layer of separation between the investigation and the officer who is the subject of the complaint.

822 City of San Francisco, *Policy Division* <<https://sf.gov/departments/departments-police-accountability/policy-division>> [as of Nov. 29, 2022].

In 2022, the Police Commission adopted a DPA recommendation and made a historic change, giving DPA – and the community by extension – a seat at SFPD’s policymaking table.⁸²³ DPA is now included at concurrence meetings, a previously closed meeting for just Command Staff during which it is decided what policy should be submitted to the Police Commission for review and adoption.⁸²⁴ DPA is also now invited to all SFPD community working groups and has input in selecting working group participants and developing protocol.⁸²⁵ Previously, working groups were “sporadic, non-inclusive, and left community advocates and disenfranchised communities feeling frustrated and unheard.”⁸²⁶ Proposed General Orders⁸²⁷ are also posted online for a 30-day comment period open to the public and SFPD personnel.⁸²⁸ This increased collaboration is the fruit of the work between the SFPD and California Department of Justice under a memorandum of understanding that required the SFPD to implement numerous recommendations to improve outcomes around critical issues of overlap between these agencies.⁸²⁹

3.7.4. DPA and Its Critics

The DPA has produced changes within the SFPD. After the DPA’s award-winning 2020 audit of the SFPD’s use of force policy,⁸³⁰ the SFPD implemented about half of DPA’s recommendations by June 2022. The DPA is increasingly closing cases based on evidence, rather than claiming the evidence insufficient.⁸³¹ The DPA is also progressively resolving cases in a timely manner before the statutes of limitations run.⁸³²

The DPA it is not without its critics. Some police reform activists believe DPA is not equipped with sufficient tools to effect change in SFPD, despite being able to make discipline and policy recommendations and being well-funded.⁸³³ Critics point to the SFPD Chief’s refusal to impose any discipline in twenty-five percent of cases for which DPA recommended discipline.⁸³⁴ However, the Chief agreed with the DPA’s recommended discipline in forty-one percent of cases and actually imposed more discipline than DPA recommended in thirteen percent of cases.⁸³⁵ Another concern is the inability

823 City of San Francisco, *The San Francisco Police Commission Adopts DPA’s Recommendations for Historic Changes to SFPD’s General Order 3.01*, Press Release <<https://sf.gov/news/san-francisco-police-commission-adopts-dpas-recommendations-historic-changes-sfpds-general>> [as of Nov. 29, 2022].

824 *Ibid.*

825 *Ibid.*

826 *Ibid.*

827 Department General Orders (DGOs) are the SFPD’s most authoritative and permanent directives. San Francisco Police Department, *General Orders* <<https://www.sanfranciscopolice.org/your-sfpd/policies/general-orders>> [as of Nov. 29, 2022].

828 City of San Francisco, *The San Francisco Police Commission Adopts DPA’s Recommendations for Historic Changes to SFPD’s General Order 3.01*, Press Release <<https://sf.gov/news/san-francisco-police-commission-adopts-dpas-recommendations-historic-changes-sfpds-general>> [as of Nov. 29, 2022].

829 Memorandum of Understanding Between the California Department of Justice and the City and County Of San Francisco, Acting Through the Mayor’s Office and San Francisco Police Department <https://oag.ca.gov/system/files/attachments/press_releases/DOJ%20MOU1.pdf> [as of Nov. 29, 2022]; Hillard Heintze, *San Francisco Police Department Collaborative Reform Initiative Phase III – Final Assessment Report*, pp. 66-134, appen. B <<https://www.sanfranciscopolice.org/sites/default/files/2022-05/SFPDHillardHeintzePhase3ReportCRI20220511.pdf>> [as of Nov. 29, 2022].

830 On May 19, 2021, the Association of Local Government Auditors (ALGA) presented San Francisco with the Distinguished Knighton Award for its audit report titled *The Police Department Needs Clearer Guidance and More Proactive Government for Better Use-of-Force Data Collection and Reporting. The Use of Force Audit Report Wins National Recognition*, City and County of San Francisco (May 19, 2021).

831 Balakrishnan, *Mission Local*, *Is Police Accountability Working in San Francisco? (Part I)* (August 4, 2022) <<https://missionlocal.org/2022/08/is-police-accountability-working-in-san-francisco-dpa/>> [as of Nov. 29, 2022]. In 2017, thirty-eight percent of cases were closed for “insufficient evidence.” By 2021, this dropped to about ten percent. *Ibid.*

832 *Ibid.*

833 *Ibid.* Note that this article does not discuss the DPA’s ability to effect policy after the 2022 change that allows DPA to sit in concurrence meetings and working groups and that mandates a comment period on SFPD policy.

834 Balakrishnan, *Mission Local*, *Police Accountability Dept.: SFPD Rejects Help, Delays Policy Updates* (July 16, 2022) <<https://missionlocal.org/2022/07/police-accountability-dept-accuses-sfpd-delay-policy-updates/>> [as of Nov. 29, 2022].

835 *Ibid.*

of DPA to require the SFPD to make urgent reforms.⁸³⁶ DPA officials also noted that they can issue reform suggestions, but cannot enforce discipline measures until new policies are updated, which allows officer misconduct to continue in the meantime.⁸³⁷

DPA is an example of how accountability can operate in an outside department, but one that works with the law enforcement agency. Its biennial audit ensures regular oversight, while its policy arm puts DPA in a position to work with SFPD to make changes in areas beyond recommending discipline for misconduct.

4. Conclusion

Jurisdictions often employ more than one accountability mechanism simultaneously, and the mechanisms can be internal and external. This report highlights several of those mechanisms. While these mechanisms may have overlapping or similar authorities, a concerted and integrated effort among them is more likely to achieve accountability. Because communities have varying resources and needs, there is not a one-size-fits-all model. Different agencies and municipalities may try different approaches to fit their communities' needs, and the communities should be involved in making the decisions about what approach will be the best fit.

5. Vision for Future Reports

This year's report focused on surveying various accountability mechanisms. In the future, the Board would like to review the efficacy of accountability mechanisms and discuss efficacy measures. The Board would also like to discuss the limitations faced by accountability mechanisms, particularly those that may be experiencing retaliation from law enforcement agencies.

The Board also notes the recently leaked list of law enforcement officers who are members of extremist groups.⁸³⁸ The Board would like to discuss accountability for law enforcement agents that are members of such groups and how agencies may take action to ensure accountability for racial and identity profiling.

836 Balakrishnan, *Part I*, *supra* note 831.

837 Balakrishnan, *Mission Local*, Police Accountability Dept.: SFPD Rejects Help, Delays Policy Updates (July 16, 2022) <<https://missionlocal.org/2022/07/police-accountability-dept-accuses-sfpd-delay-policy-updates/>> [as of Nov. 29, 2022].

838 Anti-Defamation League, *New from ADL: Leaked Oath Keepers' Membership List Reveals Hundreds of Current & Former Law Enforcement Officers, Members of Military, and Elected Officials* (Sept. 6, 2022) <<https://www.adl.org/resources/press-release/new-adl-leaked-oath-keepers-membership-list-reveals-hundreds-current-former>> [as of Nov. 29, 2022].

CALLS FOR SERVICE AND BIAS BY PROXY

1. 911 Dispatchers and Calls for Service

We are taught from a young age that we should call 911 to summon the police, fire department, or an ambulance in a crisis or emergency. Dispatchers are the first point of contact and can make significant decisions that affect the ultimate disposition of a call.⁸³⁹ Thus, supporting dispatchers and encouraging their critical thinking and training increases the likelihood of a successful and proper response to a 911 call. Critical thinking plays a significant role when a call involves a non-violent crisis or 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.⁸⁴⁰

Dispatchers play an integral role in the response and outcome of a call for service for a number of reasons. First, they serve as the conduit between the 911 caller and the response team. A dispatcher interacts directly with the 911 caller – hearing the voice and tone of the caller and any background noises – and can ask questions as necessary. The dispatcher then makes the choice to send law enforcement, a crisis intervention team in jurisdictions that have them, or a medical or fire team, or not send out a response team altogether. Thus, it is critical for dispatchers to discern whether a call is about a non-violent crisis, such as a mental health⁸⁴¹ or substance abuse episode, or improperly fueled by bias. Second, the response team relies on the information gathered by a dispatcher. The information gathered by a dispatcher—and how they frame it for the response team—may color how a team responds to a particular incident and may contribute to or prevent a volatile interaction.

An incident involving a woman who became known as “BBQ Becky” demonstrates the importance of dispatcher communication and critical decision-making. In that incident, which was captured on video and went viral, a woman called the police twice on Black men at Lake Merritt in Oakland, California, for using charcoal grills in an area she claimed was not designated for barbecuing.⁸⁴²

The two dispatchers were critical in ensuring that the women’s calls, which appeared to involve bias by proxy, led to a non-violent outcome for the two men. The dispatcher for the first call marked the call as “no further description,” indicating it was a low priority call.⁸⁴³ In doing so, the first dispatcher indicated to officers that this was not an incident involving a public safety risk nor one that needed an immediate police response.⁸⁴⁴ As a result, officers did not arrive and engage with the Black men who were the subject of the call.⁸⁴⁵ When police did not arrive, the woman placed a second call to 911 about two hours later. In listening to the reason for the call and engaging further with the caller, a second dispatcher discerned something was not right and questioned the woman’s mental state and asked if

839 Given the RIPA Board’s focus on racial and identity profiling, this section will focus on calls for service that traditionally receive a law enforcement response, including mental health or substance abuse crisis calls, rather than calls that traditionally receive a medical or fire department response, such as calls involving an injured person or a fire.

840 Racial and Identity Profiling Advisory Board, Annual Report (2022), *supra* note 169, at p. 15; Fridell, *supra* note 28, at p. 90; Herron, *I used to be a 911 dispatcher. I had to respond to racist calls every day* (Oct. 31, 2018) VOX <<https://www.vox.com/first-person/2018/5/30/17406092/racial-profiling-911-bbq-becky-living-while-black-babysitting-while-black>> [as of Nov. 29, 2022].

841 “Only 4% of the general population experiences mental health issues that severely impact or limit their daily activities or functioning in any given year. However, according to data provided by the California Highway Patrol, at least 16% of officer-involved shootings from 2011-2014 involved people with mental illness diagnoses or strong indications of mental illness.” Sen. Com. On Public Safety, Assem. Bill No. 680 (2019-2020 Reg. Sess.).

842 See Aponte, *2 Investigates obtains ‘BBQ Becky’s’ viral 911 calls* (Sept. 2, 2018) KTVU Fox 2 <<https://www.ktvu.com/news/2-investigates-obtains-bbq-beckys-viral-911-calls>> [as of Nov. 29, 2022].

843 *Ibid.*

844 See *ibid.*

845 Officers responded to a Quik Stop approximately two blocks away from where the men were barbecuing and engaged with the 911 caller without the two men present. Michelle Dione, *Original BBQ Becky Meme Video - The First Viral “Karen”* (Apr. 29, 2018) YouTube <https://www.youtube.com/watch?v=Fh9D_PUe7QI> [as of Nov. 29, 2022].

she had visited a mental facility.⁸⁴⁶ The caller escalated the reason for her call, stating she was being harassed and followed.⁸⁴⁷ The second dispatcher's coding of the call and the information the dispatcher gave to the responding officers primed them to approach the situation as one that was not involving a public safety risk, thus allowing the officers to properly focus their inquiries and preventing an unjustified law enforcement response.⁸⁴⁸ When officers arrived, they did not interact with the men, but rather assessed the 911 caller and determined she did not meet the threshold for a psychiatric hold.⁸⁴⁹ The critical thinking exhibited by the dispatchers prevented an unwarranted escalation of the situation and demonstrates why this is an essential skill for dispatchers, especially with calls involving possible bias by proxy or mental health or substance abuse crises.

However, dispatchers may sometimes be apprehensive about employing their critical thinking skills to make a decision to not send a law enforcement team in response to a call for service; they would rather err on the side of caution.⁸⁵⁰ A survey of Phoenix, Arizona's 911 operators determined that liability concerns led dispatchers to send out the crisis intervention team less often than they could have.⁸⁵¹ "These dispatchers feared that threats to safety could emerge and they might be reprimanded for not sending patrol."⁸⁵² While these concerns are understandable, several resources can be utilized to help a dispatcher make better-informed decisions.

1.1. Training

Training dispatchers regarding mental health issues and bias by proxy can help dispatchers make informed decisions about sending a law enforcement response. Lawmakers attempted to legislate mandatory health training for dispatchers with Assembly Bill 680, reasoning that dispatchers must be "better equipped to identify, collect, and relay information regarding mental health issues in a manner that improves safety for all involved including the individual in crisis, family members, bystanders and first responders."⁸⁵³ The assembly bill did not pass;⁸⁵⁴ however, POST is currently updating its dispatcher training⁸⁵⁵ to include training on mental health, crisis intervention, and de-escalation techniques.⁸⁵⁶ POST is creating a new learning domain for dispatchers about mental health conditions and intellectual developmental disability awareness. POST asserts that the domain will discuss the difference between a mental health condition and intellectual developmental disability and how calls for service may be affected. Additionally, POST is updating its dispatcher training to integrate the effects of implicit and explicit biases. According to POST, dispatchers will be trained to be aware of their own biases and how they may affect professional demeanor and behavior.⁸⁵⁷ The goal of the training is for dispatchers to conduct calls free from bias from the caller and the dispatcher.⁸⁵⁸ The new training will also discuss dispatcher "priming" of police officers, as well as how word selection, tone, and pitch can influence

846 Aponte, *supra* note 842.

847 Michelle Dione, *supra* note 850.

848 The second dispatcher questioned the caller's mental state, asking if the caller had been to John George, a local psychiatric hospital. When on scene, officers assessed the 911 caller for a 51-50 psychiatric hold, which allows a police officer to take a person into custody for up to 72 hours to evaluate their mental state and whether they are a danger to themselves or to others, but ultimately decided she did not meet the criteria. See Aponte, *supra* note 842.

849 Aponte, *supra* note 842.

850 Beck et al., *Case Study: Robust Crisis Care and Diverting 911 Calls to Crisis Lines* (Nov. 2020) Vera Institute of Justice <<https://www.vera.org/behavioral-health-crisis-alternatives/robust-crisis-care-and-diverting-911-calls-to-crisis-lines>> [as of Nov. 29, 2022].

851 *Ibid.*

852 *Ibid.* (citing Galdys and Taylor, March 4, 2020, call; and Moody, June 18, 2020, call).

853 Sen. Com. On Public Safety, Assem. Bill No. 680 (2019-2020 Reg. Sess.).

854 Assem. Bill No. 680 (2019-2020 Reg. Sess.).

855 Dispatchers are required to complete a 120-hour training course within their first year on the job. See Presentation by Commission on Peace Officer Standards and Training, *June 21, 2022 RIPA Calls for Service Subcommittee Meeting* (June 22, 2022) YouTube <<https://www.youtube.com/watch?v=l-cFR8z1rqU>> [as of Nov. 29, 2022].

856 *Ibid.*

857 *Ibid.*

858 *Ibid.*

a peace officer's response to a call.⁸⁵⁹ POST is also working on including cultural diversity, specifically regarding the LGBTQ+ community and hate crimes, into dispatcher training.

As POST updates and develops the Dispatcher Basic Training Course, the Board recommends that POST:

- (1) (a) Create a bias training for dispatchers that must be attended by all dispatchers at least once a year; (b) mandate participation in bias training to be repeated, sustained, and reinforced as further research supports; (c) and perform an annual review and update of the bias training for quality assurance and effectiveness;
- (2) Develop an assessment tool beyond an oral interview for determining potential bias of applicants during dispatcher hiring;
- (3) Develop outreach strategies for hiring of dispatchers such that dispatchers are representative of the diversity of the community they serve; and
- (4) Offer guidance to local law enforcement agencies regarding social media investigations or inquiries in the hiring of dispatchers.

POST reports that it has held workshops to gather information in order to update its dispatcher training and is in the process of drafting the training. In keeping with its mandate to review trainings for peace officers related to racial and identity profiling, the Board hopes to be able to review the dispatcher training and provide feedback on it before the training curriculum is finalized. As it has with other POST trainings, the Board also emphasizes the importance of community involvement in any course development.

1.2. Technology and Information

In addition to training, new technology can aid dispatchers in responding appropriately to calls for service. California's 911 call system is being updated to Next Generation 911 (NG911) to keep pace with current technology.⁸⁶⁰ This system will give dispatchers access to more information as they answer calls.⁸⁶¹ NG911 will be able to handle short message service (SMS) and real-time text (RTT).⁸⁶² Callers will be able to share text messages with dispatchers that can include videos, voice messages, and pictures.⁸⁶³ With more information at their disposal, dispatchers will be able to better assess a situation, which will hopefully increase confidence in their decision to send out law enforcement or some other type of response team, or provide alternatives to sending responders.

1.3. 988 Suicide and Crises Lifeline

Additionally, 911 dispatchers will work contemporaneously with a newly created mental health crisis hotline, 988, mandated by federal legislation to handle mental health and crisis intervention incidents, and reduce law enforcement response to crisis calls.⁸⁶⁴ California Assembly Bills 988⁸⁶⁵ and 1988⁸⁶⁶

859 *Ibid.*

860 Federal legislation mandates that all states update their 911 systems in an effort to modernize the nation's 911 systems to keep pace with evolving technology and to increase safety and security of the public, including first responders and other public safety personnel. The current systems "lack the advanced functionality, interoperability, and capabilities that come with the adoption of new digital communications technologies." Next Generation 9-1-1 Act of 2019, S. No. 1479, 116th Cong., 1st Sess. (2019).

861 *PODCAST #90: Cal OES, PSC Lead Nation to Go Live with NextGen 911 in Tuolumne County, California*, Cal OES News <<https://news.caloes.ca.gov/cal-oes-psc-lead-nation-to-go-live-with-nextgen-911-in-tuolumne-county-california/>> [as of Nov. 29, 2022]

862 Assem. Bill No. 1168 (2019-2020 Reg. Sess.).

863 *Next Generation 911 Solutions: Real-Time Text for 9-1-1* (Oct. 14, 2021) Next Generation Advanced <<https://nga911.com/news/post/next-generation-911-solutions-real-time-text-9-1-1>> [as of Nov. 29, 2022].

864 S.B. No. 2661, 116th Congress (2019-2020).

865 Assem. Bill No. 988 (2021-2022 Reg. Sess.).

866 Assem. Bill. No. 1988 (2021-2022 Reg. Sess.).

codified the national 988 system in California and 988 launched on July 16, 2022.⁸⁶⁷ 988 will work towards “suicide prevention and immediate, localized emergency response for individuals in mental health crisis by trained mental health professionals,” rather than law enforcement agencies.⁸⁶⁸

988 is a welcome change to the crisis and emergency response system. Currently, there is an overreliance on law enforcement responding to mental health crises even though they are not trained mental health professionals; as a result, police and the criminal justice system often serve as the “default mental health provider.”⁸⁶⁹ This overreliance has severe consequences: approximately 25% of those killed in officer-involved shootings since 2015 had a known mental illness and were disproportionately Black men.⁸⁷⁰ The 988 system will help stem an armed law enforcement response to calls in which having a professional trained in mental health or substance abuse would be the more appropriate response. The 988 number will be routed to and answered by the state’s thirteen certified suicide prevention call centers,⁸⁷¹ rather than police dispatchers, and will be available 24 hours a day and 7 days a week. In the future, 988 and 911 call centers will be able to transfer calls to each other, if the other number is the more appropriate to handle an incident. Currently, responses to 988 calls will be based on local resources, including existing crisis intervention teams. However, AB 988 mandates a five-year implementation plan to include the following:⁸⁷²

(A) Access to crisis counselors through telephone call, text, and chat, 24 hours per day, 7 days per week.

(B) Mobile crisis teams that operate statewide 24 hours per day, 7 days per week, and can respond to individuals in crisis in a timely manner. Mobile crisis teams shall be able to respond to clearly articulated suicidal or behavioral health contacts made or routed to 988 as an alternative to law enforcement, unless there is a medical emergency, someone is in immediate danger, or there is a reported crime where law enforcement is mandated by state or federal law to respond.

(C) Access to crisis receiving and stabilization services.⁸⁷³

1.4. Resource Line and Database (211)

Services are also available through another three-digit phone number, 211, that callers may contact rather than 911. It is “a free phone number and online database that connects people to local health and human services such as food, housing, child care, utility assistance, crisis intervention, disaster response information and more.”⁸⁷⁴ Individuals may call “211” or search online for resources and get connected with mental health services such as residential treatment programs, adult or child psychiatric hospitals, and mental health care in the community.⁸⁷⁵ 211 may also connect individuals

867 Assem. Bill No. 988 (2021-2022 Reg. Sess.). AB 988 was signed by the governor and chaptered on September 29, 2022. *Ibid.*

868 AB 988 – *The Miles Hall Lifeline Act: 988 Suicide and Mental Health Crisis Hotline* <<https://women.ca.gov/wp-content/uploads/sites/96/2021/04/7.-AB-988-Fact-Sheet.pdf>> [as of Nov. 29, 2022].

869 *Ibid.* Currently, 10% of law enforcement agencies’ budgets – and 20% of staff time – are spent responding to individuals with mental illness. *Ibid.* See also Racial and Identity Profiling Advisory Board, Annual Report (2022), *supra* note 169, at pp. 174-99.

870 AB 988 – *The Miles Hall Lifeline Act: 988 Suicide and Mental Health Crisis Hotline*, *supra* note 868.

871 *About 988*, 988 California Suicide Prevention and Mental Health Crisis Lifeline <<https://www.988california.org/#:~:text=988%20California%20is%20a%20consortium%20of%20thirteen%20California,Substance%20Abuse%20and%20Mental%20Health%20Services%20Administration%20%28SAMHSA%29>> [as of Nov. 29, 2022].

872 Assem. Bill No. 988 (2021-2022 Reg. Sess.). The plan must be developed no later than December 31, 2023. *Ibid.*

873 *Ibid.*

874 *211 Is a Free Information and Referral Service That Connects People to Health And Human Services in Their Community 24 Hours a Day, 7 Days a Week*, 211 <<https://www.211ca.org/about-2-1-1>> [as of Nov. 29, 2022]. In 2016, California 211 programs responded to over 2.8 million inquiries from people seeking services such as rent and mortgage assistance, food and shelter, health care, job training, transportation, child care, and elder care. *Ibid.*

875 *How Can We Help You?* (2022) 211 <<https://www.211ca.org/>> [as of Nov. 29, 2022].

with substance abuse treatment facilities and may also connect unhoused individuals with shelters and public assistance resources.⁸⁷⁶ By calling into this number or accessing this site, users may decrease calls to 911.

1.5. Conclusion

911 dispatchers are an extremely important part of the operation that responds to calls for service. They engage with the caller and the response team and assess the circumstances of a call to determine the appropriate response. As such, dispatchers play an important role in reducing armed law enforcement responses to crisis calls and bias by proxy calls and instead directing a community-based response.

2. Crisis Intervention Models

In the 2022 RIPA Report, the Board highlighted programs in San Francisco, Sacramento, Oakland, Denver, and Los Angeles that were developing alternatives to armed officers responding to crisis intervention. These programs consist of trained professional crisis response teams that can respond to calls for service and help individuals in need of mental health or other support. The programs described in the 2022 RIPA Report are continuing to provide care to their communities and expanding to include new teams or additional service times, as described in more detail below. The goal of expansion is to have fewer law enforcement responses to crisis calls, which reduces the contact individuals in crisis have with the police and the criminal legal system. Community-based responses also typically result in more referrals to treatment and fewer calls that end with an individual in handcuffs.⁸⁷⁷

In addition to providing programmatic updates on these crisis intervention programs, the Board has also compiled a list of funding opportunities for those seeking to create crisis intervention models in their community.

2.1. Programmatic Updates

2.1.1. San Francisco Street Crisis Response Teams

The goal of the San Francisco Crisis Response Team (SCRT) is to reduce encounters with law enforcement and unnecessary emergency room use by “provid[ing] rapid, trauma informed response to calls for service to people experiencing crisis in public spaces.”⁸⁷⁸ The program’s estimated annual budget of approximately \$13 million per year, paid for largely out of the city’s budget, supports the purchase and operation of SCRT vehicles, staffs the response teams with paramedics and mental health clinicians, and equips the vans with emergency equipment, food, and clothing.⁸⁷⁹ A team comprised of a paramedic, behavioral health clinician, and peer counselor responds to 911 calls identified by dispatchers as requiring a behavioral health or medical response rather than a law enforcement response.⁸⁸⁰ The team’s goal is to deescalate the crisis in the community, and they can transport to sub-acute locations or call for an ambulance for transport to a hospital for medical attention or a mental health hold.⁸⁸¹ A separate team follows up with those served by SCRT twenty-four to forty-eight

⁸⁷⁶ *Ibid.*

⁸⁷⁷ See Beck et al., *Behavioral Health Crisis Alternatives Shifting From Police to Community Responses* (Nov. 2020) Vera Institute of Justice <<https://www.vera.org/behavioral-health-crisis-alternatives#:~:text=911%20call%20diversion,calls%20are%20two%20important%20needs>> [as of Nov. 29, 2022].

⁸⁷⁸ Presentation by San Francisco Crisis Response Team, *June 21, 2022 RIPA Calls for Service Subcommittee Meeting* (June 22, 2022) YouTube <<https://www.youtube.com/watch?v=l-cFR8z1rqU>> [as of Nov. 29, 2022].

⁸⁷⁹ *San Francisco Street Crisis Response Team (SCRT) – San Francisco, CA*, Justice Center The Council of State Governments <<https://csgjusticecenter.org/publications/expanding-first-response/program-highlights/san-francisco-ca/#:~:text=The%20SCRT%20program%20has%20a,a%20rigorous%20evaluation%20of%20SCRT>> [as of Nov. 29, 2022].

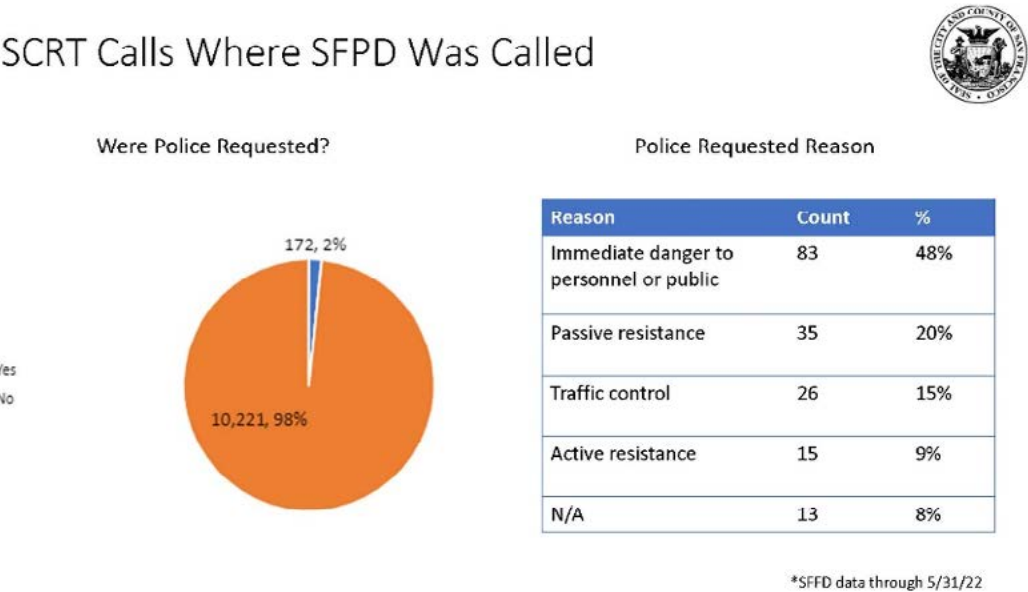
⁸⁸⁰ Presentation by San Francisco Crisis Response Team, *supra* note 878.

⁸⁸¹ *Ibid.*

hours after a crisis to ensure that individuals are linked to follow-up care.⁸⁸² This team may connect an individual to providers that the individual has an existing relationship with or create new links based on new needs.⁸⁸³

SCRT operates city-wide, 24 hours a day and 7 days a week.⁸⁸⁴ As of May 2022, six teams serve a specific neighborhood during the day but could serve the whole city when necessary, while the seventh team serves the whole city during overnight hours.⁸⁸⁵ Allotting a team to a specific neighborhood allows the team to become familiar with the neighborhood’s needs and fosters familiarity between the team and the community it serves.⁸⁸⁶ In June 2022, SCRT switched from using police dispatch systems to the local Emergency Medical Dispatch system, meaning a medic team will respond to a SCRT-eligible call if a SCRT team is unavailable.⁸⁸⁷ Previously, if a SCRT team was unavailable, law enforcement would respond.⁸⁸⁸ This change further separates law enforcement from behavioral health calls.⁸⁸⁹

Since the onset of the SCRT program, the teams have fielded over 10,000 calls for aid, and call volume continues to increase every month.⁸⁹⁰ Ninety-one percent of those calls were referred to SCRT from 911, but 5 percent of calls resulted from a response team directly viewing the crisis on-site.⁸⁹¹ As of May 2022, the average response time was eighteen minutes, but in general, the SCRT program responds in an average of sixteen minutes.⁸⁹² The vast majority of all SCRT engagements—sixty-two percent—were resolved on scene, with the client remaining safely in the community.⁸⁹³ Fifteen percent resulted in the client being transported to a hospital, thirteen percent resulted in the client being transported to a “social or behavioral setting,” and five percent of all engagements resulted in an involuntary detainment or hospitalization for mental and behavioral health treatment (referred to as a “5150” response).⁸⁹⁴



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Ibid.

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Ibid.

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Ibid.

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Ibid.

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Ibid.

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Ibid.

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Ibid.

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Ibid.

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Street Crisis Response Team May 2022 Update (May 2022) <<https://sf.gov/sites/default/files/2022-07/SCRT%20May%20Update.cleaned.pdf>> [as of Nov. 29, 2022].

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Ibid.

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Ibid.

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Ibid.

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Ibid.

Critically, SCRT contacted the San Francisco Police Department (SFPD) to provide backup in only two percent of the over 10,000 calls to which SCRT responded.⁸⁹⁵ In only 83 cases (roughly half of the two percent of cases), SFPD was called because an individual posed an immediate danger to the public, meaning the individual may have been threatening harm to the team or others.⁸⁹⁶ In the remaining 89 cases, SFPD was called in for other reasons – for example, if the person was not following SCRT instructions or SCRT needed help with traffic control.⁸⁹⁷

San Francisco's Office of Coordinated Care (OCC) follows up with the individuals seen by the SCRT teams and connects them with substance use disorder treatment or mental health care, if needed.⁸⁹⁸ The OCC followed up with eighty-six percent of cases handled in September 2022, bringing the program's overall follow-up rate to 58 percent.⁸⁹⁹ When OCC followed up, individuals declined follow-up support in only fourteen percent of cases since the launch of SCRT.⁹⁰⁰ San Francisco also collects data on client demographics and has reported that a notable sixty-five percent of all clients were experiencing homelessness during the relevant crisis.⁹⁰¹

2.1.2. Denver Support Team Assistance Response

Denver, Colorado's Support Team Assisted Response (STAR) is another program that provides an alternative to police response.⁹⁰² STAR pairs a mental health clinician with a paramedic or emergency medical technician (EMT) and dispatches them around the city each day to respond to low-level 911 calls such as trespass calls, welfare checks, intoxicated parties, and mental health crises.⁹⁰³ Responders in the STAR program arrive in civilian clothes and are able to provide a number of services, from providing water to connecting with medical care or other community support resources.⁹⁰⁴

STAR recently purchased five additional vans to expand its mobile response capacity.⁹⁰⁵ STAR also added seven more mental health clinicians, four new paramedics, and two more emergency medical technicians.⁹⁰⁶ These investments allow STAR to expand its services city-wide and potentially expand the hours of operation so the program can serve callers at additional times.⁹⁰⁷ In 2022, Denver also established a 15-person Community Advisory Committee to receive community feedback about

895 Presentation by San Francisco Crisis Response Team, *supra* note 878.

896 *Ibid.*

897 In about 20 percent of the two percent of calls involving SFPD (35 cases), the individual was passively resisting, meaning they were not following SCRT's instructions. In 15% of cases involving SFPD (a total of 26 cases), SCRT needed assistance with traffic control such as for individuals who step out into the street. In 9 percent of calls involving SFPD (15 cases), the individual actively resisted the team, thereby posing a threat to the team. Included in SCRT's numbers for calls for law enforcement are incidents unrelated to SCRT but that the SCRT team observed may require a law enforcement response. *Ibid.*

898 Presentation by San Francisco Crisis Response Team, *supra* note 878.

899 *Ibid.*

900 *Ibid.* OCC was unable to find individuals in 23% of cases. *Ibid.*

901 *Ibid.*

902 Muller, *Alternatives to Police Involvement in Mental Health Crises* (Jan. 21, 2022) Psychology Today <<https://www.psychologytoday.com/us/blog/talking-about-trauma/202201/alternatives-police-involvement-in-mental-health-crises>> [as of Nov. 29, 2022].

903 *Support Team Assisted Response (STAR) Program*, Denver The Mile High City <<https://www.denvergov.org/Government/Agencies-Departments-Offices/Agencies-Departments-Offices-Directories/Public-Health-Environment/Community-Behavioral-Health/Behavioral-Health-Strategies/Support-Team-Assisted-Response-STAR-Program>> [as of Nov. 29, 2022]; Muller, *supra* note 902.

904 Muller, *supra* note 902.

905 *Support Team Assisted Response (STAR) 2022 Mid-Year Report (2022)*, 9-1-1 Communications Denver Public Safety <https://www.denvergov.org/files/assets/public/public-health-and-environment/documents/cbh/2022_midyear_starreport_accessible.pdf> [as of Nov. 29, 2022].

906 The Good Complex News, *Denver's Program to Dispatch Mental Health Teams Instead of Police is So Successful it is Expanding 5-Fold* (Mar. 17, 2022) THE GOOD COMPLEX <<https://www.thegoodcomplex.com/denvers-program-to-dispatch-mental-health-teams-instead-of-police-is-so-successful-it-is-expanding-5-fold>> [as of Nov. 29, 2022].

907 See *Support Team Assisted Response (STAR) Program*, Denver The Mile High City, *supra* note 903.

successes and limitations and to inform the expansion of the program in the future.⁹⁰⁸ The RIPA Board is interested in learning about their findings and progress.

As of July 2022, STAR has responded to approximately 6,000 calls for service that would have otherwise been dispatched to police.⁹⁰⁹ Not one call resulted in a call for police backup, indicating that the STAR system has been effectively functioning as an alternative to law enforcement.⁹¹⁰ Councilmember Robin Kniech noted, “STAR is an example of a program that has worked — for those that it has had contacts with — in minimizing unnecessary arrests or unnecessary costs, whether that be a jail cost or an emergency room cost.”⁹¹¹ Even Denver Police will call STAR when they feel that law enforcement was not the correct first response.⁹¹² Approximately thirty percent of STAR’s calls are referrals from Denver Police.⁹¹³

The STAR Program was funded by \$1.4 million from the city of Denver’s 2021 budget, \$1 million from a municipal contingency fund, and an additional \$1.4 million from Caring for Denver, a foundation focused on mental health and substance use programs.⁹¹⁴ Denver City Council members are eager to continue funding the program’s expansion and the addition of culturally competent services, especially to the extent that this allows STAR to better serve ethnically and racially diverse neighborhoods in the city.⁹¹⁵ Another priority of city officials is to ensure that expanded STAR services include hiring more diverse staff who can respond to calls in neighborhoods with communities of color.⁹¹⁶

2.1.3. Sacramento and Oakland Mental Health First

The “Mental Health First” program in Sacramento, California is comprised of teams of mental health professionals who can respond to local calls for help. For assistance, Sacramento community members dial a crisis line independent of local law enforcement agencies, and volunteers will help provide support, de-escalation tactics, and even medical care. Mental Health First works to “intercept and reduce police contact with community members.”⁹¹⁷ Mental Health First recently expanded to Oakland, California. Both the Sacramento and Oakland Mental Health First phone lines are run by volunteers.⁹¹⁸ The services are free to callers and neither is affiliated with the respective city governments in the areas they operate.⁹¹⁹

As of January 2022, the Sacramento Mental Health First program offers support twenty-four hours a day, seven days a week.⁹²⁰ Previously, operations were from 7 pm to 7 am on Friday, Saturday, and

908 Hernandez, *Denver’s STAR Program, Sending Mental Health Pros on Certain Calls Instead of Police Officers, Is About to Get Bigger* (Aug. 30, 2021) Denverite <<https://denverite.com/2021/08/30/denver-star-mental-health-police-program/>> [as of Nov. 29, 2022].

909 From launch to February 2022, teams responded to over 2,700 calls. *Ibid.* Between January and July 2022, teams responded to over 2,800 calls. *Support Team Assisted Response (STAR) 2022 Mid-Year Report*, *supra* note 905.

910 *Support Team Assisted Response (STAR) 2022 Mid-Year Report*, *supra* note 905; see *Support Team Assisted Response (STAR) Program*, Denver The Mile High City, *supra* note 903.

911 Hernandez, *After Starting Out With Just One Van, Denver’s STAR Program Will Expand to Six This Year* (Feb. 14, 2022) Denverite <<https://denverite.com/2022/02/14/after-starting-out-with-just-one-van-denvers-star-program-will-expand-to-six-this-year/>> [as of Nov. 29, 2022].

912 *Ibid.*

913 *Ibid.*

914 Hernandez, *Denver’s STAR Program, Sending Mental Health Pros on Certain Calls Instead of Police Officers, Is About to Get Bigger* (Aug. 30, 2021) Denverite <<https://denverite.com/2021/08/30/denver-star-mental-health-police-program/>> [as of Nov. 29, 2022].

915 *Ibid.*

916 *Ibid.*

917 Muller, *supra* note 902.

918 *M.H. Community First Response Oakland*, Anti-Police Terror Project <<https://www.antipoliceterrorproject.org/mh-first-oakland>> [as of Nov. 29, 2022].

919 Copeland, *A New Hotline Will Dispatch Volunteers Instead of Police For Mental Health Crises* (Mar. 25, 2021) Prism <<https://prismreports.org/2021/03/25/a-new-hotline-will-dispatch-volunteers-instead-of-police-for-mental-health-crises/>> [as of Nov. 29, 2022].

920 Muller, *supra* note 902.

Sunday, so the program has undergone expansion this year.⁹²¹ Volunteers with medical backgrounds work on twelve-hour shifts to answer calls and provide peer-support to individuals who need assistance.⁹²² Due to concerns about the COVID-19 pandemic, the Oakland Mental Health First program is currently only available for phone support.⁹²³ The Oakland Mental Health First hotline is available on Fridays and Saturdays from 8:00 pm to 8:00 am, which fills an overnight gap when other mental health resources are not available.⁹²⁴

2.1.4. Los Angeles Community Alternatives to 911 (CAT 911)

CAT-911 consists of a network of fifteen teams in Southern California⁹²⁵ that serve as a rapid-response network for domestic violence incidents, mental health crises, first aid, and local conflict resolution.⁹²⁶ Residents can contact CAT-911 as an alternative to calling law enforcement, and Community Action Teams (CAT) are dispatched to provide emergency aid as needed.⁹²⁷ CAT-911 is run by a network of grassroots organizers throughout southern California.⁹²⁸ The program holds workshops for community volunteers to learn de-escalation tactics so they can volunteer to help neighbors combatting mental health crises.⁹²⁹

2.2. Programmatic Update Conclusion

Each of the programs described above had a positive impact on its respective community. Teams rarely called for police reinforcement, demonstrating that there is a wide range of crisis calls to which law enforcement responds but that would be better served by crisis intervention teams. The Denver Star teams did not call for police backup in the more than 2700 calls they answered.⁹³⁰ The San Francisco SCRT teams called for police backup in merely 2 percent of their more than 10,000 calls.⁹³¹ These programs indicate that alternatives to law enforcement are successful at providing crisis response without risking public safety.

3. Funding Opportunities for Crisis Intervention Programs

A number of federal- and state-level resources exist for communities looking to set up crisis intervention programs. Programs tend to be funded differently based on resources available in the respective locale. The programs referenced in this report draw funding from various sources such as city funds, grants, or the goodwill of volunteers. Below are descriptions of grants available for mobile crisis intervention.

- In 2021, the C.R.I.S.E.S. Grant Pilot Program became law in California, setting up a \$10 million grant program for crisis intervention efforts.⁹³² These grants are available to community-based organizations to set up emergency response systems as an alternative to law enforcement,⁹³³ and they will be awarded on a competitive basis by January 1, 2023.⁹³⁴

921 See Racial and Identity Profiling Advisory Board, Annual Report (2022), *supra* note 169, at p. 194.

922 Muller, *supra* note 902.

923 M.H. Community First Response Oakland, *supra* note 918.

924 *Ibid.*

925 Garrova, *This Grassroots Grope Hopes to Offer a Way to Avoid Calling Police to Mental Health Crises* (July 16, 2021) LAist <<https://laist.com/news/criminal-justice/this-grassroots-group-hopes-to-offer-a-way-to-avoid-calling-police-to-mental-health-crises>> [as of Nov. 29, 2022].

926 Welcome to CAT-911.org (2020) CAT-911.org Community Action Teams <<https://cat-911.org/>> [as of Nov. 29, 2022].

927 *Ibid.*

928 Garrova, *supra* note 925.

929 *Ibid.*

930 Support Team Assisted Response (STAR) 2022 Mid-Year Report, *supra* note 905.

931 Presentation by San Francisco Crisis Response Team, *supra* note 878.

932 C.R.I.S.E.S Grant Pilot Program, CA Gov <<https://www.cdss.ca.gov/inforesources/cdss-programs/civil-rights/crises>> [as of Nov. 29, 2022].

933 Garrova, *supra* note 925.

934 C.R.I.S.E.S Grant Pilot Program, *supra* note 932.

- As part of the response to COVID-19, the federal Substance Abuse and Mental Health Services Administration (SAMHSA) provided funding for California’s Behavioral Health Justice Intervention Services (BHJIS) grant program. The BHJIS program funds community efforts to intervene in mental and behavioral health crises to avoid the involvement of law enforcement.⁹³⁵ These funds can be used to expand mobile behavioral health crisis services, train social workers, counselors, or case managers, and embed these responders within local law enforcement teams.⁹³⁶
- The American Rescue Plan, which became federal law in 2021, included funding for the Centers for Medicare and Medicaid Services (CMS) to support mobile crisis intervention efforts across the United States.⁹³⁷ CMS awarded \$15 million to twenty states, including California, to expand mobile crisis intervention teams that benefit Medicaid recipients.⁹³⁸ As a result, Medi-Cal can now receive federal reimbursement for a wider range of crisis intervention services that are increasingly mobile, community-based, and around the clock.⁹³⁹
- The California Department of Health Care Services also administers grants for Crisis Care Mobile Units (CCMU), supported by funding from the state’s Behavioral Health Continuum Infrastructure Program and from SAMHSA.⁹⁴⁰ Already, over \$163 million has been distributed to 49 behavioral health authorities to create or expand the capacity of 245 mobile crisis response programs in California.⁹⁴¹
- The California Health Facilities Financing Authority also administered a competitive grant program for counties in California to deploy or improve behavioral health crisis response infrastructure. Currently, available funds exceed \$8 million.⁹⁴² This funding is aimed at crisis response efforts directed at children and youth.⁹⁴³ These grants can be used to set up new programs, make capital improvements, or other capacity expansions. The money can be used to fund personnel related to mobile crisis response teams and to purchase mobile crisis response vehicles.⁹⁴⁴ The program awarded grants to Sacramento County Division of Behavioral Health Services and Santa Cruz County Behavioral Health Services Division.⁹⁴⁵ Sacramento’s plan was to use the funds to purchase two new vehicles and hire eight new full-time staff members to expand mental health access to those 21 years of age and under and their caregivers. The funding was to help Sacramento’s Division to respond to approximately 300 to 400 calls per month, with 45-60% of those calls requiring in-person crisis intervention services. Santa Cruz requested money to purchase one new Mobile Crisis Van (Mobile Behavioral Health Office) and hire two new full-time staff.

935 *Behavioral Health Justice Intervention Services (BHJIS)*, Behavioral Health Justice Intervention Services <<https://www.co-responding.buildingcalhhs.com/>> [as of Nov. 29, 2022].

936 *The Behavioral Health Response and Rescue Project*, CA Gov Department of Health Care Services <<https://www.dhcs.ca.gov/services/MH/Pages/BHRRP-Projects.aspx>> [as of Nov. 29, 2022].

937 *Biden-Harris Administration Awards \$15 Million to 20 States for Mobile Crisis Intervention*, Press Release (Sept. 20, 2021) U.S. Department of Health & Human Services <<https://www.hhs.gov/about/news/2021/09/20/biden-harris-administration-awards-15-million-to-20-states-for-mobile-crisis-intervention.html>> [as of Nov. 29, 2022].

938 *Ibid.*

939 *Behavioral Health Mobile Crisis Response Services in Medi-Cal*, California Health Care Foundation (Feb. 11, 2022) <<https://www.chcf.org/project/behavioral-health-mobile-crisis-response-services-medi-cal/>> [as of Nov. 29, 2022].

940 *Crisis Care Mobile Units Program Grant*, Behavioral Health Continuum Infrastructure Program <<https://www.infrastructure.buildingcalhhs.com/ccmu/>> [as of Nov. 29, 2022].

941 *Ibid.*

942 *Investment in Mental Health Wellness Grant Programs*, Office of the State Treasurer <<https://www.treasurer.ca.gov/chffa/imhwa/index.asp>> [as of Nov. 29, 2022].

943 *Ibid.*

944 California Health Facilities Financing Authority, *Investment in Mental Health Wellness Grant Program for Children and Youth Frequently Asked Questions* (Mar. 2022) <<https://www.treasurer.ca.gov/chffa/imhwa/childreneyouth/cy-faq.pdf>> [as of Nov. 29, 2022].

945 California Health Facilities Financing Authority, *Investment in Mental Health Wellness Grant Program for Children and Youth Notable Projects* <<https://www.treasurer.ca.gov/chffa/imhwa/childreneyouth/cy-notable-projects201908.pdf>> [as of Nov. 29, 2022].

A jurisdiction looking to set up a crisis intervention team may apply to these programs and grants for funding. The Board encourages jurisdictions to seek and build programs that are alternatives to law enforcement.

4. Conclusion

Individuals call 911 for several reasons beyond medical or other emergencies. Some call because of a mental health crisis; others call to make false or ill-informed claims about persons they dislike or are biased against. Dispatchers are the first point of contact for all calls for service and determine who should respond to each call; accordingly, dispatchers should be supported with adequate training and resources to help them choose the best response for a call. Often the decision is distilled to whether law enforcement should respond to a call. In most cases, mental health related crisis calls and bias by proxy calls do not require an armed law enforcement officer to respond. The crisis intervention teams described in this report reflect an unmet need for alternative responses to law enforcement that appropriately address people in crisis. Given this, the Board encourages city governments to seek out funding opportunities to fund crisis intervention models for their communities.

Some communities have established crisis intervention teams to replace law enforcement responses, and these teams have successfully diverted individuals away from protracted contact with law enforcement or the criminal justice system without risking public safety. The Board has highlighted some of these alternatives to law enforcement responses and encourages law enforcement agencies and community advocates to partner to develop models that work for their communities.

CIVILIAN COMPLAINTS

1. Introduction

In addition to analyzing complaint data, the RIPA Board has developed recommendations regarding policies and practices to ensure that civilian complaints serve as an effective law enforcement accountability measure. Past reports have analyzed law enforcement agencies' complaint forms and procedures governing complaint intake and investigation to standardize the process and increase accessibility. The Board has also identified civilian complaint data as an important factor in early intervention systems designed to correct and prevent police misconduct.

This year, the Board emphasizes the importance of procedural justice within the civilian complaint process. Procedural justice seeks to incorporate the principles of fairness, transparency, impartiality, and respect into interactions between law enforcement and the public.⁹⁴⁶ Incorporating these principles into dispute resolution procedures, such as the adjudication of civilian complaints, allows members of the public to feel heard and respected, even if the outcome is not in their favor.⁹⁴⁷ Procedurally fair processes also allow law enforcement officials to understand why certain decisions were made, while feeling supported and respected by their supervisors and peers.⁹⁴⁸ Research shows that the relationship between law enforcement and the public has been strengthened when members of the public and peace officers feel a process or system is procedurally just.⁹⁴⁹ In turn, this allows for greater collaboration between police and the community to combat crime and even decrease crime rates in some cases.⁹⁵⁰

This year's report contains a comprehensive overview of best practices incorporating the principles of procedural justice into each step of the civilian complaint process, so that all parties involved in a complaint will feel heard and the outcome of the investigation will be fully understood. While this overview is meant to be comprehensive, it is not exhaustive, as the Board and agencies are always striving to implement emerging best practices. The Board encourages agencies to incorporate the overarching principles of procedural justice into as many aspects of the civilian complaints process as possible.

2. Overview of Civilian Complaint Data

California law has required law enforcement agencies to submit civilian complaint data to the Department of Justice since 1981. RIPA expanded this requirement in 2015. Law enforcement agencies must now report the number of civilian complaints received, the number of complaints alleging racial or identity profiling, and the disposition of all complaints⁹⁵¹ to the Department of Justice annually.

946 See, e.g., U.S. DOJ Office of Community Oriented Policing Services (COPS), *Community-Oriented Trust and Justice Briefs: Procedural Justice* ("Procedural Justice Brief") (2016) p. 1 <<https://cops.usdoj.gov/RIC/Publications/cops-w0795-pub.pdf>> [as of Nov. 29, 2022]; COPS, *Be On the Lookout Project Bulletin #6: Procedural Justice* ("Procedural Justice BOLO") (2015) p. 1 <<https://cops.usdoj.gov/RIC/Publications/cops-w0771-pub.pdf>> [as of Nov. 29, 2022].

947 See COPS, *Procedural Justice Brief*, *supra* note 946, at p. 1; COPS, *Procedural Justice BOLO*, *supra* note 946, at pp. 2, 5.

948 COPS, *Procedural Justice BOLO*, *supra* note 946, at p. 3.

949 See *id.* at p. 5; see also Nat. Assn. for Civilian Oversight of Law Enforcement, *Procedural Justice and Legitimacy* <https://www.nacole.org/procedural_justice_and_legitimacy#:~:text=The%20literature%20has%20also%20shown%20that%20officer%20perceptions,communication%20and%20the%20process%20%E2%80%94%20increas-e%20complainant%20satisfaction> [as of Nov. 29, 2022].

950 See COPS, *Procedural Justice BOLO*, *supra* note 946, at p. 5.

951 Pursuant to Cal. Penal Code, § 13012, subd. (a)(5)(B), complaint dispositions are categorized as: "Sustained" (meaning the investigation disclosed sufficient evidence to prove the truth of the allegation in the complaint by a preponderance of evidence), "exonerated" (meaning the investigation clearly established that the employee's actions that formed the basis of the complaint were not a violation of law or policy), "not sustained" (meaning the investigation failed to disclose sufficient evidence to clearly prove or disprove the complaint's allegation), and "unfounded" (meaning the investigation clearly established that the allegation is not true).

For the 2021 calendar year, the Department received civilian complaint data from 688 agencies employing peace officers in California. The agencies reported 28,617 complaints across three categories: non-criminal, misdemeanor, and felony. The majority of complaints (27,924, or 97.6%) alleged non-criminal conduct. Complaints alleging behavior constituting a misdemeanor offense accounted for 1.6 percent (453) of complaints, and allegations of behavior constituting a felony represented 0.8 percent (240) of complaints.

Of the agencies that reported civilian complaint data in 2021, 522 agencies are subject to RIPA's stop data reporting requirements (hereafter, RIPA agencies). These agencies include: municipal and district police departments, county sheriff's departments, the California Highway Patrol, the law enforcement agencies of the University of California, California State Universities, California community colleges, and the K-12 school district police departments, as well as other agencies that employ peace officers as defined under Government Code § 12525.5(g)(1), such as District Attorney Offices and Coroner's Offices.⁹⁵² The sections that follow examine only the data submitted by the RIPA agencies that are subject to collecting RIPA stop data.

2.1. Analysis of Civilian Complaint Data Submitted by RIPA Reporting Agencies

RIPA agencies reported 10,088 civilian complaints in 2021. These complaints were reported by 389 (74.5%) of the RIPA agencies, with the rest of the RIPA agencies each reporting zero complaints in 2021. Most complaints alleged noncriminal conduct (9,562, or 94.8%), followed by complaints for conduct that constitutes a misdemeanor offense (388, or 3.8%); complaints alleging conduct that constitutes a felony were the least common (137, or 1.4%).

RIPA agencies reported that 10,490 reached a disposition in the 2021 calendar year. Of the complaints that reached a disposition in 2021, 992 (9.5%) were sustained, 3,496 (33.3%) were exonerated, 1,076 (10.3%) were not sustained, and 4,926 (47%) were unfounded.⁹⁵³

2.2. Analysis of Racial and Identity Profiling Civilian Complaint Data Submitted by RIPA Reporting Agencies

Law enforcement agencies are also required by RIPA to report the number of complaints that contain an allegation of racial or identity profiling.⁹⁵⁴ Specifically, agencies submit data to the Department detailing profiling complaints that fall into nine categories: age, physical disability, sexual orientation, race/ethnicity, mental disability, gender, religion, gender identity/expression, and nationality.⁹⁵⁵

Of the 389 (74.5%) RIPA agencies reporting at least one civilian complaint, 144 (27.6%) reported one or more civilian complaints alleging racial or identity profiling. These agencies reported 1,426 complaints alleging an element or elements of racial or identity profiling, which constitutes 14.1 percent of the total complaints reported in 2021. The total number of racial and identity profiling allegations (1,647) reported to the Department exceeds the total number of racial and identity profiling complaints (1,426), 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 nationality and religion. This example would count as a single complaint with two types of alleged identity profiling.

952 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 Nov. 29, 2022].

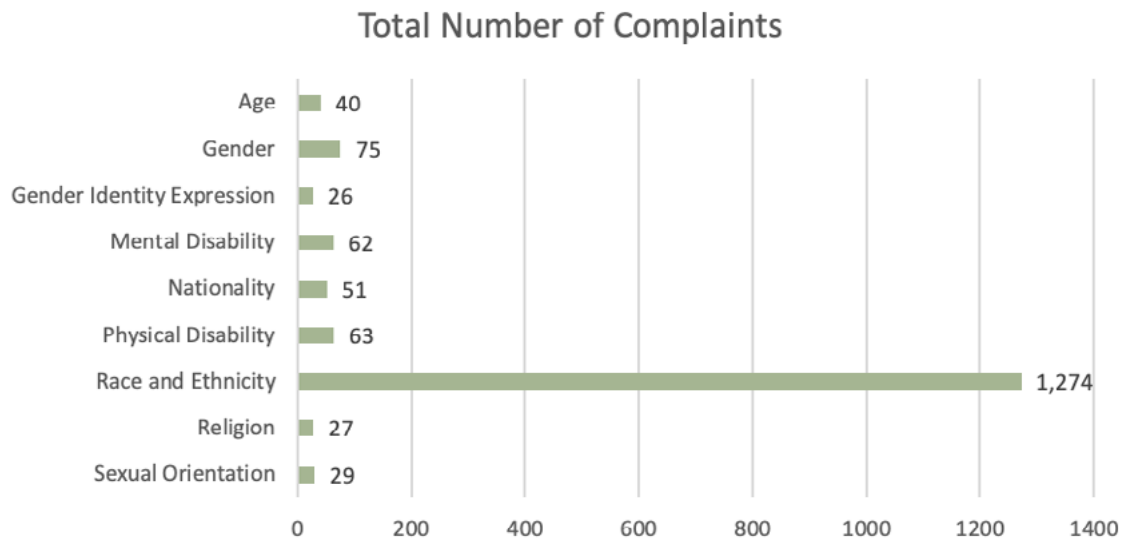
953 It is important to note that not every complaint reached a disposition during the same year it was initially reported. Therefore, it is possible that some complaints that appeared in the 2021 disposition categories were first reported in 2020 or earlier.

954 Cal. Pen. Code, § 13012, subd. (a)(5)(A)(iii).

955 See *ibid.*; see also OpenJustice, *Civilians' Complaints Against Peace Officers* <<https://openjustice.doj.ca.gov/data>> [as of Nov. 29, 2022] (categorizing reported complaints into each of the nine categories above).

Figure 55 displays the number of reported allegations that fell into each of the nine identity group types.

Figure 55. Total Allegations of Racial and Identity Profiling Reported in 2021



3. Dispositions of Civilian Complaints for RIPA Agencies

RIPA agencies reported that 713 racial and identity profiling complaints reached disposition in 2021. Of the complaints that reached a disposition, 13 (1.8%) were sustained, 130 (18.2%) were exonerated, 83 (11.6%) were not sustained, and 487 (68.3%) were determined to be unfounded. Figure 56 displays the distribution of disposition types within the 2021 data for (1) all complaints that reached disposition and (2) complaints of racial and identity profiling that reached disposition.

Disposition Definitions

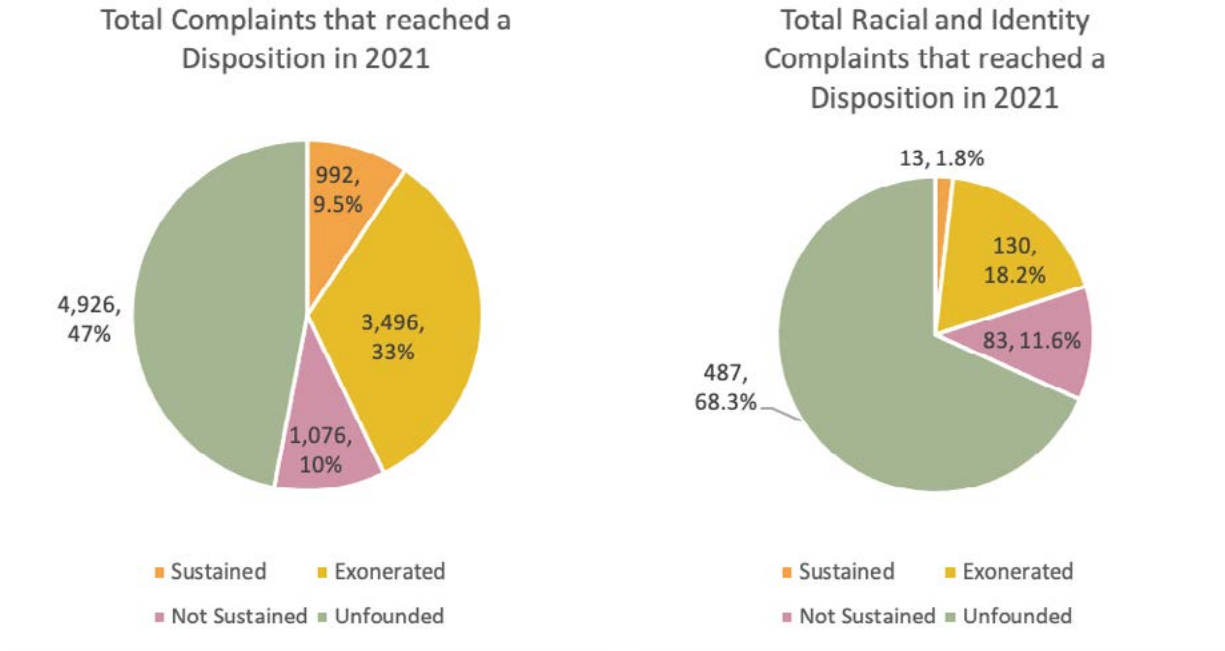
Sustained: Investigation disclosed sufficient evidence to prove truth of allegation in complaint by preponderance of evidence.

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.

Figure 56. Disposition Distribution of 2021 Complaint



3.1. Agency-Level Data Snapshot: 2021 Civilian Complaints for Wave 1, 2, and 3 Agencies

Table 5 displays civilian complaint totals broken down for Wave 1, 2, and 3 agencies.⁹⁵⁶ 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 2021.⁹⁵⁷

Table 5. Civilian Complaints Reported and Sworn Personnel Employed for Wave 1, 2 and 3 Agencies

Wave	Agency	Total Complaints Reported	Total Racial and Identity Profiling Complaints	Sworn Personnel
1	California Highway Patrol	262	29	6,736
1	Los Angeles County Sheriff's Department	763	83	9,522
1	Los Angeles Police Department	2,227	528	9,474
1	Riverside County Sheriff's Department	19	0	1,663
1	San Bernardino County Sheriff's Department	98	47	1,940

⁹⁵⁶ 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. Wave 3 agencies are the next 10 largest agencies and were required to start submitting stop data to the Department by April 1, 2022. See Cal. Gov. Code, § 12525.5, subd. (a)(2).

⁹⁵⁷ 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.

1	San Diego County Sheriff's Department	204	62	2,463
1	San Diego Police Department	203	38	1,877
1	San Francisco Police Department	826	31	2,129
2	Fresno Police Department	135	13	769
2	Long Beach Police Department	132	9	772
2	Oakland Police Department	482	53	682
2	Orange County Sheriff's Department	77	66	1,874
2	Sacramento County Sheriff's Department	347	24	1,271
2	Sacramento Police Department	221	29	716
2	San Jose Police Department	321	73	1,161
3	Alameda County Sheriff's Department	74	3	1,035
3	Fresno County Sheriff's Department	22	3	408
3	Kern County Sheriff's Department	169	8	723
3	Riverside Police Department	37	3	363
3	San Francisco County Sheriff's Department	14	4	805
3	Santa Clara County Sheriff's Department	66	8	1,189
3	Stockton Police Department	4	0	432
3	Ventura County Sheriff's Department	42	5	614

3.2. Complaints Made in Jail Systems

Given that agencies operating jails are generally larger, the data demonstrates a lower than expected number of complaints reported by sheriff's departments. This may be due to departments' classification of complaints submitted by incarcerated persons as "grievances" or other distinct categories, rather than "civilian complaints." Thus, to ensure that all complaints are captured in the data reported to the Department of Justice, law enforcement agencies operating jail systems, such as sheriffs' departments, should apply the Board's definition of "civilian complaint," discussed in detail below (see Section B.1 "Statutory Definition of 'Civilian Complaint'") to all custody settings, such as jails, to prevent the inadvertent underreporting of complaints.

4. Cross-Year Comparisons

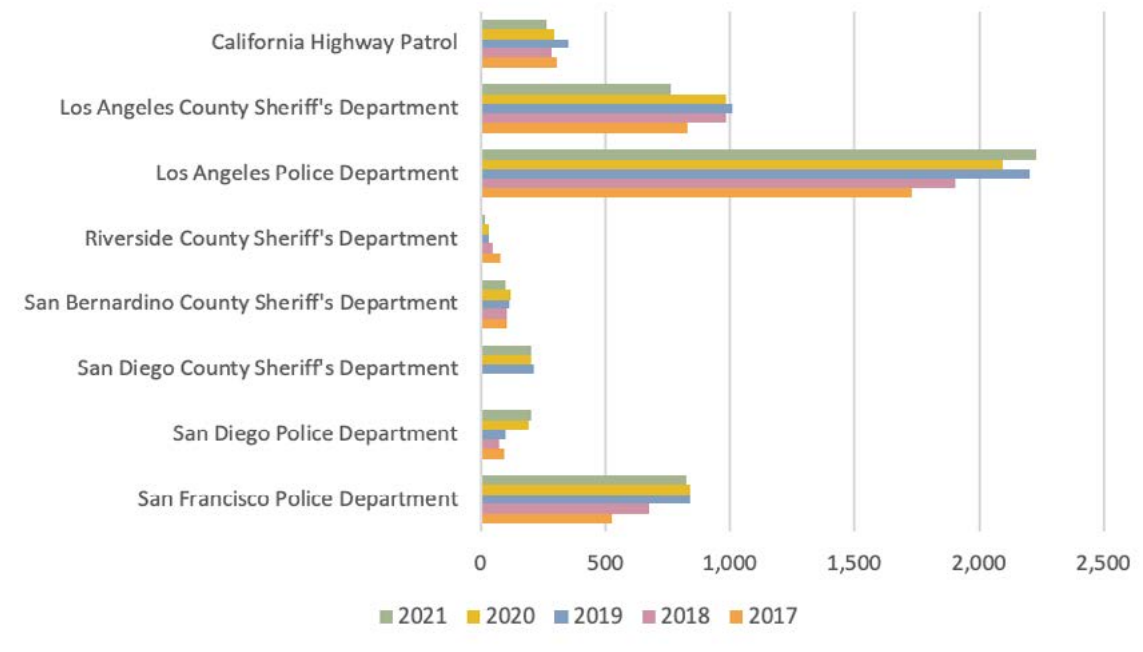
Figures 57 through 62 display the total number of complaints and total number of racial and identity profiling complaints submitted by Wave 1, 2, and 3 RIPA agencies across 5 years.

4.1. Wave 1 Agency Complaints Reported (2017-2021)

In 2021, Wave 1 agencies reported 4,602 civilian complaints. This constituted a 3.5% decrease relative to the total number of civilian complaints reported in the year prior (4,768), a 5.5 percent decrease from 2019 (4,872), a 12.5 percent increase from 2018 (4,091), and a 25.1 percent increase from 2017 (3,679).

The majority of Wave 1 agencies (5 out of 8) experienced a decrease in the number of civilian complaints reported between 2020 and 2021. The agency that experienced the largest decrease in complaints from 2020 to 2021 was Riverside County Sheriff's Department (42.4%, 33 to 19), whereas the Los Angeles Police Department experienced the largest increase (6.2%, 2,097 to 2,227). One agency, the San Diego County Sheriff's Department, reported the same number of complaints (204) in both 2020 and 2021.

Figure 57. Wave 1 Total Complaints Reported

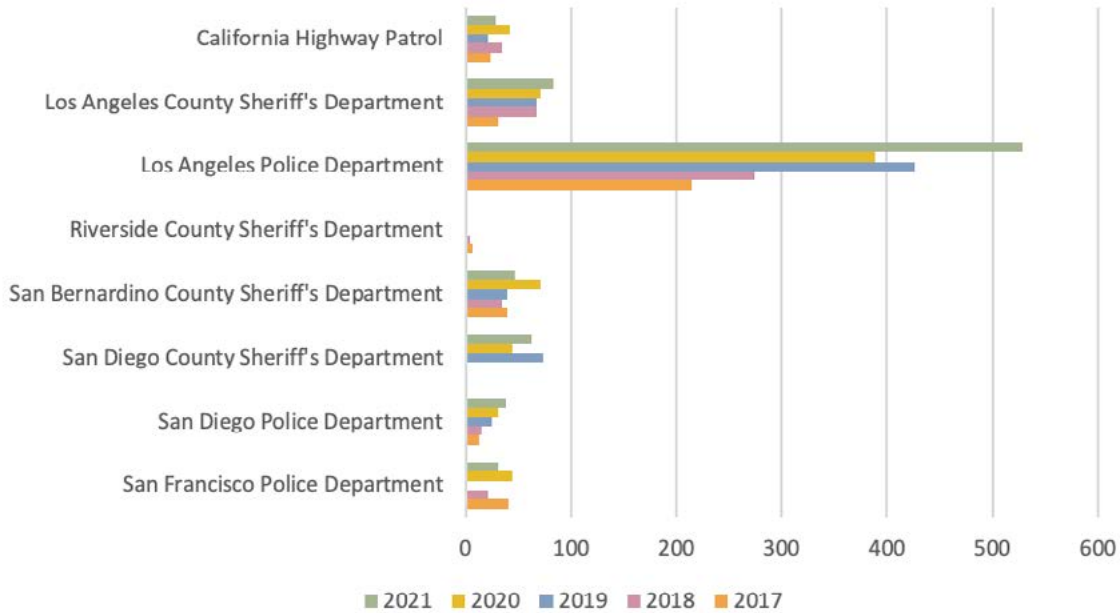


4.2. Wave 1 Total Racial and Identity Profiling Complaints

Figure 58 displays the total number of racial and identity profiling complaints reported by Wave 1 agencies from 2016 to 2021. The total number of racial and identity profiling complaints was 818 in 2021, which is an 18.2 percent increase from 2020 (692), a 25.3 percent increase from 2019 (653), an 81 percent increase from 2018 (452), and a 120.5 percent increase from 2017 (371).

Half of the Wave 1 agencies (4 out of 8) experienced an increase in the number of racial and identity profiling civilian complaints between 2020 and 2021, while three agencies experienced a decrease, and one agency, Riverside County Sheriff's Department, reported the same number of complaints in both years. The San Diego County Sheriff's Department had the largest relative increase (40.9%, 62 to 44) while the San Bernardino County Sheriff's Department had the largest relative decrease (33.8%, 71 to 47) in reported racial and identity profiling complaints reported from 2020 to 2021.

Figure 58. Wave 1 Total Racial and Identity Profiling Complaints Reported

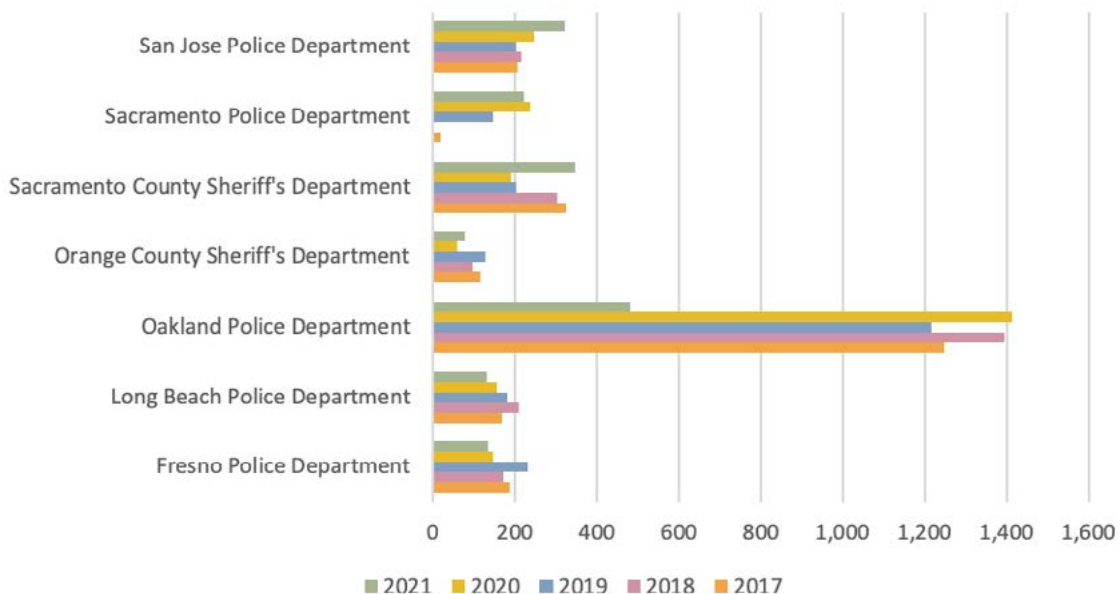


4.3. Wave 2 Agency Complaints Reported (2017-2021)

Wave 2 agencies reported 1,715 complaints in 2021. This was a 30.1 percent decrease from 2020 (2,454), a 25.9 percent decrease from 2019 (2,313), a 28.5 percent decrease from 2018 (2,399), and a 24.5 percent decrease from 2017 (2,271).

The majority of Wave 2 agencies (5 out of 7) experienced a decrease in the total number of civilian complaints reported between 2020 and 2021. The agency that experienced the largest decrease was the Oakland Police Department (65.9%, 1,414 to 482). The Sacramento County Sheriff's Department experienced the greatest increase in complaints (191 to 347, 81.7%) between 2020 and 2021.

Figure 59. Wave 2 Total Complaints Reported

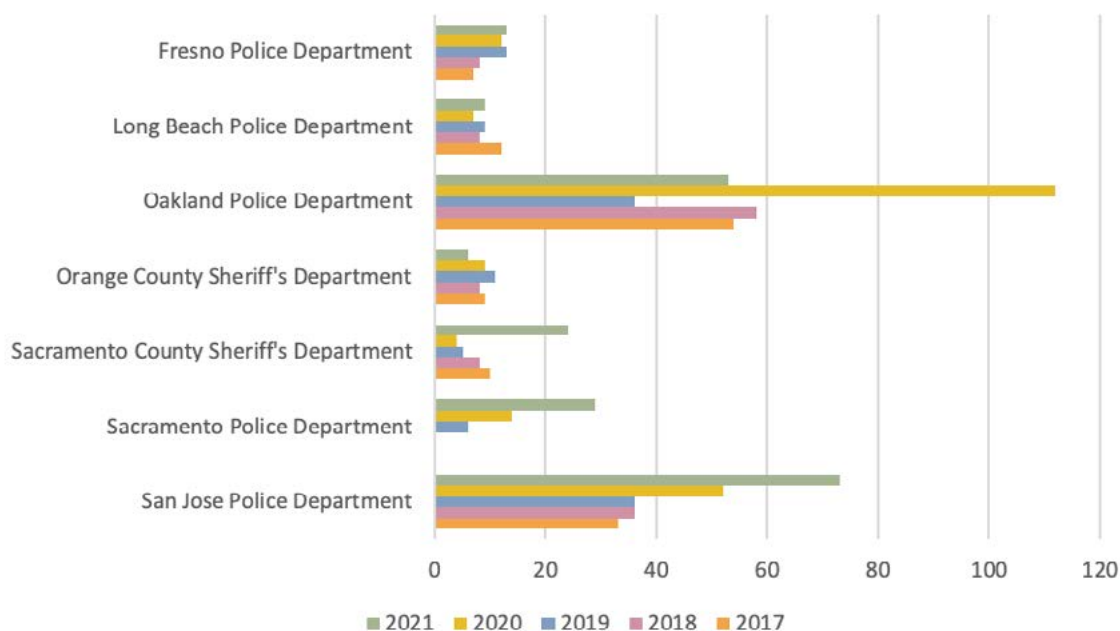


4.4. Wave 2 Racial and Identity Profiling Complaints

Wave 2 agencies reported a 1.4 percent decrease in civilian complaints from 2020 to 2021 (210 to 207). However, the number of racial and identity profiling complaints reported by Wave 2 agencies in 2021 increased relative to the three years prior to 2020, specifically a 78.4 percent increase from 2019 (116), a 64.3 percent increase from 2018 (126), and a 65.6 percent increase from 2017 (125).

The majority of Wave 2 agencies (5 out of 8) experienced an increase in the number of racial and identity profiling complaints between 2020 and 2021. The Sacramento County Sheriff's Department experienced the largest relative increase (4 to 24, 500%). The Sacramento Police Department also reported a large relative increase in alleged racial profiling allegations (14 to 29, 107.1%) between 2020 and 2021. Meanwhile, the Oakland Police Department experienced the largest decrease (112 to 53, 52.7%) of any Wave 2 agency.

Figure 60. Wave 2 Total Racial and Identity Profiling Complaints Reported

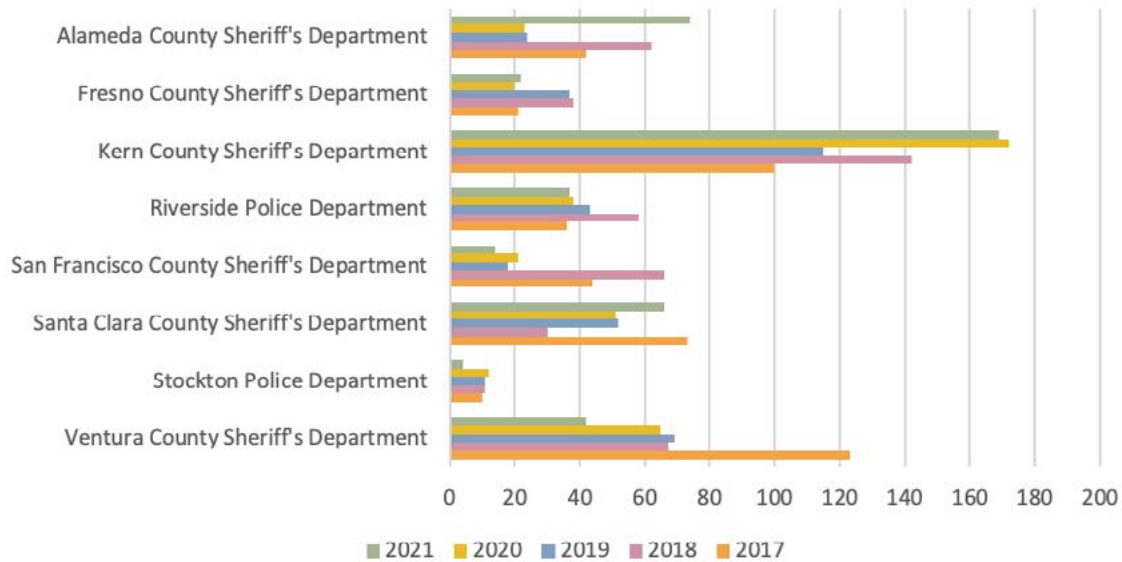


4.5. Wave 3 Total Complaints Reported (2017-2021)

Wave 3 agencies reported 428 complaints in 2021. This was a 6.5 percent increase from 2020 (402), a 16 percent increase from 2019 (369), a 9.7 percent decrease from 2018 (474), and a 4.7 percent decrease from 2017 (513).

The majority of Wave 3 agencies (5 out of 8) experienced a decrease in the total number of civilian complaints reported between 2020 and 2021. The agency that experienced the largest decrease was the Stockton Police Department (12 to 4, 66.7%). The Alameda County Sheriff's Department experienced the largest increase (23 to 74, 221.7%).

Figure 61. Wave 3 Total Complaints Reported

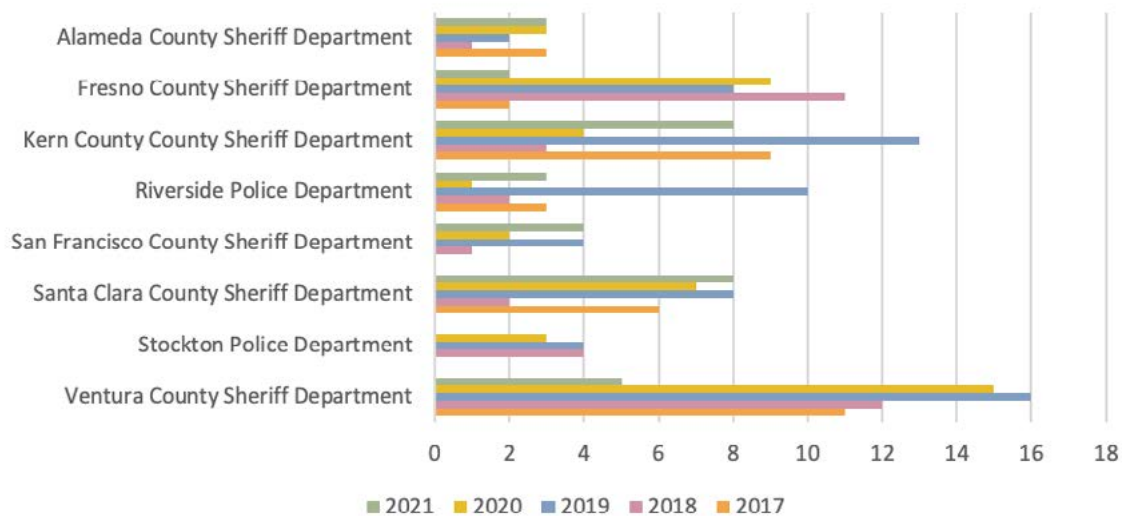


4.6. Wave 3 Racial and Identity Profiling Complaints

Wave 3 agencies reported a 22.7 percent decrease in civilian complaints from 2020 to 2021 (44 to 34). The number of profiling complaints reported in 2021 constitutes a 47.7 percent decrease from 2019 (82) and a 5.6 percent increase from 2018 (36). The total number of civilian complaints reported by Wave 3 agencies (34) was the same in 2021 as it was in 2017.

Half of the Wave 3 agencies (4 out of 8) experienced a decrease in the number of racial and identity profiling complaints between 2020 and 2021. The Stockton Police Department experienced the largest relative decrease (3 to 0, 100%), whereas the Riverside Police Department experienced the largest increase (1 to 3, 200%). The Alameda County Sheriff's Department reported seven racial and identity profiling complaints for both 2020 and 2021.

Figure 62. Wave 3 Total Racial and Identity Profiling Complaints Reported



5. Civilian Complaint Processes and Best Practices

Penal Code section 832.5 broadly requires law enforcement agencies to establish a procedure to investigate civilian complaints. This provision allows each individual law enforcement agency the freedom to create their own civilian complaint process but outlines few requirements for that process.⁹⁵⁸ Such discretion may result in unequal access to or lack of transparency into the civilian complaint process, as well as create differences in data on civilian complaints.

The Board believes standardization of the civilian complaint process would help resolve these issues and increase perceptions of procedural justice. Accordingly, the Board makes the following recommendations to law enforcement agencies and the Legislature.

5.1. Statutory Definition of “Civilian Complaint”

Current law does not define “civilian complaint.”⁹⁵⁹ Law enforcement agencies have discretion to decide what constitutes a civilian complaint and, in turn, control what incidents are investigated, reported, and retained.⁹⁶⁰

The Board has previously identified this lack of a uniform definition as a gap in the law that inhibits equitable access to the civilian complaint process and, in some cases, causes inequities in civilian complaint data.⁹⁶¹ These inequities can undermine perceptions of fairness and procedural justice. For example, an agency’s decision to count less serious complaints as “inquiries” rather than complaints to be investigated may cause them to be handled in a different way by the agency and can result in lower numbers of complaints being reported. Similarly, the classification of complaints as “internal” or “external” may result in different reporting requirements, skewing the number of reportable complaints and potentially subjecting complaints to different investigatory procedures.

As such, the Board renews its recommendation from the 2022 Annual Report that the Legislature add the following definition to Penal Code section 832.5:

(1) Complaint means either of the following:

(A) any issue brought to a department or agency where the complainant perceives that a department or agency employee engaged in criminal conduct, abusive or discriminatory behavior, inappropriate or discourteous conduct, or violation of any law or rules, policies, and regulations of the department or agency; or

(B) disagreement solely with the policies, procedures, or services of the department or agency and not with the performance of any personnel. If during the course of investigating this type of complaint, conduct is discovered that could be the basis of a complaint under subdivision (1)(A), the investigator shall report this conduct to a supervisor, which should be logged, tracked, and investigated separately from the original complaint.⁹⁶²

5.2. Civilian Complaint Procedures, From Beginning to End

The civilian complaint process should be accessible, fair, and transparent from beginning to end, so that complainants feel, and are in fact heard, and the process is seen as a legitimate tool for police accountability. Accordingly, the Board sets forth the following best practices, addressing each step in the complaints process, as the flow chart below demonstrates.

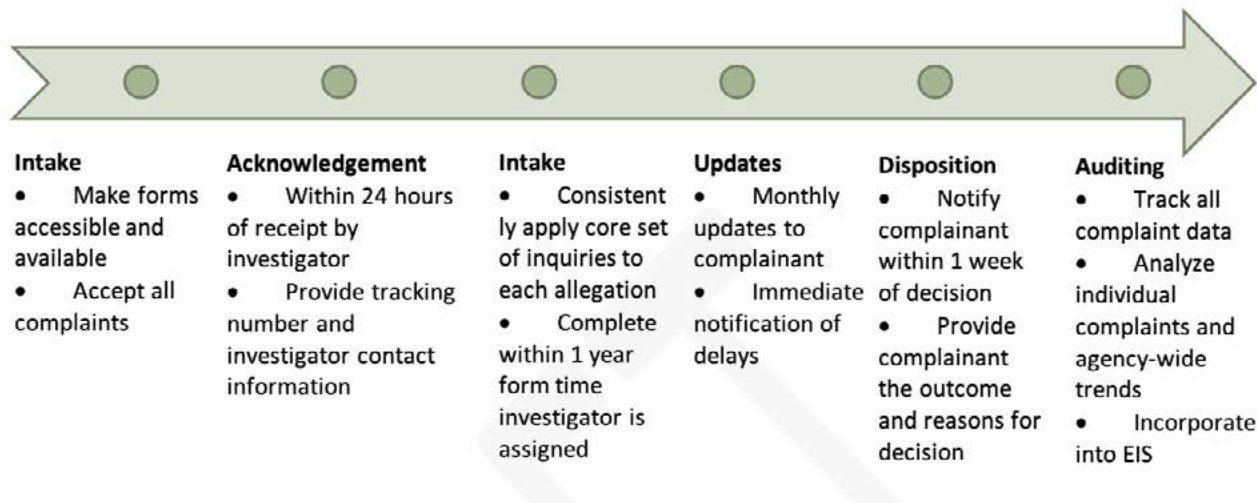
958 See Cal. Pen. Code, § 832.5.

959 See *id.* at § 832.5, subd. (d).

960 See *id.* § 832.5.

961 See Racial and Identity Profiling Advisory Board, Annual Report (2022), *supra* note 169, at pp. 227, 229; Racial and Identity Profiling Advisory Board, Annual Report (2020), *supra* note 727, at pp. 65-66.

962 See Racial and Identity Profiling Advisory Board, Annual Report (2022), *supra* note 169, at p. 229.



5.2.1. Intake and Access to the Complaint Process

5.2.1.1. Recommendations to Law Enforcement Agencies

Law enforcement agencies should aim to make the complaints process accessible to everyone, and accept all complaints, in any form, from any person.⁹⁶³ This includes complaints submitted by minors, parents or legal guardians filing on behalf of their minor dependent, non-English-speaking persons, anonymous parties, and third-party complainants (i.e., witnesses to misconduct against another person or persons who are aware of misconduct by an officer).⁹⁶⁴ Practices that may deter members of the public from pursuing a complaint, such as running warrants or immigration checks on complainants at intake, should be prohibited.⁹⁶⁵

An agency's complaint form should meet the needs of all community members. Complaint forms should be written for a 7th to 9th grade reading level and should be printed using a minimum of size 14 text in high contrast colors.⁹⁶⁶ Forms should also be made as accessible as possible, including for people with disabilities, by using additional methods such as formatting text flush left, using numbered lists instead of bullet points, and correcting formatting of electronic documents to make forms more accessible for assistive technology software/screen readers.⁹⁶⁷ Complaint forms and instructions should be provided in any language spoken by more than 5% of the jurisdiction's population, as defined in the Dymally-Alatorre Bilingual Services Act.⁹⁶⁸ Additionally, complaint forms should explicitly inquire whether the complaint alleges racial or identity profiling and provide space to specify the type(s) of racial or identity profiling alleged.⁹⁶⁹

Agencies should ensure that all members of the community can access the complaint process equally. This means civilian complaint forms must be made widely and permanently available, and should be

963 See Racial and Identity Profiling Advisory Board, Annual Report (2022), *supra* note 169, at pp. 230-231; Racial and Identity Profiling Advisory Board, Annual Report (2019) pp. 41-42 <<https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2019.pdf>> [as of Nov. 29, 2022] (citing COPS, Police Executive Research Forum, *Critical Response Technical Assessment Review: Police Accountability – Findings and National Implications of an Assessment of the San Diego Police Department* (2015) p. 6 <<https://cops.usdoj.gov/RIC/Publications/cops-w0756-pub.pdf>> [as of Nov. 29, 2022]; Consent Decree, *U.S. v. Police Dept. of Baltimore City* ("Baltimore Consent Decree") (D.Md. Jan. 12, 2017) No. 1:17-cv-00099 <<https://www.justice.gov/opa/file/925056/download>> [as of Nov. 29, 2022]; United States Department of Justice, *Standards and Guidelines for Internal Affairs*, *supra* note 658, at p. 14).

964 See Racial and Identity Profiling Advisory Board, Annual Report (2022), *supra* note 169, at pp. 231-232 (citing COPS, *Standards and Guidelines for Internal Affairs*, *supra* note 658).

965 United States Department of Justice, *Standards and Guidelines for Internal Affairs*, *supra* note 658, at p. 17.

966 See Racial and Identity Profiling Advisory Board, Annual Report (2020), *supra* note 727, at p. 72 (citing Disability Rights California, *Guide to Accessibility*, AC 01, AC 08 – v.01).

967 *Ibid.* (citing Disability Rights California, *Guide to Accessibility*, AC 01, AC 03, AC 06, AC 07, AC 09 – v.01).

968 See Racial and Identity Profiling Advisory Board, Annual Report (2022), *supra* note 169, at p. 231; Racial and Identity Profiling Advisory Board, Annual Report (2018), at pp. 32, 33 <<https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2018.pdf>> [as of Nov. 29, 2022]; see also Cal. Gov. Code, §§ 7296.2, 7299.6.

969 Racial and Identity Profiling Advisory Board, Annual Report (2022), *supra* note 169, at p. 230.

provided in a variety of locations, such as within the agencies' office(s), other government buildings, and community-centered sites.⁹⁷⁰ For example, in San Diego, complaints against the San Diego Police Department can be submitted to the Mayor's Office and are then forwarded to the Department for processing.⁹⁷¹ Each location offering a form should include posted signage notifying the public of their right to make a complaint.⁹⁷²

Law enforcement agencies should also consider alternative means for members of the public to prepare and submit complaints remotely to facilitate greater access to the complaint process.⁹⁷³ For example, agencies should consider accepting complaints through an online portal⁹⁷⁴ or free telephonic hotline.⁹⁷⁵

Law enforcement agencies should also facilitate the public's ability to participate in the complaint process. Officers who regularly interact with the community should be prepared to inform members of the public of their right to file a complaint.⁹⁷⁶ When a member of the public describes alleged misconduct to an officer, the officer should inform them of their right to file a complaint and explain the complaint process in a manner that is easily understandable and promotes action by the complainant, if desired.⁹⁷⁷ Officers should also be required to submit a complaint if a member of the public provides the officer with information about alleged misconduct by another officer.⁹⁷⁸ This should occur even if the community member does not wish to pursue a complaint themselves or does not express a desire for any remedy, such as discipline of the officer.⁹⁷⁹

Once a complaint is submitted, agencies should continue to facilitate the complainant's participation in the investigation. This includes asking people with disabilities what accommodations would help them engage with the investigation more easily, providing interpreters or translations, and recognizing other

970 *Ibid.*; see also Racial and Identity Profiling Advisory Board, Annual Report (2019), *supra* note 963, at p. 42; Racial and Identity Profiling Advisory Board, Annual Report (2018), *supra* note 968, at p. 32; see also, e.g., Baltimore Consent Decree, *supra* note 963; Supplemental Motion for Entry of Consent Decree, *U.S. v. City of Newark* (2016) 2:16-cv-01731-MCA-MAH <<https://www.justice.gov/crt/file/868131/download>> [as of Nov. 29, 2022]; COPS, *Standards and Guidelines for Internal Affairs*, *supra* note 658, at p. 16.

971 San Diego Police Dept., *File a Complaint* <<https://www.sandiego.gov/police/contact/file-complaint>> [as of Nov. 29, 2022].

972 See Racial and Identity Profiling Advisory Board, Annual Report (2022), *supra* note 169, p. 230.

973 See Racial and Identity Profiling Advisory Board, Annual Report (2020), *supra* note 727, at p. 71 (agencies should accept complaints through a variety of means, including by phone, internet, or fax, so that individuals with disabilities have multiple options to choose from, based on what would be most assistive for their particular disability); Racial and Identity Profiling Advisory Board, Annual Report (2019), *supra* note 963, at p. 42 (complaint forms should be available online); Racial and Identity Profiling Advisory Board, Annual Report (2018), *supra* note 968, at p. 32 ("If forms are only provided in-person at police departments, civilians may be deterred from submitting complaints").

974 See Racial and Identity Profiling Advisory Board, Annual Report (2022), *supra* note 169, at p. 231 (citing *U.S. v. Alamance County Sheriff Terry Johnson* (2016) 1:12-cv-01349; Baltimore Consent Decree, *supra* note 963); United States Department of Justice, *Standards and Guidelines for Internal Affairs*, *supra* note 658, at p. 16; see also, e.g., Seattle Police Dept. Office of Police Accountability, *File a Complaint* <<https://www.seattle.gov/opa/complaints/file-a-complaint>> [as of Nov. 29, 2022]; San Francisco Police Dept., *File a complaint about police services* <<https://sf.gov/file-complaint-about-police-services>> [as of Nov. 29, 2022]; Newark Police Dept., *Complaint Against Personnel* <<https://npd.newarkpublicsafety.org/professionalstandards/capform>> [as of Nov. 29, 2022]; Austin Police Dept., *File a complaint about an Austin police officer* <<https://alpha.austin.gov/en/police-oversight/file-a-complaint-about-an-austin-police-officer/>> [as of Nov. 29, 2022].

975 See Racial and Identity Profiling Advisory Board, Annual Report (2022), *supra* note 169, at p. 230; see also, e.g., Baltimore Police Dept., *How to File a Police Complaint* <<https://www.baltimorepolice.org/sites/default/files/2021-08/Complaint%20Sheet%20-%20Final.pdf>> [as of Nov. 29, 2022].

976 See Racial and Identity Profiling Advisory Board, Annual Report (2018), *supra* note 968, at p. 32 (citing Walker & Archibold, *The New World of Police Accountability* (2014) Sage Publications, Inc., p. 110; *United States v. State of New Jersey and Division of State Police of the New Jersey Department of Law and Public Safety* (2004) Civil Action No. 99-5970 (MLC)).

977 See Racial and Identity Profiling Advisory Board, Annual Report (2022), *supra* note 169, at p. 230 (citing Baltimore Consent Decree, *supra* note 963).

978 *Id.* at pp. 231-232 (citing Baltimore Consent Decree, *supra* note 963).

979 *Ibid.*

cultural needs of the complainant.⁹⁸⁰

Law enforcement agencies should also establish clear anti-retaliation policies, prohibiting department officials from taking any adverse action against a complainant, such as threats, intimidation, coercion, or harassment.⁹⁸¹ Violations of these policies should be independent grounds for discipline.⁹⁸²

The Board encourages law enforcement agencies to implement each of the recommendations above to ensure full and equal access to their complaint forms and processes.

5.2.1.2. Legislative Recommendation Regarding Penal Code § 148.6

California Penal Code section 148.6 requires complainants to read and sign a statement acknowledging that knowingly false complaints are subject to criminal prosecution. This provision is of longstanding concern to the Board, given its deterrent impact on civilian complaints.⁹⁸³ Individuals seeking to pursue bona fide complaints against law enforcement may be deterred from doing so for fear of criminal sanctions.⁹⁸⁴ Individuals who wish to remain anonymous or who wish to submit a complaint orally (not in writing) may also be deterred from filing complaints because of section 148.6's signature requirement.⁹⁸⁵ The Board is particularly concerned by these deterrent effects on complaints alleging racial and identity-based profiling.⁹⁸⁶

Both the Board and the U.S. Department of Justice have found that written or oral advisories regarding prosecution for false complaints may discourage participation in the complaint process and, in turn, have recommended that no such advisory be given to a complainant.⁹⁸⁷ However, the Legislature has not taken action to amend the Penal Code, prolonging the statute's deterrent effect on civilian complaints.

Moreover, questions have arisen regarding section 148.6's constitutionality and enforceability. While the California Supreme Court found that section 148.6 is a permissible regulation of prohibited speech (i.e., false allegations against peace officers) in 2002,⁹⁸⁸ the Ninth Circuit Court of Appeals found in 2005 that section 148.6 is an impermissible content-based regulation of speech.⁹⁸⁹ This conflict has resulted in confusion by California law enforcement agencies as to the enforceability of section 148.6.

For example, the Los Angeles Police Department stopped enforcing section 148.6's written advisory requirement and was sued by a police union seeking to enforce the requirement, in *Los Angeles Police Protective League v. City of Los Angeles*. The Superior Court entered judgment in favor of the police union, finding that the court was bound to follow the California Supreme Court decision upholding section 148.6, rather than the Ninth Circuit's decision finding it unconstitutional.⁹⁹⁰ The California Court

980 Independent Police Complaints Com. (IPCC), *IPCC guidelines for handling allegations of discrimination* ("Guidelines for Allegations of Discrimination") (2015) p. 10 <https://www.policeconduct.gov.uk/sites/default/files/Documents/research-learning/guidelines_for_handling_allegations_of_discrimination.pdf> [as of Nov. 29, 2022].

981 See Racial and Identity Profiling Advisory Board, Annual Report (2019), *supra* note 963, at p. 42 (retaliation should be expressly prohibited).

982 See, e.g., Seattle Police Dept. Policy Manual, § 5.001.14 ("Retaliation is prohibited") <<https://public.powerdms.com/Sea4550/tree/documents/2042868>> [as of Nov. 29, 2022]; *id.* § 5.002.4 ("Retaliation Is Prohibited") <<https://public.powerdms.com/Sea4550/tree/documents/2042870>> [as of Nov. 29, 2022].

983 See Racial and Identity Profiling Advisory Board, Annual Report (2022), *supra* note 169, at p. 232; Racial and Identity Profiling Advisory Board, Annual Report (2021), *supra* note 28, p. 134, note 294; Racial and Identity Profiling Advisory Board, Annual Report (2020), *supra* note 727, at pp. 73-74.

984 See Racial and Identity Profiling Advisory Board, Annual Report (2022), *supra* note 169, at p. 232.

985 See Racial and Identity Profiling Advisory Board, Annual Report (2020), *supra* note 727, at p. 73 ("Another factor that may impact the number of civilian complaints is the complainant's desire for confidentiality, which may make the complainant reluctant to file a written or formal complaint").

986 *Id.* at p. 74.

987 United States Department of Justice, *Standards and Guidelines for Internal Affairs*, *supra* note 658, at p. 17.

988 *People v. Stanistreet* (2002) 29 Cal.4th 497, 506, 512.

989 *Chaker v. Crogan* (9th Cir. 2005) 428 F.3d 1215, 1228.

990 *L.A. Police Protective League v. City of L.A.* (2022) 78 Cal.App.5th 1081, 1088.

of Appeal affirmed in May 2022,⁹⁹¹ but the City of Los Angeles appealed. In August 2022, the California Supreme Court agreed to hear this case and reassess the constitutionality of section 148.6.⁹⁹² The matter is currently pending.⁹⁹³

This case demonstrates the need for legislative action to resolve concerns about section 148.6. While the California Supreme Court is currently considering the constitutionality of section 148.6, the outcome may not address the concerns raised by the RIPA Board. For example, a finding of constitutionality would leave the statute intact and would not address the deterrent effects on civilian complaints. Accordingly, the Board renews its recommendation that the Legislature modify or eliminate the requirement that law enforcement agencies obtain a signed advisory from complainants referencing the possibility of criminal sanctions before accepting a civilian complaint. The Board believes that this legislative reform would encourage greater participation in the complaint process and ensure a more uniform complaint procedure across the state, to the extent some agencies are currently choosing to enforce section 148.6 while others are not.⁹⁹⁴

In the meantime, while this matter is pending before the California Supreme Court and the Legislature, the Board believes that the best course of action for California law enforcement agencies is to follow an opinion issued by former California Attorney General Daniel Lundgren. California Attorney General Opinion No. 96-111 concluded that law enforcement agencies may accept and investigate civilian complaints, even when the complainant has not signed the advisory required by section 148.6.⁹⁹⁵ This is consistent with the plain text of section 148.6, which does not state that investigations are contingent upon compliance with the advisory requirement, nor does it provide any penalty to law enforcement for noncompliance.⁹⁹⁶

5.2.2. Timeline of Complaint Process

It is essential that law enforcement agencies establish a clear timeline for the complaint process and share that timeline with the public, so complainants can understand the investigation process and assess whether the investigation into their complaint was timely and thorough. By creating clear deadlines and sharing them with the public, law enforcement agencies are more likely to be perceived as transparent. This will also demonstrate to complainants that their complaints are valued. To that end, law enforcement agencies should develop clear deadlines for each step in the complaint process and provide those deadlines to members of the community.⁹⁹⁷

In general, each agency's complaint timeline should establish specific deadlines to:

- Assign the complaint to a reviewer and initiate the investigation;
- Notify a complainant of the reviewer's contact information and any tracking number associated with the complaint;
- Notify an officer that a complaint was filed against them;
- Contact witnesses;
- Complete the investigation;

991 *Ibid.*

992 *L.A. Police Protective League v. City of L.A.* (2022) 514 P.3d 892 (review granted).

993 *Ibid.*

994 See Racial and Identity Profiling Advisory Board, Annual Report (2021), *supra* note 28, at p. 134; Racial and Identity Profiling Advisory Board, Annual Report (2020), *supra* note 727, at pp. 74-75.

995 See Racial and Identity Profiling Advisory Board, Annual Report (2020), *supra* note 727, at p. 74 (citing 79 Ops.Cal. Atty.Gen. 163 (1996)).

996 *Ibid.*

997 See Racial and Identity Profiling Advisory Board, Annual Report (2022), *supra* note 169, at p. 231; Racial and Identity Profiling Advisory Board, Annual Report (2018), *supra* note 968, at p. 34.

- Provide regular updates to the complainant throughout the investigation; and
- Notify the complainant of the disposition.

While the deadline for each step may vary by agency, each department should adhere to the deadlines it sets and require supervisory approval for deviations.⁹⁹⁸ An agency's deadlines for each step of the complaint process should be provided to a complainant⁹⁹⁹ and should also be available on the agency's website and other accessible locations, in order to create transparency and foster accountability to the public.

Agencies should initiate the investigation process as quickly as possible.¹⁰⁰⁰ Complainants should be provided the contact information of the individual reviewing their complaint, as well as any tracking number associated with the complaint, within 24 hours of assignment. Similarly, officers should be notified that a complaint has been submitted against them within 24 hours of assignment.

Agencies should aim to complete the investigation process within one year from the time the complaint was assigned to an investigator.¹⁰⁰¹ Agencies should also establish a timeline, within the one-year investigative period, for investigators to interview complainants and witnesses. One suggestion for smaller agencies is to interview complainants and witnesses within 24 hours of filing the complaint, and, preferably, within 24 hours of the incident, to allow the investigator to gather information from the complainant and witnesses while it is still fresh in their minds. This timeline may need to be expanded for agencies that receive a higher number of complaints or may depend on staffing within an agency, but the principle of timely interviews should apply. Policies should specify the precise amount of time the investigator will wait for a representative, like a union representative or lawyer, to appear at the interview to avoid unnecessary delays.¹⁰⁰²

Finally, complainants should be notified of a disposition, including the specific findings of the investigation and any disclosable documents relied on for the decision, within one week of the conclusion of the investigation.¹⁰⁰³

998 See Racial and Identity Profiling Advisory Board, Annual Report (2019), *supra* note 963, at p. 43 ("All investigations should adhere to written timelines from the date the complaint was filed") (citing International Association of Chiefs of Police (IACP) Law Enforcement Policy Center, *Investigation of Allegations of Employee Misconduct* ("Investigations of Misconduct") (2019) <<https://www.theiacp.org/sites/default/files/2020-08/Investigation%20of%20Allegations%20of%20Employee%20Misconduct%20-%20FULL.pdf>> [as of Nov. 29, 2022]; *U.S. v. City of Ferguson* (2016) 4:16-cv-000180-CP; Racial and Identity Profiling Advisory Board, Annual Report (2018), *supra* note 968, at p. 34 ("[T]he RIPA Board recommends that LEAs designate specific time frames within which to complete any investigation"); see also Thurnaur, International Association of Chiefs of Police, *Best Practices Guide: Internal Affairs: A Strategy for Smaller Departments* ("IACP Best Practices for Smaller Departments") <<https://www.theiacp.org/sites/default/files/2018-08/BP-InternalAffairs.pdf>> [as of Nov. 29, 2022].

999 See, e.g., Racial and Identity Profiling Advisory Board, Annual Report (2022), *supra* note 169, at p. 231; IACP, *Investigations of Misconduct*, *supra* note 998; *U.S. v. City of Ferguson*, (2016) 4:16-cv-000180-CP; Racial and Identity Profiling Advisory Board, Annual Report (2018), *supra* note 968, at p. 34.

1000 See Racial and Identity Profiling Advisory Board, Annual Report (2019), *supra* note 963, at p. 44 ("Agencies should promptly identify, collect, and consider all relevant evidence").

1001 See Racial and Identity Profiling Advisory Board, Annual Report (2018), *supra* note 968, at p. 34 (complaints should be "resolved expeditiously," in part because California law requires that any disciplinary action against peace officers be brought within one year of the incident that is the basis for discipline); see also, e.g., Anaheim Police Dept. Policy Manual, § 1010.6.5 ("Completion of Investigations") <<https://anaheim.net/DocumentCenter/View/44660/APD-Policy-Manual>> [as of Nov. 29, 2022]; Chino Police Dept. Policy Manual, § 1020.6.5 ("Completion of Investigations") <<https://cityofchino.org/DocumentCenter/View/2904/July-2022-CPD-Policy-Manual>> [as of Nov. 29, 2022]; Los Angeles Police Dept., Department Manual, § 3/824 ("Completion of Complaint Investigation") <<https://lapdonlinestrgeacc.blob.core.usgovcloudapi.net/lapdonlinemedia/2022/07/VOLUME-3-word.pdf>> [as of Nov. 29, 2022].

1002 Thurnaur, *IACP Best Practices for Smaller Departments*, *supra* note 998, at p. 5.

1003 *Id.* at p. 6.

5.2.3. Tracking Complaints

As is true of any accountability measure, careful tracking of complaints is a critical part of the process. Law enforcement agencies should track both information related to individual complaints and systemic data from the agency's aggregated complaints. This information can be used internally by agencies to identify trends among complaints.¹⁰⁰⁴ Information related to individual complaints can also be shared with complainants throughout the process, for example, through a web portal,¹⁰⁰⁵ to increase perceptions of transparency and facilitate a complainant's involvement in the investigation.

To ensure effective tracking, agencies should use a uniform system to accept, document, investigate, and report individual complaints.¹⁰⁰⁶ Where feasible, the tracking system should be automated and should capture all information necessary for individual and aggregate case tracking,¹⁰⁰⁷ such as a summary of the allegations, the subject(s) of the complaint, and deadlines for each step of the complaint process. The tracking system should alert investigators and those responsible for management of the complaint process when deadlines are about to expire or have expired.¹⁰⁰⁸

By accurately tracking individual complaint information, agencies can provide complete reporting data and improve their ability to respond to personnel or operational problems identified by the communities they serve.¹⁰⁰⁹

5.2.4. Communications Throughout the Complaint Process

Communication plays an important role in the community's perception of the complaint process. Law enforcement agencies should emphasize respectful communication throughout the complaint process so that the parties involved, including complainants and witnesses, are more likely to feel heard and, in turn, perceive the process as fair. Agencies should act professionally throughout the complaint process and avoid language that could be construed as condescending. Agencies should also strive to make complainants and witnesses feel comfortable participating in the process and that what they have to say is valued. Additionally, agencies should communicate regularly with the complainant to demonstrate their involvement in the process.

According to Penal Code section 832.7, law enforcement agencies must provide a complainant with the complainant's own statement(s) *at the time the complaint is filed*.¹⁰¹⁰ However, this statutory requirement is not explicitly extended to additional statements made by the complainant throughout the investigation.¹⁰¹¹ Nor does section 832.7 require law enforcement agencies to communicate with the complainant during the investigation process.¹⁰¹² Beyond providing the complainant an opportunity to review their initial statement at the time the complaint is filed, the only other communication

1004 See Racial and Identity Profiling Advisory Board, Annual Report (2019), *supra* note 963, at p. 44 (agencies should document all investigation findings, keep all complaints available for internal analysis and audits, and conduct regular audits to assess the effectiveness of the complaint process and determine if there is a need for a re-evaluation of existing policies, procedures, or trainings) (citing IACP, *Investigation of Allegations of Employee Misconduct*, *supra* note 998; Baltimore Consent Decree, *supra* note 963).

1005 See Racial and Identity Profiling Advisory Board, Annual Report (2022), *supra* note 169, at p. 231 (agencies should create an online portal for members of the public to prepare, submit, and track complaints); Racial and Identity Profiling Advisory Board, Annual Report (2019), *supra* note 963, at p. 43 (all complaints and their dispositions should be tracked, preferably electronically); see also, e.g., Seattle Police Dept. Office of Police Accountability, *Check Complaint Status* <<https://www.seattle.gov/opa/complaints/check-complaint-status>> [as of Nov. 29, 2022]; San Francisco Dept. of Police Accountability, *Check Case Status* <<https://sfdpa.secure.force.com/casestatus>> [as of Nov. 29, 2022].

1006 See Racial and Identity Profiling Advisory Board, Annual Report (2020), *supra* note 727, at pp. 69-70.

1007 United States Department of Justice, *Standards and Guidelines for Internal Affairs*, *supra* note 658, at p. 17.

1008 *bid*.

1009 See Racial and Identity Profiling Advisory Board, Annual Report (2020), *supra* note 727, at p. 69.

1010 Racial and Identity Profiling Advisory Board, Annual Report (2022), *supra* note 169, at p. 228 (citing Cal. Pen. Code, § 832.7, subd. (c)).

1011 See *ibid*; see also Cal. Pen. Code, § 832.7.

1012 See Cal. Pen. Code, § 832.7.

required by section 832.7 is to notify the complainant of the disposition of their complaint.¹⁰¹³

While these statutory requirements are minimal, the Board encourages law enforcement agencies to go beyond the minimum statutory requirements and incorporate the following practices into their complaint policies to ensure regular and prompt communication with complainants throughout the complaint process.

As soon as a complaint is received, agencies should begin communicating with the complainant. It is important for the investigating officer to get in touch with the complainant early on so that they can hear firsthand how the complainant experienced wrongdoing while that information is still fresh in the complainant's mind. Accordingly, agencies should establish protocols and policies to engage with complainants within 48 hours of submitting a complaint.

While it may not be possible to provide a thorough response within 48 hours, law enforcement agencies should, at minimum, acknowledge the complaint.¹⁰¹⁴ Complainants should also be provided with the following information as soon as possible after a complaint is submitted:

- A tracking number for the complaint, the identity of the investigator, and contact information or other information to track the progress of their complaint;¹⁰¹⁵
- An opportunity to review their complaint and/or statements for accuracy;¹⁰¹⁶
- Standards for review and disposition categories in the agency's policy;¹⁰¹⁷ and
- A timeline for complaint investigations and procedures that must be followed.¹⁰¹⁸

Agencies should also provide routine updates to the complainant regarding the status of the investigation. The Independent Police Complaints Commission suggests that these updates be provided every 28 days.¹⁰¹⁹ These updates should discuss the progress of the complaint, including any steps taken to investigate the complaint and anticipated next steps. If there are any delays in the investigative process, complainants should be notified immediately.¹⁰²⁰

Complainants should be notified as soon as possible once an investigation is completed. The notification should include:

- The disposition of the complaint;
- The findings underlying the disposition;
- Copies of the documents and evidence relied on, to the greatest extent the information may be disclosed by law; and
- An advisement that complainants may request further information and/or additional

1013 See Racial and Identity Profiling Advisory Board, Annual Report (2022), *supra* note 169, at pp. 228-229; Cal. Pen. Code, § 832.7, subd. (f).

1014 See Racial and Identity Profiling Advisory Board, Annual Report (2019), *supra* note 963, at p. 43 (agencies should contact the complainant "as soon as possible with a verification that the complaint has been received and that it is being reviewed") (citing Baltimore Consent Decree, *supra* note 963).

1015 Racial and Identity Profiling Advisory Board, Annual Report (2022), *supra* note 169, at p. 231 (citing United States Department of Justice, *Standards and Guidelines for Internal Affairs*, *supra* note 658).

1016 *Ibid.*

1017 *Id.* at p. 231 (citing IACP, *Investigation of Misconduct*, *supra* note 998; *U.S. v. Alamance County Sheriff Terry Johnson*; *U.S. v. City of Ferguson*, (2016) 4:16-cv-000180-CP).

1018 *Id.* at p. 231 (citing IACP, *Investigation of Misconduct*, *supra* note 998; *U.S. v. City of Ferguson*); see also Racial and Identity Profiling Advisory Board, Annual Report (2018), *supra* note 968, at p. 34.

1019 IPCC, *Guidelines for Allegations of Discrimination*, *supra* note 980, at p. VI.

1020 See Racial and Identity Profiling Advisory Board, Annual Report (2022), *supra* note 169, at p. 231 (citing Racial and Identity Profiling Advisory Board, Annual Report (2018), *supra* note 968, at p. 34) ("Complainants should be notified of any delays in the investigation process").

documents related to the investigation of their complaint.

Communications with the complainant should take into consideration any accommodations they may need. Thus, while communications may be provided in writing, agencies should offer to communicate with the complainant through an alternative method, such as by phone or email, or with the assistance of a mediator or advocate,¹⁰²¹ if they prefer.

It is important that law enforcement agencies adhere to these or similar communication practices, because complainants often already have low trust in law enforcement and may anticipate additional adverse treatment when contacting the police.

5.2.5. Investigating Complaints

An effective complaints system serves to build and maintain public confidence and trust by conducting prompt, fair, and impartial investigations. The purpose of an investigation should be to objectively investigate individual interactions/incidents with an agency, as well as to understand an agency's culture and identify any systemic issues that need to be addressed. Agencies should view the investigation process as an opportunity to learn from individual interactions and strengthen the agency's relationship with the community.

This means all complaints should be investigated.¹⁰²² No department or agency should terminate an investigation solely based on a withdrawal of a complaint.¹⁰²³

Investigations may be conducted internally by law enforcement agencies, externally by independent review boards, or both. If an agency conducts an internal investigation itself, the investigator should not have any personal involvement in the allegations of the complaint. The investigator should also be at least one rank higher than the officer being investigated.¹⁰²⁴

However, a common critique of internal investigations involves a perceived lack of objectivity when an agency investigates its own members. For example, peace officers investigating a complaint may encounter difficulty viewing an incident from a civilian's perspective, given their years of training and experience in law enforcement. In turn, this may cause the investigator to perceive some allegations as less plausible, ultimately impacting the disposition of the complaint. Accordingly, many scholars believe objectivity is better served by independent investigations of civilian complaints, using civilian oversight boards and/or independent investigators.¹⁰²⁵

When structuring a body to investigate civilian complaints, there should be no points of influence between the department and the investigating body, though this may not always be feasible.¹⁰²⁶ However, any oversight board or independent investigator must be familiar with the agency's training procedures and culture. That said, it is important for independent investigatory bodies to preserve their impartial perspective throughout the investigation process.¹⁰²⁷ This can be accomplished by structuring the investigatory body to include laypeople, as well as people with expertise or certifications related to police investigations. Of note, independent bodies in charge of civilian complaints are most effective if they have power to both conduct investigations and to adjudicate and direct police management/

1021 See IPCC, *Guidelines for Allegations of Discrimination*, *supra* at note 980, at pp. 10-11.

1022 See Racial and Identity Profiling Advisory Board, Annual Report (2022), *supra* note 169, at p. 231 (citing IACP, *Investigation of Misconduct*; *U.S. v. Alamance County Sheriff Terry Johnson*; *U.S. v. City of Ferguson*); see also Racial and Identity Profiling Advisory Board, Annual Report (2019), *supra* note 963, at p. 44 ("Agencies should accept all complaints regardless of when the alleged incident occurred . . . [and] at minimum[,] accept the complaint and conduct an initial review").

1023 See Racial and Identity Profiling Advisory Board, Annual Report (2022), *supra* note 169, p. 232 (citing Baltimore Consent Decree, *supra* note 963).

1024 Racial and Identity Profiling Advisory Board, Annual Report (2019), *supra* note 963, p. 43 (citing Baltimore Consent Decree; *U.S. v. City of Ferguson* (2016) 4:l6-cv-000180-CP).

1025 See Prenzler, *supra* note 639, at p. 660.

1026 See *id.* at pp. 662-663.

1027 See *id.* at pp. 659, 663.

training.¹⁰²⁸ The types and role of civilian review boards are discussed in more detail in the Accountability section of this Report.¹⁰²⁹

Whether through an independent review board or an internal investigation by an agency, investigations should obtain and evaluate all information relevant to the complaint.¹⁰³⁰ For example, investigations may consider:

- The date and source of the complaint;
- All parties involved in the complaint, including the complainant, the member(s) of law enforcement subject to the complaint, all witnesses to the incident underlying the complaint, and the investigator(s) assigned to the complaint;
- A brief summary of facts giving rise to the complaint;
- Each allegation raised in the complaint and the corresponding laws and policies;
- A comprehensive summary of evidence related to each allegation, including: an exhibit list identifying all relevant evidence; detailed summaries of the statements made by the complainant, subject(s) of the complaint, and witnesses, noting any discrepancies between the statements; and summaries of any other relevant evidence;
- Findings related to each allegation, based on detailed analysis of all relevant laws, policies, and evidence; and
- A recommended disposition for the complaint, including any recommendations for further action if necessary.¹⁰³¹

Throughout the investigation process, investigators should prioritize objectivity and consistency.¹⁰³² To accomplish this, agencies should consider recording all investigative interviews.¹⁰³³ Additionally, investigators should examine standardized lines of inquiry in every investigation. This includes several lines of inquiry to detect both direct and indirect evidence of wrongdoing, such as:

- The officer's reason for contact (including any contextual information provided by a dispatcher);
- Relevant contextual information during the contact, such as a perceived protected characteristic;
- The language used during the police encounter;
- A comparison of how the complainant was treated, relative to other individuals in similar circumstances without the same protected characteristics; and
- The officer's background, training, years of experience, complaint history, and patterns of

1028 See generally *id.*

1029 See Report p. 147-151.

1030 Racial and Identity Profiling Advisory Board, Annual Report (2019), *supra* note 963, at p. 44 (agencies should obtain and evaluate "all relevant evidence," excluding personal information that is not necessary to process complaint, such as the complainant's social security number or driver's license information).

1031 See, e.g., Anaheim Police Dept. Policy Manual, §§ 1010.6.3-1010.6.5, *supra* note 1001; Chino Police Dept. Policy Manual, §§ 1020.6.3-1020.6.5, *supra* note 1001; Los Angeles Police Dept., Department Manual, §§ 3/815.01, 3/820.25, *supra* note 1001.

1032 See Racial and Identity Profiling Advisory Board, Annual Report (2019), *supra* note 963, p. 43 (agencies should "ensure all complaints are appropriately and objectively reviewed").

1033 See, e.g., Anaheim Police Dept. Policy Manual, § 1010.6.2, subd. (h) ("Administrative Investigation Procedures"), *supra* note 1001; Chino Police Dept. Policy Manual, § 1020.6.2, subd. (h) ("Administrative Investigation Procedures"), *supra* note 1001; see also Los Angeles Police Dept., Department Manual, § 3/815.01 ("General Investigation Guidelines"), *supra* note 1001.

behavior.¹⁰³⁴

Investigators may develop this information by speaking with the complainant, as well as the officer subject to the complaint. When speaking with the complainant, investigators may inquire as to why the complainant felt the officer's words or actions were problematic; whether they believe the officer's words or actions were impacted by an assumption the officer made; and whether they believe the officer acted differently compared to other officers.¹⁰³⁵ Investigators can also ask the complainant what their preferred outcome is for their complaint.¹⁰³⁶

Similarly, investigators may speak directly with the officer involved in the complaint and interview them about the assessments they made; why they took the actions they did; whether the officer made any assumptions in the process; and why the officer thinks the complainant felt they experienced a wrongdoing.¹⁰³⁷ Investigators should also ask the officer if they felt they had adequate training to respond to the situation they faced.¹⁰³⁸ This may not only help the specific investigation, but can help identify problematic patterns or practices at the department level or training improvement needs.¹⁰³⁹

Lastly, investigators may consider contextual information, such as local, national, or international events, that could impact police-community relations and affect the behavior of an officer or community member.¹⁰⁴⁰ Examples include recent use-of-force incidents or spikes in certain types of crime. Consideration of the current climate will help when evaluating the possibility that an officer may have acted upon bias or been influenced by other events.¹⁰⁴¹ Investigators may also consider longstanding historical and structural issues that have caused distrust or trauma in communities of color and draw from their training on bias-free policing, procedural justice, and related trainings.¹⁰⁴² By acknowledging these contextual issues, investigators can better understand allegations from a complainant's perspective and therefore help complainants feel that their complaints are heard and valued, increasing perceptions of procedural justice.

5.2.6. Complaint Disposition

While state law lacks instructions on how agencies should investigate civilian complaints, agencies are required to report complaint outcomes under the four categories of "frivolous," "unfounded," "exonerated," or "sustained."¹⁰⁴³ Agencies must provide the complainant with written notification of the disposition within 30 days of the decision.¹⁰⁴⁴

However, it is not enough to notify of the complainant of the disposition category. To foster a sense of trust and accountability between law enforcement and the community, complainants should be provided with a thorough explanation of the investigation outcome. This means that complainants should be provided with the maximum amount of information that may be disclosed by law so that they fully understand the outcome of their complaint. Ideally, this would include:

- A statement of the specific disposition;
- A summary of the investigatory steps taken;
- The specific findings of the investigation and reasons for them;

1034 IPCC, *Guidelines for Allegations of Discrimination*, *supra* note 980, at p. VIII.

1035 *Id.* at pp. 8-9.

1036 *Id.* at p. 9.

1037 *Id.* at p. VIII.

1038 *Id.* at p. 51.

1039 *Ibid.*

1040 *Id.* at p. 25.

1041 See *ibid.*

1042 See *ibid.*

1043 See Racial and Identity Profiling Advisory Board, Annual Report (2022), *supra* note 169, at pp. 203, 228-229 (citing Cal. Pen. Code, §§ 832.5, subd. (d) and 832.7, subd. (f)(1)).

1044 *Id.* at p. 229 (citing Cal. Pen. Code § 832.7, subd. (f)(1)).

- Copies of the documents and evidence relied on;
- Whether any disciplinary actions, including training, were taken as a result of the complaint; and
- Advising that the complainant can request additional information and/or documents related to the investigation of their complaint.

However, existing laws may prevent some of this information from being disclosed the complainants. Therefore, the Board encourages the Legislature to review this issue to ensure that complainants are provided with enough information to understand the basis for the outcome of their complaint.

Nevertheless, it is important for agencies to make complainants feel heard and respected, even if the investigation does not result in a favorable outcome for the complainant.¹⁰⁴⁵ To that end, agencies should strive to timely communicate the disposition to the complainant and provide a thorough explanation of the investigative steps taken and reason for the outcome,¹⁰⁴⁶ in order to demonstrate transparency in the complaint process and foster a positive relationship between law enforcement and the community.

Agencies should also consider adopting a restorative justice approach when notifying a complainant of the disposition. Restorative justice focuses on repairing the harm caused by wrongdoing and can be accomplished using “cooperative processes that allow all willing stakeholders to meet.”¹⁰⁴⁷ To that end, agencies can provide complainants with the opportunity to speak with the officer(s) involved in the allegations and/or investigation process, for the purpose of discussing the perceived wrongdoing and its impact on the complainant, promoting reconciliation, and hopefully preventing similar harm in the future.¹⁰⁴⁸ Similarly, agencies should encourage direct apologies to complainants for any failings found during the investigation.¹⁰⁴⁹

By adopting these practices, complainants will be more likely to understand the outcome of their complaint and, in turn, perceive the process as fair.

6. Auditing the Complaints Process

Generally, the number of complaints is not a reliable indicator of the effectiveness of the complaints process. This is because an agency’s ability to implement their complaint processes differently from other agencies, including their discretion to define “civilian complaint,” can impact the number of reportable complaints an agency receives.¹⁰⁵⁰ For example, an agency’s decision to make the complaint process more accessible may result in a greater number of complaints reported. Thus, while the number of complaints may reflect public confidence in investigation procedures, declines in complaints could reflect less police misconduct or, alternatively, a “deterioration in public confidence.”¹⁰⁵¹

Accordingly, agencies should conduct regular audits of their civilian complaint process to ensure the system is effective.¹⁰⁵² Audits of an agency’s complaint process overall and responses to individual

1045 IPCC, *Guidelines for Allegations of Discrimination*, *supra* note 980, at pp. X, 9, 60.

1046 See *id.* at pp. X, 60.

1047 Racial and Identity Profiling Advisory Board, Annual Report (2022), *supra* note 169, at p. 181; Racial and Identity Profiling Advisory Board, Annual Report (2021), *supra* note 28, at p. 103 note 201 (citing 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 Nov. 29, 2022]).

1048 See Racial and Identity Profiling Advisory Board, Annual Report (2021), *supra* note 28, at pp. 104-105.

1049 IPCC, *Guidelines for Allegations of Discrimination*, *supra* note 980, at p. X.

1050 See Racial and Identity Profiling Advisory Board, Annual Report (2021), *supra* note 28, at p. 118.

1051 Prenzler, *supra* note 639, at pp. 661-662.

1052 See Racial and Identity Profiling Advisory Board, Annual Report (2022), *supra* note 169, at p. 231 (citing IACP, *Investigations of Misconduct*); see also Racial and Identity Profiling Advisory Board, Annual Report (2019), *supra* note 963, at p. 44 (citing Baltimore Consent Decree, *supra* note 963; *U.S. v. City of Newark* (2016) 2:16-cv-01731-MCA-MAH; Prenzler, *supra* note 639, at p. 672).

complaints can help agencies understand how the systems are working and where improvement is needed.¹⁰⁵³ Audits can also foster procedural justice by generating data for public review, in turn increasing perceptions of transparency.

While agencies can conduct their own internal audits, auditing may be particularly valuable when conducted by an entity outside of the law enforcement agency.¹⁰⁵⁴ External audits provide an objective evaluation of an agency's complaint practices and can identify gaps in the investigative process that agencies may have inadvertently overlooked. This information can be critical and allows agencies to align their investigative practices with organizational and community expectations. Thus, to the extent possible, agencies should conduct both internal and external audits of their response to individual complaints, as well as their complaint procedures overall.

Auditing practices can be as simple as asking directly on the complaint form whether anyone has tried to intimidate the complainant or following up with the complaint for feedback once the process is over.¹⁰⁵⁵ More sophisticated practices include conducting scientifically-based surveys to assess the quality of investigations¹⁰⁵⁶ or using video surveillance or undercover officers posing as complainants to test the integrity of the process.¹⁰⁵⁷

Regardless of the chosen method, audits of an agency's response to individual complaints should assess the quality and completeness of the investigation. These audits should aim to verify that all available evidence was collected and analyzed, and that the statements summarized in the investigative report are accurate.¹⁰⁵⁸ They should also evaluate the findings and final disposition of individual complaints and assess the timeliness of the agency's response.¹⁰⁵⁹

In addition to audits of individual complaints, agencies should periodically analyze trends within their aggregate civilian complaint data. For this to be effective, agencies must ensure that they have robust systems to capture as much complaint data as possible. This includes systematically recording noteworthy officer conduct (including any positive or negative behavior) so that patterns of conduct can be referenced when complaints are filed against particular officers. Agencies must also be able to account for complaints received by a variety of means—such as complaints logged in separate, unconnected databases.¹⁰⁶⁰ If complaint information is maintained in separate databases, agencies should integrate that information to ensure that various sources of misconduct allegations (e.g., civilian complaints, use of force incidents, domestic violence complaints, complaints by peer officers or supervisors, etc.) are not siloed from one another and agencies can identify at-risk behavior as quickly as possible.¹⁰⁶¹

Once agencies have ensured that they are capturing as much complaint data as possible and the information is integrated across databases, they should analyze complaint data in the aggregate to identify and address any systemic issues in the complaint process, as well as any individuals with disproportionately high numbers of allegations against them. For example, agencies can evaluate the efficacy of the complaints process by analyzing the number of complaints resulting only in reprimands or warnings. Agencies should then use this data to determine whether additional training or revisions to policies are necessary to improve the efficacy of the complaint process.

1053 See Racial and Identity Profiling Advisory Board, Annual Report (2019), *supra* note 963, at p. 44 (“Agencies should regularly assess the effectiveness of the complaint process and determine if there is a need for a re-evaluation of existing policies, procedures, or trainings”).

1054 See *ibid.* (“Agencies should consider the appropriateness of independent oversight models such as a civilian review board or independent auditor”).

1055 See Prenzler, *supra* note 639, at p. 667.

1056 *Ibid.*

1057 United States Department of Justice, *Standards and Guidelines for Internal Affairs*, *supra* note 658, at p. 38.

1058 See Los Angeles Police Dept., Department Manual, § 3/895.60 (“Periodic Audits Conducted By the Inspector General”), *supra* note 1002.

1059 See *id.*

1060 See Racial and Identity Profiling Advisory Board, Annual Report (2020), *supra* note 727, at pp. 69-70.

1061 See *ibid.*

In addition to conducting the audits described above, law enforcement agencies can also publish the number of internal investigations conducted, in comparison to the number of investigations initiated by civilian complaints, to offer the public greater insight into the nature and effectiveness of the agency's accountability measures.

7. Use of Complaints in Early Intervention Systems

While the civilian complaints process can be an effective accountability tool on its own, complaint investigations have the strongest impact when incorporated in proactive accountability measures, such as early intervention systems.¹⁰⁶²

Early intervention systems (EIS) are a performance management tool, separate from employee discipline, that are used to enhance integrity and accountability of law enforcement officers and agencies.¹⁰⁶³ EIS allows agencies to identify potentially problematic behavior by individual officers before disciplinary action is needed, provide resources to support officers and address performance issues, and promote safety of officers and civilians.¹⁰⁶⁴ By identifying potential performance issues and intervening early, agencies may be able to minimize future problematic incidents in the field, ultimately saving time and resources that would otherwise have been dedicated to the investigation of complaints.¹⁰⁶⁵ EIS is discussed in more detail in the Accountability section of this Report¹⁰⁶⁶ and the Board's 2021 Annual Report.¹⁰⁶⁷

In general, complaint data is one of several indicators used in EIS to assess officer behavior.¹⁰⁶⁸ Agencies using EIS may evaluate complaint data—including the number of complaints against particular officers, nature of the allegations, demographics of the complainant, and the date and time of the complained-about incident—to identify performance issues by specific officers, as well as systemic trends within the agency. For example, analysis of complaint data may allow an agency to discover systemic issues related to the type of stop from which most complaints originate, whether complaints or use-of-force incidents are more common among certain identity groups, or whether the volume of complaints increased at a certain point in history.¹⁰⁶⁹ These findings can then be used to prevent future recurrences, using the following principles of EIS.

Agencies should aim to incorporate these principles into their review of complaint data, regardless of whether they have formal EIS procedures in place.

First, to ensure that complaints are an effective tool for preventing misconduct, agencies should strive for complete and accurate collection of all relevant complaint data. This includes all information developed during the complaint investigation (described above in Section B.2.v “Investigating Complaints”), as well as the date each step in the complaint process was completed (described above in Section B.2.ii “Timeline of Complaint Process”). Agencies should then analyze this information periodically to identify any trends or issues with particular officers and within the agency as a whole.

1062 See Prenzler, *supra* note 639, at pp. 672-673.

1063 See Racial and Identity Profiling Advisory Board, Annual Report (2021), *supra* note 28, at p. 135 (citing Amendola and Davis, *Best Practices in Early Intervention Implementation and Use in Law Enforcement Agencies* (Nov. 2018) p. 1 <https://www.policinginstitute.org/wp-content/uploads/2019/03/EarlyInterventionSystem_10.26.pdf> [as of Nov. 29, 2022]); COPS, *Supervisions and Intervention within Early Intervention Systems: A Guide for Law Enforcement Executives* (“*Supervisions and Intervention in EIS*”) (Dec. 2005) p. 5 <<https://cops.usdoj.gov/RIC/Publications/cops-p105-pub.pdf>> [as of Nov. 29, 2022]; Walker et al., *Early Warning Systems: Responding to the Problem Police Officer* (“*Early Warning Systems*”) (July 2001) p. 1 <<https://www.ojp.gov/pdffiles1/nij/188565.pdf>> [as of Nov. 29, 2022].

1064 See Racial and Identity Profiling Advisory Board, Annual Report (2021), *supra* note 28, at p. 135 (citing Amendola and Davis, *supra* note 1063, at p. 1).

1065 COPS, *Supervisions and Intervention in EIS*, *supra* note 1063, at p. 6.

1066 See Report pages 142-143.

1067 Racial and Identity Profiling Advisory Board, Annual Report (2021), *supra* note 28, at pp. 134-142.

1068 *Id.* at pp. 136-137; Council on Criminal Justice (CCJ) Task Force on Policing, *Policy Assessment: Early Intervention Systems* (“*Early Intervention Systems*”) (May 2021) p. 2.

1069 United States Department of Justice, *Standards and Guidelines for Internal Affairs*, *supra* note 658, at p. 30.

In the event the complaint data reveals any issues, agencies should aim to identify and address the underlying cause(s). This analysis should include a holistic review of the incident giving rise to the complaint, including consideration of any personal tendencies or stressors that may have impacted the behavior of the involved officer (such as medical problems or family issues), as well as agency-wide trends that may have contributed to the incident (such as inadequate staffing or gaps in training).¹⁰⁷⁰

When responding to issues identified in the complaint data, agencies should emphasize that this process is intended to support officers and avoid the disciplinary process.¹⁰⁷¹ Accordingly, agencies should consider labeling consequences as “interventions” instead of “warnings” to help officers view the process as helpful, instead of punitive.¹⁰⁷² Additionally, clear distinctions should be made between preventative interventions and the formal disciplinary system.¹⁰⁷³

Effective EIS requires that supervisors have a full understanding of the process. If supervisors are knowledgeable about the system, they can help educate subordinate officers, who usually interact with the community more often, about expectations for officer behavior, common themes in complaints by community members, and ways to improve interactions with the community. To that end, supervisors must understand what data is captured in an agency’s review of complaint data, as well as the supervisor’s personal responsibility to monitor and identify patterns of behavior by subordinate officers and the full spectrum of resources available to help officers before and after formal complaints are filed.¹⁰⁷⁴ If any officers are approaching the threshold for intervention, supervisors should meet with them regularly in an attempt to address the at-risk behaviors before intervention is needed.¹⁰⁷⁵

Lastly, supervisors must be consistent in their response to performance issues¹⁰⁷⁶ and, if intervention is needed, must follow through after the intervention to ensure that the performance issue is addressed.¹⁰⁷⁷ Supervisors should also be prepared to recommend a new intervention if the performance issue is not addressed by the initial intervention.¹⁰⁷⁸

By adopting these practices, agencies will be better equipped to identify and remedy issues affecting officers’ interactions with the community and, over time, reduce the number of incidents leading to complaints.¹⁰⁷⁹

1070 See CCJ, *Early Intervention Systems*, *supra* note 1068, at pp. 3, 5 (EIS considers a wide array of responses, “ranging from coaching or training on respectful and procedurally just interactions with community members, to the provision of mental health, behavioral (e.g., anger management), or substance abuse services” and is “only as good as the interventions that are used to support officers toward better performance, as well as the accountability measures an agency uses to ensure that officers follow through on remediation plans”).

1071 See *id.* at pp. 1, 5 (EIS is “designed to be preventative, rather than punitive, reducing the changes of an adverse event by providing identified officers with supervisory support and services, such as structured supervisor-officer conversations, therapy sessions, and training,” and “[i]nterventions should be designed to be remedial rather than punitive, existing outside of departmental disciplinary systems with the goal of improving an officer’s wellbeing and correcting the problem behavior early on before it escalates”).

1072 See COPS, *Supervisions and Intervention in EIS*, *supra* note 1063, at p. 5 (EIS was previously referred to as “early ‘warning’ systems,” resulting in skepticism from many law enforcement personnel).

1073 See *ibid.*

1074 See Racial and Identity Profiling Advisory Board, *Annual Report (2021)*, *supra* note 28, at p. 140 (citing COPS, *Supervisions and Intervention in EIS*, *supra* note 1063, at p. 43).

1075 See COPS, *Supervisions and Intervention in EIS*, *supra* note 1063, at p. 11.

1076 *Ibid.*

1077 Racial and Identity Profiling Advisory Board, *Annual Report (2021)*, *supra* note 28, at p. 139 (citing COPS, *Supervisions and Intervention in EIS*, *supra* note 1063, at pp. 27-28).

1078 See COPS, *Supervisions and Intervention in EIS*, *supra* note 1063, at p. 21.

1079 See Walker et al., *Early Warning Systems*, *supra* note 1063, at p. 3 <<https://www.ojp.gov/pdffiles1/nij/188565.pdf>> [as of Nov. 29, 2022].

8. Conclusion

The civilian complaint process creates numerous opportunities for law enforcement agencies to interact with the community in positive ways. Individuals file complaints when they are dissatisfied with an agency's policies or performance and are more likely to perceive procedural deficiencies as a reflection of the agency as a whole. Having a more just process—that incorporates the principles of procedural justice throughout each step—can help dispel or lessen a complainant's negative perception. While the complainant may not have positive feelings towards law enforcement, a just process could help them feel they were treated fairly. Thus, the Board encourages law enforcement agencies to conduct a holistic review of their civilian complaint procedures to ensure that the principles of fairness, transparency, impartiality, and respect are incorporated into as many parts of the process as possible. Agencies should make the complaints process as accessible as possible to encourage participation by the community; utilize the most effective investigative practices to reach a well-reasoned determination; readily communicate their findings to the complainant; and regularly audit the complaint process to ensure it is effective. By doing so, members of the community, as well as members of law enforcement, will be better equipped to understand the steps taken to investigate a complaint and the reasons for the outcome of the investigation, and will be more likely to be satisfied with the complaint process regardless of the outcome.

POST TRAINING AND RECRUITMENT

1. Introduction and Background

The Commission on Peace Officer Standards and Training (POST) is the central hub for law enforcement training in California, and therefore plays a role in addressing and eliminating racial and identity profiling. The RIPA Board is mandated to review and analyze POST law enforcement training courses and how they impact the racial and identity stop data outcomes.¹⁰⁸⁰ Moreover, the Board's review of POST's trainings and expenditures provides public insight into: (1) the quality of the course and training offerings and suggested revisions and improvements, (2) how effective the trainings are at reducing racial and identity profiling, and (3) how POST funding for law enforcement training is being utilized.

Penal Code section 13519.4 subdivision (f) prohibits peace officers from racial or identity profiling.¹⁰⁸¹ POST is the independent state agency responsible for all training and regulations for peace officers throughout California and charged with developing minimum standards, disseminating guidelines, and certifying training. POST's budget for 2022-23 is \$110.2 million – a \$23.3 million increase from the 2021-2022 budget¹⁰⁸² – and increases the number of positions at the agency from 127 to 263.¹⁰⁸³ This budget increase is largely due to the new decertification program established by SB 2 that will begin in 2023.¹⁰⁸⁴

In addition to the Board's mandate to evaluate training related to racial and identity profiling, Penal Code section 13519.4 subdivision (h) requires POST to consult with the RIPA Board on its development of racial and identity profiling courses.¹⁰⁸⁵ Over the past six years, multiple different Board members have rigorously reviewed and made recommendations on curriculum, videos, online course materials, and onsite classroom training. The 2023 report highlights the Board's reviews and commentary on two courses that focus on racial and identity profiling. One of the courses is a Basic Academy course, which focuses on the racial and identity profiling portion of Learning Domain 42 (LD 42), Cultural Diversity/Discrimination. The other course the Board reviewed is an update of a 20-year-old Museum of Tolerance (MOT) curriculum for trainers entitled, "Racial and Identity Profiling Train-the-Trainer."

Members of the RIPA Board have also provided comments to POST regarding its regulations relevant to racial and identity profiling and the work of the Board. Assembly Bill (AB) 846 required POST to develop regulations around screening for bias in the hiring process and Senate Bill (SB) 2 required POST to define "serious misconduct" for purposes of evaluating peace officers for decertification. POST has proposed implementation regulations, and the Board has reviewed the regulations. The Board's comments are contained later in this section.

This year's report also includes a summary of three state agencies' reviews on law enforcement training in California.

1080 Cal. Pen. Code § 13519.4, subd. (j)(3)(B).

1081 Cal. Pen. Code § 13519.4, subd. (f).

1082 See Legis. Analyst, The 2022-23 Budget: Commission on Peace Officer Standards and Training (Jan. 2022) p. 1 <<https://lao.ca.gov/reports/2022/4507/POST-commission-013122.pdf>> [as of Nov. 29, 2022].

1083 See *id.* at p. 2.

1084 Cal. Pen. Code, §§ 13509.5, 13509.6, 13510.8, 13510.85, 13510.9.

1085 Cal. Pen. Code, §13519.4, subd. (g).

2. RIPA Board's Review of POST Courses

Since the enactment of RIPA, the RIPA Board members have reviewed the courses listed below related to racial and identity profiling.¹⁰⁸⁶

Name of Course	Course Type/Length	Year of Board Review
Basic Academy Learning Domain #3 Principled Policing in the Community ¹⁰⁸⁷	Academy – 26 hrs.	2022 Report
Basic Academy Learning Domain #42 Cultural Diversity and Discrimination ¹⁰⁸⁸	Academy – 16 hrs. * MOT training required to facilitate this course	2023 Report
Principled Policing: Implicit Bias and Procedural Justice	In-Service Officers – 8 hrs.	2020 Report
Bias and Racial Profiling Video	In-Service Officers – 2 hrs. *MOT training required to facilitate this course	2021 Report
Beyond Bias Racial and Identity Profiling Online	Supervisors – 2 hrs.	2021 and 2022 Reports
PSP: Strategic Communications	In-Service Officers – 3 hrs.	2021 and 2022 Reports
MOT – Racial Profiling Train- the-Trainer	In-Service Officers – 24 hrs.	2023 Report

2.1. Basic Academy LD 42 Cultural Diversity/Discrimination Course

In the course provided under Learning Domain 42, Cultural Diversity/Discrimination, the Board reviewed Chapter 2, Prejudice, Discrimination and Racial Profiling, and Chapter 4, Sexual Orientation and Gender Identity Profiling. Board members provided both general and specific comments and recommendations after reviewing these chapters.

2.1.1. Board Review and Comments

General Comments and Recommendations

- The overall topic of racial and identity profiling should be presented in one chapter as opposed to being split into chapters among various topics, as is currently the case. Racial profiling training is not adequately covered and the presentation is not cohesive.
- LD 42 should be taught in the context of unlawful, unconstitutional, and discriminatory behaviors by officers towards civilians, which restrict people's ability to move freely on sidewalks, streets, and highways in and around their communities without fear of harassment

¹⁰⁸⁶ A copy of all of the POST Basic Academy learning domains can be located here: <<https://post.ca.gov/Download-Student-Workbooks>> [as of Nov. 29, 2022].

¹⁰⁸⁷ A copy of the student workbook for LD 3 can be located here: <https://post.ca.gov/portals/0/post_docs/basic_course_resources/workbooks/LD_03_V-5.1.pdf> [as of Nov. 29, 2022].

¹⁰⁸⁸ A copy of the student workbook for LD 42 can be located here: <https://post.ca.gov/portals/0/post_docs/basic_course_resources/workbooks/LD_42_V-6.5.pdf> [as of Nov. 29, 2022].

and harm.

- The instructions and guidelines that addressed hypothetical settings and how to respectfully handle certain situations to achieve positive outcomes were well done.
- LD 42 does not advise cadets of the consequences of engaging in racial or identity profiling behavior or the consequences of not reporting profiling behavior observed by fellow officers. The course objectives should prominently discuss and emphasize law enforcement agency expectations regarding unlawful racial or identity profiling behavior and accountability for engaging in those acts, but that discussion is lacking here.
- The RIPA data continues to show that Black residents in particular are being profiled by officers. The LD 42 training course does not discuss the data findings in a meaningful way or that the data disparities are a problem that law enforcement agencies need to address.
- The course should also include a discussion of the history of policing.
- The law mandates that the curriculum be evidence-based;¹⁰⁸⁹ therefore, the course should lay out in the introduction why racial and identity profiling is a required training. The training appears to emphasize that officers have the right to think what they want as long as they act in a professional and unbiased way. The problem with this notion is that personal values and ideas may conflict with the organizational mission and undermine public trust. Therefore, it should be re-written to state that each officer possesses personal values and thoughts. However, the mission of their organization must be “front of mind” such that one’s personal values and thoughts never compromise public trust and safety.
- Overall, Section 2 on racial and identity profiling is lacking any discussion on any of the evidence-based content around profiling, such as the impact of profiling (e.g., experience of being policed/over policed or subject to an unfair system), how it manifests (e.g., more consent searches, more invasive stops, different uses of force, etc.), and how it is not effective policing. This section should focus on the significant amount of data and research showing that racial profiling is not an effective means of policing, rather than just trying to convince officers that it is wrong, which is the current framing of the section. More evidence should be incorporated.

2.1.2. Recommendations on the Learning Objectives and Introduction

LD 42 discusses the idea of stereotypes and how they can affect interactions with individuals. It stresses the need for heightened awareness of stereotyping and prejudicial viewpoints to prevent discrimination, racial and identity profiling, and bias-based policing. It also includes tools officers can employ.

- The various discussion prompts and learning activities appear in line with the requirements in the Penal Code. The course also discusses the RIPA data by indicating that when Black and Hispanic/Latine(x) are stopped, they are detained longer and subject to searches more often.
- The course is not presented in a manner to appropriately discuss how to measure course effectiveness and perhaps more information from POST is needed.
- The course material states that there is an expectation of a “higher ethical standard” for police, which is true; however, the phrase “don’t subject people to harsher treatment because of their identity” should be framed more as the minimum standard required, rather than as an aspirational goal that is higher than what we expect from other professions.
- The assertion that perceptions and biases are “neither right or wrong” is the wrong frame for this training. A more effective statement would be that even though everyone may have

1089 Cal. Pen. Code, §13519.4, subd. (h).

biases, negative views towards individuals whether conscious or subconscious can be harmful, adversely affect people's lives, and, in some circumstances, can be deadly.

- The learning objectives of the section on sexual orientation should discuss the difference between sexual orientation and gender identity and how they intersect with each other, race, culture, and religion. Also, it is not enough to accept difference; officers must also understand that the differences are to be valued and celebrated for the rich contributions they provide to our society.

2.1.3. Recommendations for the Legal Sections

This section cites the statutes regarding law enforcement's obligation to report acts of discrimination or profiling and the impact profiling can have on communities and law enforcement trust.

- While the statute was quoted previously saying that RIPA only "restates existing obligations" imposed by the Fourth and Fourteenth Amendments, this is not completely accurate. It should be more explicit that the RIPA statute recognizes that racial and identity profiling – or the "consideration of, or reliance on, to any degree" protected identity characteristics in deciding any stops or actions taken – is prohibited. To put this in context, it should also acknowledge that the law recognizes the harm caused by profiling (to individuals, communities, and police-community relations) and the need for affirmative steps to prevent it from happening.
- The legal section notes that *Whren v. United States*¹⁰⁹⁰ provides "broad discretion" for officers to conduct pretext stops, but it does not include any limitations on that discretion, including prolonging a detention to investigate an unrelated hunch.¹⁰⁹¹ The course would benefit from a discussion regarding cases such as *Rodriguez v. United States*, which held "a seizure justified only by a police-observed traffic violation, therefore 'become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission' of issuing a ticket for the violation."
- The section notes that a stop can be legal under the Fourth Amendment and illegal under the Fourteenth, but does not clearly explain why. It also does not note that it could also violate RIPA, which should be added.

2.1.4. Recommendations on Key Definitions and Vocabulary

This course also reviews some key definitions to help students understand how terms are used throughout the course and how to apply them.

- In the section of "Criminal Profiling vs. Racial Profiling," it wrongly states that racial profiling occurs when "race alone" is used to predict criminality. This is not true generally or under RIPA, which explicitly says consideration "to any degree." "Race alone" should be stricken because it gives the wrong idea and is something that is frequently repeated by officers. This section should also include more examples beyond just discrimination regarding who is stopped; it should include decisions regarding who is asked for consent to search, whether a search is conducted, using force versus de-escalating or using alternatives, handcuffing, etc. Chapter 2 in LD 42 does not discuss identity profiling at all. It is covered in Chapter 4.
- The course definitions should discuss racism and racial profiling and how they intersect and should not characterize racial profiling as controversial. "Racism" is not defined in the course, so it is not clear what is being taught. It is hard to see how authority used by officers towards certain racial groups, rather than others, because of their identity traits is not racism.

¹⁰⁹⁰ See Cal. Com. on Peace Officer Stds. and Training, Basic Course Workbook Series Student Materials: Learning Domain 42, Cultural Diversity/Discrimination, Version 6.5 ("Learning Domain 42, Cultural Diversity/Discrimination") (Dec. 2020) p. 2-19 [as of Nov. 29, 2022]; *Whren v. United States*, *supra* note 231, 517 U.S. 806.

¹⁰⁹¹ See *Rodriguez v. United States* (2015) 575 U.S. 348, 350-51 (citation omitted).

- POST should not use the term “minorities,” which is considered by many to be offensive.
- The description of “human rights” as increasing recognition of “special protections” for certain groups is inaccurate. A better foundational statement would be to acknowledge that all people have equal humanity and are deserving of equal respect and protection under the law.
- The training discusses the need for officers to have knowledge of terms related to sexual orientation and gender identity. It also includes a summary of a 2015 California Transgender survey¹⁰⁹² regarding police interaction. It may be appropriate for POST to conduct regular reviews and searches for updated surveys.
- The discussion of terms that should be avoided because they “may be considered” offensive should instead be framed as terms that “are offensive” – the Board cannot think of any scenario where it is not offensive to call a person derogatory names. The material should not imply it is good to be precautious because people are sensitive—these are intended slurs and are derogatory.

2.1.5. Recommendations for Civil Rights and Lessons Learned

During the course, students also review topics including the civil rights movement, gender identity, and sexual orientation.

- The civil rights movement is described as “elevating” a police officer’s role to protect and enforce “the civil rights for all people.” This euphemistically obscures what this “elevation” meant. Historically, it was not expressly impermissible under the law for officers to discriminate against people based on their racial background and to only protect White individuals from harm while permitting violence perpetuated by White individuals against Black individuals. The civil rights movement helped push for a change in these laws. Particularly given the time that has elapsed since the civil rights movement and officers’ continued exposure to stereotypes, biases, and structural racism in American society, using euphemisms that distort the role of policing will most likely not be helpful. The history should be made more explicit, because that also helps officers understand 1) the trajectory of policing and 2) why people may legitimately be distrustful of policing activity given the historical context and, particularly, when we see similar trends persist today.
- There is very little in this section about how prejudice manifests around sexual orientation/ gender identity. For example, in 2022, California passed a law to prohibit officers from stopping individuals for certain loitering offenses to address profiling of the transgender community.¹⁰⁹³ The course could use RIPA data to teach officers about profiling and the effect of bias on the transgender community, which was discussed in depth in the 2022 RIPA Report.¹⁰⁹⁴
- This section would be improved by having evidence-based data and research that can easily be incorporated from the current or past RIPA Board reports on the disparate treatment of individuals because of gender identity or sexual orientation and how officers should be aware of such disparities and should work to change their behavior to reduce such disparities.
- The section that states, “attempting to induce guilt . . . only reinforces that person’s beliefs” should be deleted. This is not useful guidance and suggests that profiling should not be raised as a problem of law enforcement for fear of how officers may respond.
- Rather than listing the 2015 transgender community survey as a “defining moment” in history, the information may be more appropriate elsewhere in the chapter.

1092 James et al., Nat. Center for Transgender Equality, The Rep. of the 2015 U.S. Transgender Survey (Dec. 2016) <<http://www.transequality.org/sites/default/files/docs/USTS-FullReport-FINAL.PDF>> [as of Nov. 29, 2022].

1093 Sen. Bill No. 357 (2021-2022 Reg. Sess.).

1094 See Racial and Identity Profiling Advisory Board, Annual Report (2022), *supra* note 169, at pp. 62-82.

- There is no discussion of the systemic institutional forces that have contributed to people disproportionately being perceived and treated differently.
- The discussion of the possible outcomes of prejudice should include the harm to the public of being subject to stops, invasive searches, arrests, or use of force.

2.2. Racial Profiling Train-the-Trainer Curriculum Update

The other course the Board reviewed, titled “Racial Profiling Train-the-Trainer,” focuses on preparing trainers to facilitate racial profiling courses. POST provides funding, mandated by the Legislature, to the Museum of Tolerance (MOT)¹⁰⁹⁵ to develop the curriculum and deliver the training. In order to teach the “Bias and Racial Profiling”¹⁰⁹⁶ 2-hour course for in-service officers and the 16-hour academy course “LD 42 Cultural Diversity and Discrimination,” reviewed by the Board above, instructors must receive POST certification, which requires a 24-hour Racial Profiling Train-the-Trainer Course at MOT.¹⁰⁹⁷

2.2.1. Background on Curriculum Updates

In 2002, the legislature passed a statute requiring MOT and several other community organizations to develop racial profiling trainings. Initially when the course was first developed, the law required that a number of different organizations work in concert to create this training. Those organizations included: (1) State Conference of the NAACP, (2) Brotherhood Crusade, (3) Mexican American Legal Defense and Education Fund, (4) The League of United Latin American Citizens, (5) American Civil Liberties Union, (6) Anti-Defamation League, (7) California NOW, (8) Asian Pacific Bar of California, and (9) The Urban League.¹⁰⁹⁸ In 2004, the law was amended to remove the other organizations, making MOT the sole provider of both the trainings and the course content.¹⁰⁹⁹ Since the original course development, there have not been any major updates to the course materials for nearly 20 years. Although the course content is approved by POST, MOT is responsible for creating and implementing any curriculum updates.

In January 2022, the RIPA Board was invited to participate in the update of the curriculum for this course after initial meetings with POST and MOT. POST and MOT anticipate finalizing and making this course available to instructors by the beginning of 2023.

Throughout the year, several Board members participated in focus groups and community meetings and gave testimonials for the training video that accompanies the course materials. Six focus groups were held to review the current and new curriculum to make suggested edits or changes to update or improve it. At these focus groups, the only non-law enforcement representatives present were RIPA Board members. Other team members consisted of a Chief Deputy District Attorney, two veteran Police Officers, a POST Representative, a Project Managing Consultant for MOT, two retired law enforcement, two DOJ attorneys, and a Facilitator/Course Designer with expertise in anti-bias and trauma-informed approaches to address the needs of marginalized communities. The focus groups were facilitated by MOT and the contracted course designer.

During the curriculum update, Board members reviewed each section of the existing curriculum and filmed scenarios. Board members also reviewed an outline of the new course materials and provided feedback to the course developer. Some Board members reviewed and participated in the filming of

¹⁰⁹⁵ The Museum of Tolerance (MOT) is a “human rights laboratory and educational center dedicated to challenging visitors to understand the Holocaust in both historic and contemporary contexts and confront all forms of prejudice and discrimination in our world today.” Museum of Tolerance, *Our History and Vision*, <https://www.museumoftolerance.com/about-us/our-history-and-vision/> [as of Nov. 29, 2022].

¹⁰⁹⁶ The Board reviewed this course and provided recommendations in the 2021 Report. See Racial and Identity Profiling Advisory Board, Annual Report (2021), *supra* note 28, at pp. 152-53.

¹⁰⁹⁷ Com. on Peace Officer Stds. and Training, Bull. No. 2002-12, Implementation of Racial Profiling Training Curriculum (“Bull. No. 2002-12”) (May 8, 2002) p.1 [as of Nov. 29, 2022].

¹⁰⁹⁸ See Former Cal. Pen. Code, § 13519.4, subd (f), (1)-(9), as amended by Statutes 2011, chapter 854, section 63.

¹⁰⁹⁹ *Ibid.*

scenarios for officers and others provided testimonials about profiling to be included in the new curriculum.

2.2.2. Funding for Curriculum Updates

POST provides over a million dollars of funding annually – required by the Legislature – for many of the racial profiling trainings held at MOT.

<u>TOOLS I PROGRAM: EVOLVING ROLE OF LAW ENFORCEMENT</u>	
Presentation of Tools I Course (8 hour presentations)	\$ 586,099
65 Presentations @ \$9,016.91 each	
<u>COMMAND STAFF TOOLS PROGRAM</u>	
Presentation of Command Staff Tools	\$ 68,448
Course (16 hour presentations)	
2 Presentation @ \$34,224.20 each	
<u>TOOLS III PROGRAMS: BEYOND DIVERISTY AND/OR HATE CRIMES AND/OR SLS</u>	
Presentation of Tools III Course (8 hour presentations)	\$ 199,274
15 Presentations @ \$13,284.92 each	
<u>SLI AT THE MOT</u>	
Presentations of SLI at the MOT course (16 hour presentations)	\$ 283,899
16 Presentations \$17,743.69 each	
<u>RACIAL PROFILING UPDATE TRAINING</u>	
Presentations of the Racial Profiling Update course (4 hour presentations) 19 Presentations \$3,152.18 each	\$ 59,891
TOTAL PROGRAM COSTS	\$ 1,197,612
<u>Racial Profiling Train the Trainer Curriculum Design and Development</u>	<u>\$ 358,388</u>
TOTAL COSTS	\$ 1,556,000

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MOT redirected \$358,388 on a one-time basis from its annual \$1.5 million budget to update this course. The Board hopes its review can add transparency to the curriculum offered by MOT and the Board's experience in working with MOT and POST in updating the curriculum.

2.2.3. Board Review and Comments

In their review of the course curriculum, Board members provided comments and recommendations on the current course content. Below is a summary of their recommendations.

General Comments and Recommendations:

- Courses should strive to exceed the minimum standards set by law by establishing the highest ethical and legal standards for officers regarding racial and identity profiling. The ultimate goal of this course should be to shift the culture of law enforcement and their perception of communities of color and other historically marginalized communities.
- The Board is committed to continuing efforts to work with MOT to establish a written plan for ongoing updates and community review of the course. The course update timeline is and has

1100 Com. on Peace Officer Stds. and Training, Finance Committee Agenda (Mar. 2022) Exhibit B MOT Maximum Budget Expenditures <<https://post.novusagenda.com/agendapublic/MeetingView.aspx?MeetingID=170&MinutesMeetingID=-1&doctype=Agenda>> [Nov. 29, 2022].

been the Board's biggest concern. The course was not substantially updated for 20 years. The Board has concerns that MOT and POST only dedicated a year to update the course.

- Of note, Board members were not provided with the opportunity to observe the facilitation of the course.
- The Board has not been provided with any data measuring the effectiveness of the MOT course, including statistics on how many students pass or fail the course. Courses must contain measures of effectiveness by which to evaluate course outcomes, such as a reduction in disparities in traffic stops or how many students pass or fail the course. As MOT and POST work to update the course, it is important to include such measures of effectiveness.
- While the law only requires a refresher training every five years, ongoing training for service officers should be at least once a year. Moreover, the course should be updated yearly in consultation with community members and non-law enforcement subject matter experts.
- The question throughout development of the curriculum and the course itself should be how the profession of policing can rise to the occasion and address the community's concerns. Society and our views have changed so much in the two decades since this course was first developed and we should start with asking the community what they would like to see in a course on racial and identity profiling.
- The course should address the public's demand for justice and focus the training on achieving specific outcomes.
- If we truly hope to change policing from the inside out, we must train officers to address major violations of community member's rights and trust. This includes addressing racial and identity profiling. The course must be inclusive of all identities, including gender and disability.
- Facilitators should leave the course empowered to push back on law enforcement norms around race and identity.
- It is important for trainees to leave the course with an understanding of how traffic stops may cause psychological harms in a community or to the stopped individual.
- Law enforcement officers should leave the training with an understanding of how bias may affect their encounters with individuals accused of crimes and victims of crimes.
- The Board believes the Legislature should mandate that this course be updated much more frequently.
- The Board believes the Legislature should expand the responsibility for this course and its updates to include a diverse group of stakeholders beyond MOT. For example, the Legislature could provide funding to stakeholders –including academic researchers and community-based organizations – to explore effective approaches to reducing biased policing through course curriculums and training.

2.2.4. Recommendations on Course Update Process

***NOTE:** The below recommendations have been made by the Board Members participating in the revision of the “Racial Profiling Train-the-Trainer” curriculum update. Because the development of this training is still in progress, the below recommendations and observations may change, depending on the development of the training and the degree to which the Board’s recommendations are incorporated into the final version of the training.*

- The course development should include allowing Board members, the course developers, and the public the opportunity to observe multiple training sessions and receive information on who participated in the sessions and what the pass rates were. These stakeholders should also be able to review any pertinent data regarding outcome measurements, such as a reduction in disparities in stops or use of force.
- The Board believes that MOT and POST should work continuously to update course materials in collaboration with community members.
- MOT invited the RIPA Board members to reach out to their networks to seek volunteers to participate in a community focus group. The community members who did participate were not able to give input regarding the updated curriculum because it was still in the development phase; however, POST assured the Board that the community members will be able to weigh in when the curriculum is ready. Board members were not given much time to tap into their networks to provide a list of possible volunteers to participate. The Board hopes in the future there will be a community engagement outreach plan to solicit ongoing feedback from community members.

2.2.5. Recommendations on Key Definitions and Vocabulary

- The existing definition of racism in the current course should be modified in the new course materials because as currently written, it implies that “hate” is a prerequisite, but it is not.
- The existing definition of profiling should be revised because it does not address officer actions taken during a stop or the ultimate disposition of the stop and solely focuses on the initial act of detaining an individual, which is contrary to the current law.
- Characterizing profiling of the person stopped as solely a “perception” issue could wrongly lead to interventions that are designed to minimize transparency about bias, rather than changing policies to prevent subjectivity and bias from adversely influencing officer behavior.
- The training would benefit greatly from acknowledging that disparities have been documented across jurisdictions in how people are treated during stops.
- As currently written, the course detrimentally characterizes officer profiling as “controversial”; this characterization should be eliminated.
- It is important for the course to refer to racial *and identity* profiling throughout the training, rather than focusing only on racial profiling.
- The phrase “police action with Rodney King” should be removed from the training, as it is an improper euphemism for police violence.
- The trainings currently rely on phrases such as “we don’t know what was in the mind of the officer;” but should instead emphasize and provide for discussion about how bias affects stops.

2.2.6. Recommendations to Include RIPA Data in the Course

- The RIPA reports highlight the disparities in stop data and the public's alarm regarding those disparities. The course should use the data to train on a specific ethical thought grid before a decision is made to stop, detain, handcuff, or order someone to sit on a sidewalk, or conduct a bicycle-related stop, to name a few examples.
- Including a discussion on the RIPA data and why perception data is collected would help officers understand the importance of data and how to use it for improving policing. These types of conversations have the power to change institutions.
- Additional data beyond RIPA may be illustrative as well – for example, data on actual drug use rates and a comparison of officer activities in neighborhoods where there are frequent drug overdoses. This requires officers to think about why they may be using certain strategies in some neighborhoods but not others with equally frequent drug-related offenses.

2.2.7. Recommendations Regarding Training on Bias

- Throughout the curriculum, there should be a discussion of both explicit and implicit bias and how both can lead to illegal profiling behavior. Trainees should leave with the understanding that addressing bias can actually lead to better outcomes.
- The course should provide explicit guidance from facilitators on how to address bias within themselves.
- Facilitators and participants should be prepared to challenge the culture in law enforcement and have a healthy discourse about how bias can affect behavior.

2.2.8. Recommendations for Legal Section

- Research shows that police resources might better be spent on more targeted law enforcement strategies based upon probable cause, as opposed to pretext stops, which the data shows are not effective at finding contraband and can be harmful to law enforcement-community relations, as discussed in this Report on pp. 61-107. The course materials and facilitators should not spend substantial time discussing the legal justification for these pretextual stops and instead spend more time on the limits of those stops.

2.2.9. Recommendations Regarding Scenarios

- The course would benefit from robust role-playing exercises with course participants to gain a better understanding of community members' perspectives during police stops. Some possible role plays can include: the general fear of being stopped by the police, thoughts of surviving a police stop when others died following instructions; how it feels to be singled out; how it feels to be innocent and detained on a sidewalk in handcuffs for everyone driving by to see; how it feels to be constantly watched and treated as a criminal suspect vs. a civilian, etc.
- In one of the scenarios, students were given a description of a person and asked to characterize the stop as red (bad stop), yellow (ok stop), or green (valid stop). This exercise could benefit from using different demographic information to see if that creates a different result for trainees. This would allow trainers to discuss how bias may have affected the assessment of the validity of the stop.
- A video was shown of an officer monitoring a crosswalk and the officer observed three cars going by and only stopped the last one. This was a clear example of profiling and this should be discussed in the facilitation guide. For example, the first vehicle did not stop for a student in the crosswalk, but this was not discussed during the analysis of the stop. Why do officers let things like this slide? What could participants relate to as they consider letting one person "slide" and then stopping another?

2.2.10. Recommendations Regarding Course Facilitation

- If the course is not facilitated in an effective manner, including those who are training the trainers, it will not resonate, capture, or empower cadets/officers to change.¹¹⁰¹ Facilitation observed by Board members was subpar and continuously done in a manner that did not challenge the beliefs, biases, and perceptions law enforcement has of communities of color.
- The facilitation team could be improved by including non-law enforcement representatives, such as someone with an expertise in teaching implicit bias. The current trainers may benefit from additional training themselves on how to effectively facilitate this course.
- Department leaders and officers must acknowledge that widespread inappropriate behavior is a problem. Once a problem is acknowledged and people choose to improve behavior and recognize the impact on others, then they will train and operate for changed outcomes in their behavior.
- Facilitators should review the curriculum guide in depth with participants and make sure to maximize the limited time they have during this training. Facilitators should not rely on students' self-study of course materials.
- MOT and POST should consider using facilitators from diverse backgrounds and organizations like those originally named as members of the curriculum development panel.¹¹⁰²

2.2.11. Concluding Remarks and Next Steps

In conclusion, RIPA Board members made the following recommendations regarding this curriculum and future iterations.

- The Board strongly recommends that the course be updated more frequently and, as part of these updates, that MOT and POST take steps to meaningfully and proactively engage with the community and a diverse group of stakeholders to review and provide recommendations regarding the new course content. Generally, transparency regarding courses offered by POST is imperative and increases accountability for the quality and effectiveness of their courses and trainings.
- The Board notes as of the date of this report, no future dates have been set for the Board to review the new course content, nor is there a community engagement plan for soliciting input on the new course. The Board looks forward to setting aside time in the coming year for this purpose.
- As these racial profiling courses are meant to educate officers and help protect the community, it is critical that the community has a voice in all aspects of the trainings.
- The Board also recommends the Legislature expand the organizations that can deliver this training and receive funds in order to do so. For example, the Legislature could amend the Penal Code to provide for training by additional organizations or create a curriculum development

1101 Kaste, *NYPD Study: Implicit Bias Training Changes Minds, Not Necessarily Behavior* (Sept. 10, 2020) NPR <<https://www.npr.org/2020/09/10/909380525/nypd-study-implicit-bias-training-changes-minds-not-necessarily-behavior>> [as of Nov. 29, 2022].

1102 The law mandating the training named several organizations who participated in the original development of the curriculum: "(1) State Conference of the NAACP (2) Brotherhood Crusade. (3) Mexican American Legal Defense and Education Fund. (4) The League of United Latin American Citizens. (5) American Civil Liberties Union. (6) Anti-Defamation League. (7) California NOW. (8) Asian Pacific Bar of California. (9) The Urban League." Former Cal. Pen. Code, § 13519.4, subd. (f), (1)-(9), as amended by Statutes 2011, chapter 854, section 63.

panel, as was provided for in the statute prior to its amendment in 2004.¹¹⁰³ In addition, the Legislature could also require by law the course be updated and reviewed by the community annually or at a set time persons as deemed effective by the Legislature.

- In future reports, the Board looks forward to reviewing the new curriculum and supporting filmed scenarios and any community engagement plan to seek recommendations. The Board hopes POST and MOT will work to continuously update and improve the course content in partnership with the community on a much more frequent basis.

3. Recent Trends and Developments

3.1. Recent Legislation with RIPA Board Input

In the past two years, recent legislation has focused on officer biases related to hiring and officer misconduct and decertification.

3.1.1. AB 846 Bias Evaluations in Hiring

AB 846 was signed into law on September 20, 2020. AB 846 directed POST to develop regulations for screening peace officer candidates to include measures of implicit and explicit bias.¹¹⁰⁴ POST noticed the draft regulations in 2021. The RIPA Board submitted a letter on October 22, 2021 during the public comment period with two recommendations: 1) that the regulations require a review of candidates' social media, and 2) that investigators and evaluators record their relevant findings, determinations, and factual bases.¹¹⁰⁵

On November 16, 2021, POST sent the Board a letter stating that it “would be unable to assemble further work groups and incorporate regulatory changes associated with the recommendations” before its January 1, 2022 deadline to complete them.¹¹⁰⁶

At its December 1, 2021 meeting, the Board spent considerable time discussing POST’s letter. Ultimately, the Board voted to include language in the 2022 report expressing its disagreement with POST’s decision to reject its recommendations. Because POST did not take into consideration the Board’s comments and recommendations, POST subsequently postponed the publishing of the regulations to engage with Board members to evaluate and fully consider the Board’s recommendations.

Members of the RIPA Board began a series of meetings with POST staff in December 2021. The RIPA Board and POST staff collaborated to craft draft language that reflected the Board’s proposals and that could be implemented by practitioners screening and documenting implicit and explicit biased-based behavior of potential peace officer candidates. The revised regulations require that the Background Narrative Report and the Psychological Evaluation include specific information on the bias assessment, including identifying sources used, and that the findings are provided to the screening psychologist and the hiring department. POST Bulletin No. 2022-34 indicated that the proposed regulations 1953 and 1955 submitted by POST to the Office of Administrative Law, were approved on July 18, 2022, with an effective date of August 1, 2022.¹¹⁰⁷ Additionally, a new section was added to regulation 1953 devoted to the implementation of mandatory social media checks for all peace officer applicants (known as

1103 Former Cal. Pen. Code, § 13519.4, subd. (f), (1)-(9), as amended by Statutes 2011, chapter 854, section 63, included a five-person curriculum panel from the following organizations “(1) State Conference of the NAACP. (2) Brotherhood Crusade. (3) Mexican American Legal Defense and Education Fund. (4) The League of United Latin American Citizens. (5) American Civil Liberties Union. (6) Anti-Defamation League. (7) California NOW. (8) Asian Pacific Bar of California. (9) The Urban League.”

1104 Cal. Gov. Code, § 1031.3.

1105 See section H.1 of Appendix H for RIPA Board’s Oct. 22, 2021 Letter to POST.

1106 See section H.1 of Appendix H for POST’s Nov. 16, 2021 Letter to RIPA Board.

1107 See section H.1 of Appendix H for POST Bulletin No. 2022-34 and July 18, 2022 Office of Administrative Law Notice of Approval of Regulatory Action.

cyber vetting).¹¹⁰⁸ The Board hopes to engage with POST in the future to help continue to improve the regulations and to learn more about how the regulations are implemented.

3.1.2. SB 2 Decertification

The RIPA 2022 Report Identified SB 2 as legislation that could impact the Board’s work towards eliminating racial and identity profiling. SB 2 includes a wide range of changes to peace officer employment and liability.¹¹⁰⁹ The Act creates a new Peace Officer Standards Accountability Division within POST and a Peace Officer Standards Advisory Board (Advisory Board) – the advisory board is primarily composed of non-officers who are members of the public – charged with investigating and reviewing allegations of misconduct that could be grounds for decertification.¹¹¹⁰ In the 2020 RIPA Report, the Board included a legislative proposal that the POST Commission’s composition be changed to add five non-law enforcement officers to the POST Commission with diverse backgrounds. While the creation of the Advisory Board in SB 2 is in keeping with the spirit of the RIPA Board’s legislative proposal, it has a narrow program focus. Under the Act, POST is required to review the serious misconduct investigations conducted by law enforcement and work in conjunction with the Advisory Board.¹¹¹¹

POST is charged with developing regulations aimed at defining serious misconduct under Penal Code section 13510.8. RIPA Board Co-Chair Melanie Ochoa represented the Board at the SB 2 stakeholder workshop hosted by POST on January 27 and 28, 2022. After the RIPA Board voted to send a letter to POST with their concerns regarding the definitions of “serious misconduct” and “demonstrating bias” in the draft regulations, the Board sent a letter to POST on April 18, 2022.¹¹¹² The specific recommendations were as follows:

- Clarify that bias based upon an officer’s *perception* of an individual’s identity, not only their actual identity, would be a basis for decertification.
- The definition of bias should explicitly include, but not be limited to, conduct that would constitute illegal profiling as defined by Penal Code section 13519.4.
- Acts or omissions that would render an individual ineligible as a peace officer under Government Code section 1031.3 should be included as grounds of decertification.¹¹¹³

The POST Commission issued proposed regulations 1205 on June 10, 2022 and the RIPA Board resubmitted its April 18, 2022 letter on July 7, 2022 during the public comment period. While the regulations are still being developed, POST is offering a number of training courses focused on teaching the new requirements under SB 2. In the upcoming year, the Board hopes to engage more with POST on the development of the regulations and review any trainings associated with this legislation.

3.1.3. AB 2547 Definition of “Biased Conduct”

AB 2547 was a 2022 bill that would have required POST to establish a definition of “biased conduct” and to use the definition in any investigation of a bias complaint. The bill would also have required POST to develop guidelines for performing effective social media screenings of officer applicants. The RIPA Board submitted a letter to POST on July 28, 2022 recommending that the definition of bias also include the definition of racial profiling contained in Penal Code section 13519.4

1108 Com. on Peace Officer Stds. and Training, Bull. No. 2022-46, Senate Bill 2 Implementation: Amendment of Commission Regulation 1953 – Approved – Effective January 1, 2023 (“Bull. No. 2022-46”) (Nov. 15, 2022) [as of Nov. 29, 2022], Com. on Peace Officer Stds. and Training, Bull. No. 2022-34, Amendments to Peace Officer Selection Standards, Commission Regulations 1953 and 1955 (“Bull. No. 2022-34”) (Jul. 27, 2022) [as of Nov. 29, 2022].

1109 Sen. Bill No. 2, approved by Governor, Sept. 30, 2021 (2021-2022 Reg. Sess.).

1110 *Ibid.*

1111 *Ibid.*

1112 See section H.2 of Appendix H for a copy of RIPA Board’s Apr. 18, 2022 letter to POST

1113 See *ibid.*

subdivision (e).¹¹¹⁴ The bill was introduced in February 2022 and moved through the legislative process until August 11, 2022, when the bill ultimately failed in the committee process.¹¹¹⁵

3.2. State Agency Reviews of Law Enforcement Training in California

In addition to legislative progress in this area, with the expanded release of RIPA data and findings of ongoing profiling and disparate treatment of targeted groups, POST training on Racial and Identity Profiling, funding, and officer conduct are gaining increased interest and review by California oversight state agencies. The Board would like to highlight below some of the recommendations from the Legislative Analyst's Office, the Little Hoover Commission, and the State Auditor's Office.

3.2.1. Legislative Analyst Office

The 2022 RIPA report included a review by the California Legislative Analyst's Office (LAO). The LAO reported that in the 2019-2020 California Governor's budget, POST received a \$34.9 million dollar General Fund augmentation for law enforcement training costs, of which \$20 million would be used for use of force, de-escalation, and mental health crisis training. The LAO suggested that the Legislature conduct a more extensive review of how POST is spending the money. The LAO also recommended that POST should collect and report on the number of officers trained, how the trainings were delivered, and the cost per training attendee, as well as the effect of specific trainings on officers' job performance.

The POST Subcommittee endorses the LAO's recommendations on POST funding and finds that they are consistent with the Subcommittee's past recommendations.

3.2.2. California Little Hoover Commission: Steps to Improve Law Enforcement Training in California 2021

"In the wake of deadly police encounters involving Black Americans and excessive use of force, lawmakers have looked to police training as one means to implement reform."¹¹¹⁶ The Little Hoover Commission (LHC), a legislative oversight body, conducted a study from 2020-2021 that examined the effect of law enforcement trainings and issued a publication of their findings 'Law Enforcement Training: What Works for Officers and Communities.'¹¹¹⁷ In the report, LHC raised concerns about how training is currently conducted in California.

*"California spends millions of dollars on law enforcement training each year, yet there is very little evidence to demonstrate which types of training actually achieve intended goals and positively impact officer behavior in the field –and which do not."*¹¹¹⁸

The report also explained the importance of assessing and improving law enforcement training courses prior to spending more taxpayer dollars on training that may have limited effectiveness.

*"California must assess and improve training for its nearly 700 law enforcement agencies and more than 87,000 full-time sworn and reserve peace officers. Such action would be an essential step toward meaningful law enforcement reform."*¹¹¹⁹

In its study, LHC made eleven substantive recommendations directed at legislators and POST. The RIPA

1114 See section H.3 of Appendix H for RIPA Board's July 28, 2022 Letter to Legislature.

1115 See Legis Counsels' Dig., Assem. Bill No. 2547 (2021-2022 Reg. Sess.).

1116 Little Hoover Com., Steps to Improve Law Enforcement Training in California (Nov. 2021) p. 3 <<https://lhc.ca.gov/sites/lhc.ca.gov/files/Reports/265/Report265.pdf>> [as of Nov. 29, 2022].

1117 *Ibid.*

1118 *Ibid.*

1119 *Ibid.*

POST Subcommittee endorses all of the LHC's recommendations except numbers 5 and 8, which do not reflect consensus of the subcommittee.

1) Lawmakers should temporarily refrain from amending or adding new law enforcement training and instead provide POST funding to assess how well existing training is working in the field and adjust training mandates.¹¹²⁰

2) POST should revise its process for evaluating law enforcement training to include additional course certification criteria that incorporate training outcomes.¹¹²¹

3) To encourage more rigorous analysis of officer training programs, POST should establish a process to collect and secure data for research purposes in order to improve training.¹¹²²

4) To foster collaboration with academic researchers, POST should establish a permanent academic review board to ensure training standards are aligned with the latest scientific research findings regarding new and existing standards and training.¹¹²³

5) Lawmakers should provide funding for POST to compare and evaluate California's 41 basic training academies and identify best practices. POST should report its findings to the Legislature in a report no later than one year after funding is appropriated for this purpose.¹¹²⁴

6) POST should review and evaluate the current basic academy curriculum to, among other things, review the effectiveness and relevancy of courses for today's community needs and identify the gaps in foundational training necessary to prepare new officers.¹¹²⁵

7) POST should assess and evaluate the Field Training Program to determine how it could be more complementary to the basic academy program.¹¹²⁶

8) POST should establish a new advanced academy experience, required for officers with between two to five years of experience, to reinforce entry-level training and incorporate the more advanced concepts currently embedded in the basic academy.¹¹²⁷

9) POST should assess the existing continuing professional training requirements to determine whether curricula remain relevant and necessary and make adjustments as needed.¹¹²⁸

10) POST should identify and implement ways to improve officer access to continuing education.¹¹²⁹

11) Lawmakers should modify the POST Commission to add additional public members and ensure that includes members of vulnerable communities, health and mental health professionals who serve vulnerable communities, and experts in adult education and scientific research.¹¹³⁰

1120 *Ibid.*

1121 *Ibid.*

1122 *Ibid.*

1123 *Ibid.*

1124 *Ibid.*

1125 *Id.* at p. 4.

1126 *Ibid.*

1127 *Ibid.*

1128 *Ibid.*

1129 *Ibid.*

1130 *Ibid.*

3.2.3. 2022 California State Auditor Report: Law Enforcement Departments Have Not Adequately Guarded Against Biased Conduct

The California State Auditor examined five law enforcement departments throughout the State and uncovered some officers at each department who engaged in biased conduct, either during their on-duty interactions with individuals or online through their social media posts.¹¹³¹ The report concludes that these five departments have not adequately guarded against biased conduct among their officers, finding that:

- They have not used sufficient strategies to achieve representative diversity in hiring.¹¹³²
- They have not implemented robust community engagement strategies or employee training practices.¹¹³³
- They have not established sufficient, proactive processes to identify possibly biased behavior.¹¹³⁴
- They have not consistently conducted adequate investigations of alleged biased behavior.¹¹³⁵

The State Auditor makes specific recommendations about steps each department can take to better ensure that Californians receive fair and impartial policing service. These include recommendations to the Legislature to better align expectations in state law with best practices for addressing bias in policing, such as by adopting a uniform definition of biased conduct, requiring more frequent and thorough training, and increasing independent oversight. The Auditor also recommends that each department's training about bias could be more frequent and include additional content.¹¹³⁶ The POST subcommittee endorses the general recommendations by the State Auditor's Office.

4. Best Practices, Recommendations, and Conclusions

To date, the RIPA Board has reviewed seven POST courses on racial and identity profiling. This collaboration is extremely important because the annual RIPA data suggests that the current trainings are not effective at combatting racial and identity profiling because the disparities, particularly towards those who are perceived as Black, persist. These disparities are demonstrated in the data at multiple steps of law enforcement contact, including the actions taken during the stop and the outcome of the stop.

The Board has made several recommendations to POST and the Legislature about addressing racial and identity profiling in training as result of its reviews. The following recommendations may help improve training and protect people's rights.

1131 The departments examined by the State Auditor included the Los Angeles Sheriff, the police departments of San Bernardino, San José, and Stockton, and CDCR. Cal. State Auditor, *Law Enforcement Departments Have Not Adequately Guarded Against Biased Conduct* (Apr. 26, 2022) p. 1 <<https://www.auditor.ca.gov/reports/2021-105/index.html>> [as of Nov. 29, 2022].

1132 *Ibid.*

1133 *Ibid.*

1134 *Ibid.*

1135 *Ibid.*

1136 *Ibid.*

4.1. Recommendations for the Legislature

- The Board recommends that the Legislature expand the POST Commission by five people to add more diverse representation from the public and non-sworn community.
- The Board believes that increasing the minimum academy or basic training hours to more closely reflect the hours certified by POST at most academies, which exceed this amount, would help eliminate racial and identity profiling.
- An analysis or audit of POST's funding for training would provide clarity on the most efficient use of training funds.
- Mandating in-service officers to take the 8-hour Procedural Justice training course, rather than it being voluntary, would further help reduce racial and identity profiling.
- Require Field Training Supervisors to take extensive racial and identity profiling training prior to teaching the 440 hours of Field Training to newly certified Academy graduates.
- Measures of effectiveness should be mandated by the Legislature in curriculums approved or certified by POST to determine if trainings are having the desired effect.

4.2. Recommendations for POST

RIPA Board:

- The RIPA Board requests that POST provide the Board with information on how the Board's recommendations were incorporated into the courses that the Board worked on.
- The Board would like the POST Commission to discuss the RIPA Board's course feedback and best practices recommendations as an item for discussion by the Commissioners as opposed to a consent item.

Standards and Guidelines:

- Publish any guidelines for racial and identity profiling related courses on the POST website, and if there are no current guidelines, then POST should undertake this process.
- The RIPA data and best practices recommendations from the Board should be more widely used in POST's curriculum development as well as course content.
- Measures of effectiveness should be mandated in curriculums approved or certified by POST to determine if trainings are having the desired effect.

Community Engagement:

- Develop a robust plan for engaging individuals from the communities most profiled, as evidenced by the annual RIPA report data, in reviewing and providing feedback on existing courses and new ones in development. These community members should have a wide variety of backgrounds and expertise and an effort should be made to have representation from a substantial number of individuals and organizations who work with impacted communities so that many different viewpoints and experiences are considered.
- POST would benefit from appointing a community engagement coordinator to ensure meaningful community input is considered and included in all POST courses involving interactions with the public.
- Create broader transparency in the POST racial and identity course curriculum development and certification process by publishing this information on the POST webpage and engaging with a

diverse group of interested stakeholders throughout the process.

- Engage non-traditional experts outside of POST – such as the National Organization of Black Law Enforcement Officers, the Fair and Impartial Policing Institute, or the Center for Policing Equity – to evaluate and/or develop profiling and bias training. POST’s consultant employees play an important role in POST training course development and are expected to have prior law enforcement experience. This requirement should be expanded to also consider individuals knowledgeable in the subject matter but who do not have a law enforcement background.

POST Courses and Curriculum:

- POST-certified courses on profiling should include evidence-based research and data on racial and identity disparities in the stop data that demonstrate violations of the RIPA prohibition against profiling, as required by Penal Code section 13519.4.
- Use RIPA data in racial and identity profiling courses to demonstrate that racial and identity profiling is occurring and is illegal. Then teach officers how to identify and prevent profiling, including through their expected duty to intervene.
- Every racial profiling course should contain material on officer and supervisor accountability. To have the greatest impact on law enforcement agency culture, racial and identity profiling and accountability should be integrated into most POST courses implemented in field training and as a reminder in daily roll call meetings.
- Encourage instructors to use real life examples in its certified training within specific parameters.
- The racial and identity profiling curriculum should also include information on the consequences of officers engaging in racial or identity profiling behavior or of not reporting profiling by other officers.

The Board encourages POST to use the Board’s recommendations to improve training, policies, and practices. The Board hopes POST will work in close partnership with both the RIPA Board and the community in improving racial and identity profiling training throughout the state. It is also the Board’s hope that these recommendations will help inform the Legislature of ways to make the POST Commission more diverse and improve training and accountability throughout the state.

In enacting RIPA, the Legislature determined that additional training is required to address the pernicious practice of racial and identity profiling.¹¹³⁷ Since data collection began, the RIPA data shows that disparities still exist despite changes to racial and identity profiling training. The Little Hoover Commission and the California State Auditor have also raised similar concerns about POST training. This raises questions about the effectiveness of the training being delivered. The Board urges POST to continue to engage with impacted communities, update and improve its racial and identity profiling curriculum, and explore ways to make its training more effective to improve law enforcement-community relations and outcomes throughout the state.

5. Vision for Future Reports

In future reports, the Board would like to develop ways to use the RIPA data to measure the outcomes and effectiveness of trainings. The Board would like to evaluate the full MOT training and provide detailed analyses in its next report on the quality of the training and its effectiveness.

As part of RIPA, section 13519.4 (a) of the Penal Code requires POST to “develop and disseminate guidelines and training for all peace officers in California as described in subdivision (a) of Section 13510 and who adhere to the standards approved by the commission, on the racial and cultural

¹¹³⁷ Cal. Pen. Code, § 13519.4, subd. (d)(5).

differences among residents of this state. The course or courses of instruction and the guidelines shall stress understanding and respect for racial, identity and cultural differences, and development of effective, noncombative methods of carrying out law enforcement duties in a diverse racial, identity and cultural environment.” The code further states that the intent of the Legislature in enacting the additional requirements under RIPA is “to address the pernicious practice of racial or identity profiling.”¹¹³⁸ Therefore, the Board would like to explore the requirement of Commission training guidelines in the future.¹¹³⁹ POST last published guidelines in 1992.

Now that all of the agencies in the state are collecting RIPA data, the community may have a means to hold agencies accountable for the effectiveness of any training.

The Board would also be interested in identifying and reviewing additional POST courses where officer bias can impact their behavior towards stopped individuals.

1138 See *ibid*.

1139 Cal. Pen. Code, § 13519.4, subdivision (a) mandates that POST develop training guidelines for both recruits and in-service officers as it relates to race culture and identity. POST last published guidelines in 1992.

PUBLIC USE OF RIPA DATA

1. Introduction

The Racial and Identity Profiling Advisory (RIPA) Board was created “for the purpose of eliminating racial and identity profiling, and improving diversity and racial and identity sensitivity in law enforcement.”¹¹⁴⁰ As part of this work, the RIPA Board reviews and analyzes the RIPA data collected on police and pedestrian stops by law enforcement agencies throughout California. RIPA data is available to the public and the Board encourages the public to review and utilize the data in their own communities. To understand the utility and effectiveness of RIPA data, the Board invited established organizations to present on how they have used RIPA data in their communities. On July 28, 2022, at the RIPA Board meeting, three organizations provided presentations: Public Policy Institute of California, Neighborhood Legal Services of Los Angeles County, and Center for Policing Equity.

2. Public Policy Institute of California

Public Policy Institute of California (PPIC) is a nonprofit, nonpartisan think tank that is working to inform and improve public policy in California through independent, objective, nonpartisan research.¹¹⁴¹ PPIC is based in San Francisco, California, and also has a center in Sacramento, California. Dr. Deepak Premkumar, a criminal justice research fellow with PPIC, presented on how PPIC has used nearly four million RIPA-reported stops to explore racial disparities in policing. Two recent PPIC reports captured the findings: “Racial Disparities in Law Enforcement Stops”¹¹⁴² and “Police Use of Force and Misconduct in California.”¹¹⁴³ Dr. Premkumar shared key findings from both reports that relied on RIPA data: Black Californians were two times more likely to be searched than White Californians, but their searches were less likely to yield contraband or evidence;¹¹⁴⁴ Black individuals were overrepresented in stops not leading to enforcement;¹¹⁴⁵ and Black individuals were overrepresented in use of force relative to population share.¹¹⁴⁶ In his summary of the reports’ findings and recommendations, Dr. Premkumar shared how helpful RIPA data has been in providing researchers with comprehensive stop data, not previously available, so they may accurately analyze police and civilian interactions, racial disparities, and policing practices. With accurate analysis, PPIC is able to inform and improve public policy with research-backed evidence. For example, Dr. Premkumar shared that stops for equipment/non-moving violations offer opportunities for agencies to implement alternative practices that could help reduce disparities. PPIC will continue to use RIPA data and study how new data elements could add further insights into their research and help improve decision-making and state legislation on stop and search behavior.¹¹⁴⁷

3. Neighborhood Legal Services of Los Angeles County

Neighborhood Legal Services of Los Angeles County (NLSLA) is a nonprofit providing free legal assistance to more than 100,000 individuals and families throughout Los Angeles County every year, specializing in areas of the law that disproportionately impact people living in poverty.¹¹⁴⁸ NLSLA’s

¹¹⁴⁰ Cal. Pen. Code, § 13519.4, subd. (j)(1).

¹¹⁴¹ *About PPIC*, Public Policy Inst. of California (PPIC) <<https://www.ppic.org/about-ppic/>> [as of Nov. 29, 2022].

¹¹⁴² Lofstrom et al., *Law Enforcement Stops*, *supra* note 181.

¹¹⁴³ Premkumar et al., *Police Use of Force and Misconduct in California* (Oct. 2021) PPIC <<https://www.ppic.org/publication/police-use-of-force-and-misconduct-in-california/>> [as of Nov. 29, 2022].

¹¹⁴⁴ Lofstrom et al., *Law Enforcement Stops*, *supra* note 181.

¹¹⁴⁵ *Ibid.*

¹¹⁴⁶ Premkumar et al., *Police Use of Force and Misconduct in California*, *supra* note 1143.

¹¹⁴⁷ To learn more about Public Policy Institute of California and their research on police civilian interactions, racial disparities, and policing practices, visit *About PPIC*, Public Policy Institute of California (PPIC) <<https://www.ppic.org/about-ppic/>> [as of Nov. 29, 2022].

¹¹⁴⁸ Neighborhood Legal Services of Los Angeles County (NLSLA) <<https://nlsla.org/>> [as of Nov. 29, 2022].

work includes individual representation, high impact litigation, education, and public policy advocacy. Chelsea Helena, an attorney with NLSLA, presented on their report “Not Just Stops: Mapping Racially Biased Policing in the Antelope Valley,”¹¹⁴⁹ which was developed in partnership with California State University Northridge (CSUN) to explore racial disparities in policing using Los Angeles County Sheriff’s Department (LASD) RIPA data. Using RIPA data as well as LASD’s crime database and the census block data, NLSLA discovered that policing has disproportionately targeted communities of color in the Antelope Valley, which is part of Los Angeles County.

In Antelope Valley, Black individuals were 136 percent more likely to be stopped by law enforcement than their population’s expected share and detained, searched, handcuffed, cited, and arrested at higher rates than any other race.¹¹⁵⁰ Exploring this disparity in the NLSLA report, Professor Stephen Graves, a professor of Geography and Geographic Information Systems (GIS) at CSUN, demonstrated how RIPA stop data layered into GIS mapping could compare stop rates in relation to a neighborhood’s overall population, population density, median income, and ethnic/racial breakdown. Professor Graves and Ms. Helena discovered that in the Antelope Valley, people in less populated, lower income neighborhoods of color experienced stops at a higher rate than people in more populated, wealthier White communities.¹¹⁵¹ They also layered assault and burglary rates to see if they correlated with increased policing and stop rates; instead, they found that race was the determining factor. Communities of color that experienced high assault and burglary rates but that did not border a white community saw less police activity than expected.¹¹⁵² Meanwhile, communities of color that experienced high assault and burglary rates and did border a White community saw more police activity than expected.¹¹⁵³ Ms. Helena pointed to Quartz Hill High School as an example of this, where the wealthier, White community at the school experienced fewer police contacts in comparison to the communities of color surrounding Quartz Hill High School. In response to these findings, NLSLA has been working with local community groups and youth groups to validate the experiences felt by people of color in the Antelope Valley and to advocate for change and protections against racial profiling.¹¹⁵⁴

4. Center for Policing Equity

The Center for Policing Equity (CPE) is a research and action organization that produces analyses identifying and reducing the causes of racial disparities in law enforcement.¹¹⁵⁵ CPE believes in “driving meaningful change by ensuring communities and law enforcement have the evidence-based resources they need to reimagine public safety, build community trust, and achieve racial equity.”¹¹⁵⁶ Hilary Rau, Vice President of Policy and Community Engagement at CPE, and Tracy Kawabata-Perrett, Data Operations Manager at CPE, presented on their publicly accessible resource, JusticeNavigator.org, that collects police department data, including RIPA data, so that the public may identify and reduce the harmful disparities observed in policing. Using this data, CPE has been able to develop public assessments for a number of cities and counties throughout the country, including the City of Sacramento and City and County of San Diego in California.

1149 Helena et al., *Not Just Stops: Mapping Racially Biased Policing in the Antelope Valley* (Oct. 2021) NLSLA <https://nlsla.org/wp-content/uploads/2021/10/Mapping-Racially-Biased-Policing-in-the-AV_compressed.pdf> [as of Nov. 29, 2022].

1150 *Id.* at p. 19.

1151 *Id.* at pp. 30-33.

1152 *Id.* at pp. 36-38.

1153 *Ibid.*

1154 To learn more about Neighborhood Legal Services of Los Angeles County and their report on racial disparities in policing in the Antelope Valley, see Neighborhood Legal Services of Los Angeles County <<https://nlsla.org/>> [as of Nov. 29, 2022].

1155 *Center for Policing Equity Launches Justice Navigator, Developed in Collaboration with Google.org, To Improve Policing Practices* (Sept. 2021) Center for Policing Equity (CPE) <<https://policingequity.org/newsroom/press-releases/center-for-policing-equity-launches-justice-navigator-developed-in-collaboration-with-google-org-to-improve-policing-practices>> [as of Nov. 29, 2022].

1156 *Who We Are*, CPE <<https://policingequity.org/about/who-we-are>> [as of Nov. 29, 2022].

CPE stated that California’s RIPA data has been helpful because the standards require law enforcement agencies to provide clean, complete, and ready-to-analyze data. In contrast, there is a lack of standardization in nationwide law enforcement data. Ms. Rau shared how RIPA data mitigated many of the key challenges CPE faces with law enforcement agencies in other states and how the RIPA data has allowed CPE to closely analyze and isolate calls for service, stops, and other contacts to identify disparities while controlling for factors like neighborhood crime and poverty levels.

Some key takeaways of CPE’s research are: that widespread cultural stereotypes influenced encounters between police and members of the public;¹¹⁵⁷ cognitive depletion – the phenomenon when our limited mental resources for processing information, making decisions, and controlling behavior are reduced – led to increased use of force incidents and ethics complaints among law enforcement officers;¹¹⁵⁸ individual-level factors decreased or increased risks of disparate policing, such as one’s desire to limit prejudice or support social hierarchies;¹¹⁵⁹ and promotion of equity through organizational changes set and enforce clear, unambiguous expectations on officer behavior.¹¹⁶⁰ For California’s challenges with racial disparities in pretextual stops, Ms. Rau offered four strategies based on policy interventions in other states that are similar to recommendations the RIPA Board has made in its annual reports. First, prohibit pretextual stops. Second, prohibit consent searches. Third, prohibit questions unrelated to the original stop reason. Fourth, prohibit stops based solely on low-level equipment and registration violations. CPE concluded their presentation by sharing the local advocacy efforts they have worked on and the CPE guidebook they have developed to encourage RIPA data collection efforts among law enforcement agencies across the country.¹¹⁶¹

1157 *The Justice Navigator Assessment is an essential tool in CPE’s three-part approach to addressing racial disparities in public safety*, CPE <<https://justicenavigator.org/for-law-enforcement/cpe-approach>> [as of Nov. 29, 2022].

1158 *Ibid.*

1159 *Ibid.*

1160 *Ibid.*

1161 To learn more about Center for Policing Equity and their ongoing work to identify and reduce causes of racial disparities in policing, see *Who We Are*, Center for Policing Equity (CPE) <<https://policingequity.org/about/who-we-are>> [as of Nov. 29, 2022].

AMENDMENTS TO RIPA REGULATIONS

On August 5, 2022, the Office of Administrative Law approved amendments to the regulations implementing RIPA, which were first enacted in 2017. Most of the amended regulations go into effect on January 1, 2024 to give law enforcement agencies and the Department time to reconfigure their stop data collection systems and train officers on the amendments. The amendments under the Cal. Code Regs., tit. 11, § 999.228, which relate to how agencies report stop data to the Department (i.e., in what form and what frequency) and how members of the public can access the stop data, went into effect on August 5, 2022.

The final amendments were refined after several years of input from a variety of stakeholders, including law enforcement agencies, community members, academics, advocacy groups, and the Board. The goal of the amended regulations is to improve accuracy and the consistency of the reported data, which will in turn help the Board, independent researchers, and the public track, analyze, and learn how racial or identity profiling may occur and work toward developing solutions. The data also has been a cornerstone for law enforcement agencies in understanding and shaping policy at the local level.

Some highlights of the changes implemented by the amended regulations:

- Requires officers to report eight new categories of information (known as data elements):
 - (1) Type of Stop;
 - (2) Person Stopped Perceived to be Unhoused;
 - (3) Stop Made During the Course of Performing a Welfare or Wellness Check;
 - (4) Race or Ethnicity of Officer;
 - (5) Gender of Officer;
 - (6) Stopped Person is a passenger in a vehicle; and
 - (7) The stopped person is inside a residence, where an officer was executing a search or arrest warrant naming or identifying another person, conducting a search pursuant to a condition of another person's parole, probation, PRCS, or mandatory supervision, or conducting a compliance check on another person under home detention or house arrest.
 - (8) In a multi-agency stop where the primary agency is not subject to RIPA requirements, an indication that the reporting officer works with a non-primary agency.
- Splits up the Actions Taken by Officer(s) During Stop into two separate data elements (1) Non-Force-Related Actions Taken by Officer(s) During Stop, and (2) Force-Related Actions Taken by Officer(s) During Stop.
- Provides clear definitions for probable cause to arrest, probable cause to search, reasonable suspicion, and personally identifying information.
- Clarifies that a welfare/wellness check or community caretaking function relates to an officer's non-crime related duties that are not performed for the purpose of investigating a crime.
- Clarifies that a custodial setting also includes a courtroom or courthouse in the limited circumstance where a court orders a person remanded into custody.
- Revises existing data values and adds new ones under the data elements, so officers can more accurately and thoroughly report the characteristics of their stops.
- Revises language throughout the regulations to be consistent with contemporary best practices, for example, replacing references to "Gender nonconforming" to "Nonbinary person"
- Provide a process for researchers and members of the public to access RIPA data in a manner that protects the security of that data.

- By transmitting a stop data report to the Department, the law enforcement agency is attesting that it ensured that neither personally identifiable information nor any other information that is exempt from disclosure is included in the stop data report.
- Agencies must report to the DOJ if they made no stops in a calendar year.
- Makes clear that law enforcement agencies can confidentially transmit data to advance public policy or for scientific study for use by the agency.

The Board encourages the public to review the full text of the amended regulations and the documents that describe the purpose of each amendment. The text and related documents are available here: <https://oag.ca.gov/ab953/regulations>.

RELEVANT LEGISLATION ENACTED IN 2022

This Report highlights legislation enacted in 2022 that may impact the Board's work towards eliminating racial and identity profiling and that may require updated trainings for officers and revisions to agencies' policies and procedures. Below is an overview of the primary changes resulting from the enacted legislation.

AB 2773 – Stops: Notification By Peace Officers

Assembly Bill 2773 creates a new requirement for law enforcement officers related to traffic and pedestrian stops. Beginning on January 1, 2024, law enforcement officers must state the reason for any traffic or pedestrian stop before they can engage in questioning related to a criminal investigation or traffic violation. The only exception to this rule is when an officer reasonably believes that withholding the reason is necessary to protect life or property from imminent danger, such as in cases of terrorism or kidnapping. AB 2773 codifies this rule by adding section 2806.5 to the Vehicle Code. The bill also amends Vehicle Code section 1656.3 to include an advisement that law enforcement officers must provide the reason for a traffic or pedestrian stop in the California Driver's Handbook. Lastly, the Bill amends the data reporting requirements in Government Code section 12525.5. Section 12525.5 requires law enforcement agencies to report various data elements regarding all stops conducted in a calendar year. AB 2773 expands those reporting requirements to include the reason given to the person stopped at the time of the stop.

AB 2537 – Vehicles: Driver Education

Assembly Bill 2537 adds section 1656.1 to the Vehicle Code to require the Department of Justice, in conjunction with POST, to create a video demonstrating the proper conduct of a peace officer and an individual during a traffic stop. This video must be posted on the Department's website. AB 2537 also adds section 12800.6 to the Vehicle Code, requiring that applications for a driver's license (including applications for renewals or duplicate licenses) inform the applicant of the video demonstrating proper conduct during a traffic stop. Lastly, the bill amends Vehicle Code section 11113 and Education Code section 51220.4 to require showing this video during driver's education courses.

AB 2229 – Peace Officers: Minimum Standards: Bias Evaluation

Assembly Bill 2229 amends section 1031 of the Government Code to change the standards for peace officer employment. The bill adds a requirement that peace officers be evaluated for and be found free from bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation. The bill also increases the number of educational institutions from which peace officer applicants may receive degrees in order to apply. Like Senate Bill 960, Assembly Bill 2229 revises accreditation standards for acceptable schools to include schools recognized by Cognia, a non-profit accreditation agency.

AB 655 - California Law Enforcement Accountability Reform Act

Assembly Bill 655 creates the California Law Enforcement Accountability Reform Act (CLEAR). Peace officer background investigations must now include an inquiry into whether a candidate for specified peace officer positions has engaged in membership in a hate group, participation in any hate group activity, or advocacy of public expressions of hate. Certain findings would disqualify a person from employment.

The law also requires an agency to investigate any internal or public complaint that alleges that a peace officer is or was a hate group member, participated in any hate group activity, or advocated public expressions of hate. Certain findings would require the employing agency to remove that peace officer from appointment. The bill also requires the Department of Justice to adopt and disseminate guidelines for the investigation and adjudication of these complaints by local agencies. Records of any sustained complaint that a peace officer has engaged in membership in a hate group, participation in any hate group activity, or advocacy of public expressions of hate are not confidential.

AB 988 - Mental Health: 988 Suicide and Crisis Lifeline

Assembly Bill 988 creates a new phone number, 988, to handle mental health and crisis intervention incidents. The 988 number launched on July 16, 2022. The bill also requires health care service plans and insurers to cover medically necessary treatment of a mental health or substance use disorder, including behavioral health crisis services, provided by a 988 center or mobile crisis team, regardless of whether the service is provided by an in-network or out-of-network provider, at the in-network cost-sharing amount. The cost for the 988 number will be partially funded by a \$0.08 surcharge on phone lines. AB 988 mandates a five-year implementation plan to include the following:

(A) access to crisis counselors through telephone call, text, and chat, 24 hours per day, 7 days per week;

(B) mobile crisis teams that operate statewide 24 hours per day, 7 days per week, and can respond to individuals in crisis in a timely manner. Mobile crisis teams would respond to suicidal or behavioral health calls made or routed to 988 as an alternative to law enforcement, unless there is a medical emergency, someone is in immediate danger, or there is a reported crime where law enforcement is mandated to respond by state or federal law; and

(C) access to crisis receiving and stabilization services.

SB 960 - Public Employment: Peace Officer Citizenship

Senate Bill 960 amends section 1031 of the Government Code to change the standards for peace officer employment. It changes the requirement that a peace officer or member of California Highway Patrol be a citizen of the United States to allow any individual legally authorized to work in the United States to become a peace officer or California Highway Patrol member. The bill also increases the number of educational institutions from which peace officer applicants may receive degrees.

AB 2147 – Freedom to Walk Act

Assembly Bill 2147 amends the Vehicle Code.¹¹⁶² The bill decriminalizes pedestrian roadway violations (i.e., jaywalking). Officers are limited to stopping individuals for pedestrian roadway to instances when it is reasonable to assume that there is an immediate danger of collision with a moving vehicle. The bill also requires the Commissioner of the California Highway Patrol, in consultation with the Institute of Transportation Studies at the University of California, to submit a report to the Legislature regarding statewide pedestrian-related traffic crash data and any associated impacts to traffic safety, including an evaluation of whether and how the changes made by this bill have impacted pedestrian safety.

SB 357 – Crimes: Loitering for the Purpose of Engaging in a Prostitution Offense

Senate Bill 357 repeals Penal Code sections 653.20 and 653.22, which prohibited loitering in a public place with the intent to commit prostitution. The Bill also adds section 653.29 to the Penal Code, allowing people convicted of loitering with intent to commit prostitution to petition for recall or dismissal of their conviction. Lastly, the Bill amends Evidence Code section 782.1, Penal Code sections 647.3, 653.23, and 1203.47, Public Utilities Code section 99171, and Welfare and Institutions Code sections 18259 and 18259.3 to support the decriminalization of loitering with intent to commit prostitution.

AB 256 - Criminal Procedure: Discrimination

Assembly Bill 256 amends sections 745 and 1473 of the Penal Code, which are criminal procedure codes. The bill requires a criminal trial court, upon a showing of good cause, to order prosecutors

¹¹⁶² Specifically, the bill amends sections 21451, 21452, 21453, 21456, 21461.5, 21462, 21950, 21953, 21954, 21955, 21956, 21961, and 21966 of, and adds and repeals Section 21949.5.

to share with a convicted individual evidence related to a criminal conviction or sentence, if that conviction or sentence was based on race, ethnicity, or national origin. There may be limitations on what must be shared, if the evidence is constitutionally private or contains privileged information. Previously, an individual could present statistical evidence or aggregate data about convictions, sentences, and race. AB 256 would allow an individual to also present non-statistical evidence to show that the conviction was based on race, ethnicity, or national origin. Courts considering the evidence or data must view the evidence as a whole to determine whether a significant difference exists from similar convictions or sentences showing race, ethnicity, or national origin was a factor leading to the conviction or sentence. If the court considers data, the court must consider whether differences in the data or the availability of data were caused by systemic and institutional racial bias, racial profiling, and historical patterns of racially biased policing and prosecution.

AB 2418 – Crimes: Justice Data Accountability and Transparency Act

Assembly Bill 2418 creates the Justice Data Accountability and Transparency Act (JDATA). The Act requires state and local prosecutorial agencies to begin collecting various data elements in each criminal case, including information about the case, defendant, victim, charges, initial court appearance, plea bargains, diversion and collaborative court program offerings, and disposition of the case and any post-conviction proceedings. Agencies must report these data to the Department of Justice beginning on June 1, 2027, and DOJ will begin publishing the data on June 1, 2028. Reporting and publication of this data will eventually occur on a monthly basis. The Act also creates the Prosecutorial Transparency Advisory Board. The Advisory Board, along with the DOJ, must create a data dictionary containing standardized definitions for each data element to be collected under the Act by July 1, 2024. The advisory board will also provide guidance to the DOJ regarding any draft rules, regulations, policies, plans, reports, or other decisions made in relation to the Act.

CONCLUSION

The Board continues its work to fulfill the goal of RIPA to eliminate racial and identity profiling and improve diversity and racial and identity sensitivity in law enforcement throughout California. This year, the Board reviewed additional data and policies for eliminating pretextual stops and made specific recommendations to the Legislature, law enforcement agencies, and district attorneys; examined the civilian complaint process and suggested best practices to increase access to the process from beginning to end; considered different mechanisms and their role in holding law enforcement officers and agencies accountable; and provided updates on how dispatchers can effectively respond to bias by proxy calls and how agencies and municipalities are developing alternative crisis response models that involve trained health professionals instead of armed law enforcement. The Board focused on youth interactions with law enforcement, both outside and within the schools context, and found stark disparities in how youth of color were treated during law enforcement encounters. The Board also assessed the mental health impact of law enforcement interactions on Black, Indigenous, and people of color and encouraged reframing the effect of law enforcement as a critical public health issue. In addition, the Board evaluated two POST trainings and identified areas for future collaboration with POST to improve the content and effectiveness of its certified courses.

The data show that racial and identity disparities persist year after year. The Board remains committed to analyzing and highlighting these disparities to compel evidence-driven strategies for reforming policing and eliminating racial and identity profiling in California. The Board remains hopeful that its research and recommendations will continue to inform the Legislature, POST, law enforcement agencies, advocates, researchers, and community members how to direct their energy, dedication, and resources to push for a safer California for everyone. The Board's work is strengthened by community participation, and the Board hopes to further engage with community members with its Board meetings and recommendations in the coming year.